

Jody L. McLeod  
**MAYOR**

Bruce Thompson  
**TOWN ATTORNEY**

Steve Biggs  
**TOWN MANAGER**



Bob Satterfield  
R.S. "Butch" Lawter, Jr.  
Art Holder  
Jason Thompson  
**COUNCIL MEMBERS**

Michael Grannis  
**MAYOR PRO TEM**

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## **TOWN COUNCIL MEETING**

**DECEMBER 3, 2012**

### **AGENDA**

#### **MAYOR AND TOWN COUNCIL**

**MAYOR JODY L. MCLEOD  
MAYOR PRO TEM MICHAEL GRANNIS  
COUNCILMAN BOB SATTERFIELD**

**COUNCILMAN ART HOLDER  
COUNCILMAN R.S. "BUTCH" LAWTER, JR.  
COUNCILMAN JASON THOMPSON**

#### **TOWN STAFF**

**STEVE BIGGS, TOWN MANAGER  
SHERRY L. SCGGINS, TOWN CLERK  
BRUCE THOMPSON II, TOWN ATTORNEY**

**AGENDA**  
**THE REGULAR MEETING OF THE CLAYTON TOWN COUNCIL**

**MONDAY, DECEMBER 03, 2012    THE CLAYTON CENTER**  
**6:30 PM                                    COUNCIL CHAMBERS**

**1.    CALL TO ORDER**

Pledge of Allegiance  
Invocation – Mayor Jody L. McLeod

**2.    ADJUSTMENT OF THE AGENDA**

**3.    CONSENT AGENDA**

(Items on the consent agenda are considered routine in nature or have been thoroughly discussed at previous meetings. Any member of the Council may request to have an item removed from the consent agenda for further discussion.)

- a.    Draft minutes from the November 19, 2012, work session meeting.
- b.    2013 HeartChase request.
- c.    Development agreement for East Clayton Village.
- d.    Resolution for the speed limit on Vinson Road near Powhatan school site.
- e.    East Area Neighborhood Sidewalk Project.
- f.    Resolution supporting the three year update to the Johnston County solid waste plan.
- g.    Ordinance amendment for the Library Board.
- h.    Annexation petition 2012-11-01 for the unincorporated portion of Creekside Commons Subdivision located off of Avondale Drive.
- i.    “Youth Art Month” proclamation.
- j.    Final acceptance for public water, sewer, and associated storm drainage utilities for Glen Laurel East, Phase 2A.

**4.    INTRODUCTIONS AND SPECIAL PRESENTATIONS**

**5.    PUBLIC HEARINGS**

- a.    Public hearing for rezoning request RZ 2012-81 for the Atkinson property located on US 70 Business HWY.
- b.    Public hearing for Ordinance Amendment to Chapter 155 for the following:
  - Article 2, Section 155.202, Table 2-1 “Use Regulations” to include new uses and modify existing terminology
  - Article 3, Section 155.305 to include new definitions and standards and updates to the text throughout Article 3.
  - Article 4, Section 155.403 (J) to relocate as Section 155.204 (D) as written and to remove from Article 4.

6. OLD BUSINESS
  - a. Noise ordinance – **TRACKING PURPOSES ONLY.**
  - b. Demolition ordinance for 110 West Front Street.
7. NEW BUSINESS
8. STAFF REPORTS
  - a. Town Manager
  - b. Town Attorney
  - c. Town Clerk
    - Calendar of Events
  - d. Other Staff
9. OTHER BUSINESS
  - a. Informal Discussion & Public Comment.
  - b. Council Comments.
  - c. Johnston County Economic Development Commission – **TRACKING PURPOSES ONLY.**
10. ADJOURNMENT

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 3a

Meeting Date: 12/03/12

**TITLE: DRAFT MINUTES FROM THE NOVEMBER 19, 2012, WORK SESSION MEETING.**

**DESCRIPTION: Attached.**

**RELATED GOAL: Administrative**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
12-03-12	Approval.	DRAFT 11/19/12 minutes.

**MINUTES  
CLAYTON TOWN COUNCIL  
NOVEMBER 19, 2012**

The second regular meeting of the Clayton Town Council for the month of November was held on Monday, 19, 2012, at 6:30 PM at Town Hall, 111 East Second Street.

**PRESENT:** Mayor Jody L. McLeod, Mayor Pro Tem Michael Grannis, Councilman Bob Satterfield, Councilman R. S. "Butch" Lawter Jr., and Councilman Art Holder.

**ABSENT:** Councilman Jason Thompson

**ALSO PRESENT:** Steve Biggs, Town Manager; Jeffrey Bandini, Town Attorney; Nancy Medlin, Deputy Town Manager; Sherry Scoggins, Town Clerk; Stacy Beard, Public Information Officer; David DeYoung, Planning Director; Tim Simpson, Public Works & Utilities Director; Christie Starnes, Library Director; Tommy Roy, Information Services Technician

**ITEM 1. CALL TO ORDER**

Mayor McLeod called the meeting to order at 6:33 PM. Mayor McLeod gave the invocation.

**ITEM 2. ADJUSTMENT OF THE AGENDA**

As there was no adjustment of the agenda, it was the consensus of the Council to proceed with the agenda as presented.

**ITEM 3. ACTION AGENDA**

Councilman Satterfield motioned to approve the action agenda as presented; Councilman Lawter seconded the motion. The motion carried unanimously with the following action agenda items approved at 6:35 PM:

Item 3a. Draft minutes from the November 5, 2012, regular meeting.

**ITEM 4. INTRODUCTIONS & SPECIAL PRESENTATIONS**

Item 4a. Introduction of new Town of Clayton employees.

No new Town of Clayton employees were introduced.

Item 4b. Presentation of 2012 Clayton Christmas Parade request by representative of the Clayton Chamber.

This item was presented as Item 9a.

Item 4c. Presentation of 2013 HeartChase request.

Michelle Gray with American Heart Association stated she is a resident of Clayton. She provided the following overview of the 2013 Clayton HeartChase:

- Second year for event
- Slated for Saturday, May 18, 2013
- Registration begins at 9 AM at Town Square
- Race begins at 10 AM and concludes at 12 noon
- Event will begin and end at Town Square
- HeartChase is a smaller scale of the Amazing Race and is within Downtown Clayton
- Family event for all ages
- Raises money for the American Heart Association
- 2012 HeartChase raised over \$12,000 for the American Heart Association

Councilman Lawter questioned if Parks & Recreation Director Larry Bailey was contacted because of the Annual Clayton Road Race.

Ms. Gray stated she did and she also checked with Downtown Development Coordinator Bruce Naegelen about calendared events.

It was the consensus of the Council to place this item on the consent agenda.

## **ITEM 5. ITEMS SCHEDULED FOR THE REGULAR MEETING AGENDA**

Item 5a Presentation of rezoning request RZ 2012-81 for the Atkinson property located on US 70 Business HWY.

Planning Director David DeYoung provided a PowerPoint presentation of rezoning request RZ 2012-81, the Atkinson property:

PLANNING DEPARTMENT



## RZ 2012-81 Atkinson Property Rezoning

**Request:**

- ◆ Rezoning from B-3 (Highway Business) to R-8 (Residential)



Planning Director DeYoung stated this parcel is bounded by US 70 Business HWY, Barbour Street, and Lombard Street. He stated it is surrounded by properties zoned as Residential R-8.

PLANNING DEPARTMENT



## Atkinson Property Rezoning

**Site Data:**

- ◆ 1.62 acres
- ◆ Highway Business (B-3) zoning
- ◆ Vacant wooded lot
- ◆ Adjacent to US 70 and US 42 off ramp
- ◆ Limited access parcel



Planning Director DeYoung stated this is a currently a vacant wooded lot with limited access to the parcel. He added the requested rezoning is consistent with the adjacent parcels.

PLANNING DEPARTMENT

**Atkinson Property Rezoning**

The proposed rezoning:

- ◆ Is consistent with adopted Town plans
- ◆ Is more suitable than the current zoning
- ◆ Is necessary to continue the current balance of uses
- ◆ Does not increase impacts on public facilities
- ◆ Does not violate the purposes of zoning or impact adjacent property
- ◆ Is not detrimental to the general public



*Staff is Recommending Approval of the Rezoning Request*

MOORE COUNTY  
CLAYTON  
1869

Planning Director DeYoung stated the neighbors expressed concern about the rezoning. He stated the most heard concern is that it would not be used for single family use. He stated it was explained that before a multi-family or higher intensity use can occur it would have to come before the Town Council. He stated the owner does own the lot adjacent to this request and it has a single family dwelling on Lombard Street.

Based upon question by Council, Planning Director DeYoung stated the lot facing Barbour and immediately behind the lot requested for rezoning is also owned by the applicant.

Mayor McLeod stated that is good information to have. He stated the topography for the portion of the lot facing US 70 Business HWY is sloped and would be difficult to develop. He stated the addition of the adjacent lot could make it developable.

**This item is slated for public hearing at the Monday, December 3, 2013, Council meeting.**

- Item 5b. Presentation of Ordinance Amendment for Chapter 155 for the following:
- Article 2, Section 155.202, Table 2-1 “Use Regulations” to include new uses and modify existing terminology
  - Article 3, Section 155.305 to include new definitions and standards and updates to the text throughout Article 3.

Planning Director David DeYoung provided a PowerPoint presentation overview of Ordinance Amendments for Article 2 and Article 3 of Chapter 155; herewith attached and incorporated as **Exhibit A, Articles 2&3**. Planning Director DeYoung also distributed a handout pertaining to the Downtown Overlay District; herewith attached and incorporated as **Exhibit B, Downtown Overlay District**.

Planning Director DeYoung provided the following overview:

- Article 2 amendments are updates to 202.1 and 202.8
- Handout is a request to relocate the Downtown Overlay District placed in the sign code and not the development district standard
  - No amendment to the standards; relocation of section only
- Electronic gaming is being renamed as video sweepstakes operations
  - The renaming is in alignment with the NC GS
- Addition of microbrewery
- Table 2.8 are revisions to make it consistent with Table 2.1
- Downtown Overlay District would be incorporated in section 204
- Article 3 modified language for sweepstakes
- Townhome garage requirements were clarified
  - Must have a front yard
  - Cars must fit on the parking pad and not overhang on the sidewalk
- Deleting the landscaping section referencing the Board of Adjustment as the approval authority as buffering and landscaping is incorporated in the Code
- Added the microbrewery definition
- Revisions to the video sweepstakes
  - NC GS governs this and the request is to remove from the Code

Mayor Pro Tem Grannis thanked Planning Director DeYoung for the update of the Code. He stated the hope is patrons using the Code find it easy to use. He questioned if this is a final version.

Planning Director DeYoung stated this should be the last series of changes for Articles 2 and 3 for awhile. He stated there was a meeting today with the Sign Code Committee that was established to review the sign code. He stated Article 4 is currently under review.

**This item is slated for public hearing at the Monday, December 3, 2013, Council meeting.**

Item 5c. Presentation of development agreement for East Clayton Village.

Town Manager Steve Biggs stated the most important element of the East Clayton Village project is the extension of Front Street and connecting with HWY 42. He stated the project languished for a period of time until an opportunity was found to pursue outside funding assistance. He stated the outside funding assistance is in the fund of an LAPP project through CAMPO for \$1.2 million for

the construction of Front Street. He stated the development agreement is primarily addresses how the project is being administered. He stated the Town and the developer will work together for the construction of the extension of Front Street. He stated the LAPP project which carries a 20% local match will be met by the developer as well as cost overages; as noted in Article 2 of the development agreement. He stated the Town agreed to administer the project which includes design, permitting, engineering, and construction. He stated the developer is responsible for the 20% of the total cost to design, permit, engineer, and construct the road. He stated the Town will be responsible for the remaining 80% and both parties acknowledge that the Town's share comes from the LAPP. He added the developer will be responsible for 100% of the total cost of other infrastructure. He stated in order to enhance the chance of funding by CAMPO the Town did agree to pay 100% of the cost of the sidewalk associated with the project. He stated the actual cost of the design, permit, engineer and construct of the street exceeds estimates. He stated the Town is responsible for notifying the developer excess funds will be required and the developer shall pay the amount to the Town within 30 days. He stated the developer is in agreement with the agreement.

Councilman Satterfield questioned if the planning department has had contact with the developer on the start date of this project.

Town Manager Biggs stated the Town has weekly contact with the developer. He stated this is an extremely complicated process with the amount of review by outside agencies. He stated the Town timeline for bid of this project was October and it is delayed to a winter timeline.

Mayor Pro Tem Grannis questioned with respect to the 20% total cost for design, permit, engineer and construct of the road is typical for this form of contract.

Town Manager Biggs stated this is unique. He stated the 20% covers what will be 100% of the Town's local cost towards the construction He stated the Town has done some things that have increased the cost in order to expedite the process. He stated the percentage construct that exists with the LAPP project, is the LAPP provides 80% funding and the local requirement is a 20% match for the total project. He stated the Town did accelerate some of the environmental study work while the project was under review by other agencies.

Mayor Pro Tem Grannis questioned the amount of the additional cost.

Town Manager Biggs stated the environmental work is between \$26,000 and \$30,000.

Mayor Pro Tem Grannis questioned where the money came from.

Town Manager Biggs stated the Town is paying for that from the administrative consulting services account.

It was the consensus of the Council to place this item on the consent agenda.

Item 5d. Presentation of resolution for the speed limit on Vinson Road near Powhatan school site.

Town Manager Steve Biggs stated this is a request from citizens in Glen Laurel He stated the citizens expressed that when walking students to Powhatan Elementary School they observed speeding and unsafe conditions. He stated many of the children walk to school. He stated there was traffic enforcement in the area and it was effective in that a large number of citations were issued. He added NCDOT has been made aware of this concern. He stated some of the other options being discussed in addition to traffic enforcement include:

- Possibility of adding flashing lights to the school zone signs
  - Seeking feedback from NCDOT on the administration of the request on a reimbursement basis
  - Possibility of bringing this item back to the Council with a proposal for a joint project for the lighting of the signs
    - Share in the capital costs and the school would pay the continuing cost of the electricity and maintenance on the signals
    - A cost estimate has not yet been determined
  - Speed limit reduction

Town Manager Biggs stated when the school was constructed the speed limit on Vinson Road was 55 mph. He stated the Council took action for a resolution requesting to reduce the speed on that portion of Vinson Road from 55 mph to 45 mph with the establishment of a school zone of 35 mph. He stated based upon the concerns raised by the parents, he stated this is being presented to the Council. He stated the proposal before the Council is a further reduction of the speed limit from 45 mph to 35 mph with a school zone speed limit of 25 mph. He stated if the Council takes action on this item, it would go to the NCDOT as a resolution and it would require a concurring resolution from NCDOT.

Based upon comment by Council, Town Manager Biggs stated he wanted to make the Council aware that there had been discussion of school zone light signalization. He stated the signalization is for information and is not for Council action.

Council questioned if there is a portion of Vinson Road that is 55 mph.

Town Manager Biggs stated he believes that past the school zone, the speed limit may be 55 mph.

Mayor Pro Tem Grannis stated the description in the 2010 resolution is, “within the portion of Vinson Road beginning at the intersection with Glen Laurel Road proceeding east for approximately one mile for Powhatan Elementary School and a proposed middle school on one side of Vinson Road.” He questioned the area for reduction would be what was read into the record.

Town Manager Biggs stated the NCDOT will perform a focused evaluation of the area if the Council approves the resolution.

Town Manager Biggs stated he would clarify in the resolution the final “Whereas” the school zone would reflect 25 mph.

It was the consensus of the Council to place this item on the consent agenda.

**Item 5e. Presentation of East Area Neighborhood Sidewalk Project.**

Town Manager Steve Biggs stated this is an important project for the Town. He stated as a result of the Town’s association with CAMPO, the Town was successful in acquiring \$78,000 in federal funding. He stated the original project estimate for the scope of work was \$97,500. He stated in the agenda packet is a bid tabulation from the four contractors that submitted for the project. He stated the low bidder is Narron Construction for the amount of \$114,853.65. He stated the Town is familiar and comfortable in working Narron on this type of project. He stated that would result in a local match of \$36,000. He stated the area of focus is the east – southeast area, the long termed developed portion of Town. He stated when that portion of Town was developed sidewalks were not a requirement of the Town’s subdivision regulations.

Public Works & Utilities Direct Tim Simpson stated this is a local area project similar to the East Front Street project. He stated the area is bounded by Main Street, Smith Street, US 70 Business HWY and Johnson Drive. He stated the Town will seek concurrence of the bid with NCDOT to make that award and to execute the contract. He stated concurrence from NCDOT will be about a month after the Town Council’s December action meeting. He stated the project would possibly begin mid or late February. He stated the following process is being used for notification for residents:

- Web article currently posted
- Code Red call to the project area
- Letter to each of the residents in the project area
- Door hanger for those who will have sidewalk on their side of the street closer to time of the project

Councilman Satterfield questioned how the funding works.

Town Manager Biggs stated the Town is only obligated to the Town’s local match, which is 20%. He stated it is possible the Town may receive negative

feedback for a sidewalk project, but that was an unusual circumstance in the previous sidewalk project. He stated there is no way to anticipate public reaction to a Town initiative. He stated the Town has installed more sidewalk in established neighborhoods in the last few years than will be installed in this project. He added if the scope of the project were to be reduced, then the Town's match would be reduced.

Councilman Satterfield questioned if the door hangers could go out now.

Town Manager Biggs stated the website presence is a soft release. He stated the Code Red phone call will generate calls to the Operations Center. He stated each wave of information is more focused and more direct.

Mayor McLeod stated his understanding of the neighborhood not wanting sidewalk was there was already vegetation where the sidewalk was supposed to go.

Town Manager Biggs stated there are options to making this project occur.

Mayor Pro Tem Grannis questioned the estimated start date.

Public Works & Utilities Director Simpson stated the estimated start date is latter part of February 2013.

Mayor Pro Tem Grannis stated he likes the Code Red phone calls and letters going out in advance. He questioned if this has been done in the past.

Town Manager Biggs stated a combination of approaches have been done in the past. He stated this is the most structured approach to public communication. He stated to date, this is the first time the Town has done four waves of communications to notice a project.

Councilman Lawter stated in looking at the map, it may be in the Town's best interest to dialogue with those property owners with trees that will need to come down. He requested the section of Main Street at Second Street be addressed in a future sidewalk project.

It was the consensus of the Council to place this item on the consent agenda.

Item 5f. Presentation of resolution supporting the three year update to the Johnston County solid waste plan.

Public Works & Utilities Director Tim Simpson stated this is an updated plan for the future needs of the Johnston County Solid Waste Landfill.

Mayor Pro Tem Grannis questioned if the Town is included in the discussion for the update of the plan.

Public Works & Utilities Director Simpson stated there is some involvement between the Town and County.

It was the consensus of the Council to place this item on the consent agenda.

Item 5g. Presentation of ordinance amendment for the Library Board.

Library Director Christie Starnes stated the proposed amendments to the Library Board ordinance incorporate updates of the North Carolina General Statutes for public records and open meetings.

It was the consensus of the Council to place this item on the consent agenda.

Item 5h. Presentation of Annexation petition 2012-11-01 for the unincorporated portion of Creekside Commons Subdivision located off of Avondale Drive.

Town Manager Steve Biggs stated this is a voluntary annexation and is in accordance with Town Code of Ordinances to receive Town services.

It was the consensus of the Council to place this item on its consent agenda.

Item 5i. Presentation of “Youth Art Month” proclamation.

Town Clerk Sherry Scoggins stated a reception for “Youth Art Month” is slated for Thursday, January 10, 2013, at 6:30 PM in the lobby of the Clayton Center to recognize participants in the various art activities sponsored by the Clayton Woman’s Club of Clayton and the Council is invited to attend.

It was the consensus of the Council to place this item on its consent agenda.

Item 5j. Presentation of final acceptance for public water, sewer, and associated storm drainage utilities for Glen Laurel East, Phase 2A.

It was the consensus of the Council to place this item on its consent agenda.

## **ITEM 6. ITEMS CONTINGENT FOR THE REGULAR MEETING**

No items contingent for the regular meeting were presented.

## **ITEM 7. ITEMS FOR DISCUSSION**

No items for discussion were presented.

**ITEM 8. OLD BUSINESS**

Item 8a. Noise ordinance – **TRACKING PURPOSES ONLY.**

**TRACKING PURPOSES ONLY.**

Item 8b. Demolition ordinance for 110 West Front Street.

Town Manager Steve Biggs stated if the property were to change hands and the Council stayed action, the due process would begin anew. He stated in reviewing the item, a deficiency was noticed in the file in that an order was drafted but not delivered. He stated that has been remedied. He stated the request is for the Council to take action on the ordinance for demolition at the next meeting. He stated by doing so the Town reserves its right in that if a subsequent owner is unable to correct the deficiencies of the structure, then the Council may move forward with the ordinance of demolition. He stated by adopting the ordinance, it does not obligate the Town to take action.

*This item is slated for the December 3, 2012, Council meeting as a discussion item.*

**ITEM 9. STAFF REPORTS**

Item 9a. Town Manager

Town Manager Steve Biggs stated he is a member of the Clayton Chamber Board and requested to make the Clayton Christmas Parade request on its behalf.

It was the consensus of the Council for the Town Manager to present this item.

Town Manager Biggs stated the Chamber sponsors an Annual Christmas Parade along Main Street. He stated the request is the temporary closure of Main Street from US 70 Business HWY to Robertson Street from 12 noon to 5 PM on Saturday, December 8, 2012. He stated the parade would begin at 3 PM. He added the message board would be used to note the time of the road closure and the time the parade would begin. He added the route would remain the same.

Mayor Pro Tem Grannis requested when the locations are marked, the hope is the product used during the Harvest Festival would be used for the parade. He stated the markings did not linger on the street.

Mayor Pro Tem Grannis added the Chamber did a wonderful job keeping the streets cleaned during the Harvest Festival. He is hoping for the same during the parade.

Town Manager Biggs the litter will be minimized as there is not candy distributed during the parade.

Mayor McLeod stated he will not be in the parade this year. He stated this year he and Public Information Officer Beard will make a video for Town of Clayton TV.

Councilman Satterfield motioned to suspend the rules in order to take action on this item. Councilman Holder seconded the motion. Motion carried 4-0.

Councilman Holder motioned to approve the temporary closure of Main Street for the Clayton Christmas Parade as presented. Councilman Satterfield seconded the motion. Motion carried 4-0.

**Item 9b. Town Attorney**

Town Attorney Jeffrey Bandini stated no report.

**Item 9c. Town Clerk**

Town Clerk Sherry Scoggins stated no report.

**Item 9d. Other Staff**

No other staff presented a report to Council.

**ITEM 10 OTHER BUSINESS**

**Item 10a. Informal Discussion & Public Comment.**

No informal discussion and public comment were presented to Council.

**Item 10b. Council Comments.**

Councilman Lawter stated a month or so ago there were two Town workers on John Street who were working to resolve a lack of water concern. He added he believed the employees were James Blalock and Travis Jessup. He stated his appreciation for how they resolved the concern.

**ITEM 11. ADJOURNMENT**

With there being no further business brought before the Council, Councilman Holder motioned to adjourn; Councilman Satterfield seconded the motion. Motion carried 4-0 at 7:38 PM.

Duly adopted by the Clayton Town Council this \_\_\_\_ day of December 2012, while in regular session.

ATTEST:

\_\_\_\_\_  
Jody L. McLeod,  
Mayor

\_\_\_\_\_  
Sherry L. Scoggins, MMC  
Town Clerk

TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET

Agenda Item: 3b

Meeting Date: 12/03/12

TITLE: 2013 HEARTCHASE.

DESCRIPTION: A representative of the American Heart Association will request the use of Town Square and the temporary closure of Lombard Street between Main and Second Streets. The event is slated for Saturday, May 18, 2013.

*As the section of Lombard Street between Main and Second Streets is maintained by NCDOT, NCDOT would be contacted with a request for the temporary closure. If it is the pleasure of the Council, this item can be placed on the consent agenda.*

At its November 19, 2012, Council meeting, it was the consensus of the Council to place this item on the consent agenda.

RELATED GOAL: Think Downtown

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
11-19-12	Presentation.	Special Events Committee Report.
12-3-12	Approval.	Special Events Committee Report.



Town of Clayton  
Planning Department  
111 E. Second Street, Clayton, NC 27520  
P.O. Box 879, Clayton, NC 27528  
Phone: 919-553-1545  
Fax: 919-553-1720

## SPECIAL EVENTS COMMITTEE REPORT

**Application Number:** 2012-1715  
**Event Name:** HeartChase  
**Event Date(s):** May 18, 2013  
**Location:** Town Square and Downtown Sidewalks

**Downtown/Town Limits/ETJ:** Downtown

**Applicant:** American Heart Association  
3131 RDU Center Drive, Ste 100  
Morrisville, NC 27560

**Contact:** Michelle Gray, (919) 819-2949 [michelle.gray@heart.org](mailto:michelle.gray@heart.org)  
Barbie Tew, (919) 320-5099 [barbietew@gmail.com](mailto:barbietew@gmail.com)

**Committee Meeting:** October 25, 2012

**Attendance:** Steve Biggs, Town Manager; Dale Medlin, Director Electric Dept; Chief Lee Barbee, FD; Dede Bumgarner, Zoning Admin; Heidi Stump, The Clayton Center; Tim Simpson, Director Public Works; Steve Blasko, Public Works; Capt John Coley, CPD; Andy Jernigan, CPD; Kenneth Lunger, CPD; Jeffra Patton, Safety Officer; Stacy Beard, Public Information Officer; Bruce Naegelen, Downtown Development Coordinator

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**EVENT LOCATION:** Town Square and downtown sidewalks

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**EVENT DESCRIPTION:** 8:00 am – 12:00 pm Town Square will be the starting and ending point of this “Amazing Race” type event.

The event will start at Town Square heading toward Lombard Street; go down Second Street and up to Robertson Street and end at Town Square.

Registration starts at 9:00 am and the race starts at 10:00 am. The event ends at noon.

Participants will stop at 10 checkpoints at various downtown locations and perform some type of heart healthy exercise and must complete that activity before moving on to another checkpoint.

Local businesses will sponsor the checkpoints, some of whom are Woodall’s, Mooring & Mooring Dentistry, HTR Realty, Hudson’s Hardware, Revolution Self-Defense, etc.

Some the activities at the checkpoints will involve a mini-obstacle course, boxing, guessing calories in a specific meal, ropes and kettle bells, to describe a few.

Since this is a fundraising event for heart disease and stroke research, there will be interactive activities at Town Square for people to learn how to take care of their hearts. A cardiologist's office will be taking blood pressure and there will be a Heart Wall where people can donate money in honor of people they know who have been affected by heart disease and stroke.

Estimated Attendees per day: 200 people

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**SERVICES REQUESTED:**

- Use of Town Square has been reserved through The Clayton Center
  - Organizers will rent two portable toilets that will be placed in the Town Square parking lot
  - Request permission to close S. Lombard Street between Main & Second streets from 6:00 am – 1:00 pm
  - Request for two (2) police officers to help with participant road crossings at
    - Main & Second Street
    - Main & Fayetteville Street
  - 8-10 volunteers will assist participants cross at other locations.
  - Request for trash/recycling carts through Public Works (4/4)
- 

**INFORMATION NEEDED:**

- n/a
- 

**COMMITTEE ANALYSIS AND COMMENT:**

- There were no issues with this event last year
  - Location of start/end point has changed to Town Square
  - PD indicated no problem with providing officers
  - Public Works will provide trash carts
- 

**COMMITTEE CONDITIONS**

- Organizers to request road closure at November 19 work session of Town Council
  - Event has been approved by the committee pending approval of road closure by Council
- 

**DOCUMENTATION:**

- Special Event Application
- 

**TOWN COUNCIL CONSIDERATIONS**

- American Heart Association is requesting Town Council to close S. Lombard Street between Main and Second streets on May 18, 2013 from 6:00 am to 1:00 pm for one of the HeartChase checkpoints and to provide safe access for participants.

- **COUNCIL ACTION:**

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**ACTION:**

- Special Event Permit will be issued by Planning Department upon approval of road closure by Town Council.
- 

**POST EVENT REVIEW:**

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

**Agenda Item: 3c**

**Meeting Date: 12/3/12**

**TITLE: DEVELOPMENT AGREEMENT FOR EAST CLAYTON VILLAGE.**

**DESCRIPTION:** At its April 2, 2012, Council meeting, the Clayton Town Council adopted a planned development district – residential (PDD-R 2012-05) for East Village Investments LLC for a project located on East Front Street near Old NC HWY 42 East. One of the conditions imposed by Council: “Consistent with the Locally Administered Project Agreement (Project U-3605) dated January 17, 2012, execution of a Developers Agreement between the Town and the Developer shall be complete prior to the start of construction of the Front Street Extension.”

At its November 19, 2012, Council meeting, it was the consensus of the Council to place this item on the consent agenda.

**RELATED GOAL: Manage Growth Producing Quality Developments**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
11-19-12	Presentation.	Development Agreement.
12-3-12	Approval.	Development Agreement.

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2012 (the “Effective Date”) by and between the **TOWN OF CLAYTON**, a body politic existing under the laws of the State of North Carolina (the “Town”), and **EAST VILLAGE INVESTMENTS, LLC**, a North Carolina limited liability company (“Developer”).

### BACKGROUND

Developer currently owns land within the municipal limits of the Town of Clayton, as described on the attached Exhibit A, which Developer intends to develop as the “East Village of Clayton” development (the “Property”). The Town intends to construct a two-lane minor thoroughfare road known as the “Front Street Extension,” together with certain other infrastructure improvements along the road (defined below collectively as the “Infrastructure”). The Town and Developer desire to enter into this Agreement to provide for the construction of the Road and the payment of costs incurred for the construction of the Infrastructure.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, the benefits that will accrue to both parties from the development of the Property and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

### ARTICLE 1

#### GENERAL

Section 1.1 Definitions. Whenever used in this Agreement, the following terms shall have the meanings set forth in this Section:

- (a) “**Developer**” shall mean East Village Investments, LLC, and its officers, employees, successors, assigns, and successors in title.
- (b) “**Infrastructure**” shall mean, collectively, the Road, Sewer Line, and Sidewalk.
- (c) “**LAPP Agreement**” shall mean the Locally Administered Project agreement related to the project dated 7/20/2011, TIP #U-3605, Federal-Aid Number STPDA-0406(6), CFDA #20.205 between the North Carolina Department of Transportation and the Town of Clayton, as may be amended from time to time.
- (d) “**NCDOT**” shall mean the North Carolina Department of Transportation.
- (e) “**Road**” shall mean a minor thoroughfare road known as the “Front Street Extension,” which will begin approximately at the existing eastern terminus of Front Street and extend approximately one (1) mile to an intersection with N.C. Highway 42, together with related improvements along the Road. The paved portion of the Road will be approximately 41 feet wide, as constructed, and will contain a roundabout with an approximately 100-foot radius. Upon completion, the Town intends to assume ownership and maintenance of the Road.
- (f) “**Sewer Line**” shall mean a sewer main and all valves, fittings, service connections, service lines, shutoffs, manholes, and laterals to be constructed along and under the Road, which will have sufficient flow rate and capacity to permit Developer’s development of the Property.
- (g) “**Sidewalk**” shall mean a ten (10) foot wide asphalt multi-purpose trail consisting of approximately 3,200 linear feet to be installed along the Road.

(h) “**Town**” shall mean the Town of Clayton, a body politic existing under the laws of the State of North Carolina, and its officers, employees, successors, assigns and successors in title.

Section 1.2 Termination. The term of this Agreement shall commence on the Effective Date and terminate automatically upon the earlier to occur of: (a) the date that is five (5) years after the Effective Date; or (b) the date upon which the Infrastructure has been completed and all payment and reimbursement obligations of Developer under this Agreement have been satisfied, which may be memorialized by (i) a termination agreement signed by the parties and recorded in the Johnston County Register of Deeds; or (ii) a letter signed by the Town Manager of the Town certifying that all such obligations have been satisfied.

## **ARTICLE 2 DEVELOPMENT OF INFRASTRUCTURE**

Section 2.1 Development of Infrastructure. The Town will be responsible for the design, permitting, engineering and construction of the Road, Sewer Line, and Sidewalk. Developer agrees to cooperate in good faith with the Town and the Town’s agents, contractors and subcontractors in obtaining all permits and approvals required for the construction and development of the Infrastructure.

### Section 2.2 Cost Allocation.

(a) Road. Developer shall be responsible for 20% of the total cost to design, permit, engineer and construct the Road. The Town shall be responsible for the remaining 80% of such costs. The parties acknowledge the Town’s share of the costs will be paid using the Locally Administered Projects Program grant issued through the Capital Area Metropolitan Planning Organization (CAMPO).

(b) Sewer Line. Developer shall be responsible for 100% of the total cost to design, permit, engineer and construct the Sewer Line. It is hereby understood and acknowledged that Johnston County has constructed a water line that is located in the proposed right of way for the Road and that the water line will service the Developer’s proposed residential and commercial development. The Developer shall be responsible for the costs of any additional taps, fittings or other modifications required to be made to the water line in order to serve the Developer’s development.

(c) Sidewalk. The Town shall be responsible for 100% of the total cost to design, permit, engineer and construct the Sidewalk.

(d) Developer’s Payment of Costs. The Town will be responsible for soliciting bids for the Infrastructure work pursuant to the Development Schedule. The Town shall notify Developer sixty (60) days prior to commencing the bidding process, which notice shall include the estimated cost to design, permit, engineer and construct the Infrastructure. Developer shall pay its share of the estimated cost to design, permit, engineer and construct the Infrastructure to the Town within forty-five (45) days after receiving such notice from the Town. If the actual cost to design, permit, engineer and construct the Infrastructure exceed the estimated amounts, then the Town shall notify Developer of the excess funds required, and Developer shall pay those amounts to the Town within thirty (30) days after receiving such notice from the Town. The Town shall not be obligated to commence or continue the bidding process or the design, permitting, engineering, or construction of the Infrastructure until the Town has received from Developer the funds required to be delivered by Developer under this Section.

Section 2.3 Development Schedule. Subject to the terms of this Agreement and Developer's obligations under this Agreement, the Town intends to make every reasonable effort to install and construct the Infrastructure in accordance with the development schedule set forth in Exhibit B (the "**Development Schedule**").

Section 2.4 Easements. Developer shall convey to the Town temporary and permanent easements satisfactory to the Town and NCDOT over any property owned by Developer, including the Property, for the construction and maintenance of the Infrastructure; provided, all temporary easements shall terminate automatically upon the completion of the Infrastructure. All permanent easements shall be no less than 60 feet wide or as necessary to facilitate the specified street profile design and shall be wide enough to encompass all of the Infrastructure as constructed and related public facilities (including the Road roundabout with an approximately 100 foot radius) and to provide for the maintenance of such Infrastructure and facilities. The Town shall be responsible for obtaining all other rights-of-way and easements necessary for the construction and maintenance of the Infrastructure. Developer shall execute any documents or deeds required for the public dedication of the Infrastructure and associated easements.

Section 2.5 Capacity Allocations and Entitlements. Nothing in this Agreement shall be deemed an allocation by the Town of any water or sewer capacity allocation for the Property or of any development right or entitlement required for the development of the Property. Developer shall be required to apply to the Town separately for such allocations, approvals, and entitlements in accordance with all applicable Town ordinances and regulations.

### **ARTICLE 3 DEFAULT AND REMEDIES**

#### Section 3.1 Default.

(a) By Town. Subject to Section 3.1(c), upon default of the Town's obligations under this Agreement, Developer may enforce the terms and conditions of this Agreement by (i) an action for specific performance or injunction or (ii) performance of the Town's obligations under this Agreement and suit to recover the costs of performing such obligations, less and except the amounts Developer is required to pay under this Agreement, but including any amounts prepaid to the Town by Developer.

(b) By Developer. Subject to Section 3.1(c), upon default of Developer's obligations under this Agreement, the Town may enforce the terms and conditions of this Agreement by any remedy available at law or in equity.

(c) Notice and Cure Period. Upon failure of a party to perform its obligations under this Agreement, the non-breaching party shall provide written notice to the breaching party. The breaching party shall have thirty (30) days to cure such failure. If the breaching party does not cure the failure within such 30-day period, then the non-breaching party may exercise its remedies permitted by Section 3.1(a) or (b), as applicable. Any failure or omission of the non-breaching party to exercise any right or remedy provided in this Agreement shall not be deemed a waiver of such party's right to enforce strictly the breaching party's obligations in any other instance.

Section 3.2 Limitations on Damages. In no event shall either party be liable to the other party for punitive, consequential, or speculative damages arising out of or relating to this Agreement, including damages incurred for loss of use, income, profit, financing, business, reputation, or loss of management or employee productivity or of the services of such persons.

Section 3.3 Survival. The provisions of this Article shall survive any termination of this Agreement.

## ARTICLE 4 MISCELLANEOUS

Section 4.1 Force Majeure. Notwithstanding anything in this Agreement to the contrary, the Town's obligation perform each of its development obligations under this Agreement shall be subject in each case to Force Majeure. "**Force Majeure**" shall mean and include, without limitation, delays or inability to perform caused or resulting from any event or circumstance beyond the reasonable control of the Town, including accidents, acts of God, earthquakes, flooding, tornadoes, hurricanes or other weather conditions resulting in inability to maintain normal working conditions, any development or funding moratoria instituted by any governmental entity other than the Town, legal restrictions or rejoiners, the unlawfulness or unconstitutionality of any provision of this Agreement, Developer's default under this Agreement, or acts of war, terrorism or civil unrest. In the event of a delay, the time required for completion of any particular action shall be extended for a period of time equal to the period of time the condition for which a Force Majeure delay and extension is permitted exists (each a "**Force Majeure Event**"). If, due to a Force Majeure Event, a deadline established in this Agreement cannot be met, the date for performance for such obligation shall be extended for the period of such delay, and the Town shall not be declared in default under this Agreement, so long as the Town proceeds to satisfy the obligation as soon as possible after the Force Majeure is no longer in effect.

Section 4.2 LAPP Agreement. Further, the Town's obligations under this Agreement, including the Town's obligation to comply with the Development Schedule, are subject to the LAPP Agreement and all consents and approvals that must be obtained from NCDOT during design and construction of the Infrastructure pursuant to the LAPP Agreement. The Town shall not be deemed in default under this Agreement as a result of any delay, failure to perform, or other circumstance arising out of NCDOT's administration of the LAPP Agreement that is not the result of the Town's default under the LAPP Agreement. Any discrepancies between this Agreement and the LAPP Agreement shall be resolved in favor of the LAPP Agreement.

Section 4.3 No Waiver of Governmental Authority or Discretion. Nothing in this Agreement shall be construed to bind, estop, direct, limit, or impair the future regulatory, legislative, or governmental discretion of the Town or its Town Council in a manner not permitted by law. The Town shall incur no liability to the Developer for any losses or damages it may incur as a result of or in connection with the Town's exercise or performance of its regulatory, legislative, or governmental powers or functions, or any judicial determination.

Section 4.4 No Partnership. Nothing contained in this Agreement shall be construed to make the Town a partner with Developer or render either party liable for the debts or obligations of the other.

Section 4.5 No Third-Party Rights Created. This Agreement is intended for the benefit of the Town and Developer and their successors and assigns as permitted under this Agreement and not for any other person; and no such persons shall enjoy any right, benefit, or entitlement under this Agreement.

Section 4.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the matters covered herein and supersedes all prior negotiations, understandings, and agreements with respect to the matters contemplated herein.

Section 4.7 Amendment. Except as otherwise provided herein, this Agreement may not be amended or terminated except by written instrument signed by both parties.

Section 4.8 Assignment. Developer may assign this Agreement to one or more entities that are owned or controlled by or under common control with Developer only with the Town's prior written consent, which shall not be unreasonably withheld. Upon such assignment, Developer shall be released of any liability under this Agreement only if the subsequent assignee is acceptable to the Town and covenants in a document approved by the Town and recorded at the Johnston County Register of Deeds to undertake all responsibilities of Developer under this Agreement and the Town is made a third-party beneficiary of the assignment agreement.

Section 4.9 Successors and Assigns. All of the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. Developer's obligations under this Agreement shall run with the land and shall be binding upon future owners of the Property.

Section 4.10 Enforceability. The enforceability and validity of this Agreement, in whole or in part, shall not be affected by the unenforceability or invalidity of any particular provision of this Agreement.

Section 4.11 Applicable Laws. This Agreement shall be construed under the laws of the State of North Carolina.

Section 4.12 Principles of Interpretation and Definitions. In this Agreement, unless the context requires otherwise: (a) the singular includes the plural, and the plural includes the singular; (b) the pronouns "it", "its", and "they" include the masculine and feminine; (c) references to statutes or regulations include all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation; (d) references to contracts and agreements shall be deemed to include all amendments thereto; (e) the words "include", "includes", and "including" are to be interpreted as if they were followed by either the phrase "without limitation" or "but not limited to"; (f) references to an "Article", "Section", "section", or "paragraph" shall mean an article or section of this Agreement; (g) headings and titles of sections, paragraphs, and articles are for convenience only and shall not be construed to affect the meaning of this Agreement; (h) the word "shall" is mandatory; and (i) all exhibits, attachments, or documents attached to this Agreement or referred to in this Agreement are incorporated by reference into this Agreement as if fully set forth herein.

**[SIGNATURES ON FOLLOWING PAGES.]**

**IN WITNESS WHEREOF**, the Town and Developer have caused this Agreement to be duly executed and sealed pursuant to proper authority as of the day and year first above written.

**DEVELOPER:**

**EAST VILLAGE INVESTMENTS, LLC**, a North Carolina limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

I certify that \_\_\_\_\_, Manager of **EAST VILLAGE INVESTMENTS, LLC**, a North Carolina limited liability company, personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein.

Date: \_\_\_\_\_

\_\_\_\_\_

Official Signature of Notary

\_\_\_\_\_

Notary's printed or typed name

My Commission Expires: \_\_\_\_\_ [AFFIX NOTARIAL STAMP-SEAL]

**TOWN OF CLAYTON**

By: \_\_\_\_\_

Name:

Title:

Attest: \_\_\_\_\_, Secretary

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, \_\_\_\_\_, a Notary Public of the County of Wake and State of North Carolina, certify that \_\_\_\_\_, being personally known to me, personally came before me this day and acknowledged that he is the Secretary of the **TOWN OF CLAYTON**, a body politic existing under the laws of the State of North Carolina, and that by authority duly given and as the act of the TOWN OF CLAYTON, the foregoing instrument was voluntarily signed in its name by its \_\_\_\_\_, and voluntarily attested by him as its Secretary for the purposes stated therein.

Witness my hand and seal, this \_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public

My Commission Expires:

[NOTARY SEAL]

**EXHIBIT A DESCRIPTION OF PROPERTY**

All of these parcels of land located in the Town of Clayton, Johnston County, and more particularly described as follows:

Parcel One: BEING all of 12.83 acres, more or less, and having the Johnston County Tax Office Account Number 05037011 and North Carolina PIN Number 166806-39-4560;

Parcel Two:

BEING all of 70.85 acres, more or less, and having the Johnston County Tax Office Account Number 05037010E and North Carolina PIN Number 166806-49-7689; Parcel Three: BEING all of 18.49 acres, more or less, and having the Johnston County Tax Office Account

Number 05037010B and North Carolina PIN Number 166807-59-6372; Parcel Four: BEING all of 1.46 acres, more or less, and having the Johnston County Tax Office Account

Number 05H03008L and North Carolina PIN Number 166807-68-2404; and Parcel Five: BEING all of 3.09 acres, more or less, and having the Johnston County Tax Office Account

Number 05037010F and North Carolina PIN Number 166807-58-3281.

**Date**

**Action**

Town begins bidding process for design and construction of Infrastructure.

Completion of pre-construction activities.

NCDOT to authorize construction funds.

Completion of project.

**EXHIBIT B DEVELOPMENT SCHEDULE**

3144844v2/920056.001

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

**Agenda Item: 3d**

**Meeting Date: 12/3/12**

**TITLE: RESOLUTION FOR THE SPEED LIMIT ON VINSON ROAD NEAR POWHATAN SCHOOL SITE.**

**DESCRIPTION:** At its April 5, 2010, Council meeting, Council adopted a resolution requesting NCDOT consider the lowering of the speed limit from 55 mph to 45 mph beginning at Glen Laurel Road and Vinson Road and proceed in an easterly direction for one mile. The primary purpose for the request was for the safety as there is a daycare, elementary and proposed middle school on Vinson Road.

Due to the increased development of the area, a request to adjust the speed limit on Vinson has been received and is before Council for its consideration.

At its November 19, 2012, Council meeting, it was the consensus of the Council to place this item on the consent agenda.

**RELATED GOAL: Manage Growth Producing Quality Developments**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
11-19-12	Presentation.	April 5, 2010, minutes excerpt; Resolution adopted 4/5/2010; NCDOT Letter of Approval of request dated 5/28/2010; & proposed resolution.
12-3-12	Approval.	Resolution.

**TOWN OF CLAYTON  
RESOLUTION REQUESTING A  
SPEED LIMIT REDUCTION ON VINSON ROAD**

**WHEREAS**, at its November 19, 2012, Council meeting, the Clayton Town Council was of the consensus that the speed posting on Vinson Road should be reduced; and

**WHEREAS**, the speed limit on Vinson Road is presently 45 miles per hour; and

**WHEREAS**, significant residential and institutional development has occurred along Vinson Road and a reduced speed limit is necessary to ensure safe travel; and

**WHEREAS**, the requested speed limit is 35 miles per hour on the portion of Vinson Road beginning at the intersection with Glen Laurel Road proceeding east for approximately one mile; and

**WHEREAS**, the request includes a school zone designation of 25 miles per hour within the portion of Vinson Road beginning at the intersection with Glen Laurel Road proceeding east for approximately one mile for Powhatan Elementary School and a proposed middle school on one side of Vinson Road with a proposed daycare immediately across the street from Powhatan Elementary School.

**NOW THEREFORE BE IT RESOLVED** by the Town Council of the Town of Clayton that the North Carolina Department of Transportation be requested to reduce the speed limit on Vinson Road.

Duly adopted this 3rd day of December 2012, while in regular session.

ATTEST:

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Jody L. McLeod,  
Mayor

---

Sherry L. Scoggins, MMC  
Town Clerk

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 3e

Meeting Date: 12/3/12

TITLE: EAST AREA NEIGHBORHOOD SIDEWALK PROJECT.

DESCRIPTION: Attached.

At its November 19, 2012, Council meeting, it was the consensus of the Council to place this item on the consent agenda.

RELATED GOAL: Manage Growth Producing Quality Developments

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
11-19-12	Presentation.	NCDOT Construction Authorization Letter for Project from NCDOT; Bid Tabulation; & Resolution.
12-3-12	Approval.	NCDOT Construction Authorization Letter for Project from NCDOT; Bid Tabulation; & Resolution.



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE  
GOVERNOR

EUGENE A. CONTI, JR.  
SECRETARY

June 19, 2012

Mr. Tim Simpson, PE  
Public Works and Utilities Director  
Town of Clayton

*VIA E-MAIL*

SUBJECT: Construction Authorization  
Town of Clayton, Johnston County  
TIP #: EL-5100 OA; WBS Element: 41821.3.29  
East Area Neighborhood Sidewalk Project

Dear Mr. Simpson:

The NC Department of Transportation has received Federal Highway Administration (FHWA) authorization for the construction phase of the above project. The funds authorized and available for construction total **\$97,500 (\$78,000 federal and \$19,500 non-federal [local] match)**.

Please coordinate with the Division Project Manager, Jerry Page, from this point forward on the advertising, letting, and awarding of a construction contract, including NCDOT's review and concurrence in award. The Project Manager will assist and provide guidance on pre-bid meetings, bid opening procedures, and pre-qualification requirements for contractors, per the attached guidelines.

NCDOT must concur in the Town's award of the construction contract. Please submit all required documentation, per the attached guidelines, to the Division Project Manager for review and concurrence. Do not proceed with the final execution of a contract until you have received written notification that the Department concurs with the procedures used.

Please note, construction administration, engineering and inspection are eligible costs for the construction phase; however, the Town may not utilize the firm responsible for design for any phase of construction administration, without obtaining an exemption from NCDOT's Construction Unit AND without undertaking a new solicitation process in compliance with federal regulations.

MAILING ADDRESS:  
NC DEPARTMENT OF TRANSPORTATION  
TRANSPORTATION PROGRAM MANAGEMENT  
1595 MAIL SERVICE CENTER  
RALEIGH NC 27699-1595

TELEPHONE: 919-707-6600  
FAX: 919-212-5711

WEBSITE:  
WWW.NCDOT.GOV

LOCATION:  
CENTURY CENTER COMPLEX  
ENTRANCE B-1  
1020 BIRCH RIDGE DRIVE  
RALEIGH NC 27610  
Page 33 of 195

Mr. Tim Simpson, PE

Page 2 of 2

June 19, 2012

If you have any questions, please call Jerry Page at 252-237-6164 or me at 919-707-6626.

Sincerely,



Marta Matthews

Program Consultant

Local Programs Management Office

encl.

ec: Mr. Jerry Page, PE, Division Project Manager  
Ms. Theresa Canales, PE, Contractual Service Unit  
Mr. Ray McIntyre, PE, STIP Unit  
Mr. Christopher Peoples, PE, Materials and Test Unit  
Ms. Tammy Richards, FHWA  
Mr. Chris Lukasina, CAMPO

**EAST AREA NEIGHBORHOOD SIDEWALK PROJECT**  
**TOWN OF CLAYTON, NC**  
**ITEMIZED BID TABULATION**  
**Bid Date: October 24, 2012 @ 1:30 p.m.**

ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT	J.W. GRAND, INC. <i>License # 25005</i>		HOLLINS CONST. <i>License # 69738</i>		TURNER ASPHALT <i>License # 55042</i>		NARRON CONT. <i>License # 62426</i>	
				UNIT BID	AMOUNT BID	UNIT BID	AMOUNT BID	UNIT BID	AMOUNT BID	UNIT BID	AMOUNT BID
1	Mobilization	1	LS	\$10,350.00	\$10,350.00	\$12,000.00	\$12,000.00	\$5,000.00	\$5,000.00	\$3,000.00	\$3,000.00
2	Comprehensive Grading	1	LS	\$52,900.00	\$52,900.00	\$30,000.00	\$30,000.00	\$10,000.00	\$10,000.00	\$9,000.00	\$9,000.00
3	Traffic Control	1	LS	\$46,000.00	\$46,000.00	\$5,500.00	\$5,500.00	\$6,000.00	\$6,000.00	\$8,000.00	\$8,000.00
4	4" Concrete Sidewalk	2218	SY	\$29.90	\$66,318.20	\$35.00	\$77,630.00	\$29.25	\$64,876.50	\$25.50	\$56,559.00
5	6" Concrete Sidewalk	33	SY	\$52.90	\$1,745.70	\$40.00	\$1,320.00	\$35.00	\$1,155.00	\$27.80	\$917.40
6	Concrete Curb Ramps	18	EA	\$1,035.00	\$18,630.00	\$1,200.00	\$21,600.00	\$900.00	\$16,200.00	\$900.00	\$16,200.00
7	Temporary Silt Fence	2029	LF	\$2.30	\$4,666.70	\$3.00	\$6,087.00	\$2.95	\$5,985.55	\$2.25	\$4,565.25
8	Seeding & Mulching	1	AC	\$4,600.00	\$4,600.00	\$2,000.00	\$2,000.00	\$2,500.00	\$2,500.00	\$1,500.00	\$1,500.00
9	Valve Box Adjustments	2	EA	\$345.00	\$690.00	\$125.00	\$250.00	\$405.00	\$810.00	\$150.00	\$300.00
10	Water Meter Grade Adjustment	17	EA	\$287.50	\$4,887.50	\$300.00	\$5,100.00	\$305.00	\$5,185.00	\$100.00	\$1,700.00
11	Water Meter Relocation	17	EA	\$575.00	\$9,775.00	\$500.00	\$8,500.00	\$505.00	\$8,585.00	\$360.00	\$6,120.00
12	Sewer Service Grade Adjustment	6	EA	\$920.00	\$5,520.00	\$400.00	\$2,400.00	\$345.00	\$2,070.00	\$80.00	\$480.00
13	Sewer Service Relocation	6	EA	\$437.00	\$2,622.00	\$900.00	\$5,400.00	\$710.00	\$4,260.00	\$360.00	\$2,160.00
14	Curb Drain Adjustment	4	EA	\$460.00	\$1,840.00	\$500.00	\$2,000.00	\$450.00	\$1,800.00	\$140.00	\$560.00
15	Segmental Block Retaining Wall	24	SY	\$186.30	\$4,471.20	\$110.00	\$2,640.00	\$208.00	\$4,992.00	\$158.00	\$3,792.00
				<b>TOTAL BID</b>	<b>\$235,016.30</b>	<b>TOTAL BID</b>	<b>\$182,427.00</b>	<b>TOTAL BID</b>	<b>\$139,419.05</b>	<b>TOTAL BID</b>	<b>\$114,853.65</b>

**EAST AREA NEIGHBORHOOD SIDEWALK PROJECT  
TOWN OF CLAYTON, NORTH CAROLINA**

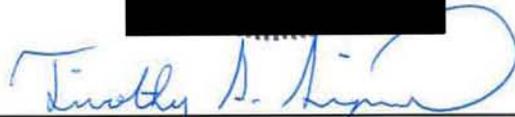
**BID DATE/TIME:** October 24, 2012 @ 1:30 p.m.

CONTRACTORS	LICENSE NO.	BID BOND	% DBE/WBE	TOTAL BID AMOUNT	REMARKS
<b>J.W. GRAND</b> 935 Shotwell Road, Suite 106 Clayton, NC 27520	25005	5%	3.43%	\$235,016.30	
<b>HOLLINS CONSTRUCTION SERVICES</b> 3650 Rogers Road, Suite 320 Wake Forest, NC 27582	69738	5%	4%	\$182,427.00	
<b>TURNER ASPHALT</b> 5805 Lease Lane Raleigh, NC 27617	55042	5%	3%	\$139,419.05	
<b>NARRON CONTRACTING</b> P.O. Box 909 Clayton, NC 27528	62426	5%	7.5%	\$114,853.65	<b>APPARENT LOW BIDDER</b>

This is to certify that the bids tabulated herein were publically opened and read aloud at 1:30 p.m. on the 24th day of October 2012, in the Town of Clayton, Operations Center located at 653 NC 42 Highway West, Clayton, North Carolina, and that all said bids were accompanied by either a certified check or bidder's bond except as otherwise noted.

**TOWN OF CLAYTON**  
653 NC 42 Highway West  
Clayton, NC 27520  
License No.: 19832



  
\_\_\_\_\_  
Timothy S. Simpson, P.E.

**TOWN OF CLAYTON  
RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF  
OF THE TOWN OF CLAYTON A CONTRACT AND ANY CHANGE  
ORDERS WITHIN THE BUDGETED AMOUNT WITH NARRON  
CONTRACTING, INC. FOR THE PROJECT KNOWN AS THE CLAYTON  
EAST AREA NEIGHBORHOOD SIDEWALK PROJECT**

**WHEREAS**, the Clayton Town Council desires to work cooperatively with the North Carolina Department of Transportation on the project known as the Clayton East Area Neighborhood Sidewalk Project (EL-5100 OA); and

**WHEREAS**, the Clayton East Area Neighborhood Sidewalk Project will promote pedestrian mobility for Clayton residents and visitors; and

**WHEREAS**, the Clayton East Area Neighborhood Sidewalk Project is funded in part by the North Carolina Department of Transportation and all project expenditures beyond the Municipal Agreement approved amount of \$78,000 will be considered part of Clayton's Local Match.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF CLAYTON THAT:**

The Mayor of the Town of Clayton is hereby authorized to execute on behalf of the Town of Clayton the attached contract with Narron Contracting, Inc. in the amount of \$114,853.65 and any change orders within the budgeted amount for the Clayton East Area Neighborhood Sidewalk Project pending concurrence with the North Carolina Department of Transportation.

Duly adopted by the Clayton Town Council this 3rd day of December 2012 while in regular session.

**ATTEST:**

---

Sherry L. Scoggins, MMC  
Town Clerk

---

Jody L. McLeod  
Mayor

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

**Agenda Item: 3f**

**Meeting Date: 12/3/12**

**TITLE: RESOLUTION SUPPORTING THE THREE YEAR UPDATE TO THE JOHNSTON COUNTY SOLID WASTE PLAN.**

**DESCRIPTION:** At its April 20, 2009, Council work session meeting, Council received an overview of the resolution supporting the three year update to the Johnston County solid waste plan.

At its May 4, 2009, Council meeting, Council adopted the resolution.

At its November 19, 2012, Council meeting, it was the consensus of the Council to place this item on the consent agenda.

**RELATED GOAL: Manage Growth Producing Quality Developments**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
11-19-12	Presentation.	Resolution.
12-3-12	Approval.	Resolution.

**TOWN OF CLAYTON  
RESOLUTION TO APPROVE  
THE JOHNSTON COUNTY SOLID WASTE PLAN**

**WHEREAS**, better planning for solid waste will help protect public health and the environment, provide for an improved solid waste management system, better utilize our natural resources, control the cost of solid waste management; and,

**WHEREAS**, NC General Statute 130A-309.09A(b) requires each unit of local government, either individually or in cooperation with the other units of local government, to develop a 10-year comprehensive solid waste management plan; and

**WHEREAS**, Johnston County is acting as the lead agency for compliance with GS 130A-309.09A(b) for the units of local government within Johnston County, and

**WHEREAS**, the Town of Clayton has been actively involved in the planning process by representation on the Johnston County Solid Waste Planning and Advisory Committee;

**NOW, THEREFORE, BE IT RESOLVED** that the Town of Clayton hereby approves the Johnston County Three-Year Update to the Comprehensive Solid Waste Management Plan.

Duly adopted by the Clayton Town Council during regular session on the 3rd day of December 2012.

\_\_\_\_\_  
Jody L. McLeod.  
Mayor

ATTEST:

\_\_\_\_\_  
Sherry L. Scoggins, MMC  
Town Clerk

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

**Agenda Item: 3g**

**Meeting Date: 12/3/12**

**TITLE: ORDINANCE AMENDMENT FOR THE LIBRARY BOARD.**

**DESCRIPTION:** At its October 25, 2012, Library Board meeting, the members along with the Library Director, Ex-Officio Art Holder and the Town Clerk reviewed the ordinance pertaining to the Library Board. This section of the ordinance was last amended in 1991. The purpose of the review was to incorporate revisions from the North Carolina statutes pertaining to open meetings and public records.

At its November 19, 2012, Council meeting, it was the consensus of the Council to place this item on the consent agenda.

**RELATED GOAL:** Administrative

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
11-19-12	Presentation.	Ordinance.
12-03-12	Approval.	Ordinance.

**TOWN OF CLAYTON  
CODE OF ORDINANCES – CHAPTER 32**

**BE IT HEREBY ADOPTED THAT THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA** amends its Code of Ordinances with the following:

Amend the following sections of CHAPTER 32 to read as follows:

**32.060 ESTABLISHMENT.**

<b>Current</b>	<b>Recommended</b>
<b>(C) Powers and duties.</b>	<b>(C) Charges.</b>
(2) Make recommendations to the Town Manager concerning the construction and improvement of buildings and other structures for the library system;	(2) The Library Director and Board will collaboratively develop a Capital Improvement Program (CIP) for library facilities and the final document will be forwarded to the Town Manager.
(4) Advise the Town Manager concerning the appointment of a Chief Librarian or Director of Library Services;	(4) Advise the Town Manager concerning the appointment of a Library Director;
(5) Establish a schedule of fines and charges for late return of, failure to return, damage to, and loss of library materials and to take other measures to protect and regulate the use of such materials;	(5) Recommend a schedule of fines and charges for late return of, failure to return, damage to, and loss of library materials and to take other measures to protect and regulate the use of such materials;
(6) Participate in preparing the annual budget of the library; and	(6) The Library Director will incorporate recommendations from the Board in the preparation of the annual budget of the library. The Library Director will provide an overview of the adopted budget to the Board.
<b>(D) Members.</b>	
(1) <i>Appointment.</i> The Library Board shall consist of ten members appointed by the Town Council. Five members shall be chosen from within the corporate limits of the town and the others as broadly representative of the service area as possible.	(1) <i>Appointment.</i> The Library Board shall consist of ten members appointed by the Town Council. Five members shall be chosen from within the corporate limits of the town and the others from within the extra-territorial jurisdiction (ETJ).
	Pre-requisite for appointment is all members have a library card.
(3) <i>Length of appointment.</i> Each	(3) A term begins January 1 and

member shall be appointed for a three-year term.	expires December 31. Appointments that are vacated shall be filled by the Town Council for the completion of the unexpired term.
<b>(E) Meetings.</b>	
(1) The Library Board shall hold at least quarterly meetings, and all of its meetings shall be open to the public. The annual meeting shall be held in July and its agenda shall include a review of goals and the election of officers.	(1) As a public body, the Library Board shall hold at least quarterly meetings, and all of its meetings shall be open to the public (NC GS 143-310).
	The meeting schedule is to be adopted before the end of the calendar year and filed with the Town Clerk and posted on the Town of Clayton website (NC GS 143-318.12).
	If the Board needs to amend its calendar, it must do so at least 48 hours before the meeting.
	The annual meeting shall be held in January and its agenda include a review of goals and election of officers.
(2) The election of officers for the ensuing year shall take place at the regular Library Board meeting in July of each year. In the event an officer's appointment to the Library Board is terminated, a replacement to this office shall be elected by the Board from its membership at the meeting following the termination.	(2) The election of officers for the ensuing year shall take place at the regular Library Board meeting in July January of each year. In the event an officer's appointment to the Library Board is terminated, a replacement to this office shall be elected by the Board from its membership at the meeting following the termination.
	<b>Officers:</b>
	<b>Chair:</b> Facilitate the meetings of the Library Board and execute documents as directed or approved by the Library Board
	<b>Vice-Chair:</b> In the absence of the Chair, the Vice-Chair will facilitate the meeting of the Library Board and execute documents as directed or approved by the Library Board.
	<b>Recorder:</b> Take and transcribe the minutes of the official meetings of the Library Board.
<b>(3) Officers shall serve for one year</b>	<b>(3) Officers shall serve for one year</b>

<p>with eligibility for re-election. Mid-year replacement of officers shall serve for the period remaining in that term. New officers shall take office at the first meeting following the regular July meeting.</p>	<p>with eligibility for re-election. Mid-year replacement of officers shall serve for the period remaining in that term. New officers shall take office at the first meeting following the regular July January meeting.</p>
	<p>In accordance with NC GS 143-318.10 (e), the Library Board shall keep full and accurate minutes of all official meetings.</p>
	<p>Minutes are to include the date, time and place of the meeting, members present and absent, a summary of points discussed, motions of the Board, and adjournment.</p>
<p>(4) The Board shall make an annual report on library operations (G.S. § 153A-266) to the local government units that provide financial support to the library and an annual report to the Department of Cultural Resources as required by G.S. § 125-5.</p>	<p>(4) In collaboration with Johnston County, the Library Director shall complete the annual report on library operations (G.S. § 153A-266) to the local government units that provide financial support to the library and an annual report to the Department of Cultural Resources as required by G.S. § 125-5. The Library Director will provide an overview of the report to the Board.</p>
<p>(5) Special meetings may be called by the Chair or in his/her absence, the Vice-Chair may call a special meeting of the Library Board by giving each member 48 hours' notice. Special meetings will be scheduled upon written request by three or more Board members.</p>	<p>(5) Special meetings may be called by the Chair, Vice-Chair, or three or more members of the Board. In accordance with NC GS 143-318.12, a written notice of the meeting stating its purpose is to be posted on the principal bulletin board or door of its usual meeting room; and mailed, emailed, or delivered to each media or individual requesting notice; and it must be posted on the Town website prior to the scheduled meeting time.</p>
<p>(F) <i>Committees.</i> The Chair shall have the authority, subject to the approval of the Library Board, to appoint such committees as may be deemed desirable to complete the work of the Board. Committees may be composed of Board members, library staff members, and perhaps others. No</p>	

<p>committee, either standing or special, can be given power to act for the Board; rather the committee investigates a particular matter and makes recommendations to the full Board.</p>	
	<p>Committees will adhere to the open meetings and public records laws as followed by the Board.</p>
<p>(Adopted 10-2-89; Am. adopted 2-4-91)</p>	

Duly adopted this 3rd day of December 2012 while in regular session.

\_\_\_\_\_  
**Jody L. McLeod,**  
**Mayor**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Sherry L. Scoggins, MMC**  
**Town Clerk**

\_\_\_\_\_  
**Katherine Ross**  
**Town Attorney**

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

**Agenda Item: 3h**

**Meeting Date: 12/3/12**

**TITLE: ANNEXATION PETITION 2012-11-01 FOR THE UNINCORPORATED PORTION OF CREEKSIDE COMMONS SUBDIVISION LOCATED OFF OF AVONDALE DRIVE.**

**DESCRIPTION: At its September 7, 2010, Council meeting, the Clayton Town Council approved planned development district request PDD-R 2010-02 for Creekside Commons located south of Avondale Drive in the southeastern portion of Cobblestone Development.**

**“A valid annexation petition of the area outside the present town limits shall be submitted prior to recording final plats,” was a condition of approval for the planned development district.**

**At its November 19, 2012, Council meeting, it was the consensus of the Council to place this item on the consent agenda.**

**RELATED GOAL: Administrative**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
11-19-12	Presentation.	Resolution & Map.
12-3-12	Approval.	Resolution & Map.

**ANNEXATION PETITION 2012-11-01**  
**Creekside Commons Subdivision off of Avondale Drive**  
**Parcel: 05H03023 (unincorporated portion of parcel)**  
**Owner – AIS Forestry & Farming LLC (Algie Stephens)**  
**CONTIGUOUS, unincorporated portion of 26.5 +/- acres**

**TOWN OF CLAYTON**  
**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE**  
**A PETITION RECEIVED UNDER G.S. 160A-31**

**WHEREAS**, a petition requesting annexation of an area described in said petition was received on November 5, 2012, by the Town Council; and

**WHEREAS**, G.S. 160A-31 provides that the sufficiency of the petition shall be investigated by the Town Clerk before further annexation proceedings may take place; and

**WHEREAS**, the Town Council of the Town of Clayton deems it advisable to proceed in response to this request for annexation:

**NOW, THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Clayton that:

The Town Clerk is hereby directed to investigate the sufficiency of the above-described petition and to certify as soon as possible to the Town of Clayton the result of her investigation.

Duly adopted this 3rd day of December 2012, while in regular session.

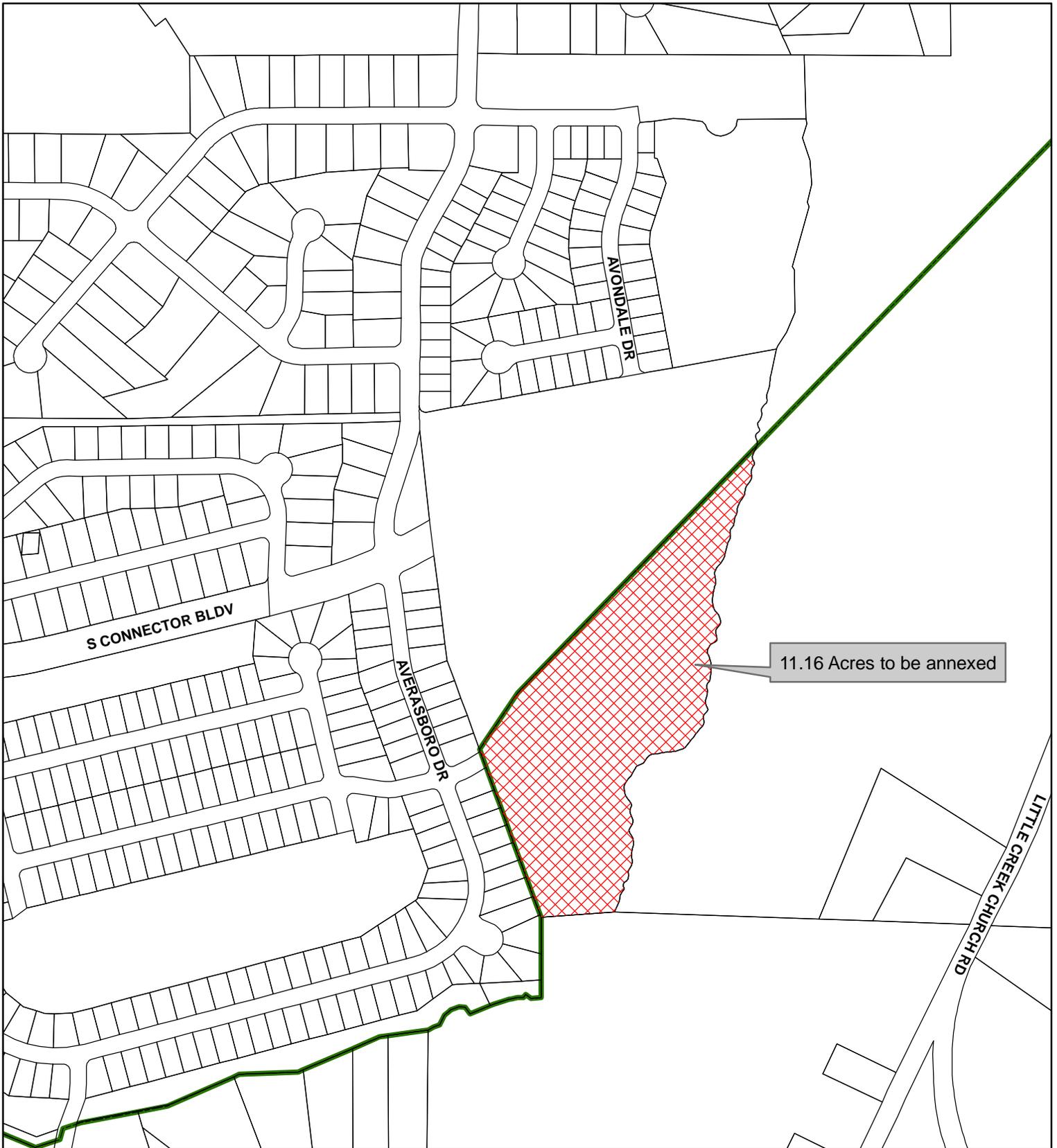
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**Jody L. McLeod**  
**Mayor**

**ATTEST:**

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**Sherry L. Scoggins, MMC**  
**Town Clerk**



## Annexation Map

Applicant(s): AIS Forestry & Farming LLC  
 Property Owner(s): AIS Forestry & Farming LLC  
 Parcel Number(s): Portion of 05H03023  
 File Number(s): Annex 2012-11-01

### Legend

-  Clayton Town Limits
-  Clayton ETJ
-  Parcels



**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 3i

Meeting Date: 12/3/12

**TITLE: "YOUTH ART MONTH" PROCLAMATION.**

**DESCRIPTION: The Woman's Club of Clayton and the Arts Department request the Town Council proclaim the month of January as "Youth Art Month."**

An Arts Award Reception will be at the Clayton Center on Thursday, January 10, 2013, at 6:30 PM. Students, parents, teachers, friends, and the Town Council are invited to attend.

At its November 19, 2012, Council meeting, it was the consensus of the Council to place this item on the consent agenda.

**RELATED GOAL: Administrative**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
11-19-12	Presentation.	Proclamation.
12-3-12	Approval.	Proclamation.

# TOWN OF CLAYTON PROCLAMATION YOUTH ART MONTH

**WHEREAS**, the arts, in its many forms, constitute an important part of the community and contribute to the development of our youth; and,

**WHEREAS**, participation in and enjoyment of the arts can take many forms, including the visual arts, fine arts and performing arts; and,

**WHEREAS**, the Clayton Women's Club has sought to promote the involvement of our youth in various art projects to the betterment of their minds and the community as a whole.

**NOW, THEREFORE, LET IT BE PROCLAIMED** by the Honorable Mayor and Town Council of the Town of Clayton that the month of January each year, be recognized as:

## YOUTH ART MONTH

Let it also be proclaimed that all businesses, industries and citizens in the Clayton community are urged to support and encourage the school aged children of Clayton to participate in the arts.

Duly proclaimed this the 3rd day of December 2012, while in regular session.

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Jody L. McLeod  
Mayor

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

**Agenda Item: 3j**

**Meeting Date: 12/3/12**

**TITLE: FINAL ACCEPTANCE FOR PUBLIC WATER, SEWER, AND ASSOCIATED STORM DRAINAGE UTILITIES FOR GLEN LAUREL EAST, PHASE 2A.**

**DESCRIPTION: Attached.**

**At its November 19, 2012, Council meeting, it was the consensus of the Council to place this item on the consent agenda.**

**RELATED GOAL: Administrative**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
11-19-12	Presentation.	Memorandum.
12-3-12	Approval.	Memorandum.

# TOWN OF CLAYTON OPERATIONS CENTER

"SERVICE"

ELECTRIC SERVICE  
(919) 553-1530

VEHICLE MAINTENANCE  
(919) 553-1530



"ENVIRONMENT"

PUBLIC WORKS  
(919) 553-1530

WATER RECLAMATION  
(919) 553-1535

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## MEMORANDUM

To: Sherry Scoggins, Town Clerk

From: Chris Rowland, Construction Inspector ↵

Copy: Danny Blackburn, Blackburn Engineering  
Chad Blackmon, Blackmon Engineering  
David DeYoung, Planning Director

Date: October 26, 2012

Subject: Glen Laurel East, Phase 2A

Please place a final acceptance request for the subject public water, sewer, & associated storm drainage utilities on the next available agenda. A final inspection was done and all punch list items have been completed. Following acceptance, the Town will assume all operation and maintenance duties.

**received**  
10-26-12 DRB

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 5a

Meeting Date: 12/03/12

**TITLE: PUBLIC HEARING FOR REZONING REQUEST RZ 2012-81 FOR THE ATKINSON PROPERTY LOCATED ON US 70 BUSINESS HWY.**

**DESCRIPTION: Rezoning Request RZ 2012-81 was submitted by the Atkinson's to change the current B-3 zoning to R-8.**

The Planning Board reviewed this request at its October 22, 2012, meeting, and is recommending approval.

***This item is slated for public hearing at the Monday, December 3, 2012, Clayton Town Council meeting.***

**RELATED GOAL: Manage Growth Producing Quality Developments**

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
11-19-12	Presentation & Public notice.	Application, Neighborhood Meeting Minutes with Comparison of uses and Sign-in sheet, Staff Report, Aerial Maps – Current & Proposed.
12-03-12	Pubic Hearing.	Application, Neighborhood Meeting Minutes with Comparison of uses and Sign-in sheet, Staff Report, Aerial Maps – Current & Proposed, and Statement Of Reasonableness Form.



Town of Clayton  
 Planning Department  
 111 E. Second Street, Clayton, NC 27520  
 P.O. Box 879, Clayton, NC 27528  
 Phone: 919-553-1545  
 Fax: 919-553-1720

## REZONING APPLICATION

*Pursuant to Article 7, Section 155.704 of the Unified Development Code, an owner of land within the jurisdiction of the Town (or a duly authorized agent) may petition the Town Council to amend the Official Zoning Map.*

*Rezoning applications must be accompanied by nine (9) sets of the application, nine (9) sets of required plans, an Owner's Consent Form (attached) and the application fee. The application fee is \$400.00 for a rezoning to a Standard District. A rezoning to a Planned Development District requires a fee of \$500.00 +\$5.00 per lot or unit for residential uses or \$500.00 +\$5.00 per acre for non residential uses. All fees are due when the application is submitted.*

*If the rezoning request is to a Planned Development District, the application must be accompanied by a Major Site Plan application and associated fees.*

*Please note that Section 155.702(B) of the Unified Development Code requires a Neighborhood Meeting for all Rezoning Petitions.*

### SITE INFORMATION:

**Name of Project:** Rezoning of property      **Acreeage of Property:** 1.62

**Parcel ID Number:** 05 0 18 005      **Tax ID:** 2000019710

**Deed Book:** 1210      **Deed Page(s):** 345-346

**Address:** Clayton, NC

**Location:** between South Lombard Street and South Barbour Street and adjacent to Highway 70 Business

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**Existing Use:** undeveloped lot & noise buffer      **Proposed Use:** undeveveloped lot & noise barrier

**Existing Zoning District:** B-3

**Requested Zoning District** R-8

**Is project within a Planned Development:**       Yes       No

**Planned Development District (if applicable):** N/A

**Is project within an Overlay District:**       Yes       No

**Overlay District (if applicable):** Thoroughfare

### FOR OFFICE USE ONLY

File Number: <u>R22012-81</u>	Date Received: <u>8/10/12</u>	Amount Paid: <u>\$400.00</u>
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**OWNER INFORMATION:**

**Name:** Peggy Jones Atkinson; Stephen Dwight Atkinson and Terry Stafford Atkinson

**Mailing Address:** 704 South Lombard Street, Clayton, NC 27520; 303 Williams Street, Greenville, NC 27858

**Phone Number:** 252.414.9401 **Fax:** \_\_\_\_\_

**Email Address:** atkinsons@unca.edu

**APPLICANT INFORMATION:**

**Applicant:** Stephen Dwight Atkinson

**Mailing Address:** 303 Williams Street, Greenville, NC 27858

**Phone Number:** 252.414.9401 **Fax:** \_\_\_\_\_

**Contact Person:** Stephen Dwight Atkinson

**Email Address:** atkinsons@unca.edu

**REQUIRED PLANS AND SUPPLEMENTAL INFORMATION**

*The following items must accompany a rezoning application. This information is required to be present on all plans, except where otherwise noted:*

A signed and sealed boundary survey (**not more than a year old unless otherwise approved by the Planning Department**) with the azimuth or courses and distances of every property line shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required. The survey must include any and all easements of record (referenced by Deed Book and Page) and must be prepared by a surveyor registered in the State of North Carolina. (Planning Office has approved the metes & bounds survey as a submittal).

Property legal description typed (10 pt. font or greater) on an 8.5 inch by 11 inch paper with one inch margins. The legal description must also be submitted electronically in Microsoft Word format. *not required*

A copy of the last recorded deed for the subject property. *per Beth Franklin SDA 2/2/12*

**JUSTIFICATION STATEMENT**

*Please provide detailed information concerning all requests. Attach additional sheets if necessary.*

Property cannot be used as location for a highway business due to following reasons: 1.) topography of site; 2.) location of site adjacent to major highway and bridge; 3.) adjacency to intersection of major highway (stacking distance of vehicles

entering property from exit ramp too short to be safe at South Barbour Street); 4.) bridge at Highway 42 W (South Lombard St) is too close to property to enter and exit property safely at Lombard Street. Owners request the property be rezoned for residential use.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





# ADJACENT PROPERTY OWNERS LIST

**Project Name: Rezoning Request**

*The following are all the persons, firms, or corporations owning property within 100 feet and immediately adjacent to the property (including across street rights of way) subject to this request. It is the responsibility of the applicant to correctly identify the current owner, based upon records in the Johnston County GIS Office, for all property owners of land within the required public notice radius.*

PARCEL NUMBER	NAME	ADDRESS
05018005	Peggy Jones Atkinson <i>et als</i>	704 South Lombard St., Clayton, NC 27520
05017044	Peggy Jones Atkinson <i>et als</i>	704 South Lombard St., Clayton, NC 27520
05017031	Peggy Jones Atkinson	704 South Lombard St., Clayton, NC 27520
05017027	Linda Michiner McAdams	611 South Barbour St., Clayton, NC 27520
05017030	Tammy Chatham	616 South Lombard St., Clayton, NC 27520 Mail address: 2161 Galilee Road Lot #7 Smithfield, NC 27577
05013017	Paul M. Forbes	403 Blanchard St., Clayton, NC 27520-2701
05013016	Johnny Battle Jones	413 Blanchard St., Clayton, NC 27520-2701
05013033	Blaine P. Nierman	609 South Lombard St., Clayton, NC 27520
05018005E	Roses LLC	PO Box 1379, Clayton, NC 27528-0000
05017024	Ella Kemp Sorrell	618 South Barbour St., Clayton, NC 27520
05017023A	Jerry L. & Pamela D. Gunter	616 South Barbour St., Clayton, NC 27520
05017022	Ruth F. Pleasant Revoc. Trust Ruth F. Pleasant, Trustee	612 South Barbour St., Clayton, NC 27520
05017038	Ruth F. Pleasant	612 South Barbour St., Clayton, NC 27520-2714



**Town of Clayton**  
**Planning Department**  
 111 E. Second Street, Clayton, NC 27520  
 P.O. Box 879, Clayton, NC 27528  
 Phone: 919-553-1545  
 Fax: 919-553-1720

## OWNER'S CONSENT FORM

*Consent is required from the property owner(s) and if applicable, to an agent if the property owner(s) do not intend to attend all meetings and public hearings and submit in person all material pertaining to the application. A separate form is required from each owner. Consent is valid for one year from date of notary, unless otherwise specified. Attach copy of last recorded deed for subject property.*

**Project Name:** Rezoning of property **Submittal Date:** August 10, 2012

I hereby give CONSENT to Stephen Dwight Atkinson Terry Stafford Atkinson (type, stamp or print clearly full name of agent) to act on my behalf, to submit or have submitted this application and all required material and documents, and to attend and represent me at all meetings and public hearings pertaining to the application(s) indicated above. Furthermore, I hereby give consent to the party designated above to agree to all terms and conditions which may arise as part of the approval of this application.

I hereby certify that I have ownership interest in the subject of this application. I understand that any false, inaccurate or incomplete information provided by me or my agent will result in the denial, revocation or administrative withdrawal of this application, request, approval or permits. I further agree to all terms and conditions, which may be imposed as part of the approval of this application.

**OWNER INFORMATION: (Corporations must submit verification that signatory has authorization to sign)**

<u>Peggy Jones Atkinson</u> <u>Stephen Dwight Atkinson</u> <u>Terry Stafford Atkinson</u> (Name - type, print clearly) <u>704 S. Lombard St.</u> <u>303 Williams Street</u> <u>303 Williams Street</u> (Address)	<u>Peggy Jones Atkinson</u> <u>Stephen Dwight Atkinson</u> <u>Terry Stafford Atkinson</u> (Signature) <u>Clayton, NC 27520</u> <u>Greenville, NC 27858</u> <u>Greenville, NC 27858</u> (City, State, Zip)
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**AGENT INFORMATION:**

<u>Stephen Dwight Atkinson</u> <u>Terry Stafford Atkinson</u> (Name - type, print clearly) <u>303 Williams Street</u> (Address)	<u>Stephen Dwight Atkinson</u> <u>Terry Stafford Atkinson</u> (Signature) <u>Greenville, NC 27858</u> (City, State, Zip)
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**STATE OF** NC  
**COUNTY OF** Johnston

Sworn and subscribed before me Peggy Jones Atkinson Stephen Dwight Atkinson Terry Stafford Atkinson, a Notary Public for the above State and County, this the 10 day of August, 2012.

**SEAL**

Edith M Godwin EMG  
8/10/12  
Edith M Godwin  
 Notary Public

**My Commission Expires:** 3/24/16

## **Rezoning Request Neighborhood Meeting Minutes**

**October 14, 2012**

The meeting formally began at 3:00 PM and was attended by seven people (refer to attachment of sign-in sheet of attendees.) Stephen Dwight Atkinson and Peggy Atkinson Sanders represented the rezoning request applicants. Mr. Atkinson provided a brief history of the site starting around 1980 until the present day. He also discussed how the rezoning of the property from B-3 to R-8 is in keeping with the Town of Clayton's Strategic Growth Plan of 2008 plan to have this property become Residential Infill.

Mr. Atkinson covered the Town's ordinance for both B3 and R8 Zoning Districts and covered the full range of possible uses for both zones. Mr. Atkinson also passed around this information for all to review (refer to attachment Town of Clayton, NC Chapter 155 Unified Development Code Permitted Uses).

The main concerns the neighbors expressed were potential increase of additional traffic and could a lot of apartments be built on the site. Mr. Atkinson explained that the major drawback to many of the B3 uses was the lack of safe drive access to the site due to the exit ramp onto Barbour Street, unsafe access between the bridge and the exit ramp along Highway 70, and the location of the Bridge adjacent to Lombard Street. Mr. Atkinson also passed out copies of photos showing the property and the traffic hazards at these locations (refer to attachment of photos). Mr. Atkinson stressed that the Owners had no intention of developing the site and that changing the zoning district to R8 would be in the best interests of the neighbors since all of the properties adjacent and near the site, except for Day Care Center, located across the street on Barbour Street, are zoned residential properties.

The meeting concluded at 3:45 PM.

# Town of Clayton, NC

## CHAPTER 155: UNIFIED DEVELOPMENT CODE

### Permitted Uses of Zones

#### **R8 Zoning District**

(c) R-8 | Single-Family Residential-8. The R-8 district is established to provide for orderly suburban residential development and redevelopment and is intended to maintain residential areas at suburban densities characterized predominantly by owner-occupied, single-family detached units. To encourage higher quality development and to ensure greater environmental protection, open space subdivisions are permitted. A special permit process for higher intensity development is also allowed, using discretion to balance issues of higher density with improved amenities

#### **B3 Zoning District**

(e) B-3 | Highway-Business. The B-3 district provides locations of offices, service uses, and businesses retailing durable and convenience goods for the community as a whole. Located on major and minor thoroughfares and, therefore, are accessible to and serve the entire community. Site design and buffering mitigate impacts of traffic, operations and scale on adjacent businesses and residential neighborhoods.

<b><u>Permitted uses of zones</u></b>	<b><u>R8</u></b>	<b><u>B3</u></b>
<b>Residential Uses</b>		
Adult Care Home 2 to 6 Adults	P	
Adult Care Home 7 to 12 Adults	S	S
Adult Care Home 13+ Adults		S
Alley Loaded House	P	
Apartments	P/S	S
Child Care Home	C	
Nursing Home		P
Two Family Home	P/S	

<b><u>Permitted uses of zones</u></b>	<b><u>R8</u></b>	<b><u>B3</u></b>
Townhouse	P/S	S
Security/Care Taker Quarters		C
Single Family House	P	
Upper Story Residence	P/S	P
Zero Lot Line House	P	

### **Non-Residential Uses**

Assembly, Not for Profit		P
Cemetery		P
Church or Place of Worship	P	P
Day Care (Supervision for 3-8)	C	
Government Service	S	P
Hospital or Medical Center		P
School (Elementary or Secondary)	S	
School (Technical, Trade or Business)	S	P
Indoor Entertainment		P
Outdoor Entertainment		P
Fitness		P
Golf Course	P	
Gun Range		S
Park, Active	S	S
Park, Passive	C	C
Nursery, Agriculture		P

**Permitted uses of zones**

**R8**

**B3**

Adult-oriented Business	S
Bed & Breakfast	P
Car Wash, Auto Detailing	P
Contractor's Office	P
Contractor's Storage Yard	C
Convenience Store with Gas Sales	P
Creative Studio	P
Electronic Gaming	C
Financial Institution	P
Hotel, Motel	P
Laundry Services	C
Lounge, Cocktail	S
Newspaper Publisher	P
Office, General	P
Office, Medical	P
Outdoor Seating and Sidwalk Café	C
Pawn Shop	C
Radio or Television Studio	P
Restaurant, Drive Through	C
Restaurant, General	P
Retail Sales, General	P
Retail Sales, Neighborhood	P
Self-Storage Facility	C
Service, General	P

Service, Neighborhood	P
Tattoo Parlor	S
Towing Service and Storage	C
Vehicular Repair or Service	S
Vehicular Sales and Rental	P
Veterinary Clinic	P
Building Supplies, Wholesale	C
Laboratory, Research	P
Research & Development	P
Warehouse, Freight Movement	C
Telecommunication Facility	S
Utility, Minor	P

**P = Permitted**

**C = Conditional use permitted in the zoning district only if approved by the Planning Board**

**S = Special use permitted in the zoning district only if approved by the Town Council**

# Atkinson Rezoning Neighborhood Meeting

704 South Lombard Street  
Clayton, NC 27520  
October 14, 2012 3:00 PM

Name	Address
Paul W. Forbes	407 Blanche Road Clayton NC.
Fern Gunter	616 Barbours St
Jerry Gunter	
Rookie Pleasant	612 Barbours St
Mandi King Burn	609 Barbours St.
Rob Pleasant	612 S. Barbours St.



Town of Clayton  
Planning Department  
111 E. Second Street, Clayton, NC 27520  
P.O. Box 879, Clayton, NC 27528  
Phone: 919-553-1545  
Fax: 919-553-1720

## STAFF REPORT

**Application Number:** RZ 2012-81  
**Project Name:** Property of Peggy Atkinson  
**NC PIN:** 165920-90-4551  
**Town Limits/ETJ:** Town Limits  
**Applicant:** Stephen Atkinson  
**Owners:** Peggy Atkinson, Stephen Atkinson and Terry Atkinson  
**Agent(s):** Stephen Atkinson  
**Neighborhood Meeting:** Held October 14, 2012

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**PROJECT LOCATION:** The project is located between S Lombard Street and S Barbour Street and adjacent to US 70 BUS HWY W, in the Town Limits of Clayton.

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**REQUEST:** The request is to rezone the above referenced property from B -3 ( Highway Business) to R-8 (Residential) to accommodate the existing single family detached homes in the area.

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### SITE DATA:

Acreage: 1.62 acres  
Present Zoning: B-3 (Highway Business)  
Proposed Zoning: R-8 (Residential)  
Existing Use: Vacant vegetated lot

### DEVELOPMENT DATA:

Proposed Use: Same as existing use

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**ENVIRONMENTAL:** No environmental concerns.

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### ADJACENT ZONING AND LAND USES:

North: Zoning: R-8  
Existing Use: Vacant, Residential  
South: Zoning: B-3

Existing Use: Storage Facility

East: Zoning: R-8  
Existing Use: Residential

West: Zoning: B-3  
Existing Use: Daycare

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**STAFF ANALYSIS AND COMMENTARY:**

The subject site is a vacant wooded parcel located between S Barbour and S Lombard Streets and adjacent to US 70 BUS Hwy W. The Strategic Growth Plan shows the property as vacant land with the proposed land use as residential infill. The surrounding properties with the exception of the daycare are zoned for residential use. The property is currently used as noise buffer from the traffic on US 70 B US Hwy W, adjacent properties and S Barbour Street. The applicant is requesting to rezone the property from B-3 (Highway Business) to R-8 (Residential) because of the specific topography in the area and to protect the existing residential use of adjacent property.

- o **Consistency with the Strategic Growth Plan**

The proposed residential use is consistent with the Strategic Growth Plan as residential infill.

- o **Consistency with the Unified Development Code**

The existing use of the subject site as single family detached dwellings will be consistent with the UDC once rezoned to a Residential Zoning District.

- o **Compatibility with Surrounding Land Uses**

The existing and surrounding uses are residential therefore no additional impact on the surrounding land uses is anticipated.

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**OTHER:**

FIRE PROTECTION: The Town of Clayton Fire Department will provide fire protection.

SCHOOL IMPACTS: NA

PARKS AND RECREATION: NA

ACCESS/STREETS: S Barbour Street and S Lombard Street

WATER/SEWER PROVIDER: Town of Clayton

ELECTRIC PROVIDER: Town of Clayton

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**FINDINGS:**

In connection with its legislative decision on a rezoning request, the Town Council may consider certain approval criteria. The applicant has addressed the approval criteria expressly established by Chapter 155.704 (J) of the UDC. Please refer to Exhibit "A" for the applicant's response.

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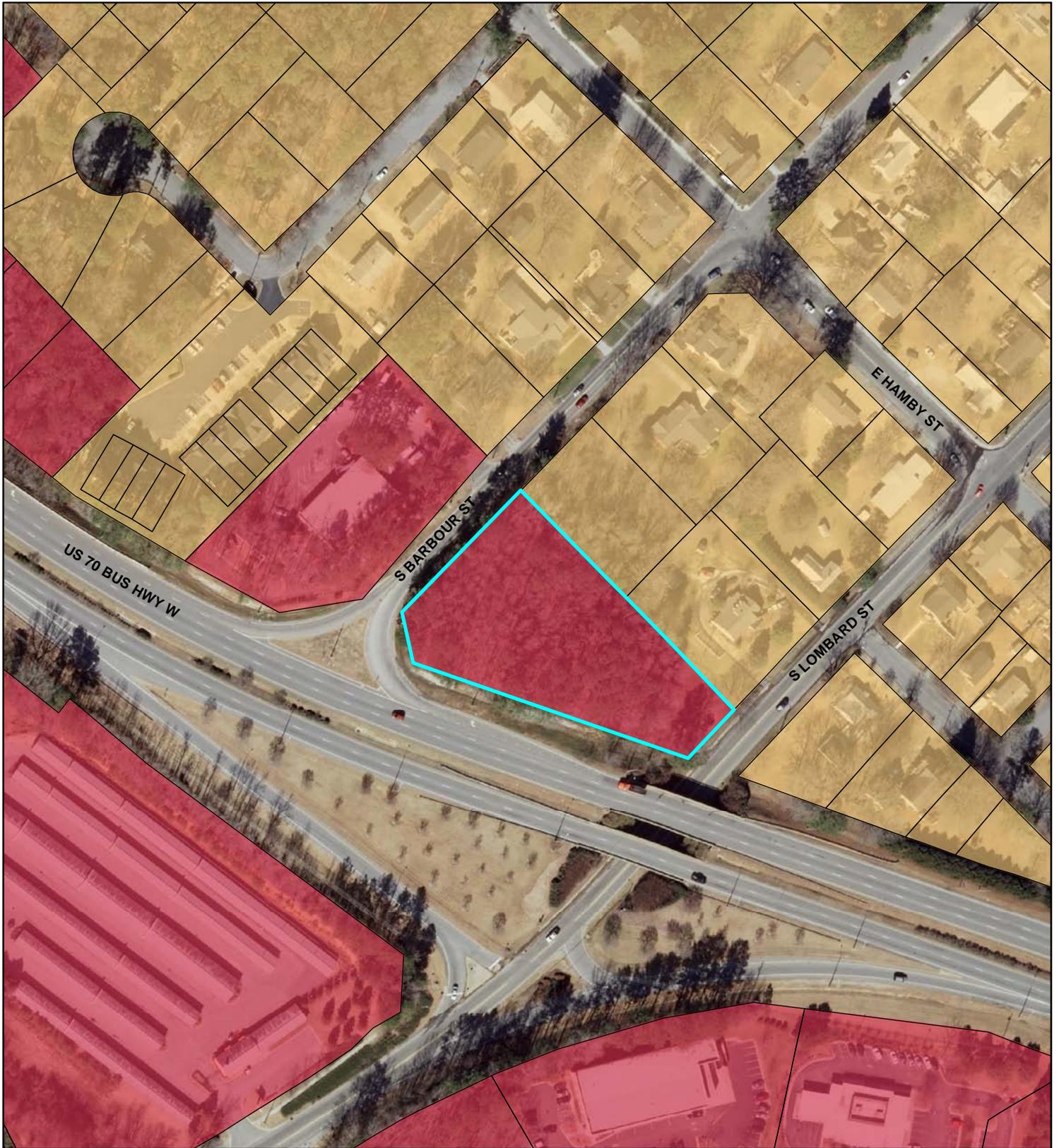
**STAFF RECOMMENDATION / CONDITIONS OF APPROVAL:**

Staff is recommending approval of the rezoning with no conditions.

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**PLANNING BOARD RECOMMENDATION:**

Planning Board recommended the approval of RZ 2012-81 on October 22, 2012.



**Legend**

Clayton Town Limits	R-6	PD-C
Clayton ETJ	PD-R	I-1
R-E	B-1	I-2
R-10	B-2	O-I
R-8	B-3	PD-MU
Produced by: TOC Planning	SUD	

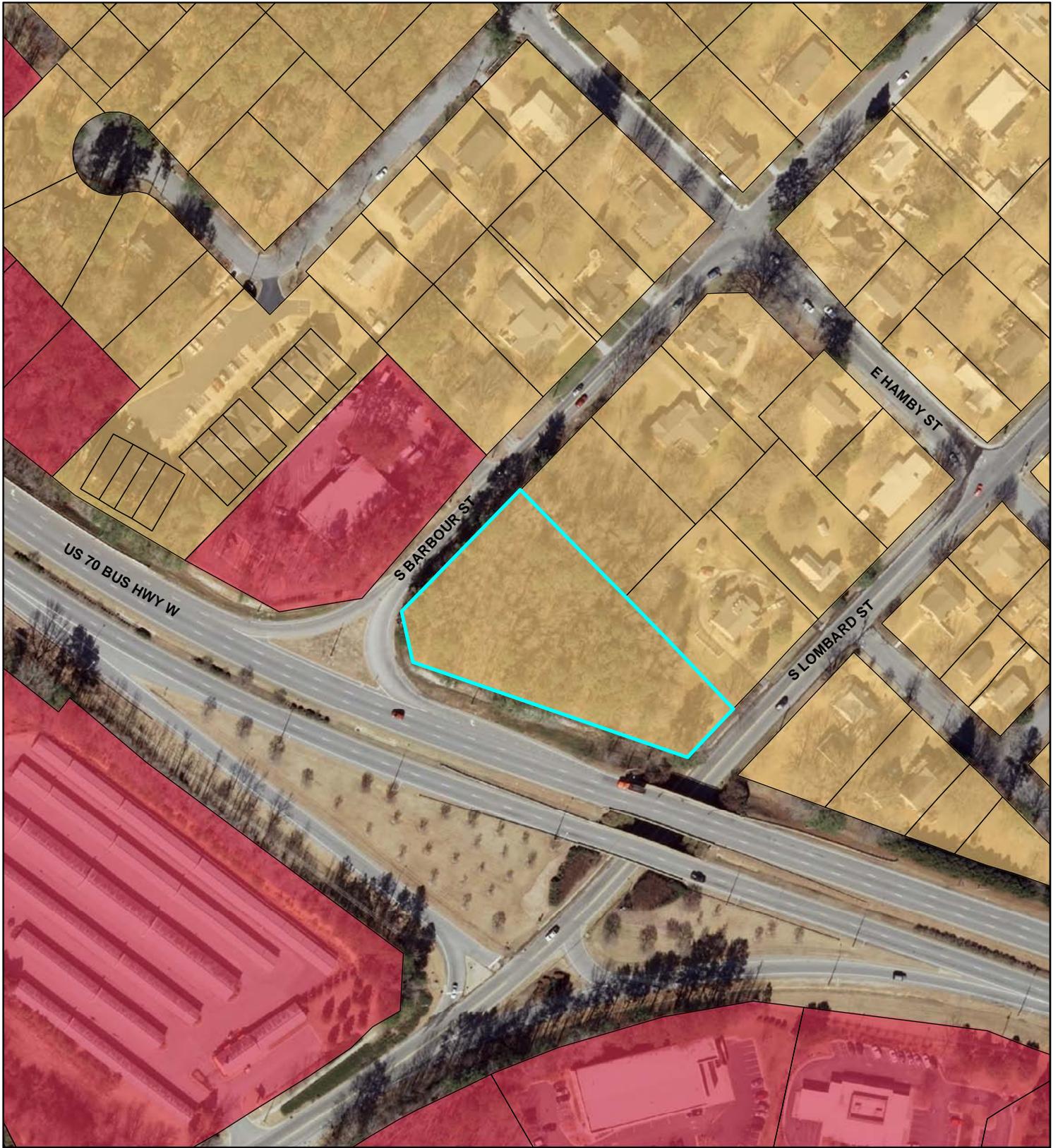
**Proposed Zoning/Aerial Map**

Applicant(s): Stephen Atkinson  
 Property Owner(s): Peggy Atkinson, Stephen Atkinson & Terry Atkinson  
 Parcel Number(s) 05018005  
 File Number(s): RZ 2012-81

J

Disclaimer: Town of Clayton assumes no legal responsibility for the information represented here.





**Legend**

Clayton Town Limits	R-6	PD-C
Clayton ETJ	PD-R	I-1
R-E	B-1	I-2
R-10	B-2	O-I
R-8	B-3	PD-MU
Produced by: TOC Planning	SUD	

**Proposed Zoning/Aerial Map**

Applicant(s): Stephen Atkinson  
 Property Owner(s): Peggy Atkinson, Stephen Atkinson & Terry Atkinson  
 Parcel Number(s) 05018005  
 File Number(s): RZ 2012-81

J

Disclaimer: Town of Clayton assumes no legal responsibility for the information represented here.



**TOWN OF CLAYTON  
CONSISTENCY AND REASONABLENESS STATEMENT**

**RZ 2012-81**

**THE TOWN COUNCIL OF THE TOWN OF CLAYTON HEREBY STATES:**

**Section 1: RZ 2012-81 is consistent with the Town of Clayton Strategic Growth Plan.**

**Section 2: Based upon information presented at the public hearings and by the applicant, and based upon the recommendations and detailed information developed by staff and/or the Planning Board contained in the staff report, and considering the criteria of Section 155.704(J) of the Unified Development Code of the Town of Clayton, RZ 2012-81 is reasonable and in the public interest.**

**Duly approved this 3rd day of December 2012 while in regular session.**

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**Jody L. McLeod  
Mayor**

**ATTEST:**

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**Sherry L. Scoggins, MMC  
Town Clerk**

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 5b

Meeting Date: 12/03/12

**TITLE: PUBLIC HEARING FOR ORDINANCE AMENDMENTS FOR CHAPTER 155 FOR THE FOLLOWING:**

- **ARTICLE 2, SECTION 155.202, TABLE 2-1 “USE REGULATIONS” TO INCLUDE NEW USES AND MODIFY EXISTING TERMINOLOGY.**
- **ARTICLE 3, SECTION 155.305 TO INCLUDE NEW DEFINITIONS AND STANDARDS AND UPDATES OT THE TEXT THROUGHOUT ARTICLE 3.**
- **ARTICLE 4, SECTION 155.403 (J) TO RELOCATE AS SECTION 155.204 (D) AS WRITTEN AND TO REMOVE FROM ARTICLE 4.**

**DESCRIPTION:** Attached.

***This item is slated for public hearing at the Monday, December 3, 2012, Clayton Town Council meeting.***

**RELATED GOAL:** Manage Growth Producing Quality Developments

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
11-19-12	Presentation & Public Notice.	Articles 2 and 3 of Chapter 155.
12-03-12	Public Hearing.	Articles 2, 3, & 4 of Chapter 155 and Statement of Reasonableness Form.

**TOWN OF CLAYTON**  
**Amendment to the Code of Ordinances: Chapter 155**  
**Unified Development Code**

**BEING HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA to amend Article 2 with the following:**

**ARTICLE 2: ZONING DISTRICTS**

**§ 155.200 DISTRICTS ESTABLISHED.**

To carry out the provisions of this chapter, within the jurisdiction of the Town, the following zoning districts are established.

(A) *General use districts*

(1) *Residential.*

(a) **R-E | Residential-Estate.** The R-E district is comprised of low density, single-family dwellings, and other selected uses which are compatible with the open and rural character of the area. The established regulations for this district are designed to promote and encourage an environment for family life and agriculture. To encourage higher quality development and to ensure greater environmental protection, open space subdivisions are permitted.

(b) **R-10 | Single-Family Residential-10.** The R-10 district is established to provide for orderly suburban residential development and redevelopment and is intended to maintain residential areas at relatively low densities characterized predominantly by owner-occupied, single-family detached units. The district requirements protect existing neighborhoods from undesirable or incompatible uses. To encourage higher quality development and to ensure greater environmental protection, open space subdivisions are permitted. A special permit process for higher intensity development is also allowed, using discretion to balance issues of higher density with improved amenities.

(c) **R-8 | Single-Family Residential-8.** The R-8 district is established to provide for orderly suburban residential development and redevelopment and is intended to maintain residential areas at suburban densities characterized predominantly by owner-occupied, single-family detached units. To encourage higher quality development and to ensure greater environmental protection, open space subdivisions are permitted. A special permit process for higher intensity development is also allowed, using discretion to balance issues of higher density with improved amenities.

(d) **R-6 | Single-Family Residential-6.** The R-6 district is established to provide for orderly suburban residential development and redevelopment. Intended to protect, preserve and enhance existing residential areas of higher density which include multi-family dwellings mixed with other housing types. A special permit process for higher intensity development is also allowed, using discretion to balance issues of higher density with improved amenities.

(2) *Nonresidential.*

(a) **O-R | Office-Residential.** The O-R district is intended to accommodate modest-scale professional occupations, along with single-family and multi-family residential units, to serve as a neighborhood activity center and as a transition between residential and more intense commercial uses.

(b) **O-I | Office-Institutional.** The O-I district is intended to permit offices, institutions and associated administrative, executive, professional and research uses in new and existing structures and limited retail uses. Such offices and instructional user should be located along major roadways, adjacent to commercial uses to act as a buffer between such roadways and residential uses.

(c) **B-1 | Central-Business.** The B-1 district is intended to foster a vibrant, safe, town center by encouraging residential development while retaining and further developing a broad range of commercial, office, institutional, public, cultural and entertainment uses and activities. The district is intended to define and promote the town center as a desirable place to live, work and recreate.

(d) **B-2 | Neighborhood-Business.** The B-2 district provides opportunities for small-scale commercial uses offering primarily convenience shopping and services for adjacent residential areas. Proximity to residences requires that commercial operations are low intensity, unobtrusive and conducted at a scale and density compatible with the surrounding neighborhood. There is a relatively low demand on public services, transportation and utilities.

(e) **B-3 | Highway-Business.** The B-3 district provides locations of offices, service uses, and businesses retailing durable and convenience goods for the community as a whole. Located on major and minor thoroughfares and, therefore, are accessible to and serve the entire community. Site design and buffering mitigate impacts of traffic, operations and scale on adjacent businesses and residential neighborhoods.

(f) **I-1 | Industrial-Light.** The I-1 district fosters the retention and growth of employment opportunities by providing areas where a broad range of industrial uses may locate and where options for complementary uses exist. Industries should be operated in a relatively clean and quiet manner, and should not be obnoxious to nearby residential or business districts, warehousing and wholesaling activities, and research facilities. The regulations of this district are intended to prohibit the use of land for industries that by their nature may create some nuisance to surrounding properties.

(g) **I-2 | Industrial-Heavy.** The I-2 district fosters the retention and growth of employment opportunities by providing areas where a broad range of industrial uses may locate and where options for complementary uses exist. Indented for heavy industries that, by their nature, may create some nuisance, and which are not properly associated with or are compatible with nearby residential or business districts, warehousing and wholesaling activities, and research facilities.

(3) *Planned Development.*

(a) **PD-R | Planned Development-Residential.** The PD-R district provides opportunities for master-planned residential communities containing a mix of housing types,

including associated amenities with appropriate perimeter buffering and open space. This district is primarily intended for large-scale residential projects that require either additional flexibility not available in a residential district or greater scrutiny by the Town due to their scale.

(b) **PD-C | Planned Development-Commercial.** The PD-C district is intended to enhance the design of a commercial development by allowing for additional flexibility not available in the nonresidential districts. The district allows for innovations and special features in site development, including the location and type of structures, the conservation of natural features, the conservation of energy, and the efficient use of open space.

(c) **PD-I | Planned Development-Industrial.** The PD-I district is intended to provide a means of achieving unified industrial complexes of high quality to promote amenities beyond those expected under conventional techniques, to achieve greater flexibility in design, to encourage well-planned industrial developments that provide for community needs, to provide for appropriate use of land which is significantly unique in its physical characteristics, location or other circumstances to warrant special methods of development, and to allow the expansion of existing industrial areas while safeguarding and maintaining the integrity of surrounding uses, especially those of a residential nature.

(d) **PD-MU | Planned Development-Mixed Use.** The PD-MU district is intended to provide coordinated mixed use developments which include light industrial, commercial, office, educational, civic, institutional, residential and service uses within a planned development with appropriate perimeter buffering and open space. The variety of land uses available in this district allows flexibility to respond to market demands and the needs of tenants, which provides for a variety of physically and functionally integrated land uses.

(B) *Special Use Districts.*

(1) Pursuant to G.S. § 160A-382, the Town Council may establish by ordinance various special use districts upon request by or on behalf of all owners. Parallel special use districts shall be designated by adding "-S" to the corresponding general use district.

(2) All zoning regulations that apply to the general use district are the minimum within the corresponding special use district.

(3) A special use district may provide for greater but not lesser setbacks than those applicable to the corresponding general use district, and may limit the number of uses.

(4) Under each special use district, all uses must be approved through the issuance of a special use permit granted by the Town Council in accordance with § 155.711. However, a special use permit is not required as a prerequisite to establish a special use district, since the district itself may be conditioned and established first and then developed much later. However, a special use permit may be submitted in tandem petition for the special use district, either by preference of the applicant or upon request by the Town Council or Planning Director, if either finds that such permit is necessary in order to consider an application for a special use district.

(5) If for any reason a condition imposed pursuant to these regulations is found to be illegal or invalid, or if the applicant should fail to accept any condition, it is the intent of this chapter that

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the authorization of such special use permit shall be null and void and of no effect and that proceedings be instituted to rezone the property to its previous zoning classification.

(C) *Overlay Districts.*

(1) *Thoroughfare Overlay District.*

(a) Thoroughfare Overlay District (TOD). The Thoroughfare Overlay District is established for the purpose of maintaining a safe, efficient, and functional development pattern adjacent to major thoroughfares, while maintaining an aesthetic streetscape environment. It is recognized that an enhanced development quality in areas of high visibility promotes economic development and stability in the entire community. The standards established in § 155.204(A) shall be applied to properties which adjoin major thoroughfares, as designated on the Town's Overlay Zoning Map.

(2) *Watershed Protection Overlay (WPO).*

(a) The Watershed Protection Overlay (WPO) is hereby established as a district that overlays the designated water supply watershed. The designated water supply watershed under this district is defined and established by the overlay district "Watershed Protection Overlay" on the zoning map. Land use and development within the WPO must comply with all the requirements of both the underlying zoning district and the watershed overlay.

(b) The designated water supply watershed within the Town is designated by the state as a Class IV watershed protected area (WS-IV PA) and is referred to as the Neuse River (Smithfield) watershed within the Neuse River basin. Only new development activities that require an erosion/sedimentation control plan under state law or approved local government program are required to meet the provisions of this program. See § 155.501 for watershed protection standards.

(D) *Interpretation of District Boundaries.*

(1) *Defined.* District boundaries as are shown upon the Official Zoning Map of the Town as set forth in § 155.104, and as adopted by Town Council. The provisions of this chapter are hereby established and declared to be in effect upon all land included within the boundaries as shown on the map.

(2) *Rules for interpretation.*

(a) The Board of Adjustment is authorized to interpret the Official Zoning Map and act upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Planning Director, they shall be handled as provided in § 155.717.

(b) An application for an Official Zoning Map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Planning Director. The application shall contain sufficient information to enable the Board of Adjustment to make the necessary interpretation.

(c) Where uncertainty exists as to the boundaries of any district shown on the Official Zoning Map, the following rules shall apply:

1. Boundaries indicated as approximately following the centerlines of streets, alleys, highways, streams or railroads shall be construed to follow such centerlines.
2. Boundaries indicated as approximately following lot lines, Town limits or extraterritorial jurisdiction boundary lines, shall be construed as following such lines, limits or boundaries; and
3. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following such changed shorelines.
4. Where a district boundary divides a lot or where distances are not specifically indicated on the zoning map, the boundary shall be determined by measurement, using the scale of the zoning map.
5. Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

(Ord. 2005-11-02, passed 11-21-05; Am. Ord. 2009-08-02, passed 8-3-09)

## **§ 155.201 MEASUREMENTS AND EXCEPTIONS.**

(A) *General.* No lot, even though it may consist of one or more adjacent lots of record in single ownership, shall be reduced in size so that the lot area per dwelling unit, lot width, yard and lot coverage requirements, and other requirements of this chapter are not maintained. This prohibition shall not be construed to prevent the purchase or condemnation of narrow strips of land for public utilities or street right-of-way purposes.

(B) *Building coverage.* The maximum area of the lot that is permitted to be covered by buildings, including both principal structures and accessory buildings. Building coverage does not include paved areas such as driveways, uncovered porches or patios, decks, swimming pools or pool cages, or roof overhangs of less than three feet.

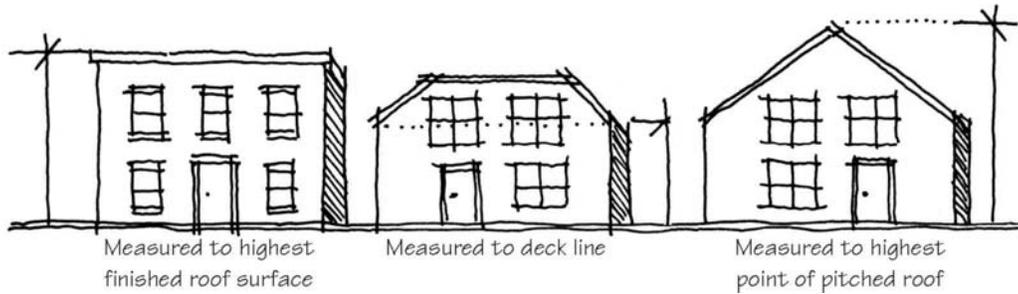
(C) *Impervious surface.* The maximum area of the lot that is permitted to be covered by buildings, including both principal structures and accessory buildings, paved areas such as driveways, uncovered porches or patios, or solid decks.

(D) *Building separation.* The required separation between any two buildings located on the same lot or parcel of land.

(E) *Gross floor area.* The gross floor area of a building shall be measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings and shall include the following areas:

- (1) The area of each floor of the structure;
  - (2) All attic space used for active commercial space; and
  - (3) All outside storage areas as permitted § 155.405.
- (F) *Height.*

(1) Height shall be determined by the vertical distance from the average of the finished ground level to the highest finished roof surface of any flat roof, to the deck line of a mansard roof, or to the highest point of the ridge of any pitched roof.



(2) No structure shall be erected or altered so as to exceed the height limit or density regulations of this subchapter for the district in which it is located.

(3) The Board of Adjustment may grant a conditional use permit in accordance with § 155.710 for structures such as spires, belfries, cupolas, domes not intended for human occupancy, monuments, water tanks/towers, transmission and telecommunication towers, chimneys, flagpoles, aerials or antennas, or other similar structures which, by design or function, must exceed established height limits of the district in which it is to be located.

(4) The Town Council may grant a special use permit in accordance with § 155.711 for structures exceeding the maximum height limits of any district.

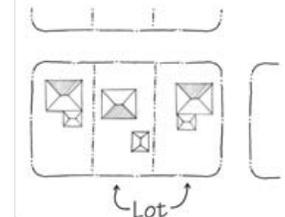
(G) *Area.* Area shall be measured in gross square feet or acres.

(1) *Lot.*

(a) A single lot of record, or more than one contiguous lot of record in the same ownership, which lot or lots of record are not divided by any street or public alley.

(b) Lot area shall be that area included in a single, undivided piece of land.

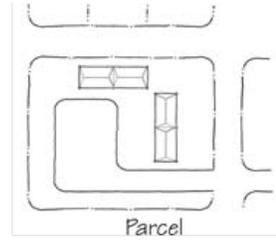
(c) Minimum lot areas shall be exclusive of existing or proposed public or private right-of-way, resource conservation areas (see § 155.500), and required recreation and open space (see § 155.203(H)).



(2) *Parcel.*

(a) A continuous quantity of land in the possession of or owned by, or recorded as property of the same person or persons. A parcel may contain multiple buildings or uses.

(b) Parcel area shall be that area required for each individual building in a multi-building project. A parcel may include multiple lots.

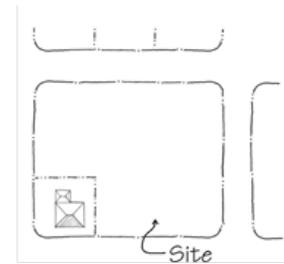


(3) *Site.*

(a) A continuous quantity of land to be developed as a single project. A site may contain multiple parcel or lots.

(b) Site area shall be the total land area of the proposed development. A site may include multiple parcels or lots.

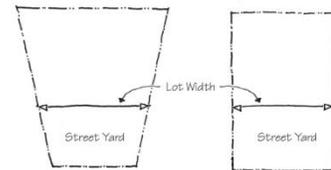
(c) Net site area shall mean the total gross area of the parcel, minus any resource conservation areas (see § 155.500) located on the site.



(H) *Width.*

(1) *Building width.* Building width shall be measured by the distance along the front plane of any building (as determined by the location of an entrance fronting on a street).

(2) *Parcel or lot width.* Parcel or lot width shall be measured by the distance between the side lot lines (generally running perpendicular to a street), measured at the rear edge of the street yard along a straight line parallel to the front of the property line or along the chord of the front property line.



(I) *Density.*

(1) Density shall be allocated to each development parcel as follows:

(a) One hundred percent of the district density for the area outside of resource conservation areas; and

(b) Fifty percent of the district density for any resource conservation areas.

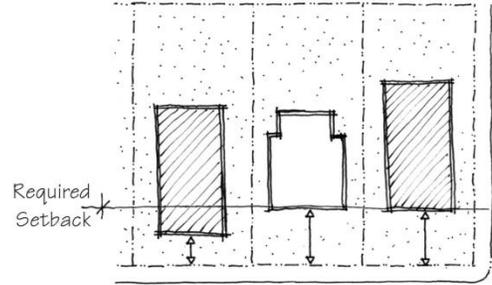
(2) Density for single-family districts shall be calculated by dividing one acre of land (43,560 square feet) by the minimum single-family detached lot size for the district.

(J) *Yards and setbacks.*

(1) *General.*

(a) All street yard and side yard (street) setbacks shall be measured from the edge of the right-of-way.

(b) The minimum street yard requirements of this subchapter for residential dwellings shall not apply on any lot where the average street yard of existing dwellings located on either side of the lot in question within the same block and zoning district and fronting on the same side of the street is less than the minimum required street yard. In such cases, the street yard on such lots may be less than the required street yard, but not less than the adjacent dwelling with the greatest street yard depth.



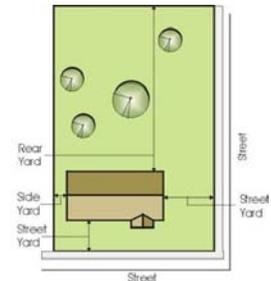
(c) Every part of every required yard shall be open and unobstructed above the general ground level of the graded lot upward to the sky except as provided or as otherwise permitted in this chapter.

(d) No part of a yard or other open space required about any structure or use for the purpose of complying with the provisions of this chapter shall be included as a part of a yard or other open space similarly required for another structure or use.

(2) *Types of yards.*

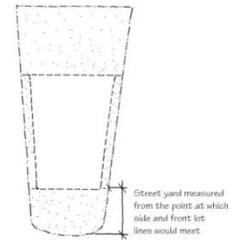
(a) There are four types of yards - street, side (street), side (interior), and rear yards.

(b) Double frontage lots have two street yards.

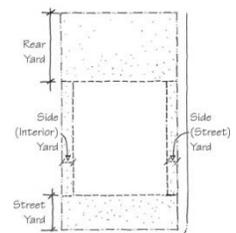


(3) *Measurement of yards.*

(a) Depth of a required street yard shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot lines, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding.



(b) Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.



(c) Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line.

(4) *Yard encroachments.* The following encroachment standards shall apply to all required yards, so long as they do not extend into any easements:

- (a) Parking structures may extend into the rear yard of a dwelling unit.
- (b) Chimneys, pre-fabricated chimneys, flues, or smokestacks may extend a maximum of four feet into a required yard.
- (c) Building eave or roof overhang may extend up to 24 inches into a required yard; provided that such extension is at least three feet from the property line, its lower edge is at least seven and one-half feet above the ground elevation, and it is located at least five feet from any other building or eave.
- (d) Sills and ornamental features may project up to 24 inches into any required yard.
- (e) Except in the B-1 District, fire escapes may project up to eight feet into any required yard.
- (f) Signs may extend into required yards in conformance with standards found in § 155.403.
- (g) Pedestrian bridges, breezeways, building connections, and supports of these structures may extend into required yards upon findings by the approving authority that the connecting feature is necessary to provide safe pedestrian access or to improve transit access.
- (h) Security gates and guard stations may be located within any required yard.
- (i) Unenclosed patios, decks or terraces, including lighting structures, may extend up to four feet into any required side yard, or up to eight feet into any required rear yard.
- (j) Covered porches may encroach a maximum of 20% of the required street yard setback depth.
- (k) Mechanical equipment for residential uses, such as HVAC units and security lighting, may extend into any required side yard but shall remain at least four feet from the property line.
- (l) Bay windows, entrances, balconies, and similar features that are less than ten feet wide may extend up to 18 inches into any required yard, but shall remain at least six feet from the property line.
- (m) Structures below and covered by the ground may extend into any required yard.
- (n) Driveways may extend into any required yard, provided that, to the extent practicable, they extend across rather than along the setback area and may be no closer than two feet from the property line.
- (o) Planters, retaining walls, fences, hedges, and other landscaping structures may encroach into any required yard and may be no closer than one foot from the property line subject to visibility restrictions.

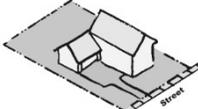
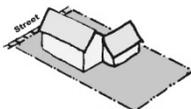
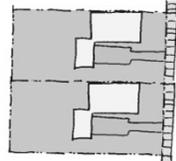
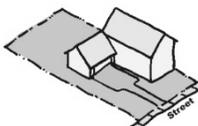
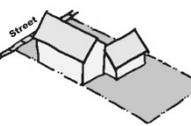
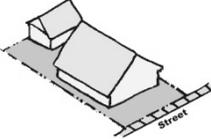
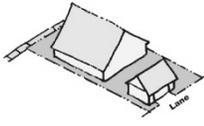
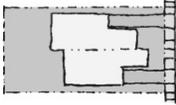
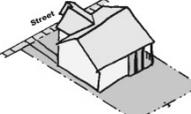
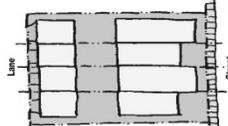
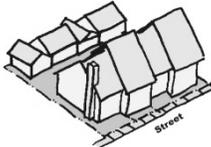
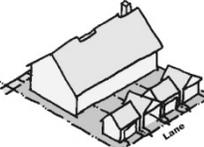
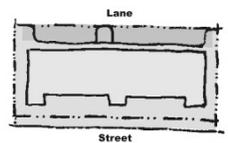
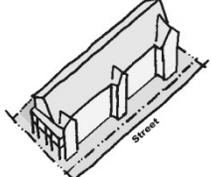
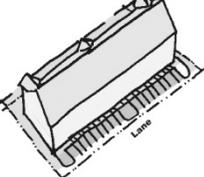
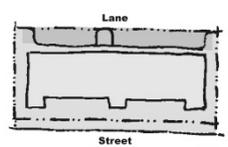
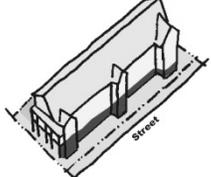
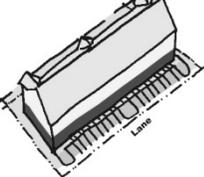
(p) Utility lines located underground and minor structures accessory to utility lines (such as hydrants, manholes, and transformers and other cabinet structures) may encroach into any required yard.

(Ord. 2005-11-02, passed 11-21-05)

**§ 155.202 LAND USE REGULATIONS.**

(A) *Housing types.*

(1) *Definitions.* The following housing types are established to provide a common terminology for housing in the Town. All drawings are for illustrative purposes only.

<p><b>Single Family Detached</b> A detached dwelling unit located on a single lot with private yards on all four sides</p>			
<p><b>Zero Lot Line House</b> A detached dwelling unit located on a single lot with private yards on three sides. The unit has a single side yard on one side comprising the equivalent of two side yards of a single-family detached house.</p>			
<p><b>Alley-Loaded House</b> A detached dwelling unit located on a single lot with private yards on all four sides: however, the house is set closer to the street than a single-family detached house.</p>			
<p><b>Two-Family House</b> Two attached dwelling units in a single structure on a single lot (often called a duplex). The two units can be located on separate floors or side-by-side.</p>			
<p><b>Townhouse</b> Two or more attached dwelling units located on separately owned lots or on a single lot where the units are lined up in a row and share side walls, individual units can be mixed vertically.</p>			
<p><b>Apartment</b> Three or more attached dwelling units in a single structure on a single lot. An apartment can vary in height from two to five stories, individual units can be mixed vertically.</p>			
<p><b>Upper-Story Residential</b> A dwelling unit located on a floor above a nonresidential use.</p>			

(B) *Use Regulations table.* The use regulations table is subject to the explanation as set forth below.

(1) *Key to types of use.*

(a) Permitted. A "P" indicates that a use is permitted in the respective district subject to the specific use standards in §§ 155.300 through 155.307. Such uses are also subject to all other applicable requirements of this chapter.

(b) Conditional use review. A "C" indicates a use that may be permitted in the respective general use district only where approved by the Board of Adjustment in accordance with § 155.710. Conditional uses are subject to all other applicable requirements of this chapter, including the specific use standards contained in §§ 155.300 through 155.307, except where such use standards are expressly modified by the Board of Adjustment as part of the conditional use approval.

(c) Special use review. An "S" indicates a use that may be permitted in the respective general use district only where approved by the Town Council in accordance with § 155.711. Special uses are subject to all other applicable requirements of this chapter, including the specific use standards contained in §§ 155.300 through 155.307, except where such use standards are expressly modified by the Town Council as part of the special use approval.

(d) Specific use [standard section](#). The "Specific Use [Standard Section](#)" column on the table is a cross-reference to any specific use standard listed in §§ 155.300 through 155.307. ~~Where no cross-reference is shown, no additional use standard shall apply.~~

(e) Uses not permitted. A blank cell in the use table indicates that a use is not permitted in the respective district.

(2) *Uses.* Table 2-1 lists the principal uses regulated by this chapter for general use districts. For special use districts see § 155.200(B), for overlay districts see § 155.204, for planned development districts see § 155.203(KL), and for accessory structures and uses see § 155.3085.

**Table 2-1 Use Regulations**

Use Type	Zoning Districts											Specific Use Section
	Residential				Nonresidential							
	R-E	R-10	R-8	R-6	O-R	O-I	B-1	B-2	B-3	I-1	I-2	
<b>Residential Uses</b>												
Adult Care Home (2-6 Adults)	P	P	P	P								§155.301(A)
Adult Care Home (7-12 Adults)	S	S	S	S		C	S	S	S			§155.301(A)
Adult Care Home (13+ Adults)						C	S	S	S			§155.301(A)
Alley Loaded House		P	P	P								§155.301(B)
Apartments		P/S	P/S	S	S	S	S	S	S			§155.301(C)
Boarding House				C		P		P				§155.301(D)
Child Care Home	C	C	C	C	C							§155.301(E)
Manufactured Home	P											§155.301(F)
Manufactured Home Park	S											§155.301(G)
Nursing Home (Congregate Living Facility)	C			C		P		S	P			§155.301(H)
Two family House		P/S	P/S	S	S							§155.301(I)
Townhouse		P/S	P/S	S	S	S	S	S	S			§155.301(J)
Security/Caretaker Quarters	C								C			§155.301(K)
Single Family House	P	P	P	P								§155.301(L)

Use Type	Zoning Districts											Specific Use Section
	Residential				Nonresidential							
	R-E	R-10	R-8	R-6	O-R	O-I	B-1	B-2	B-3	I-1	I-2	
Upper-story Residence		P/S	P/S	P/S	S	P	P	P	P			\$155.301(M)
Zero Lot Line House		P	P	P								\$155.301(N)
<b>Public and Civic Uses</b>												
Assembly, Not For Profit	S					P			P			\$155.302(A)
Cemetery	P								P			\$155.302(B)
Church or Place of Worship	C	C	C	C		C		C	C			\$155.302(C)
College or University						P						\$155.302(D)
Day Care (Supervision for 3-8 )	C	C	C	C	C							\$155.302(E)
Day Care (Supervision for 9+)	C	C	C	C	C	P	P	C	P			\$155.302(E)
Government Service	S	S	S	S	P	P	P	P	P	P	P	\$155.302(F)
Hospital or Medical Center						P			P			\$155.302(G)
<del>Nursing Home (Congregate Living Facility)</del>	<del>C</del>			<del>C</del>		<del>P</del>		<del>S</del>	<del>P</del>			<del>\$155.301(H)</del>
School (Elementary or Secondary)	S	S	S	S		S						\$155.302(H)
School (Technical, Trade or Business)	S	S	S	S		P	P		P	P	P	\$155.302(J)
<b>Recreational Uses</b>												
Entertainment, Indoor							C	C	P	P		\$155.303(A)
Entertainment, Outdoor									C	P		\$155.303(B)
Fitness Center							C	C	P	P		\$155.303(C)
Golf Course	P	P	P	P								\$155.303(D)
Gun Range							S	S	S	S	S	\$155.303(E)
Park, Active	S	S	S	S	S	S	S	S	S	S	S	\$155.303(F)
Park, Passive	C	C	C	C	P	P	C	C	C	C	C	\$155.303(G)
Stable, Private	P											\$155.303(H)
<b>Agricultural Uses</b>												
Agriculture, Livestock	C										C	\$155.304(A)
Agriculture, Sales and Service	P										C	\$155.304(B)
Nursery	P					P	P	C	P			\$155.304(C)
<b>Commercial Uses</b>												
Adult Oriented Business									S		S	\$155.305(A)
Bed and Breakfast	P					P	P	P	P			\$155.305(B)
Car Wash/Auto Detailing						C	C	P	P			\$155.305(C)
Contractor Office						C	C		P	P	P	\$155.305(D)
Contractor Storage Yard									C	C	P	\$155.305(E)
Convenience Store with Gas Sales							C	C	P	P	P	\$155.305(F)
Creative Studio					P	P	P	P	P			\$155.305(G)
<del>Electronic Gaming</del>							<del>C</del>	<del>C</del>	<del>C</del>			<del>\$155.305(H)</del>
Financial Institution					P	P	P	P	P			\$155.305(H)
Funeral Home				C		P	P	P	P			\$155.305(J)
Hotel/Motel						S	S		P			\$155.305(K)
Kennel	C							C				\$155.305(K)
Laundry Services							C		C	P	P	\$155.305(L)
Lounge, Cocktail							S		S	S	S	\$155.305(M)
<u>Microbrewery</u>							<u>P</u>		<u>P</u>	<u>P</u>		<u>\$155.305(N)</u>
Newspaper Publisher									P	P	P	\$155.305(O)
Office, General					P	P	P	P	P	P		\$155.305(P)
Office, Medical					P	P	P	P	P	P		\$155.305(Q)
Outdoor Seating/Sidewalk Cafe						C	P	C	C			\$155.305(R)
Pawn Shop									C	P		\$155.305(S)
Radio or Television Studio									P	P	P	\$155.305(T)
Restaurant, Drive-Through						C	C	C	C	C		\$155.305(U)
Restaurant, General						C	P	P	P	C		\$155.305(V)
Retail Sales, General							P		P			\$155.305(W)
Retail Sales, Neighborhood							P	P	P			\$155.305(X)
Self-storage Facility								C	C	P	P	\$155.305(Y)
Service, General							P		P			\$155.305(Z)
Service, Neighborhood							P	P	P			\$155.305(AA)
Tattoo Parlor									S			\$155.305(BB)

Use Type	Zoning Districts											Specific Use Section
	Residential				Nonresidential							
	R-E	R-10	R-8	R-6	O-R	O-I	B-1	B-2	B-3	I-1	I-2	
Towing Service and Storage									C	C	C	\$155.305(CC)
Vehicle Repair or Service									S	P	P	\$155.305(DD)
Vehicle Sales and Rental									P	P	P	\$155.305(EE)
Veterinary Clinic								C	C	P		\$155.305(FF)
<a href="#">Video Sweepstakes Operations</a>								C	C	C		<a href="#">\$155.305(GG)</a>
<b>Industrial Uses</b>												
Building Supplies, Wholesale									C	P	P	\$155.306(A)
Crematorium										P	P	\$155.306(B)
Gas and Fuel, Wholesale										P	P	\$155.306(C)
Laboratory, Research						P			P	P	P	\$155.306(D)
Manufacturing, Limited										P	P	\$155.306(E)
Manufacturing, General										C	P	\$155.306(F)
Manufacturing, Heavy											P	\$155.306(G)
Research and Development						P			P	P	P	\$155.306(H)
Warehouse, Freight Movement									C	P	P	\$155.306(I)
<b>Utilities</b>												
Recycling Center										P	P	\$155.307(A)
Renewable Energy Facility										C	P	\$155.307(B)
Telecommunication Facility	S	S	S	S	S	S	S	S	S	S	S	\$155.307(C)
Utility, Minor	P	P	P	P	P	P	P	P	P	P	P	\$155.307(D)
Utility, Major										P	P	\$155.307(E)
Waste Service										C	P	\$155.307(F)
Key:												
P – Permitted												
C – Conditional Use permitted in the zoning district only if approved by the Planning Board (PB) ( § 155.710)												
S – Special Use permitted in the zoning district only if approved by the Town Council (TC) ) ( § 155.711)												

(Ord. 2005-11-02, passed 11-21-05; Am. Ord. 2007-05-02, passed 5-7-07; Am. Ord. 2009-06-06, passed 6-1-09; Am. Ord. 2009-08-03, passed 8-3-09)

**§ 155.203 GENERAL USE DISTRICT STANDARDS.**

(A) *Intent.* The general use district development standards establish lot sizes and certain restrictions for residential and nonresidential development. These standards allow for variety in housing types while maintaining the overall character of neighborhoods and commercial areas of the Town. Separate standards are established to regulate development in each general use district. This approach to district development standards benefits the public by:

- (1) Allowing for development that is more sensitive to the environment and encourages the preservation of open and natural areas.
- (2) Promoting quality site design and energy-efficient development.
- (3) Promoting affordable and life-cycle housing.
- (4) Promoting development intensities that maximize existing and proposed infrastructure investments.

(B) *Resource conservation areas.*

(1) No resource conservation area (see §155.500) shall be counted towards lot area required by this subchapter. This shall not preclude the platting of lots in such areas, provided that adequate lot area outside the resource conservation area is provided to meet the minimum lot area requirements of this subchapter.

(2) No resource conservation area shall be counted towards the recreation and open space requirements (see (H) of this section).

(C) *Clayton general design guidelines.* The Town has established a manual to guide the future growth of development. The design guidelines provide a basis for making decisions about the appropriate treatment of new construction and land development. Property owners, real estate agents, developers, tenants, architects and decision makers should use the guidelines contained in the document when considering a project. This will help establish an appropriate direction for its design. For any project subject to review, the applicant should refer to the guidelines at the outset, to avoid planning efforts that later may prove to be inappropriate.

(D) *How to use this section.* This section is divided into the following:

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<b>Part 1. Residential Districts.</b> This Part sets forth specific standards for development in residential districts.	§ 155.203(E) through § 155.203(J)
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<b>Part 2. Nonresidential Districts.</b> This Part sets forth specific standards for development in nonresidential districts.	§ 155.203(K)
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<b>Part 3. Planned Development Districts.</b> This Part sets forth specific standards for development in planned development districts.	§ 155.203(L)
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**PART 1. RESIDENTIAL DISTRICTS**

(E) *Purpose and intent.* The purpose and intent of the residential districts is to provide a safe and healthy living environment for residents, protect the Town’s existing neighborhoods from incompatible uses, maintain natural areas and open spaces within neighborhoods, encourage connectivity and interconnectivity for multiple modes of transportation, and ensure adequate public facilities and services are available to meet the needs of current and future residents.

(F) *Residential subdivision types.* Development within the residential districts allows a variety of housing types. To further the purpose of residential districts, two types of residential subdivisions are permitted, as follows.

(1) *Conventional residential subdivision.* A conventional residential subdivision is a pattern of residential development that provides a majority of property owners with substantial yards on their own property. A. recreation and open space dedication or payment of a fee-in-lieu is required for conventional residential subdivisions.

(2) *Open space residential subdivision.* An open space residential subdivision trades conventional minimum lot size and dimensions for additional common recreation and open space. An open space residential subdivision shall be a sufficient size to ensure adequate common recreation and open space can be incorporated into the subdivision design. An open space residential subdivision may allow additional density provided certain enhancements are incorporated into the design of the subdivision.

(G) *Conventional subdivision standards.*

(1) *Applicability.* A conventional residential subdivision is permitted in all residential districts subject to the following standards.

(2) *Density.* In the R-10 and R-8 Districts, townhouse parcels, apartment parcels and upper-story residential units shall not exceed a density of ten units per acre. In the R-6 District, townhouse parcels, apartment parcels and upper-story residential units shall not exceed a density of 12 units per acre.

(3) *Development standards.* Applicants utilizing the conventional residential subdivision option shall meet all applicable development standards as set forth in § 155.400 through § 155.405 and § 155.500 through § 155.502. Applicants shall comply with all other provisions in this chapter and all other applicable laws.

(4) *Lots not served by public water and sewer.* No permit to install a septic tank system shall be issued until the County Health Director has determined by a field investigation of the area that the site is acceptable for a septic tank system and that such a system can be installed at the site in compliance with these rules and regulations. The field investigations shall include evaluation of such factors as size and shape of the lot or lots, character and porosity of soil, percolation rate, topography, depth of the water table, rock or other impervious formations, location or proposed location of any water supply wells, and the success or failure history of any other septic tank systems in the area. The County Health Director shall not issue a permit if he determines that the site is not acceptable for septic tank systems.

(5) *Minimum square footage.* Minimum square footage requirements have been established for conventional subdivisions to ensure the scale of new construction is consistent with the established neighborhood patterns. Residential subdivisions which have a valid subdivision/plat approval, and additions to existing dwelling units are exempt from the minimum square footage requirements.

(6) *Dimensional standards.* Applicants utilizing the conventional residential subdivision option shall meet the dimensional standards provided in Table 2-2. Applicants shall comply with all other provisions in this chapter and all other applicable laws.

Table 2-2 Conventional Subdivision Regulations

Conventional Subdivision Standards																
Zoning District	Unit Type	Lot Standards						Density (dwelling units / acre)	Minimum Setbacks (ft.)				Building Standards			
		Min. Site Area (Acres)	Min. Parcel Size (sq. ft.)	Min. Lot Area (sq. ft.)	Min. Lot Width (ft.)	Max Lot Coverage (%)	Max Impervious Surface (%)		Front	Side Interior	Side Street	Rear	Max. Height (ft.)	Min. Dwelling Unit Size (sq. ft.)	Accessory Structures	
R-E	Single Family with water and sewer	--	--	20,000	80	35	50	2	35	15	25	30	35	1,400	See §155.308 5	
	Single Family with well and septic	--	--	40,000	100	35	50	1	35	15	25	30	35	1,400		
R-10	Single Family	--	--	10,000	70	35	50	4	30	10	20	25	35	1,100	See §155.308 5	
	Zero Lot Line	--	--	10,000	70	35	50	4	30	0	20	25	35	1,100		
	Alley Loaded	--	--	10,000	70	35	50	4	30	10	10	25	35	1,100		
	Two Family		12,000	Set by Special Use Process												
	Townhouse (2 units)		12,000													
	Townhouse (3+ units)		20,000													
Apartments		20,000														
R-8	Single Family	--	--	8,000	60	35	55	5	25	10	15	25	35	1,100	See §155.308 5	
	Zero Lot Line	--	--	8,000	60	35	55	5	25	0	15	25	35	1,100		
	Alley Loaded	--	--	8,000	60	35	55	5	15	10	15	25	35	1,100		
	Two Family		10,000	Set by Special Use Process												
	Townhouse (2 units)		10,000													
	Townhouse (3+ units)		20,000													
Apartments		20,000														
R-6	Single Family	--	--	6,000	50	35	60	7	20	6	10	20	35	960	See §155.308 5	
	Zero Lot Line	--	--	6,000	50	35	60	7	20	0	10	25	35	960		
	Alley Loaded	--	--	6,000	50	35	60	7	10	6	10	25	35	960		
	Two Family		8,000	Set by Special Use Process												
	Townhouse (2 units)		8,000													
	Townhouse (3+ units)		20,000													
Apartments		20,000														

Notes	
1	Minimum dwelling unit size = total heated square footage
2	Manufactured homes and manufactured home parks shall meet the minimum requirements set forth in UDC §155.3012 (F) and (G)
3	In no instance shall the area of a residential lot be less than the size determined to be adequate by the County Health Department after soil and ground water table investigations have been made.
4	A minimum of 1,245 square feet of Recreation and Open Space is required per unit for Single Family, Zero Lot Line and Alley Loaded units.
5	Public water and sewer is required in the R-10, R-8 and R-6 Zoning Districts. Within Town limits, connection to public water and sewer is also required for lots contiguous to existing service.
6	Lots using a zero side interior setback for one lot line are required to double the side interior setback requirement established for a single family unit for the opposite lot line.
7	In the R-10 and R-8 Zoning Districts, townhouse parcels, apartment parcels, and upper story residential shall not exceed a density of 10 dwelling units per acre.
8	In the R-6 Zoning District, townhouse parcels, apartment parcels, and upper story residential shall not exceed a density of 12 dwelling units per acre.

(H) *Open space subdivision standards.*

(1) *Intent.* The intent of an open space residential subdivision is to provide a development alternative to a conventional subdivision. An open space residential subdivision involves clustering home sites within a portion of the development site and allowing housing units on smaller lots than those permitted in a conventional residential subdivision. Open space subdivisions promote the preservation of environmentally sensitive land and allows for efficient use of the land to provide additional common open space. Open space subdivision development is encouraged by the Town in the form of these flexible design and maximum density provisions. Other purposes of an open space residential subdivision include the following:

(a) To preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat.

(b) To preserve important historic and archaeological sites.

(c) To permit clustering of houses and structures in a manner that will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for residential development.

(d) To reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in residential development.

(e) To promote interconnected greenways and corridors throughout the community.

(f) To create contiguous greenspace within and adjacent to the development site.

(g) To protect scenic views.

(h) To protect prime agricultural land and preserve farming as an economic activity.

(2) *Applicability.* An open space residential subdivision is permitted in the R-E, R-10, and R-8 Zoning Districts subject to the following standards.

(3) *Mix of housing types.* Two-family, townhouse, apartment, and upper-story residential units may comprise no more than 50percent of the total dwelling units of a proposed open space residential subdivision. In no case shall the density allowance be exceeded for the overall site. In the R-10 and R-8 Districts, townhouse parcels, apartment parcels, and upper-story residential units shall not exceed a density of ten units per acre.

(4) *Minimum square footage.* Minimum square footage requirements have been established for open space subdivisions to ensure the scale of new construction is consistent with the established neighborhood patterns. Existing dwelling units, including any additions thereto, are exempt from the minimum square footage requirements.

(5) *Development standards.* Applicants utilizing the open space residential subdivision option shall meet all applicable development standards as set forth in §§ 155.400 through 155.405

and §§ 155.500 through 155.502. Applicants shall comply with all other provisions in this chapter and all other applicable laws.

(6) *Dimensional standards.* Applicants utilizing the open space residential subdivision option shall meet the dimensional standards provided in Table 2-3. Applicants shall comply with all other provisions this chapter and all other applicable laws.

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**Table 2-3 Open Space Subdivision Regulations**

<b>Open Space Subdivision Standards</b>															
Zoning District	Unit Type	Lot Standards						Density (dwelling units / acre)	Minimum Setbacks (ft.)				Building Standards		
		Min. Site Area (Acres)	Min. Parcel Size (sq. ft.)	Min. Lot Area (sq. ft.)	Min. Lot Width (ft.)	Max Lot Coverage (%)	Max Impervious Surface (%)		Front	Side Interior	Side Street	Rear	Max. Height (ft.)	Min. Dwelling Unit Size (sq. ft)	Accessory Structures
<b>R-E</b>	Single Family	10	--	12,000	48	35	50	3	21	9	15	18	35	1,400	See §155.308 <sup>5</sup>
<b>R-10</b>	Single Family	10	--	8,000	50	35	50	5	25	6	15	15	35	1,100	See §155.308 <sup>5</sup>
	Zero Lot Line	10	--	8,000	50	35	50	5	25	0	15	15	35	1,100	
	Alley Loaded	10	--	6,000	42	35	50	7	15	5	10	15	35	960	
	Two Family	10	12,000	12,000	75	35	50	3	25	6	15	15	35	960	See §155.308 <sup>5</sup>
	Townhouse (2 units)	10	12,000	6,000	42	35	50	3	25	6	15	15	35	960	
	Townhouse (3+ units)	10	20,000	4,000	25	35	50	10	25	15	15	15	35	700	
Apartments	10	20,000	--	--	35	50	10	25	15	15	15	35			
<b>R-8</b>	Single Family	10	--	6,000	42	35	55	7	20	6	10	15	35	960	See §155.308 <sup>5</sup>
	Zero Lot Line	10	--	6,000	42	35	55	7	20	0	10	15	35	960	
	Alley Loaded	10	--	4,800	40	40	55	9	10	5	10	15	35	960	
	Two Family	10	10,000	9,000	65	40	55	4	20	6	10	15	35	700	
	Townhouse (2 units)	10	10,000	4,800	40	40	55	9	20	6	10	15	35	700	
	Townhouse (3+ units)	10	20,000	3,000	21	40	55	10	20	--	10	15	35	700	
Apartments	10	20,000	--	--	40	55	10	15	10	15	20	35			
<b>Notes</b>															
1	Minimum dwelling unit size = total heated square footage														
2	Minimum dwelling unit size for multi-family is a per unit minimum														
3	Manufactured homes and manufactured home parks shall meet the minimum requirements set forth in UDC §155.301 <sup>2</sup> (F) and (G)														
4	In no instance shall the area of a residential lot be less than the size determined to be adequate by the County Health Department after soil and ground water table investigations have been made.														
5	A minimum of 1,245 square feet per unit of public Recreation and Open Space is required in the R-E Zoning District														
6	A minimum of 12.5% of the total site acreage is required to be Recreation and Open Space in all Open Space Subdivisions.														
7	Public water and sewer is required in all residential Zoning Districts.														
8	Lots using a zero side interior setback for one lot line are required to double the side interior setback requirement established for a single family unit for the opposite lot line.														
9	In the R-10 and R-8 Zoning Districts, townhouse parcels, apartment parcels, and upper story residential shall not exceed a density of 10 dwelling units per acre.														
10	The minimum building separation for townhouse parcels and apartment parcels is 20 feet.														

(7) *Utilities.* To the maximum extent feasible, utilities in open space residential subdivisions shall be placed underground.

(8) *Project boundary buffer.*

(a) No buffer is required where the width of the project's perimeter lots is equal to or greater than the minimum lot width of the adjoining development or the minimum lot width required by the zoning district applied to any adjoining undeveloped parcel.

(b) Where narrower lot widths are provided, a Class C buffer shall be provided (see § 155.402) along all project boundaries of an open space subdivision.

(I) *Recreation and open space requirements.*

(1) *Applicability.* Recreation and open space is an integral part of both conventional and open space residential subdivisions. The minimum recreation and open space requirement for each subdivision type is set forth below. No additional recreation or open space shall be required on the site, except where otherwise required by state or federal law. In the case that a subdivision is being developed in phases, the amount of recreation and open space shall be computed separately for each phase, but may be combined with existing recreation and open space in earlier phases to create a larger uniform area.

(2) *All residential subdivisions.*

(a) All residential development shall be required to either dedicate a portion of the land in the subdivision, or land in another location if approved by Town Council for recreation or open space use, or make a payment-in-lieu of dedication at a rate as set forth in the Town's Comprehensive List of Fees and Charges per lot or dwelling unit. If a development is approved which provides private recreation and open space, to be maintained by a homeowner or property management organization, and meeting the minimum standards of this section, the required fee-in-lieu payment shall be as set forth in the Town's Comprehensive List of Fees and Charges per lot or dwelling unit. A combination of dedication and payment-in-lieu may be used to meet these requirements.

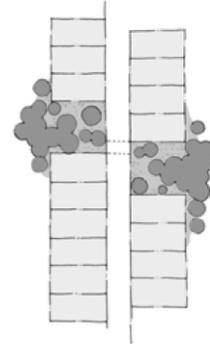
(b) At least 1,245 square feet of land shall be required for each proposed dwelling unit. Such land shall not include resource conservation areas (see § 155.500). The Town Council reserves the right to refuse to accept dedication of parcels for subdivisions, in which case the applicant shall pay the fee-in-lieu of dedication. The Town shall use fee-in-lieu payments for the acquisition or development of recreation and open space sites.

(c) The location of the proposed recreation and open space areas, its suitability for recreational use, and any recreational plans adopted by the Town shall be considered in determining whether to accept dedication or payment-in-lieu. The decision shall be made by the Town Council as a component of preliminary subdivision plans or special use permits, or by the Planning Director as a component of site plans. Any decision of the Planning Director relative to this section may be appealed to the Town Council.

(3) *Open space residential subdivision.*

(a) All development utilizing the open space residential subdivision option shall provide recreation and open space equal to 12.5% of the net site area as public or private recreation and open space.

(b) Where the Town Council accepts dedication of a portion or all of this recreation and open space, the dedicated portion shall receive 100% credit toward the requirement for recreation and open space in (H)(2) of this section. The Town Council reserves the right to refuse to accept dedication.



(c) Where the recreation and open space is retained privately, or deemed unacceptable as public recreation and open space by the Town Council, it shall receive only 50% credit against the recreation and open space requirement, in recognition of a reduced burden on the Town's public recreation and open space system.

(4) *Configuration of recreation and open space.*

(a) The minimum width for any required recreation and open space shall be 50 feet. Exceptions may be granted by the Town Council for items such as trail easements, mid-block crossings, linear parks/medians, when their purpose meets the intent of this section.

(b) At least 60% of the required recreation and open space shall be in a contiguous parcel. For the purposes of this section, contiguous shall include any recreation and open space bisected by a residential street (including a residential collector), provided that:

1. A pedestrian crosswalk is constructed to provide access to the recreation and open space on both sides of the street; and
2. The right-of-way area is not included in the calculation of minimum recreation and open space required.

(c) The recreation and open space shall adjoin any neighboring areas of recreation and open space, other protected areas, and non-protected natural areas that would be candidates for inclusion as part of a future area of protected recreation and open space.

(d) The required recreation and open space shall be directly accessible to the largest practicable number of lots within the subdivision. Non-adjoining lots shall be provided with safe, convenient access to the open space (i.e. mid-block connections in logical locations). No lot within the subdivision should be further than a one-quarter-mile radius from the required recreation and open space. This radius shall be measured in a straight line, without regard for street, sidewalk or trail connections to the open space.

(e) Access to the recreation and open space shall be provided either by an abutting street or easement. Such easement shall be not less than 30 feet wide.

(f) At least 25% of the recreation and open space shall be improved. Trails may be developed in accordance with the Clayton General Design Guidelines. Other improved

recreation and open space areas shall be developed as set forth below. The shape, topography, and subsoils shall be appropriate to the improvements proposed. Where recreation or open space consists of prime agricultural land, this improvement requirement shall not apply.

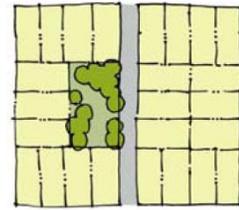
**Tot Lot & Playgrounds (Private Only).** *Playgrounds provide play areas for children as well as open shelter and benches. Playgrounds may be built within squares, greens, mini-parks and neighborhood parks or may stand alone within a residential block.*

Playgrounds shall be designed with commercial grade play equipment for two age groups: tot lot for children ages one to five; and separate play equipment for children ages six to ten. May include picnic units and shelters. Minimum requirements include two park benches and one trash receptacle. Must have shock absorbing surface with a maximum 2% slope. Playgrounds must meet all federal, state and local regulations and be compliant with the Americans with Disabilities Act. Due to the continuing maintenance obligations, the Town does not accept dedication of tot lots and playgrounds.



**Mini-Park (Private Only).** *The mini-park provides active recreational facilities for the use by the residents of the immediate surrounding neighborhood within the development.*

Size is from 2,500 sq. ft to one acre. May include: tennis courts, basketball courts, playgrounds and seating accommodations. Each mini-park shall be centrally located and easily accessible so that it can be conveniently and safely reached and used by those persons in the surrounding neighborhood it is designed to serve. Rear facing lots are allowed. Mini-parks shall be attractively landscaped and be provided with sufficient natural or man-made screening or buffer areas to minimize any negative impacts upon adjacent residences. Due to the continuing maintenance obligations, the Town does not accept dedication of mini-parks.



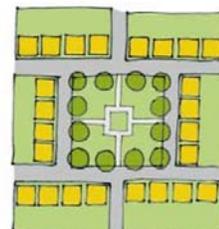
**Plaza.** *Plazas are for passive recreation use adjacent to a civic or commercial building. Plazas are paved in brick or another type of imperious surface.*

Plazas shall be level, stepped or gently sloping. At no time shall a plaza's horizontal length or width be greater than three times the height of surrounding buildings. Size is from 2,000 to 30,000 sq. ft.



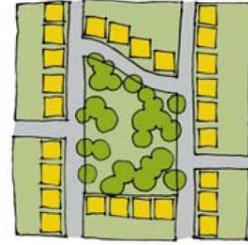
**Squares.** *Squares are formal areas for passive recreation use bound by streets or front facing lots.*

Squares shall be bound by streets on a minimum of three sides or 75% of their perimeter and may be bound by front facing lots on one side or 25% of their perimeter. No rear facing lots allowed adjacent to a square. Trees plantings are encouraged parallel to the street right-of-way. Geometrical tree planting layouts for internal plantings are encouraged. Minimum size is 500 sq. ft. to one acre.



**Green.** *The green is an informal area for passive use bound by streets or front facing lots.*

A green shall be bound by streets on a minimum of three sides or 75% of their perimeter and may be bound by front facing lots on one side or 25% of their perimeter. No rear facing lots allowed adjacent to a green. Tree plantings can be informal and the topography irregular. Greens may be used to preserve specimen trees. Size is 500 sq. ft. to one acre.



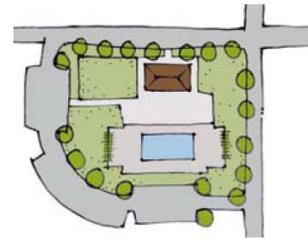
**Neighborhood Park.** *Neighborhood parks are designed for active or passive recreation use. Maximum park size can exceed five acres if the neighborhood park creates an open space that services an entire neighborhood or a group of neighborhoods; or incorporates physical features which are an asset to the community (i.e. lake or river frontage, high ground, or significant stands of trees).*

Minimum size from one to five acres. Neighborhood parks shall be bound by streets on a minimum of 50% of their perimeter. Front facing lots are encouraged around the perimeter. Neighborhood parks shall include benches and walking paths. Neighborhood parks may include but are not limited to: tennis courts, racquet ball courts, basketball courts, volley ball courts, ball fields, swings, slides, playgrounds, dog parks, benches, restrooms, picnic units, shelters, walking paths and parking areas.



**Clubhouse/Pool Amenity Area.** *Clubhouse/pool areas can be found in a neighborhood park, mini-park or alone as an amenity area for the residents of a developed community. Clubhouse/pool areas can include: swimming pools, group activity room, gazebos, outdoor eating areas, and exercise stations.*

Pools should be a minimum size of 1,000 sq. ft. Clubhouses and swimming pools must meet all applicable building and health codes for the Town and the state.



**Greenway.** *Greenways typically follow natural or constructed features such as streams or roads and are designed to incorporate natural settings such as creeks and significant stands of trees within neighborhoods, and are used for transportation, recreation, and environmental protection. Greenways differ from parks; plazas and squares in that their detailing is natural (i.e. informally planted) except along rights-of-way, and may contain irregular topography.*

Design of the greenway should incorporate conservation of existing mature tree canopy and landscape, protection of existing natural drainage ways and creeks. Improvements shall include paved walks/trails and benches, and trash receptacles.



(5) *Adopted municipal and county plans.* Adopted municipal and county plans shall be taken into consideration when evaluating land proposals.

(6) *Permitted uses of recreation and open space.* Uses of recreation and open space may include the following:

- (a) Conservation areas for natural, archeological or historical resources;
- (b) Meadows, woodlands, wetlands, wildlife corridors, game preserves, or similar conservation-oriented areas;
- (c) Pedestrian or multipurpose trails;
- (d) Passive recreation areas;
- (e) Active recreation areas, provided that impervious area is limited to no more than 50% of the total recreation and open space;
- (f) Golf courses (excluding clubhouse areas and maintenance facilities), provided the area does not exceed 50% of the required recreation and open space, and further provided that impervious area is limited to no more than 10% of the total recreation and open space;
- (g) Above-ground utility rights-of-way, provided the area does not exceed 50% of the required recreation and open space;
- (h) Agriculture, horticulture, silviculture or pasture uses, provided that all applicable best management practices are used to minimize environmental impacts;
- (i) Landscaped stormwater management facilities;
- (j) Easements for drainage, access, and underground utility lines; and
- (k) Other conservation-oriented uses compatible with the purposes of this chapter.

(7) *Prohibited uses of recreation and open space.* Recreation and open space shall not include the following:

- (a) Community or individual wastewater disposal systems;
- (b) Streets (except for street crossings as expressly provided above) and parking areas; and
- (c) Other activities as determined by the applicant and recorded on the legal instrument providing for permanent protection.

(8) *Ownership and management of recreation and open space.*

- (a) Ownership. Recreation and open space shall be accepted and owned by one of the following entities:

1. Town of Clayton. The responsibility for maintaining the recreation and open space, and any facilities shall be borne by the Town.

2. Land conservancy or land trust. The responsibility for maintaining the recreation and open space, and any facilities shall be borne by a land conservancy or land trust.

3. Homeowners association. A homeowners association representing residents of the subdivision shall own the recreation and open space. Membership in the association shall be mandatory and automatic for all homeowners of the subdivision and their successors. The homeowners' association shall have lien authority to ensure the collection of dues from all members. The responsibility for maintaining the recreation and open space, and any facilities shall be borne by the homeowner's association.

4. Private landowner. A private landowner may retain ownership of recreation and open space. The responsibility for maintaining the recreation and open space, and any facilities shall be borne by the private landowner.

(b) Management. Applicants shall submit a plan for the management of recreation and open space and other common facilities that:

1. Allocates responsibility and guidelines for the maintenance and operation of the recreation and open space, and any facilities located thereon, including provisions for ongoing maintenance and for long-term capital improvements;

2. Estimates the costs and staffing requirements needed for maintenance and operation of, and insurance for, the recreation and open space and outlines the means by which such funding will be obtained or provided;

3. Provides that any changes to the plan be approved by the Town; and

4. Provides for enforcement of the plan.

(c) Maintenance.

1. Passive recreation and open space maintenance is limited to removal of litter, dead tree and plant materials (that is obstructing pedestrian movement), and brush; weeding and mowing. Natural water courses are to be maintained as free-flowing and devoid of debris. Stream channels shall be maintained so as not to alter floodplain levels.

2. No specific maintenance is required for agricultural uses.

3. Active recreation and open space areas shall be accessible to all residents of the development. Maintenance is limited to ensuring that there exist no hazards, nuisances or unhealthy conditions.

(d) Failure to maintain. In the event the party responsible for maintenance of the recreation and open space fails to maintain all or any portion in reasonable order and condition, the Town may assume responsibility for its maintenance and may enter the premises and take corrective action, including the provision of extended maintenance. The costs of such maintenance may be charged to the homeowner's association, or to the individual property owners that make up the homeowner's association, and may include administrative costs and penalties. Such costs shall become a lien on all subdivision properties.

(9) *Legal instrument for permanent protection.*

(a) The recreation and open space shall be protected in perpetuity by a binding legal instrument that is recorded with the deed. The instrument shall be one of the following:

1. A permanent conservation easement in favor of either:

A. A land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements. The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for re-transfer in the event the organization becomes unable to carry out its functions; or

B. A governmental entity with an interest in pursuing goals compatible with the purposes of this chapter. If the entity accepting the easement is not the Town, then a third right of enforcement favoring the Town shall be included in the easement.

2. A permanent restrictive covenant for conservation purposes in favor of a governmental entity.

3. An equivalent legal tool that provides permanent protection, if approved by the Town.

(b) The instrument for permanent protection shall include clear restrictions on the use of the recreation and open space. These restrictions shall include all restrictions contained in this chapter, as well as any further restrictions the applicant chooses to place on the use of the recreation and open space. Where appropriate, the instrument shall allow for stream or habitat restoration within the easement area.

(J) *Nonresidential development in residential districts.* As set forth in the Use Regulation Table (Table 2-1 § 155.202(B)) certain nonresidential uses are permitted in residential districts. Permitted nonresidential uses shall meet the dimensional standards provided in Table 2-4. Applicants shall comply with all other provisions of this chapter and all other applicable laws.

**Table 2-4 Nonresidential Development Standards for Residential Districts**

Zoning District	Lot Standards			Minimum Setbacks				Building Standards		
	Min. Lot Area (sq.ft.)	Min. Lot Width (ft.)	Public Water & Sewer	Street (Front)	Side Interior	Side Street	Rear	Max. Building Height (ft.) <sup>(1)</sup>	Building Coverage	Impervious Surface
<b>R-E</b>	20,000	80	Required	35	15	25	30	35	35%	50%
<b>R-10</b>	10,000	70	Required	30	10	20	25	35	35%	50%
<b>R-8</b>	8,000	60	Required	25	10	15	25	35	35%	55%
<b>R-6</b>	6,000	50	Required	20	6	10	20	35	35%	60%
<b>Notes</b>										
(1)	The Council may grant a special use permit in accordance with § 155.711, allowing nonresidential buildings to exceed the maximum height limits of the district.									

**PART 2. NONRESIDENTIAL DISTRICTS**

(K) *Nonresidential district standards.*

(1) Development standards. Applicants shall meet all applicable development standards as set forth in §§ 155.400 through 155.405 and §§ 155.500 through 155.502. Applicants shall comply with all other provisions in this chapter and all other applicable laws.

(2) *Nonresidential dimensional standards.*

(a) As set forth in the Use Regulations Table (Table 2-1 § 155.202(B)) certain uses are allowed in nonresidential districts. Allowed uses shall meet the dimensional standards provided in Table 2-5. Applicants shall comply with all other provisions of this chapter and all other applicable laws.

**Table 2-5 Nonresidential Dimensional Standards**

Zoning District	Lot Standards			Minimum Setbacks (ft.)				Building Standards <sup>(3)</sup>		
	Min. Lot Area (sq.ft.)	Min. Lot Width (ft.)	Public Water & Sewer	Street / Front (Max.)	Side Interior (abutting residential)	Side Street	Rear (abutting residential)	Max. Building Height (ft.) <sup>(1)</sup>	Building Coverage	Impervious Surface
<b>O-R</b>	6,000	50	Required	20	6 (6)	10	20 (20)	35	50%	75%
<b>O-I</b>	6,000	60	Required	30	10 (30)	20	20 (30)	60	50%	75%
<b>B-1<sup>(4)</sup></b>	None	None	Required	0 <sup>(2)</sup>	0 (30)	0	0 (30)	50	--	--
<b>B-2</b>	6,000	50	Required	20	10 (30)	10	20 (30)	35	50%	75%
<b>B-3</b>	8,000	60	Required	25	15 (30)	30	30 (30)	60	50%	75%
<b>I-1</b>	20,000	100	Required	50	20 (30)	30	40 (40)	50	50%	75%
<b>I-2</b>	20,000	100	Required	50	20 (30)	30	40 (40)	50	50%	75%
<b>Notes:</b>										
(1)	No maximum building coverage or impervious surface limits in the B-1 Zoning District									
(2)	Maximum 10 foot street yard setback in B-1 Zoning District									
(3)	Minimum Building Separation in all Zoning Districts is 20 feet									
(4)	The Town Council may grant a special use permit in accordance with § 155.711 for structures exceeding the maximum height limits									

(b) More than one building may be permitted be on a single lot.

(c) In the B-1 District, no rear yard shall be less than that of the nearest building facing on the same side of the street with the least rear yard depth. In no case shall the required rear yard setback exceed ten feet from the rear property line.

(d) The Town Council may grant a special use permit in accordance with § 155.711, allowing specified nonresidential buildings to exceed the maximum height limits of the district.

(3) *Residential dimensional standards.*

(a) As set forth in the Use Regulations Table (Table 2-1 § 155.202(B)) certain residential uses are permitted in nonresidential districts. Dimensional standards for townhouses and apartments are established through the special use process (see § 155.711). Within the B-1 District, no townhouse or apartment shall be established on a parcel less than 20,000 square feet in area.

(b) Upper-story residential is permitted on the upper floors of a nonresidential building and shall conform to the lot, yard and bulk requirements of the principal building.

(c) Except in the B-1 District, townhouse and apartment parcels and upper-story residential units shall not exceed a density of 12 units per acre in a standard residential district.

**PART 3. PLANNED DEVELOPMENT DISTRICTS**

(L) *Planned development district standards.*

(1) *General provisions for all planned developments (PD-R, PD-C, PD-I, PD-MU).*

(a) Rezoning criteria. In approving a rezoning for a planned development, the Town Council shall find the district designation and planned development master plan comply with the general standards for all planned development in this section and the specific standards for the proposed planned development listed in (K)(2) through (5) of this section, respectively.

(b) Planned development master plan. The development proposed in the master plan is compatible with the character of surrounding land uses and maintains and enhances the value of surrounding properties. The master plan shall be prepared by a professionally certified landscape architect, engineer or architect.

(c) Design guidelines and dimensional standards. Each planned development shall provide a comprehensive set of design guidelines that demonstrate the project will be appropriate within the context of the surrounding properties and the larger community. All bulk, area and dimensional standards shall be established by the Town Council at the time of approval.

(d) General development standards. Unless specifically waived by the Town Council, all standards specified in §§ 155.400 through 155.405 shall apply.

(e) Resource conservation areas.

1. No resource conservation area (see § 155.500) shall be counted towards lot area. This shall not preclude the platting of lots in such areas, provided that adequate lot area outside the resource conservation area is provided.

2. No resource conservation area shall be counted towards the recreation and open space requirements (see below).

(f) Recreation and open space. The planned development master plan shall meet or exceed the recreation and open space requirements of an open space residential subdivision (see § 155.203(H)).

(g) Stormwater management. When determined necessary by the Town Council, the planned development master plan shall contain a comprehensive stormwater management plan prepared by a professional engineer licensed in the state.

(h) Phasing. If development is proposed to occur in phases, the planned development master plan shall include a phasing plan for the development, and if appropriate, with specific build-out dates. Guarantees shall be provided that project improvements and amenities that are necessary and desirable for residents and tenants of the project, or that are of benefit to the Town, are constructed with the first phase of the project, or, if this is not possible, then as early in the project as is technically feasible.

(2) *Planned Development-Residential (PD-R) District.*

(a) Minimum requirements.

1. The Planned Development -Residential District is an option provided to encourage a mix of housing options within a comprehensively planned development, allowing a density bonus in return for the provision of a higher quality development.

2. Unless waived by the Town Council, the PD-R District is permissible on tracts of land of least ten contiguous acres.

(b) Uses. Uses listed in the R-E, R-10, R-8, R-6 Districts are generally allowed in a PD-R District (see Table 2-1 § 155.202), subject to approval by the Town Council.

(b) Project boundary buffer.

1. A perimeter buffer shall be required along all project boundaries of a planned residential development.

2. Where narrower lot widths are provided, a Class C buffer shall be provided (see § 155.402) along all project boundaries.

(3) *Planned Development-Commercial (PD-C) District.*

(a) Minimum requirements.

1. The Planned Development- Commercial District is an option provided to enhance the design of a commercial development within a comprehensively planned development by allowing for additional flexibility not available in nonresidential districts.

2. Unless waived by the Town Council, the minimum tract of land for rezoning is two contiguous acres.

(b) Uses. The uses listed in the O-I, B-1, B-2, and B-3 districts are generally allowed in a PD-C District (Table 2-1 see § 155.202), subject to approval by the Town Council.

(c) Project boundary buffer.

1. Unless waived by the Town Council, a Class B buffer (see § 155.402) shall be provided along all project boundaries abutting a nonresidential district.

2. Unless waived by the Town Council, a Class C buffer (see § 155.402) shall be provided all project boundaries abutting a residential district.

(4) *Planned Development-Industrial (PD-I) District.*

(a) Minimum requirements.

1. The Planned Development- Industrial District is an option provided to encourage unified industrial complexes of high quality by allowing for additional flexibility not available in nonresidential districts.

2. The PD-I District is permissible on tracts of land of least ten contiguous acres.

(b) Uses.

1. The uses listed in the B-1, B-2, B-3, I-1, and I-2 Districts are generally allowed in a PD-I District (see § 155.202), subject to approval by the Town Council.

2. Non-industrial or non-manufacturing uses located in a PD-I District are intended to serve the needs of the development and not the needs of a surrounding area. Areas designated for non-industrial and non-manufacturing activities shall be oriented towards the interior of the project and shall not be located on exterior or perimeter streets or property boundaries, but shall be centrally located within the project to serve the employees of the district.

(c) Project boundary buffer. A Class C buffer shall be provided (see § 155.402) along all project boundaries.

(5) *Planned Development-Mixed Use (PD-MU) District.*

(a) Minimum requirements.

1. The Planned Development- Mixed Use District is an option provided to encourage coordinated mixed use developments.

2. Unless waived by the Town Council, the minimum tract of land for rezoning is two contiguous acres.

(b) Uses.

1. The uses listed in the Use Regulations Table are generally allowed in a PD-MU District (Table 2-1 § 155.202), subject to approval by the Town Council.

2. The mix of uses shall be established by the Town Council at the time of approval.

(c) Project boundary buffer. Unless waived by the Town Council, a Class C buffer shall be provided (see § 155.402) along all project boundaries.

(Ord. 2005-11-02, passed 11-21-05; Am. Ord. 2007-04-05, passed 4-2-07)

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**§ 155.204 OVERLAY DISTRICT STANDARDS.**

(A) *Thoroughfare Overlay District.*

(1) *Established.* The Thoroughfare Overlay District (TOD) is established for the purpose of maintaining a safe, efficient, and functional development pattern adjacent to major thoroughfares, while maintaining an aesthetic streetscape environment. It is recognized that an enhanced development quality in areas of high visibility promotes economic development and stability in the entire community. The standards established in this section shall be applied, at the discretion of the Town Council, to nonresidential properties which adjoin major thoroughfares.

(2) *Designation.*

Properties subject to these regulations shall be adjacent to, or have immediate access to a major thoroughfare. The boundaries follow the major thoroughfares both- within the corporate limits and extraterritorial jurisdiction, and in no case extend more than 150 feet from the outer edge of the right-of-way of a thoroughfare.

(3) *Permitted uses.* All permitted, special, and conditional uses of the underlying zoning district are allowed subject to the specific requirements and procedures for each classification.

(4) *Dimensional requirements.* The dimensional requirements of this overlay district shall be the same as the underlying zoning district.

(5) *Street yard requirements.*

(a) All new developments or major expansions of existing development (25% increase in building area, lot area, or parking requirement) shall provide a landscaped street yard as provided in Table 2-6.

**Table 2-6 TOD Street Yard Requirements**

	Street Yard Width (feet)		
	Average	Minimum	Maximum
TOD Commercial	20	10	40
TOD Industrial	40	20	80

(b) For purposes of this section, the street yard area is determined by multiplying the lot frontage, less driveways, times the average required width to determine the required street yard area. There shall be no structures allowed in this street yard, except as follows:

1. Landscaping;
2. Drainage features designed to mimic the natural environment;
3. Public utilities and facilities;
4. Driveways and streets;
5. Sidewalks, pedestrian ways, or bikeways;

6. One on-premises sign not exceeding six feet in height and 24 square feet.

(6) *Landscape requirements.*

(a) All required street yard areas shall be covered by lawn, ground cover, trees, shrubs, or mulch, except as noted above. Maintenance shall be the responsibility of the property owner. Landscaping shall be required according to Table 2-7 below.

**Table 2-7 TOD Landscape Requirements**

	Min. Landscape Requirements	
	Trees (per 1,000 sq. ft. of street yard)	Shrubs (per 1,000 sq. ft. of street yard)
TOD Commercial	1	5
TOD Industrial	2	10

(b) The preservation of existing trees shall be required when practical, utilizing recognized professional standards. The species and size of all plant material shall be specified on the site plan, and at least 50% of the total shall be evergreen. Trees shall have a minimum height of six feet and shrubs must have a minimum height of 18 inches at planting and reach 30 inches within two years. Additional trees may substitute for shrubs on a one-for-one basis. The requirements set forth in this section may be used to fulfill up to 67% (two-thirds) of the landscaping required under § 155.402(D), except that landscaping within all parking areas for vehicles, as set forth in § 155.401(C)(3)(d)2., and buffers, as set forth in § 155.402(E)(2)(c) shall be provided completely, as required, in addition to these requirements.

(7) *Access regulations.* All driveways and public street intersections in a Thoroughfare Overlay District shall be subject to NCDOT and the town standards and permitting processes, whichever is applicable. Any parcel of land with less than 400 feet of frontage on a thoroughfare may have no more than one point of access to the thoroughfare. One additional driveway for each additional 400 feet of thoroughfare frontage shall be allowed, and one per 400 feet of additional frontage. Where medians are provided which prohibit turns into oncoming traffic, access points may be provided every 200 linear feet. No driveway shall be allowed within 300 feet of the intersection of two thoroughfares or within 200 feet of an intersection of any other public street on the thoroughfare. Driveways shall be a minimum of 200 feet apart (measured from center line to center line) on thoroughfares, and shall align with opposing drives, where possible. Shared driveways or parallel access roads shall be used when deemed necessary, and the appropriate legal documents may be required by the town prior to driveway permit issuance. If access to a lot or legally created parcel of land is physically unobtainable under these provisions, an access point may be approved which is located the greatest distance possible from an existing access point and in the safest possible location to be approved by NCDOT and/or the town. For the purpose of this section, adjacent lots in common ownership fronting on a thoroughfare in a Thoroughfare Overlay District shall be considered as one lot when determining permitted driveways.

(8) *Alternative means of compliance.* It is recognized that strict interpretation and application of these standards may create particular hardships in areas of unusual topographic condition, or in retrofitting existing developed properties which are expanded. The Planning Board, by majority vote, may approve a site plan for any proposed development which does not meet any

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specific standard of this section as an alternate means of compliance, subject to making the following findings:

(a) The proposed development attempts to meet the intent of the Thoroughfare Overlay District.

(b) There are physical conditions, not only economic considerations, which prevent the proposed development from meeting the specific standards of this chapter.

(c) The proposed development will be designed to meet the standards of this section to the fullest extent possible.

(d) In determining alternative means of compliance, the Planning Board may consider various features such as width in relation to opacity of landscaping in street yard, number of required parking spaces, and driveway locations and/or distances from nearby intersections.

(B) *Watershed Protection Overlay (-WP)*. Use and development standards. The use and development standards for the Watershed Protection Overlay (-WP) are found in § 155.501.

(C) *Scenic Highway Overlay (SHO)*.

(1) *Established*. The Scenic Highway Overlay (SHO) is established for the purpose of protecting the visual qualities of the scenic US Highway 70 West corridor by maintaining the corridor in as natural a state as is feasible and retaining its historic rural character while providing opportunities for growth and development, and encouraging urban development at highway interchanges. The property within the SHO offers a desirable, predominantly low density, rural lifestyle. A primary goal is to promote and enhance the quality of life experience by protecting the unique rural character and social fabric while enhancing appeal for new residential and business investment.

(2) *Designation*. Properties subject to these regulations shall be within the SHO boundaries for scenic US Highway 70 West. The general boundaries for the SHO follow the thoroughfare within Town limits and extra territorial jurisdiction (ETJ) for ½ mile, centered on highway interchanges and extends 1,000 feet from the centerline of the right-of-way for the remainder of the thoroughfare. The official SHO boundaries are subject to an Official Zoning Map amendment approved by Town Council.

(3) *Exemptions*.

(a) Existing single family lots of record and residential subdivisions which have a valid subdivision/plat approval.

(b) Property used for “bona fide” farms as defined in North Carolina General Statutes (NCGS) Section 153A-340.

(4) *Permitted uses*. All permitted, special, and conditional uses of the underlying zoning district are allowed subject to the specific requirements and procedures for each classification unless otherwise stated herein.

(5) *Development requirements.* The development requirements of the SHO shall prevail over any conflicting regulation established within the underlying zoning district. All driveways and public street intersections shall be subject to applicable NCDOT requirements, town standards and permitting processes.

(6) *Nonconformities.* This section shall not be construed or held to affect the rights of (1) any existing established business, its successors, or assigns, to continue in a use or structure that may otherwise become a legal nonconformity as a result of the establishment of this section or (2) any use specifically approved by a development plan approval granted by the Town prior to the effective date of this section.

(7) *Waivers.* A waiver from one or more of the development requirements may be granted by the Town Council if the waiver criteria set forth below have been met.

(a) The granting of the waiver will not be detrimental to the public safety, health, or welfare or injurious to other property or improvements in the neighborhood in which the property is located;

(b) The conditions upon which the request for a waiver are based are unique to the property for which the waiver is sought and are not generally applicable to other property;

(c) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of this chapter are enforced; and

(d) The purpose of the waiver is not based primarily upon financial consideration.

(8) *SHO interchange development.* The Town seeks to encourage the development of specific uses at SHO interchanges, evoking a sense of arrival at a significant urban destination. SHO interchanges shall generally include properties within ½ mile radius of the intersection point of the following highway interchanges:

- Scenic US Highway 70 West and business US Highway 70 West
- Scenic US Highway 70 West and NC HWY 42 West

To create the unique character and aesthetics for these interchanges, development standards are provided which:

- Create an urban identity for interchanges through the use of planning and design standards.
  - Ensure high quality, architecturally compatible, consistently landscaped development at interchanges.
- Regulate uses at interchanges to create a specific character and aesthetic quality.
- Ensure that new development or redevelopment projects at the interchanges preserve and enhance the existing visual character of the scenic corridor.
  - Promote and protect the health, safety and general welfare of the Town.

(9) *Interchange site development guidelines.*

(a) Application. To promote and enhance the character of the SHO, certain uses shall be prohibited at the interchanges which might otherwise be permitted within the underlying zoning districts. Mixed-use development at the interchanges is encouraged.

(b) Uses. Those uses permitted, allowed subject to a conditional use or subject to a special use at SHO interchanges are listed in Table 2-8 below. A use not listed, but possessing similar characteristics to those identified may be established upon approval by the Planning Director. Appeals to such determinations shall be made to the Board of Adjustment.

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**Table 2-8 Interchange Use Regulations**

Use Type	SHO Interchange	Specific Use Section
<b>Residential Uses</b>		
Apartments	S	§155.301 <del>2</del> (C <del>D</del> )
Alley Loaded	S	§155.301 <del>2</del> (B)
Nursing <del>Convalescent Facility</del> Home (Congregate Living Facility)	S	§155.301 <del>3</del> (HA)
Townhouse	S	§155.301 <del>2</del> (J <del>E</del> )
Single Family House	S	§155.301 <del>2</del> (LA)
Upper-story Residence <del>tial</del>	P	§155.301 <del>2</del> (M <del>E</del> )
<b>Public and Civic Uses</b>		
College or University	S	§155.302 (D)
Government Service	P	§155.302 (F)
Hospital or Medical Center	C	§155.302 (G)
School (Technical, Trade or Business)	S	§155.302 (J)
School ( <del>Public or Private</del> Elementary or Secondary)	S	§155.302 <del>3</del> (I <del>G</del> )
<b>Recreational Uses</b>		
Arena, Auditorium or Stadium	S	
Indoor <del>Recreation</del> Entertainment	C	§155.303(A)
<b>Commercial Uses</b>		
<del>Indoor Entertainment</del>	<del>S</del>	
Convenience Store with Gas Sales	S	§155.305 <del>4</del> (F <del>E</del> )
Hotel/Motel	C	§155.305 <del>4</del> (K <del>D</del> )
Office, General	P	§155.305 (P)
Office, Medical	P	§155.305 (Q)
Outdoor Seating/Sidewalk Cafe	S	§155.305 <del>4</del> (R <del>O</del> )
Restaurant, General	C	§155.305 (V)
Retail Sales, General	P	§155.305 <del>4</del> (W <del>H</del> )
Service, General	P	§155.305 <del>4</del> (Z <del>I</del> )
Veterinarian/Animal Hospital	C	§155.305 (FF)
<b>Industrial Uses</b>		
Research and Development	C	§155.306 (H)
<b>Key:</b>		
P – Permitted by right		
C – Conditional Use permitted if approved by the Planning Board (PB)		
S – Special Use permitted if approved by the Town Council (TC)		
* Mixed use development is encouraged		

(c) Site design. Development shall incorporate the design criteria established in the Town’s General Design Guidelines to enhance and protect the health, safety and general welfare of the Town.

(d) Pedestrian amenities. Uses shall contribute to pedestrian-friendly focal spaces through the provision of well-designed walking paths, pedestrian spaces with furnishings, public art, generous plantings, marked crosswalks, and vehicular parking and circulation areas clearly separated from such pedestrian amenities.

(e) Landscaping. To supplement landscape requirements, existing vegetation shall be incorporated into the design of the development to the greatest extent possible.

(f) Setback requirements.

1. Setbacks for properties not having direct frontage along a thoroughfare within the SHO shall be as defined by the underlying zoning district.

2. Thoroughfare right-of-way setbacks shall be a minimum of 50 feet. The entire area within the right-of-way setback shall be fully grassed and landscaped. Structures and paved areas for motor vehicles, other than for ingress, egress and signage shall not be installed or constructed within 50 feet of a road right-of-way. Buildings shall be directly adjacent to the right-of-way setback with parking and circulation occurring interior to the development. Encroachment into the setback may be granted by Town Council to allow for art in public places, transit stops, pedestrian amenities such as meandering sidewalks, and outdoor seating with or without service for restaurants.

(g) Access management.

1. NCDOT policies and access management practices shall be followed to limit traffic conflicts through the design and placement of driveways and medians within the SHO.

2. To improve safety and site circulation, cross access agreements shall be provided by proposed development to adjacent properties.

(h) Site development. To promote a sense of arrival, structures located on intersection properties having frontage on Scenic US Highway 70 West are encouraged to be multiple stories in height. Buildings directly adjacent to Scenic US 70 West shall be a minimum of two stories or 25 feet in height. To encourage both quality mixed-use development and multiple story buildings, the Town Council may grant development incentives such as:

1. Density and/or intensity bonuses;
2. Increased building height allowances; and
3. Reduced parking requirements.

(i) Prohibited elements. The following elements are prohibited at SHO interchanges:

1. Unfinished concrete or concrete masonry walls.
2. Unscreened dumpsters or trash receptacles.

3. Visible neon and other elements with highly reflective or bright colored surfaces.

4. Distracting or frivolous objects which are not in harmony with the SHO.

(10) *SHO Interchange building design guidelines.*

(a) General design. Development shall be designed to be compatible with the surrounding environment, both manmade and natural. A building shall provide a positive impact on the surrounding environment.

(b) Building elevations. All building elevations shall be treated equally as if all sides were the front of the building. This requirement includes but is not limited to architectural elements, facade treatment, and landscaping.

(c) Building materials and color. Building materials and color selection shall achieve visual order through the consistent use of compatible color palettes.

(d) Trademark forms and colors. Buildings and structures which use trademark or symbolic forms and colors and which have a negative impact on the visual environment of the area, shall not be permitted.

(e) Architectural detail. Architectural design shall prohibit large expanses of blank walls with limited or no windows or architectural embellishments.

(f) Roof overhangs. Unless specifically designed otherwise, roof overhangs including mansard roof overhangs shall wrap around the building so that there is visual continuity around the entire building.

(g) Mechanical equipment screening. The highest portion of mechanical equipment, such as backflow preventers, meters and valves for public utilities operations, satellite antennas, heating and ventilating, air-conditioning, or other utility hardware on roofs, ground, or buildings shall be installed at or below the lowest elevation or below the level of screening materials. Materials used for screening purposes shall be compatible with the architectural style, color, and materials of the principal building. This equipment shall be located so as not to be visible from any street or adjoining property.

(h) Gutters and down spouts. Gutters and down spouts shall be painted to match the surface to which they are attached. Gutters and down spouts may, however, be painted in such a way so as to become a design element if the color is consistent with the color scheme of the building.

(i) Service yards, storage yards, and loading docks. All refuse and waste containers, recycling or compacting containers, dumpsters, oil tanks, bottled gas tanks, service yards, storage yards, and loading docks shall be located in the rear or side yard. All such service equipment and service areas shall be screened from view from any street or adjoining property by means of a wall, landscaping, or other methods approved by the Town Council.

(11) *SHO corridor development.*

(a) General design. New development along the SHO corridor shall be sited and designed to minimize adverse impacts on scenic areas visible from the scenic highway to the maximum extent feasible. As a general design principle, the density of vegetation should increase with the density or intensity of development. Priority shall be given to retaining existing natural resources and mature trees.

(b) Special setback requirement. Non-residential development must maintain a minimum 100 foot setback and non-exempt residential development must maintain a minimum 50 foot setback from the edge of the ultimate right-of-way for Scenic US Highway 70 West. Residential development which provides a 100 foot setback and provides unit clustering will receive a density bonus of one-half unit per acre. The following exceptions are permitted within the special setback:

1. Landscaping;
2. Drainage features designed to mimic the natural environment;
3. Public utilities and facilities, and private wells and septic systems;
4. Driveways and streets; and
5. Sidewalks, pedestrian ways, or bikeways.

(c) Development location. Development shall be designed so that it is located on the least visible portion of the site from the corridor. If there is no feasible building site location to minimize visibility, then the development shall be sited and designed to minimize impacts on scenic areas from the highway.

(d) Landscape elements. Existing vegetation and proposed landscaping shall be blended to produce the feeling of masses of trees forming green arbors. These masses shall be interrupted by occasional views to open spaces and environmentally sensitive lands.

(e) Clustering development. In an effort to preserve expansive open spaces and native vegetative communities within the corridor, development shall be clustered to preserve large areas of open space and the existing natural vegetation shall be preserved whenever possible, with the exception of invasive plant species.

(f) Building design. Buildings and structures shall be designed to blend into the existing natural setting to the greatest extent possible. This shall be accomplished through the use of natural earth toned colors, architectural treatments on all sides of a structure and landscaping. Facilities such as loading zones, mechanical equipment, and trash and garbage containers shall be completely screened and buffered so that they cannot be viewed from the highway.

(g) Site grading. Site grading shall be minimized to incorporate the existing topography to the greatest extent feasible.

(h) Massing. The massing of buildings, including height, bulk and scale, is important to maintaining the character of the SHO corridor. To ensure the impact of development is

minimized, the height buildings shall be limited based on the topography and the shape of the site in relation to the highway.

1. In order to better determine the impact of development on the corridor, the Planning Director may require the applicant to hold a “balloon test” prior to the initial public hearing on the application. The applicant shall arrange to fly, or raise on a temporary mast, a large and brightly colored balloon in the approximate location and at the maximum height of the proposed structure(s).

(i) Prohibited elements. The following elements are prohibited along the SHO corridor:

1. Unfinished concrete or concrete masonry walls.
2. Unscreened dumpsters or trash receptacles.
3. Visible neon and other lighting elements with highly reflective or bright colored surfaces.
4. Unshielded lighting and backlit signage.
5. Distracting or frivolous objects which are not in harmony with the SHO.

(Ord. 2005-11-02, passed 11-21-05)

Amend the following as 155.204 (D):

(D) *Downtown Overlay District.* The Downtown Overlay District is established for the purpose of fostering the economic vitality of the area within the district's boundaries. It is recognized that a vibrant downtown promotes the economic development and stability of the entire community. The standards established herein shall be applied to all nonresidential properties which are located within the district's boundaries.

(1) *Designation of Downtown Overlay District.* This district shall be an overlay district and shall include all commercially zoned properties located within the Downtown Overlay District of the Town Zoning Map.

(2) *Permitted uses.* All permitted, special and conditional uses of the underlying zoning district are allowed subject to the specific requirements and procedures for each classification.

(3) *Dimensional requirements.* The dimensional requirements of this Overlay District shall be the same as the underlying zoning district.

(4) *Sign regulations.*

(a) *Easels.* Easels shall be permitted within the Downtown Overlay District provided that there is a minimum of five feet of sidewalk clearance. Easels shall be uniform in size (maximum six square feet) and type as selected by the Town Downtown

Development Association. Easels will only be allowed during business hours. Only one easel shall be allowed per business.

(b) Window signs. One 11-inch by 17-inch window sign or two 8 1/2-inch by 11-inch window signs shall be permitted per business per street frontage. Changeable letter signs shall be prohibited in the Downtown Overlay District except for "historic signs."

(c) Promotional banners.

1. Promotional banners not exceeding 12 square feet shall be permitted in the Downtown Overlay District for periods of up to 14 days. Promotional banners shall be allowed a maximum of four times per year. All promotional banners must be reviewed and approved by Planning Director and a permit must be issued. Promotional banners must be removed immediately following the 14-day period.

2. Religious, governmental, civic, and bona fide nonprofit organizations may display a single promotional banner within or over a public right-of-way for a period not to exceed 14 days, subject to the issuance of a permit by the Planning Department. Such banner shall be erected by the Town in a manner which does not endanger the public use of said right-of-way. No organization may erect a promotional banner under the terms of this section more than twice in a 12 month period

(d) Decorative flags and banners. Decorative flags and banners shall be reviewed and approved by the Planning Director. Holiday decorations may be installed for a maximum period of seven weeks. Seasonal banners must correspond to the appropriate season.

Duly adopted this \_\_\_\_ day of 2012, while in regular session.

\_\_\_\_\_  
Jody L. McLeod  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Sherry L. Scoggins, MMC  
Town Clerk

\_\_\_\_\_  
Katherine Ross  
Town Attorney

**TOWN OF CLAYTON**  
**Amendment to the Code of Ordinances: Chapter 155**  
**Unified Development Code**

**BEING HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA to amend Article 3 with the following:**

**ARTICLE 3: SPECIFIC USE STANDARDS**

**§ 155.300 USE INTERPRETATION.**

(A) *Uses.* The list of uses included in the Use Regulations Table (Table 2-1 § 155.202(B)) and defined in this subsection is intended to classify uses on the basis of common functional characteristics (activity, type of customers, goods or services) and land use compatibility. Other uses not specifically listed in the Use Table, but exhibiting similar characteristics to a listed use, shall be so classified by the interpretation of the Planning Director pursuant to the procedures and standards set forth in 155.300(B) below.

(B) *Uses not specifically listed.*

(1) Any use not specifically listed in this chapter is expressly prohibited, unless the Planning Director determines in accordance with § 155.715, that the use is similar to a use or uses listed in this chapter. Where an unlisted use is similar to a use listed in Table 2-1 (§ 155.202(B)), the unlisted use shall also be subject to the similar uses standards and approval process. The Planning Director shall not amend this chapter by adding to or eliminating any use standard for the unlisted use.

(2) Where an unlisted use is found by the Planning Director not to be similar to any other use listed in Table 2-1 (§ 155.202(B)), the use shall be permitted only following a text amendment in accordance with § 155.703. The decision of the Planning Director may not be appealed to the Board of Adjustment.

(3) When considering the appropriate districts for a use not listed in the Use Regulations Table, the district intent statements (see § 155.203(A)) shall be taken into consideration.

(4) Determination of an appropriate category for a proposed use not currently listed shall be made by applying the following criteria.

(a) The actual or projected characteristics of the activity in relationship to the stated characteristics of each use category.

(b) The relative amount of site area or floor space and equipment devoted to the activity.

(c) Relative amounts of sales from each activity.

(d) The customer type for each activity.

- (e) The relative number of employees in each activity.
- (f) Hours of operation.
- (g) Building and site arrangement.
- (h) Types of vehicles used and their parking requirements.
- (i) The relative number of vehicle trips generated.
- (j) Signs.
- (k) How the use is advertised.
- (l) The likely impact on surrounding properties.
- (m) Whether the activity is likely to be found independent of the other activities on the site.

(C) *Developments with multiple uses.*

(1) Nonresidential, townhouse and apartment complexes may be established on a single unified parcel, provided that the following requirements are met. Except as set forth above, no more than one principal building or use may be erected on a single lot of record.

(2) Development with multiple uses shall meet all applicable development standards as set forth in §§ 155.200 through 155.204, §§ 155.400 through 155.405 and §§ 155.500 through 155.502. Applicants shall comply with all other provisions in this chapter and all other applicable laws.

(3) When the principal uses of a development fall within different group of uses or no group of uses, each principal use shall be classified in the applicable group of uses or treated as an individual use and each use shall be subject to all applicable regulations for that group of uses or individual use.

(4) A development comprised of uses regulated by separate rows on the Use Regulations Table shall be reviewed using the most restrictive process from among the proposed uses. If a proposed development on a single parcel includes a special use review, then the entire development requires special use review.

(5) Where a use requiring approval as a conditional use or a special use lies on a separate legal parcel, only the building containing the use and its separate parcel shall be subject to review, not the entire project. However, where the separate legal parcel is an outparcel, the application shall describe the relationship of the outparcel to the remaining site.

(Ord. 2005-11-02, passed 11-21-05; Am. Ord. 2006-06-01, passed 6-19-06; Am. Ord. 2007-04-05, passed 4-2-07)

## § 155.301 RESIDENTIAL USE STANDARDS.

The following standards shall apply to all permitted uses, conditional uses and special uses, as set forth in the Use Regulations Table (Table 2-1 § 155.202(B)). Additional design considerations may be outlined in the Clayton General Design Guidelines.

(A) **Adult ~~C~~are ~~H~~ome.** An assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision.

(1) In the R-E District, an adult care home shall provide at least 150 square feet of gross floor area per occupant and 4,000 square feet of lot area per occupant.

(2) In the R-10 District, an adult care home shall provide least 150 square feet of gross floor area per occupant and 2,000 square feet of lot area per occupant.

(3) In the R-8 District, an adult care home shall provide least 150 square feet of gross floor area per occupant and 1,600 square feet of lot area per occupant.

(4) In the R-6 District, an adult care home shall provide least 150 square feet of gross floor area per occupant and 1,200 square feet of lot area per occupant.

(B) **Alley-Loaded ~~H~~ouse.** A detached dwelling unit located on a single lot with private yards on all four sides: however, the house is set closer to the street than a single-family detached house.

(1) An alley shall be provided to the rear of all alley-loaded houses. All vehicular access shall take place from the alley. No parking shall be permitted in the required street yard.

(C) **Apartments.** Three or more attached dwelling units in a single structure on a single lot. An apartment can vary in height from two to five stories, individual units can be mixed vertically.

(2) No parking space shall be located in a required yard, except for the rear yard.

(3) No off-street parking space shall be located closer than ten feet to any residential building wall.

(4) For developments of 40 or more dwelling units, a divided ingress-egress driveway with a landscaped median for all entrances from public streets shall be provided for all developments.

(5) Sidewalks shall be constructed within the interior of the development to link residential buildings with other destinations such as, but not limited to: parking, adjoining streets, mailboxes, trash disposal, adjoining sidewalks or greenways and on-site amenities such as recreation areas.

(6) ~~For apartment complexes see § 155.3001 for additional requirements.~~

(D) **Boarding House.** A building, other than a hotel/motel or bed and breakfast, containing not more than nine guest rooms. At least one meal is provided to guests. Individual guest rooms may not contain kitchens and personal services are not provided.

(1) Boarding houses shall meet the standards of § 152.25 of the Town Code of Ordinances.

(2) Each boarding house shall have a full-time resident manager.

(3) Fifteen square feet of common living area other than kitchens, hallways and bathrooms shall be provided per occupant.

(4) A boarding house shall not be located within 1,000 feet, as measured in any direction from property line to property line, of another boarding house.

(E) **Child Care Home.** A child care home is a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care.

(1) Where abutting a residential use, visual buffers shall be provided so as to shield all parking areas, play areas and outdoor activity from abutting property. Such buffer shall consist of trees or other vegetation of such height and depths as determined by the Board of Adjustment or an appropriate fence or wall or combination thereof.

(F) **Manufactured Home.** A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. Manufactured home includes any structure that meets all of the requirements of this definition and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the Manufactured Home Act.

Except as set forth in division (G)(1)(a) of this section, all manufactured homes shall meet or exceed the following criteria:

(1) The manufactured home shall be set up and tied down in accordance with the standards set by the North Carolina Department of Insurance.

(2) The manufactured home shall have a length not exceeding four times its width, with length measured along the longest axis and width measured at the narrowest part of the other axis.

(3) The manufactured home shall have a minimum of 960 square feet of enclosed and heated living area per dwelling area.

(4) Screening of the foundation area shall be by a continuous, permanent masonry foundation or masonry curtain wall with a finished surface and constructed in accordance with North Carolina Building Code regulations. The foundation shall be unbroken except for required ventilation and access, and installed under the perimeter of the manufactured home.

(5) Stairs, porches, entrance platforms, ramps, and other means of entrance and exit to and from the manufactured home shall be installed or constructed in accordance with the standards set by the North Carolina Building Code, free standing or attached firmly to the primary structure and anchored securely to the ground.

(6) The exterior siding shall consist predominantly of vinyl or aluminum horizontal siding (whose reflectivity does not exceed that of gloss white paint), wood, or hardboard, comparable in composition, appearance and durability to the exterior siding commonly used in standard residential construction.

(7) The moving hitch, wheels and axles, and transporting lights shall be have been removed.

(8) At least two off-street parking spaces shall be provided.

(9) The lot shall be cleared of all excess growth and graded to provide adequate drainage.

(10) All areas not used for parking, manufactured homes, or required porches, shall be grassed or otherwise suitably landscaped to prevent erosion.

(11) All standards must be met prior to issuance of a certificate of occupancy.

(G) **Manufactured ~~H~~Home ~~P~~Parks.** Any plat of ground upon which two or more manufactured homes, occupied for dwelling purposes, are located, regardless of whether a charge is made for such accommodations. Includes a recreation vehicle park.

(1) *General requirements.*

(a) Notwithstanding the criteria set forth in division (F) above, manufactured homes located within manufactured home parks shall be in accordance with all of the requirements of division (F) above, except divisions (F)(2), (F)(3) and (F)(4) shall not apply to manufactured homes located in manufactured home parks. All new or replacement manufactured homes located in manufactured home parks shall be a minimum of 12 feet in width, measured at the narrowest part of the shortest axis of the home, and shall contain a minimum of 480 square feet of enclosed and heated living area. The foundation area of the manufactured home shall be at a minimum, completely screened with faux skirting panels constructed from durable vinyl, or panels simulating a faux brick, rock or stone finish. The skirting shall be completely framed including a bottom track. The foundation screening must be kept in a well maintained condition.

(b) All manufactured home parks shall be a minimum of three acres in size.

(c) No living compartment or structure, other than a Florida Room or other prefabricated structure, specifically designed for manufactured home use or extension, shall be added to any manufactured home. Porches covered with a roof and open on three sides may be permitted if yard space requirements of this chapter are not violated, and if such addition complies with the North Carolina Building Code.

~~(c)~~(d) Up to two manufactured home park identification signs may be utilized, but the sum of the areas of one side of these signs shall not exceed 40 square feet. Only external, non-flashing lighting shall be used for illumination. The top portion of any sign shall not exceed 12 feet in height.

~~(d)~~(e) Within a manufactured home park, one manufactured home may be used as an administrative office.

(2) *Streets and parking.*

(a) Each manufactured home shall abut upon an improved street or driveway, which shall have unobstructed access to a Town or state maintained road.

(b) Streets shall have a minimum paved width of 20 feet. In addition, every such street shall lie within a cleared right-of-way having a minimum width of 40 feet.

(c) Maintenance of such streets shall be provided by the owner or operator of the park.

(d) Permanent dead-end streets or cul-de-sacs shall not exceed 500 feet in length and shall be provided with a turnaround of at least 70 feet in diameter.

(e) Streets or drives within the manufactured home park shall intersect as nearly as possible at right angles, and no street shall intersect at less than 75 degrees. Where a street intersects a public street or road, the design standards of the North Carolina Highway Commission shall apply.

(f) New street names or manufactured home park names shall not duplicate nor be similar to existing street names or manufactured home park names in the area.

(g) A minimum of two paved parking spaces shall be provided adjacent to each manufactured home space, but shall not be located within any public right-of-way or within any street in the park.

(h) No manufactured home lots shall be located within the 100-year floodway area, as shown on the latest National Flood Insurance Program map for the Town.

(3) *Lot size and lot width requirements.*

(a) Lots served by community or public water and sewer shall have a minimum lot size of 6,000 square feet and have a minimum lot width of 50 feet at the front building line. The maximum coverage of the lot by the unit and any accessory structures shall not exceed 40% of the lot area.

(b) Lots served by individual septic tank and individual well shall have a minimum lot size of 25,000 square feet and have a minimum lot width of 75 feet at the front building line. The maximum coverage of the lot by the unit and any accessory structures shall not exceed 40% of the lot area.

(c) Lots served by community or public water and individual septic tank or public sewer and individual well shall have a minimum lot size of 15,000 square feet and have a minimum lot width of 75 feet at the front building line. The maximum coverage of the lot by the unit shall not exceed 40% of the lot area.

(4) *Project boundary buffer.* A Class C buffer shall be provided (see § 155.402) along all project boundaries of a manufactured home park.

(5) *Yard requirements.*

(a) The following yard requirements shall pertain to every manufactured home in the manufactured home park:

1. Minimum depth of street yard, measured from front lot line: 20 feet.
2. Minimum width of side yard, measured from side lot line:
  - A. Ten feet.
  - B. Six feet, if served by public water and sewer.

(b) Minimum depth of rear yard, measured from rear lot line: 20 feet.

(c) Detached garages and accessory buildings may be erected on manufactured home lots as permitted in § 155.3058.

(6) *Utility requirements.*

(a) **Water.** An accessible, adequate, safe supply of water shall be provided in each manufactured home park. When a municipal water supply is not available, a community water supply shall be developed and its supply used exclusively in accordance with the standards of the Sanitary Engineering Division of the North Carolina Division of Health Services and the County Health Department.

(b) **Sewer.** Adequate and safe sewage disposal facilities shall be provided in all manufactured home parks. Collection systems and sewage treatment complying with the requirements of the North Carolina Department of Natural Resources and Community Development and the County Health Department shall be provided.

(c) **Solid waste.**

1. The storage, collection, and disposal of solid waste in the manufactured home park shall be so constructed as to create no health hazards, rodent harborage, insect breeding area, accident or fire hazard, or pollution, and shall be maintained at least 100 feet from a well site.

2. All solid waste containing garbage shall be stored in a standard fly-tight, watertight, rodent-proof container, which shall be located at each manufactured home space, or an approved bulk container site. The manufactured home park management

shall be responsible for the proper storage, collection, and disposal of solid waste as specified by the County Health Department.

3. Grounds, buildings, and structures shall be maintained free of insect and rodent harborage and infestation.

4. No junked or abandoned vehicles shall be allowed in the park.

(7) *Street lights.* All streets in the manufactured home park shall be adequately illuminated. The minimum size street light shall be a 175-watt mercury vapor, approximately 7,000 lumen class or its equivalent, spaced at intervals of not more than 400 feet. Street lights shall be at each intersection.

(8) *Telephone and power lines.* All telephone lines and power lines are to be located underground. Utility easements shall not be less than ten feet in width.

(9) *Recreation areas and facilities.*

(a) Adequate and suitable recreation areas to serve the anticipated population shall be provided and shall consist of at least 10,000 square feet for each 25 manufactured home lots. All manufactured home parks having five or more lots shall have a minimum size recreational area of 10,000 square feet. Manufactured home parks having more than 25 manufactured home lots shall provide 400 square feet of recreation space per lot in excess of 25.

(b) No recreational facilities shall be placed in an area utilized for septic tank filter fields.

(10) *Mobile home parks with prior approval.* All mobile home parks approved for development by the Town, county, or state prior May 4, 1987 are hereby granted special use status under the terms of § 155.109(A)(2), and the number of units contained therein may be maintained and replaced with other units, provided that:

(a) A copy of the mobile home park plan bearing proof of approval by the responsible governmental agency shall be filed in the Planning Department no later than 90 days after the approval of this revision.

(b) All replacement units shall obtain an approved zoning compliance permit and inspection by the Town Inspections Department prior to occupancy.

(c) All replacement units shall meet the requirements of (F) of this section.

(d) No replacement unit may increase any nonconforming standard of the existing unit, and in no case may any replacement unit be located nearer than ten feet to a public street right-of-way or periphery property line.

(e) Any expansion of a mobile home park shall be in full accordance with the current standards of this chapter.

(f) If a mobile home park which does not conform to current standards has been discontinued, or if 80% of the number of spaces are vacated for a period of 180 days, the mobile home park shall not be re-established, and all future use of the land therein shall comply fully with the provisions of this chapter.

(H) **Nursing Home (Congregate Living Facility).** This term includes assisted living facilities, extended congregate care facilities, transitional living facilities, rehabilitative home care services, or home for the aged or any other residential structure, whether or not operated for profit, which undertakes for a period exceeding 24 hours: care, housing, food service, and one or more personal services for persons not related to the owner or administrator by blood or marriage. In addition, this term shall include other residential uses such as dormitories, group homes with a central dining facility, and similar bed-based uses.

(I) **Two Family House.** Two attached dwelling units in a single structure on a single lot (often called a duplex). The two units can be located on separate floors or side-by-side.

(J) **Townhouse.** Two or more attached dwelling units located on separately owned lots or on a single lot where the units are lined up in a row and share side walls, individual units can be mixed vertically.

(1) Side yards are not required for interior townhouses, but street and rear yards shall be provided for all townhouses, and building separation requirements shall be maintained for all townhouse structures.

~~(2) All townhouse garages and parking areas shall be located to the rear of the building. No parking shall be permitted in the required street yard.~~

(2) Garage Parking Options

a. Rear-Loaded

i. Garage is placed entirely to the rear of the townhouse and is rear-accessed. Garage can be attached or detached.

ii. Garage doors must face the alley or rear access drive.

b. Front-Loaded

i. Garage doors may constitute no more than 50% of the width of the individual townhouse unit.

ii. The driveway must be aligned with the garage and shall not exceed the width of the garage entrance/door.

iii. Any parking in the front setback must have sufficient depth so that parked cars do not encroach on the adjacent sidewalk. The garage doors must be set back at least twenty (20) feet from the sidewalk.

iv. Garage doors must be recessed at least one foot behind the front wall plane, or a second story element over the garage doors must be provided that extends at least one foot beyond the front wall plane.

v. Front-loaded garages shall be prohibited on one-story townhome units.

(3) The maximum number of units allowed in a single building is eight.

(4) The first floor shall be located a minimum of two feet and a maximum of three feet above grade.

~~(4) For townhouse complexes see § 155.3001 for additional requirements.~~

(K) **Security or Caretaker Quarters.** A dwelling unit, which may be a mobile home, a manufactured home, or a modular home, located on a site for occupancy by a caretaker or security guard.

(L) **Single Family House.** A detached dwelling unit located on a single lot with private yards on all four sides.

(M) **~~Upper-Story Residential~~.** A dwelling unit located on a floor above a nonresidential use.

(1) An upper-story residential unit shall adhere to all dimensional standards of the nonresidential zoning district in which it is located.

(N) **~~Zero Lot Line~~.** A detached dwelling unit located on a single lot with private yards on three sides. The unit has a single side yard on one side comprising the equivalent of two side yards of a single-family detached house.

(1) A single side yard shall be provided comprising the equivalent of two side yards of a conventional detached house. This reduction shall not be allowed on the street yard or to the side yard adjacent to lots that are not part of the zero lot line project.

(2) An easement between the two property owners to allow for maintenance or repair of the house shall be required when the roof overhang or side wall of the house are within four feet of the adjacent property line (no roof overhang shall be permitted to extend across the property line). The easement on the adjacent property must provide at least five feet of unobstructed space. The easement shall be recorded on the subdivision plat.

(3) If the side wall of the house is on the property line, or within three feet of the property line, windows or other openings that allow for visibility into the side yard of the adjacent lot shall not be allowed. Windows that do not allow visibility into the side yard of the adjacent lot, such as a clerestory window or a translucent window, shall be allowed.

(Ord. 2005-11-02, passed 11-21-05; Am. Ord. 2007-06-02, passed 6-4-07)

**§ 155.302 PUBLIC AND CIVIC USE STANDARDS.**

The following standards shall apply to all permitted uses, conditional uses and special uses, as set forth in the Use Regulations Table (Table 2-1 § 155.202(B)). Additional design considerations may be outlined in the Clayton General Design Guidelines.

(A) **Assembly, Not for Profit.** A site or facility open to the public, owned or operated by a not-for-profit organization for social, educational or recreational purposes. Typical uses include museums, cultural centers, recreational facilities, botanical gardens and community services such as after school care or tutorial services, medical services, and employment services. Not for profit assembly uses requiring membership may include uses such as cultural organizations and union halls.

(B) **Cemetery.** A place used or to be used and dedicated or designated for interments of human remains or pet animal remains. A cemetery may include an office, chapel, mausoleum, columbarium or crematory.

(C) **Church or Place of Worship.** A sanctuary which may include a retreat, convent, seminary or other similar use, owned or operated by a tax-exempt religious group that is used periodically, primarily or exclusively for religious worship, activities and related services.

(1) Following the initial approval of places of worship through the conditional use permit process (see § 155.710), expansions of up to 20% of the area originally approved through the conditional use permit process may be approved administratively.

(2) Administrative approvals of expansions of places of worship shall not waive any conditions of approval of the conditional use permit.

(3) Accessory uses standards for a place of worship are set forth in ~~§ 155.305~~ § 155.308(E).

(D) **College or University.** An institution of higher learning offering undergraduate or graduate degrees, and including the buildings required for educational or support services, such as classrooms, laboratories, dormitories and the like.

(E) **Day Care.** An establishment that provides care, protection and supervision for children as regulated by the National Resource Center for Health and Safety in Child Care and Early Education, or for adults as regulated by the North Carolina Department of Health and Human Services.

(1) An off-street passenger drop-off and passenger loading area shall be provided for any day care. Such area shall not be located in the street yard.

(2) Where abutting a residential use, visual buffers shall be provided so as to shield all parking areas, play areas and outdoor activity from abutting property. ~~Such buffer shall consist of trees or other vegetation of such height and depths as determined by the Board of Adjustment or an appropriate fence or wall or combination thereof.~~

(F) **Government Service.** Buildings or facilities owned or operated by a government entity and providing services for the public, excluding utility and recreational services. Typical uses include administrative offices for government agencies, public libraries, police and fire stations, and resource centers.

(G) **Hospital.** A facility licensed by the State of North Carolina which maintains and operates organized facilities for medical or surgical diagnosis, overnight and outpatient care, and treatment of

human illness. A hospital may include related support facilities such as [a helipad](#), laboratories, outpatient departments, staff offices, food services, and a gift shop.

**(H) School (Elementary or Secondary).** A public or private institution offering a curriculum of education authorized by the state giving regular instruction at the primary, secondary level, or a school for the mentally or physically handicapped. Included in this definition are preschool programs. However, this definition does not include day care facilities, individual instruction, or classes in a specialized subject.

(1) Following the initial approval of a school through the special use permit process (see § 155.711), expansions of up to 20% of the area originally approved through the special use permit process may be approved administratively.

(2) Administrative approvals of expansions of schools shall not waive any conditions of approval of the special use permit.

**(H)(I) School (Technical, Trade or Business).** An institution offering instruction beyond high school level with a course of study in vocational, technical or other special subjects.

(1) Following the initial approval of a school through the special use permit process (see § 155.711), expansions of up to 20% of the area originally approved through the special use permit process may be approved administratively.

(2) Administrative approvals of expansions of schools shall not waive any conditions of approval of the special use permit.

(Ord. 2005-11-02, passed 11-21-05; Am. Ord. 2009-08-02, passed 8-3-09)

## § 155.303 RECREATIONAL USE STANDARDS.

The following standards shall apply to all permitted uses, conditional uses and special uses, as set forth in the Use Regulations Table (Table 2-1 § 155.202(B)). Additional design considerations may be outlined in the Clayton General Design Guidelines.

(A) **Indoor Entertainment.** Amusement or recreational activities carried on wholly within a building. Typical uses include bowling alleys, billiard parlors, theaters, and activities of a similar nature. This does not include an adult-oriented business or amusement center.

(B) **Outdoor Entertainment.** Amusement or recreational activities where any portion of the activity takes place in the open, excluding golf courses and public parks. Typical uses include athletic fields, batting cages, golf driving ranges, tennis courts, go-cart tracks, and miniature golf courses.

(C) **Fitness Center.** A facility used for conducting recreational activities such as aerobic exercises, weight lifting, running, swimming, racquetball, handball, and squash. A fitness center may also include babysitting and limited food service for the use of the members of the center only.

(D) **Golf Course.** A facility providing a golf recreation area designed for executive or regulation play along with accessory support facilities, excluding miniature golf.

(E) **Gun Range.** An enclosed facility used for the discharge of firearms or projectiles at targets.

(F) **Park, Active.** A public outdoor recreation area which provides recreational opportunities and activities to the general public.

(G) **Park, Passive.** A public or private outdoor recreation area relying on a natural or man-made resource base and developed with a low intensity of impact on the land. Typical uses include greenway trail systems, community gardens, wildlife management and demonstration areas for historical, cultural, scientific, educational or other purposes that relate to the natural qualities of the area, and support facilities for such activities.

(H) **Stable, Private.** The breeding, boarding, training, or raising care of horses owned by the occupants or owners of the premises.

## § 155.304 AGRICULTURAL USE STANDARDS.

The following standards shall apply to all permitted uses, conditional uses and special uses, as set forth in the Use Regulations Table (Table 2-1 § 155.202(B)). Additional design considerations may be outlined in the Clayton General Design Guidelines.

(A) **Agriculture, Livestock.** The breeding, raising and caring for domestic animals including horses.

(1) Property used for livestock shall be a minimum of five acres in size.

(2) All accessory uses and structures, such as troughs, feed mechanisms and storage, shall be setback a minimum of 100 feet from any property line.

(3) The maximum number of large animals permitted for each acre shall not exceed five. Large animals shall include horses, swine, cattle, goats, and sheep. An enclosed structure with one stall for each large animal is required when the total number of large animals exceeds three per acre.

(4) The maximum number of small animals permitted for each acre shall not exceed 100. Small animals shall include rabbits and fowl, excluding peafowl. Small animals shall be permitted in addition to large animals.

(5) The use shall assure that there is no incompatibility with surrounding land uses. In the event that an incompatibility exists, the ~~applicant~~applicant shall satisfactorily mitigate the incompatibility prior to receiving final approval.

(B) **Agriculture, Sales and Service.** An establishment primarily engaged in the sale or rental of farm tools, small implements and farming equipment such as pickers, mowers, livestock, feed, grain, tack, riding attire, animal care products, and farm supplies.

(1) All storage areas for agricultural sales and service uses shall be enclosed or completely screened from view.

(C) **Nursery.** The sale of horticultural specialties such as flowers, shrubs, sod, trees, mulch and accessory hardscape materials such as decorative stones intended for ornamental or landscaping purposes.

### § 155.305 COMMERCIAL USE STANDARDS.

The following standards shall apply to all permitted uses, conditional uses and special uses, as set forth in the Use Regulations Table (Table 2-1 § 155.202(B)). Additional design considerations may be outlined in the Clayton General Design Guidelines.

(A) **Adult Oriented Business.** Any place defined as an "adult establishment" as defined by G.S. § 14-202.10, as such statute may be amended from time to time, including adult cabarets, and except the definition of "massage business" shall not include any establishment or business where massage is practiced that is a health club, exercise studio, hospital, physical therapy business or other similar health-related business. Adult-oriented business specifically includes, however, any massage business where massages are rendered by any person exhibiting "specified anatomical areas" and/or where massages are performed on any client's "specified anatomical areas." "Specified anatomical areas" are those defined by G.S. § 14-202.10 as such statute may be amended from time to time.

(1) No such use shall be located within 1,000 feet of a church, primary, elementary or secondary school, residence or residentially zoned property, any establishment serving on-premises beverages requiring an ABC license, or any other adult-oriented business.

(2) There shall be no more than one such use on the same property or in the same building or structure.

(3) Except for permanent signage as permitted in § 155.403, there shall be no advertisement, promotional materials, displays, or temporary signs visible to the public from public rights-of-way.

(B) **Bed & Breakfast.** A building containing one or more guest rooms for an overnight stay which are rented at a daily rate and where breakfast is the only meal served to guests.

(1) An owner shall reside on site.

(2) There shall be no substantial modifications to the exterior appearance of the structure; however, fire escapes, handicapped entrances and other features may be added to protect public safety.

(3) Meals shall be served on the premises only for guests and employees. Rooms may not be equipped with cooking facilities.

(4) Parking shall not be allowed in any street yard.

(C) **Car Wash/Auto Detailing.** A permanent establishment engaged in washing or detailing motor vehicles which may use production line methods with a conveyor, blower, or other mechanical

devices, and which may employ some hand labor. Detailing includes hand washing and waxing, striping, and interior cleaning.

(D) **Contractor's eOffice.** A facility for a building, heating, plumbing, electrical, landscape, janitorial or similar contractor.

(1) All activity shall be conducted entirely within a fully-enclosed building. The temporary loading and off-loading of vehicles shall be permitted outside.

(2) The overnight storage of fleet vehicles may be allowed subject to Planning Board approval (see § 155.405).

(E) **Contractor Storage Yard.** A lot used for the storage of construction material, equipment, or three or more commercial vehicles used by building trades and services, other than construction sites. A contractor's office is permitted as an accessory to the storage yard.

(1) Equipment principally used in construction activity shall include but is not limited to bobcats, front-end loaders, over-head cranes, graders, dump trucks, compactors, forklift, steam rollers, earth movers, bulldozer, backhoe, concrete mixer, trenchers, cable/pipe layers or any such equipment that is not a street worthy vehicle.

(2) Outdoor storage may be allowed subject to Planning Board approval (see § 155.405).

(3) Combustible materials and chemicals shall be stored in compliance with all local, state, and federal regulations.

(F) **Convenience Store with Gas Sales.** A convenience store which includes accessory gasoline retail sales to the general public.

(1) *General standards.*

(a) Vehicle repair or service shall not be permitted.

(b) The primary building, including any attached canopy, shall conform to all setback requirements.

(c) Gasoline pumps, tanks and pump islands shall be located no closer than 20 feet to any side or rear property line or right-of-way.

(d) No sign of any type or any gasoline pump or tank shall be located within 20 feet of a residential use.

(e) A Class C buffer (see § 155.402) shall be established along any side of the property where the gas station abuts a residential use, provided such buffer shall not restrict clear sight at any intersection or driveway.

(f) Freestanding vents shall not be permitted.

(g) Outdoor storage and display may be allowed subject to Planning Board approval (see § 155.405).

(2) *Fuel canopies.*

(a) The canopy shall be located no closer than 15 feet to any side or rear property line or right-of-way.

(b) The canopy shall not exceed the height of the principal building, but in no case shall the canopy height exceed 20 feet.

(3) *Single-bay automatic car wash.* An accessory single-bay automatic (not self-service) car wash completely enclosed except for openings necessary to allow entry and exit of vehicles shall be permitted subject to the following:

(a) The car wash structure shall be located no closer than 20 feet to any side or rear property line or right-of-way.

(b) The car wash structure shall not exceed a height of 20 feet or exceed an overall building dimension of 25 feet in width and 50 feet in length.

(c) The car wash structure shall be located behind the rear building line of the principal building.

(d) All car wash structures shall meet all applicable yard requirements.

(G) **Creative Studio.** A facility involved in the display and/or instruction of the arts, such as individually crafted artwork, jewelry, furniture, sculpture, pottery, leathercraft, hand-woven articles, and related items; art classroom; music studio or classroom; dance studio or classroom; martial arts instruction; or similar use. This definition does not include any adult entertainment establishment.

(H) **Financial Institution.** An establishment engaged in deposit banking. Typical uses include commercial banks, savings institutions, and credit unions, including outdoor automated teller machines and drive-thru only facilities.

(1) Freestanding automated teller machines require minor site plan approval.

(I) **Funeral Home.** An establishment which arranges and manages funeral and prepares the human deceased for burial.

(1) A funeral home may include a crematorium located within the principal building.

(J) **Hotel/Motel.** A building containing one or more guest rooms, for overnight guests, and containing registration facilities, on-site management, cleaning services and combined utilities.

(1) All hotel and motel buildings and parking shall be located at least 50 feet from any property line adjoining a residential district or use.

(2) Any accessory commercial activities such as restaurants shall not be located along the side of the property adjacent to a residential district or use.

(3) Any outdoor recreation facilities, such as swimming pools, shall not be located along the side of the property adjacent to a residential district or use. If the outdoor recreation facility is a swimming pool, it shall meet the standards of § 155.307308(D)(3).

(K) **Kenel.** Any building or land used, designed or arranged to facilitate the care of four or more domestic animals, such as dogs and cats.

(L) **Laundry Services.** An establishment that provides washing, drying, dry-cleaning, or ironing machines for hire to be used by customers on the premises, or that is engaged in providing laundry and dry cleaning services with customer drop-off and pick-up.

(M) **Lounge, Cocktail.** A use engaged in the preparation and retail sale of alcoholic beverages for consumption on the premises, including taverns, bars, nightclubs, and similar uses other than restaurants or alcohol sales for off-premises consumption.

(1) A cocktail lounge shall not be located within 250 feet of a residential district and shall be separated a minimum of 750 feet from another cocktail lounge.

(2) Outdoor seating and open lounge areas shall meet the criteria set forth in § 155.3045(O)

(N) **Microbrewery.** A facility for the production and packaging of beer and other malt beverages for distribution, retail, or wholesale, on or off premise, with a capacity of not more than 15,000 barrels per year. Areas for demonstration, education, retail sale, or tasting are included in this definition as incidental to the primary use of producing beverages.

~~(N)~~(O) **Newspaper Publisher.** A building used for the production and distribution of newspapers, magazines and other related materials.

~~(O)~~(P) **Office, General.** A facility generally focusing on business, government, or professional services. General office shall include advertising offices; business management consulting, data processing, collection agency; real estate or insurance agents professional services such as lawyer, accountant, bookkeeper, engineer, or architect, sales office, travel agency or any similar use.

~~(P)~~(Q) **Office, Medical.** A facility in which a doctor, dentist, psychiatrist, physician's assistant, nurse practitioner or similar medial provider treats or counsels patients.

~~(O)~~(R) **Outdoor Seating and Sidewalk Cafes.** A restaurant which provides as a primary component of its business, an open area outside of the principal structure for seating including areas adjacent to sidewalks or pedestrian circulation areas.

(1) **Application.** Any restaurant seeking to operate a sidewalk cafe shall, in addition to acquiring all necessary health and sanitation permits and inspection and applicable ABC and other business licenses, prepare and file an application with the Town Manager or his designee, on a form for this purpose provided by the Town Manager.

(2) *Site plan requirement.* A drawing or site plan showing the section of sidewalk or pedestrian way to be used for the sidewalk cafe, and the section to be kept clear for pedestrian use, and depicting the proposed placement of tables, chairs, and other furnishings on the sidewalk or pedestrian way.

(3) *Insurance and indemnification.* Applicants must show proof of meeting minimum criteria for general liability insurance and must execute an indemnification statement in favor of the Town, each as approved by the Town Attorney.

(4) *Issuance of permit.* No permit for the operation of a sidewalk cafe may be issued unless the application is complete and unless the following requirements are met.

(a) The sidewalk cafe must be associated with an operating restaurant such that it is under the same management and shares the same food preparation facilities, restroom facilities and other customer convenience facilities as the restaurant and does not exceed 50% of the interior seating for the associated restaurant.

(b) The sidewalk cafe must be operated under the same name as the restaurant and may not be opened or operated at any time when the restaurant is not open for business.

(c) The operation of the sidewalk cafe must be clearly incidental to the associated restaurant business.

(d) The placement of tables, chairs and other furnishings, as shown in the drawing submitted with the site plan, must be done in such a manner not to extend more than five feet from the property line, provided that at least four feet of unobstructed space (as measured from the street-side edge of the sidewalk) remains on the sidewalk or pedestrian way for the passage of pedestrians. Trees, poles, signs, sandwich board signs, planters, benches, hydrants, trash receptacles, and the like are all considered obstructions.

(e) The restaurant seeking to operate the sidewalk cafe must front on and open onto the sidewalk or pedestrian way proposed for the sidewalk cafe. The placement of tables, chairs and other furnishings may not extend beyond the sidewalk or pedestrian way frontage of the associated restaurant.

(f) The tables, chairs, and other furnishings used in the sidewalk cafe shall be of a type that is easily removed from the public right-of-way. Tables, chairs, and other furnishings used in the operation of the sidewalk cafe must be removed within 24 hours' notice from the Town. If such items are not removed upon 24 hours' notice, the Town shall have the right to remove and dispose of these items and may assess the property owner for the cost of such removal and disposal. The Town shall also have the right to remove such items immediately in an emergency situation. The Town shall not be responsible for damage to the public sidewalk cafe barricades and furnishings under any circumstances.

(g) Except as elsewhere permitted, the operation or furnishing of the sidewalk cafe shall not involve any permanent alteration to or encroachment upon any street, sidewalk or pedestrian way or to the exterior of the associated restaurant. The owner of the sidewalk cafe shall be responsible for repairing any incidental damage to public sidewalks resulting from the operation of the sidewalk cafe.

(h) The sidewalk cafe shall only be open when the restaurant is open. No person shall consume alcoholic beverages in a sidewalk cafe after such hours.

(i) Alcoholic beverages. Alcoholic beverages may be served and consumed at sidewalk cafes providing the following requirements are met:

1. The sidewalk cafe shall be part of a standard restaurant and shall otherwise be authorized, permitted or licensed under the state law and Town codes to serve and sell alcoholic beverages for on-premises consumption.

2. The portion of the sidewalk cafe where alcohol is or may be served shall be enclosed by clearly visible barricades and shall have not more than two points of ingress or egress.

3. The sidewalk cafe must be included as part of the premises for which an ABC permit is issued pursuant to G.S. § 18B-1001 for the purposes of applying and enforcing state laws regarding the sale or consumption of alcoholic beverages.

4. Signs shall be posted, visible at all exit points from the sidewalk cafe, that it is unlawful to remove alcoholic beverages in open and unsealed containers from the premises.

5. The restaurant operator shall not have violated any law, regulation or ordinance relating to the possession, sale, transportation or consumption of intoxicating beverages or controlled substances for the five years preceding the commencement of the sale of alcoholic beverages at the sidewalk cafe.

(j) Denial. A permit may be denied if it is found that the granting of the permit would not be in the public interest. Any applicant denied a permit to operate a sidewalk cafe shall receive a written statement, outlining the grounds on which the denial is based. The applicant may appeal the denial of the permit to the Town Council within 30 working days after the date of the written denial and the Town Council may take such corrective action as it shall find necessary. The findings and determination of the Town Council shall be final.

(k) Permit revocation. The Town Manager or his designee may revoke a permit issued pursuant to this section, if he finds that the restaurant operator has:

1. Deliberately misrepresented or provided false information in the permit application;

2. Violated any provision of this code;

3. Violated any law, regulation or ordinance regarding the possession, sale, transportation or consumption of intoxicating beverages or controlled substances;

4. Operate the sidewalk cafe in such a manner as to create a public nuisance or to constitute a hazard to the public health, safety or welfare, specifically including failure to keep the sidewalk cafe area clean and free of refuse; and/or

5. Failed to maintain any health, business or other permit or license required by law for the operation of a restaurant business. Before the revocation of a permit, the Town Manager shall notify the permit holder of his intent to revoke the permit and the reasons therefor and shall afford the permit holder a reasonable opportunity to appear and be heard on the question of such revocation. After the hearing, the Town Manager shall notify permit holder in writing of the decision and the reasons therefor. A decision of the Town Manager to revoke permit may be appealed to the Town Council in accordance with the provision of this section.

(l) Term, transfer, renewal, and the like. Permits issued in accordance with the provisions of this section shall:

1. Be issued annually;
2. Be in addition to the annual privilege license; and
3. Not be transferable or assignable.

(5) *Definitions.* For purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Pedestrian Way. An improved walk or passageway intended for use by pedestrians, but not adjacent to any Town street.

Restaurant. An establishment engaged in the business of regularly and customarily selling food, primarily to be eaten on the premises, including businesses that are referred to as restaurants, cafeterias, cafes, lunch stands, grills, snack bars, fast food businesses and other establishments, such as drug stores, which have a lunch counter or other section where food is sold to be eaten on the premises. This definition does not include food vendors selling food as part of a festival or nonprofit event.

Restaurant Operator. The person, firm or corporation operating a restaurant and associated sidewalk cafe. As used in this section, this definition includes the owner and manager, if different from the owner of the restaurant and associated sidewalk cafe.

Sidewalk. That portion of a public street between the curb line, or the lateral lines of the roadway if there is no curb and the adjacent property line that is intended for the use of pedestrians.

| ~~(R)~~(S) **Pawn Shop.** Any establishment engaged in the loaning of money on the security of personal property pledged in the keeping of the pawnbroker, and the sale of such property.

1. Outdoor storage may be allowed subject to Planning Board approval (see § 155.405).

| ~~(S)~~(T) **Radio or Television Studio.** An establishment primarily engaged in the provision of broadcasting and other information relay services accomplished through the use of electronic and telephonic mechanisms. Excluded are facilities classified as major utility services, broadcasting or telecommunication facilities.

~~(F)~~(U) **Restaurant, Drive Through.** An establishment equipped to sell food and beverages in one of the following methods: drive-through sales to patrons in automobiles for take out who place orders through a window or remote transmission device; or sales to patrons for take out or dining in, that includes three or more of the following: food or beverage choices are advertised on a menu board; countertop sales where payment is made prior to consumption; disposable containers and utensils; limited service dining facilities with no hostess or waiters; and self service or prepackaged condiments.

~~(H)~~(V) **Restaurant, General.** An establishment with no drive-through, equipped to sell food and beverages, served and consumed primarily on the premises, that includes three or more of the following: host or hostess assists patrons upon entry; food and beverage choices are offered from a printed menu provided by wait staff at a table; orders are taken at the table; food is served on dishes and metal utensils are provided; and, payment is made after meal consumption.

~~(A)~~(W) **Retail Sales, General.** A facility involved in the wholesale or retail sale, lease, or rental of new or used products to through traffic as well as the surrounding neighborhood. General retail shall include the selling, leasing or renting of the following goods: antiques; art; art supplies; bicycles; building supplies; cameras; carpet and floor coverings; crafts; clothing; computers; dry goods; electronic equipment; fabric; furniture; garden supplies; hardware; household products; jewelry; medical supplies; musical instruments; music; pets; pet supplies; printed materials; sporting goods; or any similar use. The retail sale of automobile parts shall be considered retail general provided no on-site automobile service or repair is provided. This definition does not include any adult entertainment establishment.

1. Outdoor storage and display may allowed subject to Planning Board approval (see § 155.405).

~~(W)~~(X) **Retail Sales, Neighborhood.** A facility involved in the sale, lease, or rental of new or used products primarily to local traffic in the surrounding neighborhood. Neighborhood retail shall include the selling, leasing or renting of the following goods: books; health and beauty products; photo finishing; crafts; flowers; gifts or souvenirs; groceries; plants; picture frames; produce; stationery; tobacco; videos or any similar use. Also includes preparation and sale of baked goods, coffee, ice cream, fountain drinks, confections and similar products whose preparation does not require installation of an exhaust hood.

1. Outdoor storage and display may allowed subject to Planning Board approval (see § 155.405).

2. Outdoor seating and dining may be allowed subject to Planning Board approval ~~(see § 155.305(DR)(2))~~.

~~(X)~~(Y) **Self Storage Facility.** A facility consisting of individual, self-contained units that are leased for the storage of business or personal goods.

- (1) All storage shall be contained within a fully-enclosed building. However, outdoor storage of boats, travel trailers, recreational vehicles, and other noncommercial occasional use vehicles may allowed subject to Planning Board approval (see § 155.405).

- (2) A Class C buffer (see § 155.402) shall be established along any side of the property where the self-storage facility abuts or is across the street from a residential use.

(3) Where the end wall of the self-storage facility is visible from a public right-of-way, the wall shall be buffered by a hedge that has a mature height of at least four feet.

(4) The following activities shall be prohibited on the premises:

(a) Commercial, wholesale or retail sales, flea markets or peddling, or miscellaneous or garage sales. However, once a month, the management of the self-storage facility may conduct a one-day auction or sale of abandoned or stored materials to settle unpaid storage bills in accordance with state regulations.

(b) Servicing, repair, or fabrication of motor vehicles, boats, trailers, lawn mowers, appliances, or other similar equipment.

(c) Operation of a transfer-and-storage business.

(d) Operation of power tools, spray painting equipment, table saws, lathes, compressors, welding equipment, kilns, or other similar equipment except when needed for maintenance of the use.

(e) Any activity that is noxious or offensive because of odors, dust, noise, fumes, or vibrations.

(f) Storage of hazardous chemicals, flammable liquids, or combustible and explosive materials.

(g) Habitation of storage units by humans or animals.

~~(Y)~~(Z) **Service, General.** A facility involved in providing personal or repair services to through traffic as well as the surrounding neighborhood. General services shall include the following personal services: animal grooming; photographic; photography, blueprint, quick-sign service; psychic or medium; security service; taxidermist; catering service or any similar use. General services shall also include the following repair services: bicycles; moped, canvas products; clocks; computers; jewelry; musical instruments; office equipment; radios; shoes; televisions; furniture; watches or any similar use. Also includes a tailor, milliner, upholsterer or locksmith. This definition does not include any adult entertainment establishment. All activity shall be conducted entirely within a fully-enclosed building, except for the following:

(1) Outdoor storage may allowed subject to Planning Board approval (see § 155.405).

~~(Z)~~(AA) **Service, Neighborhood.** A facility involved in providing limited personal services to local traffic in the surrounding neighborhood. Neighborhood services shall include the following: personal care services such as hair, nail, tanning, massage therapy; pack and ship facility; or any similar use. All activity shall be conducted entirely within a fully-enclosed building, except for the following:

(1) Outdoor storage may allowed subject to Planning Board approval (see § 155.405).

~~(AA)~~(BB) **Tattoo Parlor.** An establishment whose principal business activity is the practice of one or more of the following:

(1) Placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or puncture the skin.

~~(1)~~(2) Piercing of the body of a person (other than the ear) for the purpose of inserting jewelry or other decoration.

~~(BB)~~(CC) **Towing Service and Storage.** The use of a lot for the temporary storage of operable or inoperable vehicles in conjunction with a commercial towing service, with no sales or repair or salvage activity occurring on the lot and subject to the following standards:

(1) Outdoor storage may allowed subject to Planning Board approval (see § 155.405).

~~(CC)~~(DD) **Vehicle Repair or Service.** An establishment engaged in the repair of new or used motorized vehicles, equipment.

(1) No vehicle sales shall be permitted.

(2) A Class C buffer (see § 155.402) shall be established along any side of the property adjacent to a residential use.

(3) If the facility has more than one service bay, the additional service bay doors shall not be oriented toward any residential use, or the service bays shall be screened from view from adjacent property using landscaping.

(4) All repair or service operations, excluding washing, shall be conducted entirely within a fully-enclosed building. The term fully-enclosed building shall not be construed to limit open bay doors during hours of operation.

(5) Operable vehicles may be parked on-site during business hours. All vehicle parking shall be accomplished on the site, and in no case shall a parked vehicle encroach into the right-of-way.

(6) The outdoor overnight storage of vehicles may be allowed subject to Planning Board approval (see § 155.405).

(7) There shall be no dismantling of vehicles for salvage.

(8) The storage of impounded vehicles shall not be permitted.

~~(DD)~~(EE) **Vehicle Sales and Rental.** An establishment engaged in the sale, rental, or lease of new or used motorized vehicles, equipment, or mobile homes as defined by the Department of Motor Vehicles. Typical uses include auto and truck rental, lease and sales; boat rental and sales; mobile home and recreational vehicle sales; construction equipment rental yards; moving trailer rental, and large implement sales or rental.

(1) A Class C buffer (see § 155.402) shall be established along any side of the property adjacent to a residential use.

(2) Operable vehicles may be parked on-site during business hours. All vehicle parking shall be accomplished on the site, and in no case shall a parked vehicle encroach into the right-of-way.

(3) The outdoor overnight storage of vehicles under repair may be allowed subject to Planning Board approval (see § 155.405).

(4) Vehicle sales displayed for rental or sale visible from the public right-of-way shall provide a parking buffer as set forth in § 155.402(E)(2)(b).

~~(EE)~~(FF) **Veterinary Clinic.** An establishment engaged in providing medical care, treatment and temporary boarding for animals.

(1) Outdoor runs may be permitted subject to Board of Adjustment approval (see § 155.710).

(2) All animal boarding shall occur indoors. All pens, kennels and runs shall be located within an enclosed structure.

~~(GG) -Video Sweepstakes Operation-~~ Any business enterprise, whether as a principal or an accessory use, where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, including sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. This term includes, but is not limited to internet cafes, internet sweepstakes, and cybercafés. This does not include any lottery approved by the State of North Carolina.

(1) Unaccompanied persons under the age of eighteen (18) are prohibited from entering the premises.

(2) The hours of operation shall be limited to Sunday through Thursday 9am to 1am, and Friday and Saturday 9am to 2am.

(3) A maximum of one hundred (100) machines are allowed at each establishment.

(4) Two (2) or fewer machines are classified as an accessory use and shall not be bound by the standards of this section.

(5) All uses meeting the definition of Internet Sweepstakes Facilities that were established prior to November 5, 2012 shall cease operations and close or be brought into compliance with the provisions of this ordinance by midnight, December 31, 2013.

## § 155.306 INDUSTRIAL USE STANDARDS.

The following standards shall apply to all permitted uses, conditional uses and special uses, as set forth in the Use Regulations Table (Table 2-1 § 155.202(B)). Additional design considerations may be outlined in the Clayton General Design Guidelines.

(A) **Building Supplies, Wholesale.** An establishment engaged in the sale or fabrication and allied products to contractors for the construction, maintenance, repair and improvement of real property.

(1) Retail sales of lumber and allied products to the consumer may be conducted, but must be clearly accessory to the primary use.

(B) **Crematorium.** A place used and dedicated to the cremation of human remains or pet animal remains.

(C) **Gas and Fuel, Wholesale.** The use of land for bulk storage and wholesale distribution of 2,500 gallons or more of flammable liquid, or 2,000 gallons water capacity or more of flammable gas, excluding below-ground storage which is clearly accessory to the principal use on the site.

(D) **Laboratory, Research.** An establishment engaged in industrial, scientific or medical research, bio-manufacturing, testing, and analysis, including support services and structures. Typical uses include natural science/manufacturing research facilities and product testing/quality control facilities.

(1) Outdoor manufacturing, processing or testing shall be limited to industrial districts only.

(E) **Manufacturing, limited.** A facility conducting light manufacturing operations within a fully-enclosed building, generally serviced by trucks no longer than 24 feet in length. Limited manufacturing shall include the following: bulk mailing service; clothing or textile manufacturing; manufacture or assembly of equipment, instruments (including musical instruments), appliances, precision items, and electrical items; printing, publishing, and lithography; production of artwork and toys; sign-making; building maintenance service; exterminator; movie production facility; photo-finishing laboratory; repair of scientific or professional instruments and electric motors; sheet metal; welding, machine, tool repair shop or studio; woodworking, including cabinet makers and furniture manufacturing; or any similar use.

(1) All manufacturing activity shall be conducted entirely within a fully-enclosed building.

(2) Outdoor storage and display may allowed subject to Planning Board approval (see § 155.405).

(3) Uses shall not emit smoke, odor or objectionable waste materials.

(4) No vibration shall be produced that is transmitted through the ground (and is discernible without the aid of instruments) at or beyond the lot line.

(5) No direct glare from high temperature processes such as combustion or welding visible from the street shall be permitted.

(F) **Manufacturing, General.** A facility conducting manufacturing with some operations conducted outside. General manufacturing shall include the following: bulk mailing service; clothing or textile manufacturing; manufacture or assembly of equipment, instruments (including musical instruments), appliances, precision items, and electrical items; printing, publishing, and lithography; production of artwork and toys; sign-making; building maintenance service; exterminator; movie production facility; laundry or dry cleaning plant; photo-finishing laboratory; repair of scientific or professional instruments and electric motors; sheet metal; welding, machine, tool repair shop or studio; woodworking, including cabinet makers and furniture manufacturing; or any similar use.

(G) **Manufacturing, Heavy.** A facility conducting assembly heavy manufacturing with operation conducted indoors and outdoors. Heavy manufacturing shall include the following: heavy factory production; industrial yards; any use that is potentially dangerous, noxious or offensive to neighboring uses or those who pass on public ways by reason of smoke, odor, noise, glare, fumes, gas, vibration, threat of fire or explosion, emission of particulate matter, interference with radio, television reception, radiation or any other likely cause; animal processing, packing, treating, and storage; livestock or poultry slaughtering; citrus concentrate plant; processing of food and related products; production of chemical, rubber, leather, clay, bone, paper, pulp, plastic, stone, or glass materials or products, production or fabrication of metals or metal products including enameling and galvanizing, sawmill; bulk storage of flammable liquids; commercial feed lot; concrete batching and asphalt processing and manufacture; wrecking, junk or salvage yard; bottling plant; or any similar use.

(H) **Research and Development.** A facility focused primarily on the research and development of new products. Research and development shall include: offices, and other facilities used for research and development by or for any individual, organization, or concern, whether public or private; prototype production facilities that manufacture a limited amount of a product in order to fully investigate the merits of such a product; pilot plants used to test manufacturing processes planned for use in production elsewhere; production facilities and operations with a high degree of scientific input; facilities and operations in which the input of science, technology, research, and other forms of concepts or ideas constitute a major element of the value added by manufacture per unit of product.

(I) **Warehouse and Freight Movement.** A facility involved in the storage or movement of goods for themselves or other firms. Goods are delivered to other firms or the final consumer with little on-site sales activity to customers. Warehouse and freight movement shall include the following: bulk storage, including nonflammable liquids, feed and grain storage; cold storage plants, including frozen food lockers; household moving and general freight storage; separate warehouse used by retail store such as furniture or appliance store; bus barn; parcel services, mail order facility; stockpiling of sand, gravel, or other aggregate materials; transfer and storage business where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred; or any similar use.

**§ 155.3076 UTILITIES USE STANDARDS.**

The following standards shall apply to all permitted uses, conditional uses and special uses, as set forth in the Use Regulations Table (Table 2-1 § 155.202(B)). Additional design considerations may be outlined in the Clayton General Design Guidelines.

(A) **Recycling Center.** A permanent facility designed and used for receiving, separating, storing, converting, baling or processing of non-hazardous recyclable materials that are not intended for disposal. The use may include construction debris recycling or other intensive recycling processes such as chipping and mulching.

(1) To ensure compatibility with surrounding uses, screening and buffering around the perimeter of the proposed recycling plant shall be required at the time the facility is constructed.

**(B) Renewable Energy Facility.** A facility that renewable energy sources such as solar, wind uses or other systems with a principal use of producing electric, thermal power or mechanical power.

**(B)(C) Telecommunication Facility.** Any tower whose principal use is to facilitate transmissions for AM/FM radio, television, microwave and cellular telephone transmission towers, antennae and accessory equipment and buildings. Specific standards for communication towers are set forth in § 155.31009.

**(C)(D) Utility, Major.** A large-scale utility such as a water or wastewater treatment plant, water tower, electrical generation plant, or transmission facility or any similar use.

**(D)(E) Utility, Minor.** All utility facilities not considered major, including, but not limited to neighborhood-serving facilities such as pump stations, telephone exchanges, lift stations, and stormwater detention facilities, or any similar use.

**(E)(F) Waste Service.** A facility that generally receives solid or liquid wastes from others for transfer to another location, collects sanitary waste or manufactures a product from the composting of organic material. Waste-related service shall include the following: animal waste processing; landfill, incinerator; manufacture and production of goods from composting organic material; outdoor recycle processing center; outdoor storage of recyclable material, including construction material; transfer station; or any similar use.

(Ord. 2005-11-02, passed 11-21-05; Am. Ord. 2007-05-02, passed 5-7-07; Am. Ord. 2007-05-03, passed 5-7-07)

**§ 155.3087 ACCESSORY STRUCTURES AND USES.**

(A) *General.* Accessory structures and uses shall be consistent with all standards in the district for the principal use, except as expressly set forth below. Additional design considerations may be outlined in the Clayton General Design Guidelines.

- (1) Accessory structures and uses shall be accessory and clearly incidental and subordinate to a permitted principal uses. An accessory use shall only be allowed when a principal use exists.
- (2) Accessory structures and uses shall be located on the same lot as the permitted use or structure, or on a contiguous lot in the same ownership.
- (3) Accessory structures and uses shall not involve operations or structures not in keeping with the character of the primary use or principal structure served.
- (4) Accessory structures and uses shall not be of a nature likely to attract visitors in larger numbers than would normally be expected, where applicable.
- (5) An accessory use shall contribute to the comfort, convenience or necessity of occupants of the primary use served.
- (6) An accessory use shall be located within the same district as the principal use.

(7) Tractor trailers are prohibited as storage buildings or structures except as permitted on an active construction site.

(B) *Accessory structures.* Accessory structures, not including accessory dwelling units (see (C)(1) of this section) shall be subject to the following requirements:

(1) *Zoning permit required.* It shall be unlawful to begin moving, constructing, altering, or repairing, except ordinary repairs, of an accessory structure, until the Planning Department has issued a zoning permit for such work (see § 155.709).

(2) *Setbacks.*

(a) No accessory structure shall be located closer than ten feet to any other building or manufactured home.

(b) No accessory structure shall extend in front of the front line of the principal structure, except in the B-1 District, where the Board of Adjustment may approve a conditional use permit for an accessory use or structure to be placed in any yard other than the rear yard.

(c) No accessory structure may extend within five feet of any lot line in R-6 and R-8 Districts, and within ten feet in all other zoning districts. No accessory structure shall be located within 20 feet of any street right-of-way.

(3) *Height.* The height of an accessory structure shall not exceed the height of the principal structure, unless approved as a conditional use by the Board of Adjustment, as provided in § 155.710.

(4) *Number.* No more than one accessory structure shall be permitted on the same lot as any primary structure in R-6, R-8, and R-10 Residential Districts, and no more than two accessory structures shall be permitted on the same lot as any primary structure in all other zoning districts.

(C) *Accessory uses in residential districts.*

(1) *Accessory dwelling units.* One accessory dwelling shall be permitted as a conditional use by the Board of Adjustment (see § 155.710) subject to their approval and the following requirements:

(a) The living area of the accessory dwelling shall not exceed the living area of the principal structure. In no case shall the total floor area of the accessory dwelling unit exceed 600 square feet.

(b) The accessory dwelling shall not have a separate electrical meter.

(c) The owner of the property shall occupy either the primary structure or the accessory dwelling.

(d) The principal dwelling and accessory dwelling unit together shall not exceed the maximum building coverage and impervious surface requirements for the district.

(e) All principal structure setbacks and yard requirements shall be met.

(f) One additional parking space on the same premises shall be required for the accessory dwelling unit.

(g) A subdivision with accessory dwelling units shall not exceed the maximum district density requirements, counting all principal dwelling units and any accessory dwelling units.

(h) An accessory dwelling shall either be located within the principal structure; or meet the following standards:

1. The accessory dwelling shall be located on the same lot as the principal structure.

2. The accessory dwelling shall be separated by at least ten feet from the principal structure.

3. The accessory dwelling shall be located in the rear or side yard of the principal structure. The rear and side setback shall be equal to those of all accessory structures.

4. Total building coverage and impervious surface area shall not exceed that permitted in the district.

5. The height of a principal structure shall not be exceeded by any accessory dwelling.

6. The accessory dwelling unit shall be architecturally consistent with the principal structure.

(2) *Home occupations.*

(a) Prohibited home occupations. The following uses are not permitted as home occupations:

1. Vehicle and/or body and fender repair.

2. Outdoor repair.

3. Commercial nursery or truck farming.

4. Food handling, processing or packing, other than services that utilize standard home kitchen equipment.

5. Medical or dental lab.

6. Restaurant.

7. Sale or repair of firearms.

8. Bulk storage of flammable liquids.
9. Funeral homes and mortuaries.
10. Animal hospitals and kennels.

(b) Class A. The intent of a Class A Home Occupation is to permit very limited activities in a residential dwelling, provided such activities do not impact or detract from the residential character of the neighborhood. A Class A Home Occupation shall be deemed an accessory use and no further approval shall be required, provided the use meets the standards of this chapter.

1. The use of the dwelling unit for Class A Home Occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and shall under no circumstances change the residential character of the structure.
2. There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of a home occupation.
3. No business, storage or warehousing of material, supplies or equipment shall be permitted outside of the primary dwelling unit.
4. No equipment or process shall be used that creates excessive noise, vibration, glare, fumes, odors, or electrical interference.
5. No display of products shall be visible from the street.
6. A Class A Home Occupation shall be subject to all applicable licenses and business taxes.
7. No persons other than members of the family residing on the premises shall be engaged in the home occupation.
8. Storage space and the operation of the business inside the dwelling unit shall not exceed 25% of the first floor area of the residence.
9. Customers and employees coming to the residence to conduct business shall not be permitted.
10. No signage shall be permitted.

(c) Class B. A Class B Home Occupations is a business, profession, occupation or trade conducted for gain or support within a residential dwelling or its accessory buildings that requires employees, customers, clients or patrons to visit the home. A Class B Home Occupation shall be permitted as a conditional use provided that the Board of Adjustment shall determine in its judgment that:

1. It is carried on by a person residing on the premises and employs no more than two employees not living on the premises.

2. No more than 20% of the total actual floor area of the dwelling shall be in the conduct of the home occupation.

3. No more than two vehicles are used in the conduct of the home occupation, and such vehicles are parked off the street.

4. No merchandise or commodity is sold on the premises, except what is incidental to the home occupation.

5. No mechanical equipment is installed or used except such that is normally used for domestic or professional purposes.

6. No expansion shall be permitted outside the principal structure that houses the home occupation, except that which is necessary to house vehicles used in the conduct of home occupation.

7. It is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

8. The use will not create undue traffic congestion or create a traffic hazard.

9. Advertising signs shall be limited to one unlighted wall sign no larger than three square feet in area, attached to the structure housing the home occupation, or one yard sign of the same size not to exceed three feet in height.

(3) *Swimming pools.* When allowed, in-ground and above ground swimming pools that have a water depth over 24 inches and or have a surface area of at least 100 square feet shall be subject to the following requirements (see Chapter 154, Swimming Pools, of the Town Code of Ordinances for additional standards).

(a) *Private pools.* Private swimming pools (as well as the decking and equipment associated with the pool) on single-family detached, zero lot lines, alley-loaded, and two-family lots shall not be located in the street yard and shall not be closer than five feet to the any property line.

(b) *Outdoor community pools, private club pools, or pools in multi-family complexes.*

1. Outdoor pools including decking shall be located at least 50 feet from any property line adjacent to a residential district or use, and at least 25 feet from any property line adjacent to any other district or use.

2. When the pool is adjacent to off-site residences, the playing of music detectable off-site on a public address system is prohibited. Informational announcements shall be permitted. This requirement may be waived if a permit has been issued for a special event.

(4) *Vehicle repair.* Up to two vehicles may be repaired simultaneously on a residential property if the vehicles are registered to an occupant of the residence.

(5) *Vehicle sales.* Vehicle sales shall be prohibited within a residential district or on property devoted to residential use, except that the sale of a private vehicle registered to the occupant of the residence shall be allowed. No more than one such vehicle shall be displayed at a time.

(D) *Accessory uses in nonresidential districts.*

(1) *Drive-thru.* Drive-thru facilities shall be subject to the following requirements:

(a) A drive-thru shall only be permitted in conjunction with a permitted nonresidential use.

(b) Drive-thru windows and lanes shall be screened in accordance with § 155.402(G).

(2) *Outdoor seating and dining.* Outdoor seating and dining may be allowed subject to major site plan approval by the Planning Board (see § 155.707).

(3) *Swimming pools.*

(a) Outdoor pools shall meet the standards of Chapter 154, Swimming Pools, of the Town Code of Ordinances.

(b) Outdoor pools including decking shall be located at least 50 feet from any property line adjacent to a residential district or use, and at least 25 feet from any property line adjacent to any other district or use.

(c) When the pool is adjacent to residences, the playing of music detectable off-site on a public address system is prohibited. Informational announcements shall be permitted. This requirement may be waived if a permit has been issued for a special event.

(E) *Accessory uses for places of worship.* Accessory uses are permitted for a place of worship in accordance with the following standards.

(1) The following facilities may be considered accessory to a place of worship. Additional buffering may be required through the review and approval of a site plan to address the intensity of the proposed place of worship and the proposed accessory uses.

(a) Offices for the place of worship;

(b) Rooms for religious instruction or counseling;

(c) Meeting rooms for intermittent community meetings or instruction;

(d) Fellowship hall;

(e) Kitchen facilities;

(f) Senior center, neighborhood arts center or other community center;

(g) Temporary child care during religious services or events;

- (h) Outdoor play area;
- (i) Columbarium;
- (j) “Meals on Wheels” or other similar programs using the kitchen in the place of worship but delivering food elsewhere; and
- (k) Residence for clergy employed by the place of worship.

(2) The following accessory uses are subject to approval of a major site plan by the Planning Board (see § 155.707).

- (a) Gymnasium or similar indoor recreational facility;
- (b) Cemetery;
- (c) Overnight accommodation for visiting clergy and non-paying guests of clergy employed by the place of worship;
- (d) Child care center;
- (e) School;
- (f) Soup kitchen or other social service facility; and
- (g) Athletic field or similar facility.

(Ord. 2005-11-02, passed 11-21-05; Am. Ord. 2007-04-05, passed 4-2-07)

### § 155.3089 TEMPORARY USES.

(A) *General requirements.* Certain uses are temporary in character. They vary in type and degree, as well as length of time involved. Such uses may have little impact on surrounding and nearby properties or they may present questions involving potential incompatibility of the temporary use with existing uses. Unless otherwise specified in this chapter, the following regulations shall govern temporary uses.

(B) *Temporary uses exempt from permit.* The following permitted temporary uses are exempt from these requirements.

- (1) Christmas tree sales lots.

(2) Garage or yard sales are permitted only by the property owner on their property and are allowed once every four months at any given location. The sale may not exceed three consecutive days in length. Advertising signs may not be placed on any rights-of-way or off-site locations without the owners' permission.

(3) Storage pods for off-site storage of household or other goods located in any street yard are permitted for a maximum of seven consecutive days, and any side or rear yard for a maximum of 30 consecutive days.

(C) *Temporary use permit required.* The following temporary uses are allowed in the frequency stated below, except that no property shall have more than four of the events listed below in one calendar year.

(1) *Commercial circuses, carnivals or fairs.* Commercial circuses, carnivals or fairs, for not more than two consecutive weeks in any calendar year.

(2) *Temporary religious or revival activities.* Temporary religious or revival activities in tents in association with a place of worship, for not more than two consecutive weeks in any calendar year.

(3) *Non-profit special events.* Special events run by non-profit, charitable organizations occurring no longer than seven consecutive days once every three months.

(4) *Tent sales.* Tent sales by merchants occupying the premises on which the sale is conducted and having a valid certificate of occupancy, and occurring no longer than seven consecutive days once every six months.

(5) *Grand opening sales.* Grand opening sales, including outside food and beverage vending, for three consecutive days, once per certificate of occupancy.

(6) *Outdoor vehicle show or sale.* Outdoor motor vehicle or recreational vehicle show or sale, for three consecutive days, twice per calendar year.

(7) *Other temporary uses.* Other temporary uses similar in nature to the ones listed above, with corresponding limitations, as determined by the Planning Director.

(D) *Temporary outdoor display of merchandise.* Permanent outdoor display of merchandise may be approved as part of major site plan (see § 155.405).

(1) Outdoor display of merchandise in nonresidential districts by merchants occupying the premises and having a valid certificate of occupancy, occurring no longer than nine consecutive days up to four times per year, is allowed subject to issuance of a temporary use permit and all of the following conditions.

(a) Merchandise shall only be displayed in front of the premises occupied by the merchant.

(b) Merchandise shall not be displayed closer than five feet to any entrance to the premises.

(c) Merchandise shall only be displayed in a manner that does not obstruct pedestrian or vehicular circulation or traffic.

(d) The display of merchandise shall not exceed eight feet in height.

(e) Merchandise shall only be displayed during the merchant's hours of operation, and must be taken inside the premises at closing.

(f) Merchandise shall only be displayed in an area not wider than 50% of the total linear foot frontage of the building occupied by the merchant.

(g) The required temporary use permit must be visibly displayed at the main entrance of the associated merchant.

(h) A violation of any conditions set out in this section shall constitute a violation of the temporary use permit and cause said temporary use permit to be revoked. Once revoked, a temporary use permit shall not be issued for the same temporary use for a period of one year.

(2) Any temporary use permit issued under (C)(1) through (7) of this section shall be counted in the maximum number of temporary use permits allowed for the temporary outdoor display of merchandise.

(3) The requirements of this section do not supersede the permanent outdoor storage or display requirements of § 155.405.

(E) *Manufactured home or trailer for temporary use.* After approval by the Planning Director, a manufactured home or trailer may be used as a temporary office, security shelter, or shelter for materials or tools (but not for residential purposes or sales offices) incident to construction on or development of the premises upon which the manufactured home or trailer is located. Such use shall be strictly limited to the time construction or development is actively underway. In no event shall the use continue more than six months without the further approval of the Planning Director. The temporary use shall be approved only upon finding that actual construction is continuing.

(F) *Temporary use in conjunction with special event permit.* Where a valid permit has been issued by the Town for use of adjacent right-of-way that makes the street unavailable to vehicular traffic, a temporary use permit may be issued in accordance for events on the grounds or in the parking lot of any adjacent parcel during the period of the special event permit.

(G) *Real estate development projects.*

(1) A developer may request a temporary use permit for necessary commercial promotional, storage, or fabrication activities at the development site which occur during construction of that developer's project.

(2) When the request is for a temporary sales office, model home, or apartment, the application shall list the lots, apartment units, or dwelling units to be initially sold.

(3) The temporary use permit shall be restricted to only those activities and properties listed on the petition. Such activities shall not include any sale of properties outside the development site or any resale of properties.

(4) The following uses in connection with such a project require a temporary use permit:

(a) Offices for sale of real estate or for persons engaged in the development.

- (b) Construction materials storage, general contractor's business office, processing, or fabrication.
- (c) Equipment storage.
- (d) Model homes or sample apartments.

(Ord. 2005-11-02, passed 11-21-05)

## § 155.30910 TELECOMMUNICATION FACILITIES.

(A) *Purpose and legislative intent.*

(1) The Telecommunications Act of 1996 affirmed the Town authority concerning the placement, construction and modification of wireless telecommunications facilities. North Carolina General Statutes governing the regulation of wireless telecommunication facilities, Chapter 160A, Article 19, Part 3E, provide for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.

(2) The Town finds that wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, character and environment of the Town and its inhabitants, including but not limited to adjacent and nearby property owners. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. In order to insure that the placement, construction or modification of wireless telecommunications facilities is consistent with the Town's land use policies, the Town is adopting a single, comprehensive, wireless telecommunications facilities application and permitting process. The intent of this section is to minimize the physical impact of wireless telecommunications facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the Town.

(B) *Definitions.* For purposes of this section, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

Accessory Facility or Structure. An accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.

Amend or Amended. Any change in an application made subsequent to the submission of the application from that which was originally submitted, regardless of the reason.

Antenna. A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

Applicant. Any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities.

Application. All necessary and required documentation that an applicant submits in order to receive a special use permit or a building permit for wireless telecommunications facilities.

Co-location. The use of an approved telecommunications structure to support antenna for the provision of wireless services.

Commercial Impracticability or Commercially Impracticable. The inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be "commercial impracticable" and shall not render an act or the terms of an agreement "commercially impracticable".

Consultant Fee(s). Set by Town Council and set forth in the Town's schedule of fees.

Completed Application. An application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an application.

DAS or Distributive Access System. A technology using antenna combining technology allowing for multiple carriers or wireless service providers to use the same set of antennas, cabling or fiber optics.

FAA. The Federal Aviation Administration, or its duly designated and authorized successor agency.

FCC. The Federal Communications Commission, or its duly designated and authorized successor agency.

Height. When referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightning protection device.

Maintenance. Plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the WTF.

Modification or Modify. The addition, removal or change of any of the physical and visually discernible components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernible components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site as a co-location is a modification.

Necessary. What is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting or acting in a manner that prohibits the provision of service as intended and described in the narrative of the application. **NECESSARY** does not mean what may be desired or preferred technically.

NIER. Non-ionizing electromagnetic radiation.

Person. Any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

Personal Wireless Facility. See definition for wireless telecommunications facility.

Personal Wireless Service or PWS or Personal Telecommunications Service or PTS. Have the same meaning as defined and used in the 1996 Telecommunications Act.

Repair and Maintenance. The replacement or repair of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually ~~discernable~~discernible components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.

Special Use Permit. The official document or permit by which an applicant is allowed to file for a building permit to construct and use wireless telecommunications facilities as granted or issued by the Town.

Stealth or Stealth Technology. A design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances. Stealth technology includes such technology as DAS or its functional equivalent or camouflage where the tower is disguised to make it less visually obtrusive and not recognizable to the average person as a WTF.

State. The State of North Carolina.

Telecommunications. The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

Telecommunications Site. See definition for Wireless Telecommunication Facilities.

Telecommunication Structure. A structure used in the provision of services described in the definition for Wireless Telecommunication Facilities.

Temporary. Temporary in relation to all aspects and components of this section, something intended to, or that does, exist for fewer than 90 days.

Tower. Any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.

Wireless Telecommunications Facilities (WTF or WTFS). Includes a telecommunications site and personal wireless facility. It means a structure, facility or location designed, or intended to be used as, or

used to support antennas or other transmitting or receiving devices. This includes without limit, towers of all types, kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the facility. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

(C) *Overall procedure and desired outcomes for approving and issuing permits for wireless telecommunications facilities.* In order to ensure that the placement, construction, and modification of wireless telecommunications facilities protects the Town's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this section, the Town hereby adopts an overall policy with respect to the review, approval and issuance of permits for wireless telecommunications facilities for the express purpose of achieving the following outcomes:

(1) Requiring a special use permit for any new, co-location or modification of a wireless telecommunications facility as required or otherwise specified in this section.

(2) Implementing an application process for person(s) seeking approval of wireless ~~tele-~~communications facilities.

(3) Establishing a procedure for examining an application and issuing a special use permit and/or building permit for wireless telecommunications facilities that is both fair and consistent.

(4) Promoting, and requiring wherever possible, the sharing and/or co-location of wireless telecommunications facilities among service providers.

(5) Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner as to minimize the physical and visual impact on the community, including but not limited to the use of stealth technology.

(6) In approving a wireless ~~tele-~~communications facility, the Town shall find that the facility shall be the most appropriate site in regards to being the least visually intrusive among those available in the Town given the facts and circumstances.

(D) *Exceptions from a special use permit for wireless telecommunications facilities.*

(1) No person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of a wireless telecommunications facility as of the effective date of this section without having first obtained a special use permit for a wireless telecommunications facility as defined in division (B) of this section or an administratively granted authorization (building permit) as defined in division (G) of this section, whichever is applicable. Notwithstanding anything to the contrary in this section, no special use permit shall be required for those noncommercial exceptions noted in division (E), unless deemed in the public interest by the Town.

(2) If constructed as required by permit, all legally permitted wireless telecommunications facilities that existed on or before the effective date of this section shall be allowed to continue as they presently exist, provided however, that they are operating as originally permitted and that any

modification of an existing wireless telecommunications facility not permitted under this section will require the complete facility and any new installation to comply with this section, as will anything changing the structural load.

(3) Any repair and maintenance of a wireless telecommunications facility that does not increase the height of the structure, alter the profile, increase the footprint or otherwise exceed the conditions of the special use permit does not require an application for a special use permit but may require a building permit. However, no additional construction or site modification shall be considered to be repair and maintenance.

(E) *Exclusions.* The following shall be exempt from this section:

(1) Any facilities expressly exempt from the Town's siting, building and permitting authority.

(2) Any reception or transmission devices expressly exempted under the Telecommunications Act of 1996.

(3) Facilities used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar noncommercial telecommunications.

(4) Facilities used exclusively for providing unlicensed spread spectrum technologies, such as IEEE 802.11a, b, g services (e.g. Wi-Fi and Bluetooth) where the facility does not require a new tower or increase the height of the structure being attached to.

(F) *Special use permit application and other requirements for a new wireless telecommunications facility or for increasing the footprint, height, profile or number of co-locations of the structure to be attached to.*

(1) (a) All applicants for a special use permit for wireless telecommunications facilities, including new towers or support structures or that otherwise increases the footprint, height, profile or number of co-locations or any modification of such facility beyond the conditions of an approved special use permit shall comply with the requirements set forth in this section. The Town Council is the officially designated agency or body of the Town to whom applications for a special use permit for wireless telecommunications facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting or revoking special use permits for wireless telecommunications facilities. The Town Council may at its discretion delegate or designate the Planning Board or other official agencies or officials of the Town or outside consultants to accept, review, analyze, evaluate and make recommendations to Town Council with respect to the granting or not granting or revoking special use permits for wireless telecommunications facilities. However, outside consultants shall have no authority to make or change policy for the Town.

(b) Placement of wireless telecommunications towers and facilities within major subdivisions or within intended service areas with existing or planned medium to high residential density, or areas identified as potential high density area, must employ stealth or camouflage techniques, such as DAS, or its functional equivalent.

(c) Note: Medium density, high density or potentially high density residential areas shall be defined by planning staff in its discretion.

(2) All applicants shall closely follow the instructions for preparing an application for a wireless telecommunications facility prior to the submittal of an application for special use permit. Not closely following the instructions without permission to deviate from such shall result in a tolling of the otherwise required 45 day notification period until the receipt of a complete and properly completed application. The applicant shall be notified in writing within 45 days of submission of an application as to the completeness of the wireless telecommunications facility application and any deficiencies. An amended application shall be required to correct any deficiencies.

(3) When placing wireless facilities on government-owned property or facilities, only noncommercial wireless carriers and users are exempt from the permitting requirements of this section.

(4) The Town may deny applications not meeting the requirements stated herein or which are otherwise not complete. In the event the application is denied, the portion of the wireless telecommunications facility application fee remaining from the consultant fee shall be refunded, but the special use permit application fee is not refundable.

(5) No wireless telecommunications facilities shall be installed, constructed or modified until the application is reviewed and approved by Town Council, and the special use permit has been approved and a building permit has been issued.

(6) Any and all representations made by the applicant to Town Council on the record during the application process, whether written or verbal, shall be deemed to have been relied upon in good faith by the Town. Any verbal representation shall be treated as if it were made in writing.

(7) An application for a special use permit for wireless telecommunications facilities shall be signed on behalf of the applicant by the person vested with the authority to bind and commit the applicant to the conditions of the special use permit and the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.

(8) The applicant must provide documentation to verify it has the right to proceed as proposed on the site. This requires an executed copy of the lease with the landowner or landlord or a signed letter of agency acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.

(9) The applicant shall include a statement in writing:

(a) That the applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by Town Council in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, state and federal laws, rules, and regulations; and

(b) That the construction of the wireless telecommunications facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the state.

(10) Where a certification is called for in this section, such certification shall bear the signature and seal of a professional engineer licensed in the state.

(11) In addition to all other required information as stated in this section, all applications for the construction or installation of new wireless telecommunications facilities or modification of an existing facility shall contain the information hereinafter set forth prior to the issuance of a building permit.

*Ownership and Management:*

- (a) The name, address and phone number of the person preparing the application;
- (b) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
- (c) The postal address and tax map parcel number of the property;
- (d) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;
- (e) Written acknowledgment that any new telecommunications tower shall be structurally designed to accommodate a minimum of six antenna arrays and shall be managed so as to not restrict, prevent or prohibit competition among carriers;
- (f) The applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new telecommunications tower that it constructs;

*Zoning and Planning:*

- (g) The Zoning District or designation in which the property is situated;
- (h) The size of the property footprint on which the structure to be built or attached is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- (i) The location, size and height of all existing and proposed structures on the property on which the structure is located and that is the subject of the application;
- (j) A site plan showing the footprint and type, location and dimensions of access drive, landscaping and buffers, fencing and any other requirement of site plans;
- (k) Elevations showing the profile or the vertical rendition of the wireless telecommunications facility identifying proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the pre-existing grade, materials, color and lighting;
- (l) When considering a modification to an existing wireless telecommunications facility, provide all users and attachments to the facility, including all related fixtures,

structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;

(m) The azimuth, size and center line height location of all proposed and existing antennas on the supporting structure;

(n) The type and design of the wireless telecommunications facility, the number of antenna arrays proposed and the basis for the calculations of the wireless telecommunications facility's capacity to accommodate the required number of antenna arrays for which the structure must be designed;

(o) The applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new telecommunication tower that it constructs;

(p) Technical information regarding noise and/or sound generated by any generators or other equipment to be used on site; if multiple generators are to be used, then the data should show the cumulative impact of noise generated.

*Safety:*

(q) If modifying an existing wireless telecommunications facility:

1. The age of the facility in years, including the date of the grant of the original permit;

2. A description of the type of tower, e.g. guyed, self-supporting lattice or monopole;

3. The make, model, type and manufacturer of the facility and the structural design calculations, certified by a professional engineer licensed in the state, proving the facility's capability to safely accommodate the facilities of the applicant without change or modification or if any change or modification of the facility is needed, a detailed narrative explaining what changes are needed, why they are needed and who will be responsible to assure that the changes are made;

4. A copy of the installed foundation design, as well as a geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for the tower site or other structure;

5. For a tower that is five years old or older, or for a guyed tower that is three years old or older, a copy of the latest ANSI report done pursuant to the latest edition of ANSI-EIA/TIA 222F-Annex E for any self-supporting tower. If an ANSI report has not been done pursuant to the preceding schedule, an ANSI report shall be done and submitted as part of the application. No building permit shall be issued for any wireless facility where the structure being attached to is in need of remediation, unless and until all remediation work needed has been completed or a schedule for the remediation work has been approved by the Planning Department;

(r) A structural report signed by a professional engineer licensed to do business in the state and bearing that engineer's currently valid stamp, showing the structural adequacy of the proposed structure to accommodate the proposed wireless telecommunications facility, including any equipment shelter, unless the equipment shelter is located on the lowest floor of a building;

(s) If attaching to a structure other than a tower or where the proposed attachment is within 30 feet of areas to which the public has or could reasonably have or gain access to, documentation shall be provided, including all calculations, proving that the potential exposure to RF radiation (i.e. NIER or non-ion-emitting radiation), will be in compliance with the most recent Federal Communications Commission regulations governing RF radiation and exposure thereto, and further denoting the minimum distance from any antennas an individual may safely stand without being exposed to RF radiation in excess of the FCC's permitted standards and any portion(s) of the structure that would be exposed to RF radiation in excess of the FCC's permitted standards. In compliance with the FCC's regulations, in such an instance the RF radiation from all wireless facilities at that location shall be included in the calculations to show the cumulative effect on any area of the building or structure deemed accessible by the public or workers. Such report or analysis shall be signed and sealed by a professional engineer licensed in the state; or

(t) In an instance involving a tower where the new wireless facilities will be ten meters or more above ground level and not within 30 feet of areas to which the public has or could reasonably have or gain access to, signed documentation such as the FCC's "Checklist to Determine whether a Facility may Categorically Excluded" shall be provided to verify that the wireless telecommunication facility with the proposed installation will be in full compliance with the current FCC's RF emissions regulations. If not categorically excluded, a complete RF emissions study is required to enable verification of compliance including providing all calculations so that such may be verified prior to issuance of a building permit;

(u) In certain instances, the Town may deem it appropriate to have an RF survey of the facility done after the construction or modification and activation of the facility, such to be done under the direction of the Town or its designee, and an un-redacted copy of the survey results provided, along with all calculations prior to issuance of a certificate of compliance;

(v) If any section or portion of the structure to be attached to is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with yellow and black plastic chain and striped warning tape, as well as placing RF radiation signs as needed and appropriate to warn individuals of the potential danger;

(w) A signed statement that the applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.

(12) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed wireless telecommunications facility is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any where the application increases the height of the wireless telecommunications facility. If this analysis determines that an FAA determination is required, then

all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

(13) Application for new wireless telecommunications facility versus co-location. Placement of wireless telecommunications towers and facilities within major subdivisions or within intended service areas with existing or planned medium to high residential density, or areas identified as potential high density areas, must employ stealth or camouflage techniques, such as DAS, or its functional equivalent.

Note: Medium density, high density or potentially high density residential areas shall be defined by planning staff in its discretion.

(a) The applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing wireless telecommunications facilities or the use of alternative buildings or other structures within the town that are at or above the surrounding tree height or the tallest obstruction and are within one mile of the proposed tower. Copies of written requests and responses for shared use shall be provided to the Town in the application, along with any letters of rejection stating the reason for rejection.

(b) Telecommunications towers shall be prohibited in Residential Districts, Historic Districts or Renaissance Districts, unless the applicant provides documentation (i.e. clear and convincing evidence) to demonstrate that the telecommunications tower is necessary, that the area cannot be served from outside the district, that no existing or previously approved wireless telecommunications facility can reasonably be used for the antenna placement instead of the construction of a new wireless telecommunications facility or instead of increasing the height of an existing wireless telecommunications facility, and that no alternative wireless telecommunications facility or alternative type of wireless telecommunications facility can be used to provide wireless telecommunications service to the district.

(c) In order to better inform the public, in the case of a new telecommunication tower, the applicant shall hold a "balloon test" prior to the initial public hearing on the application. The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a ten foot in length, a brightly colored balloon at the maximum height of the proposed new tower.

(d) At least 14 days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest the proposed site and shall be removed no later than 14 days after the conduct of the balloon test. The sign shall be at least four feet by eight feet in size and shall be readable from the road by a person with 20/20 vision.

(e) Such sign shall be placed off, but as near to, the public right-of-way as is possible.

(f) Such sign shall contain the times and date(s) of the balloon test and contact information.

(g) The dates, (including a second date, in case of poor visibility or wind in excess of 15 mph on the initial date) times and location of this balloon test shall be advertised by the applicant seven and 14 days in advance of the first test date in a newspaper with a general circulation in the town and as agreed to by the Town. The applicant shall inform the Town in

writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four consecutive hours between 10:00 a.m. and 2:00 p.m. on the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with pictures from various locations of the balloon shall be provided with the application.

(h) The applicant shall notify all property owners and residents located within 1,500 feet of the nearest property line of the subject property of the proposed construction of the tower and wireless facility and of the date(s) and time(s) of the balloon test. Such notice shall be provided at least 14 days prior to the conduct of the balloon test and shall be delivered by first class mail.

(i) The wireless telecommunications facility shall be structurally designed to accommodate at least six additional antenna arrays as regards the load and stress created on the structure, with each array to be sited in such a manner as to provide for flush attachments to the greatest extent possible with the minimum separation required without causing interference. An intermodulation study shall be submitted to justify design claims as related to interference. A claim of interference because of a need to have greater than six feet of vertical clearance between facilities, measured from the vertical centerline of one array to the vertical centerline of another, must be proven by technical data showing that there is no technological alternative that would enable the service to be provided that would require less vertical space, and not merely verbal or written assertions. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the wireless telecommunications facility is not reasonably feasible if co-location is technically or commercially impractical or impracticable. The applicant shall provide information necessary to determine whether co-location is reasonably feasible based upon:

1. The kind of wireless telecommunications facilities site and structure proposed;
2. Available space on existing and approved wireless telecommunications facilities;

(j) The owner of a proposed new wireless telecommunications facility, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed wireless telecommunications facility by other wireless service providers in the future, and shall:

1. Respond within 60 days to a request for information from a potential shared-use applicant;
2. Negotiate in good faith concerning future requests for shared use of the new wireless telecommunications facility by other telecommunications providers;
3. Allow shared use of the new wireless telecommunications facility if another telecommunications provider agrees in writing to pay reasonable charges;
4. Failure to abide by the conditions outlined above may be grounds for revocation of the special use permit.

(14) The applicant shall provide certification with documentation (i.e. structural analysis) including calculations that the telecommunication facility and foundation and attachments, rooftop support structure, water tank structure, or any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) guidelines.

(15) All applications for proposed wireless telecommunications facilities shall contain a demonstration that the facility is sited and designed so as to create the least visual intrusiveness reasonably possible given the facts and circumstances involved, and thereby will have the least adverse visual effect on the environment and its character, on existing vegetation, and on the community in the area of the wireless telecommunications facility. The Town expressly reserves the right to require the use of stealth or camouflage technology or techniques such as DAS (Distributive Antenna System technology) or its functional equivalent to achieve this goal and such shall be subject to approval by Town Council.

(16) The applicant shall furnish a visual impact assessment, which shall include:

(a) A computer-generated "Zone of Visibility Map" at a minimum of one-mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage;

(b) Pictorial representations (photo simulations) of "before and after" views from key viewpoints inside of the town as may be appropriate and required, including, but not limited to, state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;

(c) A written description of the visual impact of the proposed facility, including, as applicable, the tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.

(17) The applicant shall demonstrate and provide in writing and by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed wireless telecommunications facility.

(18) The wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of stealth or camouflage or concealment technology as may be required by the Town.

(19) All utilities at a wireless telecommunications facility site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

(20) At a wireless telecommunications facility site an access road, turn around space for an emergency vehicle and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

(21) All wireless telecommunications facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, state, or United States, including, but not limited to, the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

(22) A holder of a special use permit granted under this section shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.

(23) There shall be a pre-application meeting for all intended applications. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process and certain issues or concerns the Town may have. A pre-application meeting shall also include a site visit, if there has not been a prior site visit for the requested facility. Costs of Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a consultant fee based on the fixed hourly rate to be set in the Town's fee schedule applied to the anticipated time customarily required for the review of similar applications.

(24) An applicant shall submit to the Town the number of completed applications determined to be needed at the pre-application meeting. However, applications will not be transmitted to Town Council for consideration until the application is deemed complete.

(25) If the proposed site is within two miles of another jurisdiction, written notification of the application shall be provided to the legislative body of all such adjacent municipalities as applicable and/or requested.

(26) The holder of a special use permit shall notify the Town of any intended modification of a wireless telecommunication facility and shall apply to the Town to modify, relocate or rebuild a wireless telecommunications facility.

(27) A building permit shall not be issued for construction of the wireless telecommunications facility until there is an application for a specific carrier that documents that the facility is necessary for that carrier to serve the community and that co-location on an existing telecommunications structure is not feasible within the applicant's search ring. Collocation on an existing structure is not reasonably feasible if co-location is technically or commercially impractical or impracticable or the owner of the wireless telecommunications facility is unwilling to enter into a

contract for such use at fair market value. Sufficient documentation in the form of clear and convincing evidence to support such claims shall be submitted with a wireless telecommunications facility application for the first carrier to determine whether co-location on existing structures is reasonably feasible and to document the need for a specific height and that less height will serve to prohibit or have the effect of prohibiting the provision of service.

(G) *Requirements for an application for the first antenna to be attached to an approved wireless telecommunications structure within the parameters of an approved special use permit.*

(1) The fixed application fee for review of wireless telecommunications facilities applications for locating an antenna array on an approved wireless telecommunications facility within the parameters of an approved special use permit shall be as set forth in the Town's schedule of fees.

(2) An application to increase the parameters or size of an approved wireless telecommunications facility as relates to conditioned height, profile, number of co-locations or footprint shall not qualify for treatment as an attachment to an approved wireless telecommunications facility within the parameters of an approved special use permit under this section.

(3) There shall be no special use permit required for an application to attach the first antenna array on an approved wireless telecommunications facility within the parameters of an approved special use permit, unless for good cause such shall be required by Town Council or the Planning Director. Instead, approval shall result in issuance of a building permit by the appropriate administrative officer.

(4) Documentation shall be provided to demonstrate that the applicant has the legal right to proceed as proposed on the site, including an executed copy of the lease with the owner of the facility proposed to be attached to, or a letter of agency, showing the right of the applicant to attach to the structure.

(5) A pre-application meeting shall be held. Before the pre-application meeting, the applicant shall be provided instructions for completing an application. Said instructions are to be controlling as regards the form and substance of the issues addressed in the instructions and must be followed. Prior to the pre-application meeting, the applicant shall prepare and submit a project information form provided by the Town and submit the consultant fee, but shall not prepare or submit the application until after the pre-application meeting.

(6) The applicant shall include a written statement that:

(a) The applicant's proposed wireless telecommunications facility shall be maintained in a safe manner, and in compliance with all conditions of all applicable permits and authorizations, without exception, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, state and federal laws, rules, and regulations; and

(b) The construction of the wireless telecommunications facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the state.

(7) An application for the first antenna to be attached to an approved wireless telecommunications facility subsequent to the issuance of the special use permit and prior to issuance of a building permit for construction of the wireless telecommunications facility shall contain the requirements of the streamlined process for review of co-locations in division (H) and the following information:

*Facility Description and Documentation of the Facility as Necessary*

(a) A detailed narrative description and explanation of the specific objective(s) for the new wireless telecommunications facility, expressly including and explaining the purpose for the facility, such as coverage and/or capacity, technical requirements, and the identified boundaries of the specific geographic area of intended coverage;

(b) Technical documentation that proves the design of the wireless telecommunications facility is what is necessary to provide type and coverage of the service primarily and essentially within the Town. Such documentation shall include a propagation study of the proposed site and all adjoining planned, proposed or existing sites, that demonstrates a significant gap in coverage and/or, if a capacity issue is involved, to include an analysis of the current and projected usage (traffic studies) using generally accepted industry methods and standards so as to conclusively prove the need for what is proposed. To enable the Town to make its decision as regards to the design of the wireless telecommunications facility, the Town may require the provision of all technical or engineering data and information used by the applicant that is necessary to enable an informed decision to be made to assure compliance with the intent of this section and that is based upon a written record, not to include information that by applicable law or regulation is deemed to be confidential or proprietary;

(c) All of the modeling information (i.e. data) inputted into the software used to produce the propagation studies, including, but not limited to any assumptions made, such as ambient tree height, which shall include the completion of the Town's Propagation Study Data Form;

(d) A copy of the FCC license applicable for the intended use of the wireless telecommunications facility, as well as a copy of the five and ten year build-out plan required by the FCC;

(e) The frequency, modulation and class of service of radio or other transmitting equipment;

(f) The maximum transmission power capability of all radios, as designed, if the applicant is a cellular or functional equivalent carrier, or the maximum transmission power capability, as designed, of all transmission facilities if the applicant is not a cellular or functional equivalent carrier;

(g) The actual intended transmission power stated as the maximum effective radiated power (ERP), both in dBm's and watts;

(h) A statement certifying that the wireless telecommunications facility and all attachments thereto are in compliance with the conditions of the approved special use permit.

*Ownership and Management:*

- (i) The name, address and phone number of the person preparing the application;
  - (j) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
  - (k) The postal address and tax map parcel number of the property;
  - (l) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities.
- (H) *Streamlined requirements for an application to co-locate on an existing telecommunications facility within the parameters of an approved special use permit.*
- (1) The fixed application fee for review of wireless telecommunications facilities applications for co-locating an antenna array on an existing wireless telecommunications facility shall be as set forth in the Town's schedule of fees.
  - (2) An application to increase the parameters of an approved wireless telecommunications facility as relates to conditioned height, profile, number of co-locations or footprint shall not qualify for treatment as an attachment to an existing tower or other structure under this section.
  - (3) There shall be no special use permit required for an application to modify or to co-locate an antenna array on an existing and properly permitted wireless telecommunications facility so long as the co-location or modification does not exceed the parameters of the conditions of the approved special use permit, unless for good cause such shall be required by Town Council or the Planning Director. Instead, approval shall result in issuance of a building permit by the appropriate administrative officer.
  - (4) Documentation shall be provided to demonstrate that the applicant has the legal right to proceed as proposed on the site, including an executed copy of the lease with the owner of the facility proposed to be attached to, or a letter of agency, showing the right of the applicant to attach to the structure.
  - (5) A pre-application meeting shall be held. Before the pre-application meeting, the applicant shall be provided instructions for completing an application. Said instructions are to be controlling as regards the form and substance of the issues addressed in the instructions and must be followed. Prior to the pre-application meeting, the applicant shall prepare and submit the project information form and submit the consultant fee, but shall not prepare or submit the application.
  - (6) The applicant shall include a written statement that:
    - (a) The applicant's proposed wireless telecommunications facility shall be maintained in a safe manner, and in compliance with all conditions of all applicable permits and authorizations, without exception, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, state and federal laws, rules, and regulations; and

(b) The construction of the wireless telecommunications facilities is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the state.

(7) An application for attaching an antenna array under this section shall contain the following information:

*Facility Description:*

(a) A detailed narrative description and explanation of the specific objective(s) for the new facility, or the modification of an existing wireless facility, expressly including and explaining the purpose for the facility, such as lack of coverage, and/or capacity, requirements, and the identified boundaries of the specific geographic area of intended coverage;

(b) Documentation that the design of the facility is what is necessary for the design service to serve the community (i.e. that the placement on the wireless telecommunications structure is the lowest available height necessary and that the design produces the least visual and is designed to operate within the conditions of the approved special use permit as regards to height, profile, type and number of co-locations and footprint);

(c) A copy of the FCC license applicable for the intended use of the wireless telecommunications facility, as well as a copy of the five and ten year build-out plan required by the FCC;

(d) The frequency, modulation and class of service of radio or other transmitting equipment;

(e) The maximum transmission power capability of all radios, as designed, if the applicant is a cellular or functional equivalent carrier, or the maximum transmission power capability, as designed, of all transmission facilities if the applicant is not a cellular or functional equivalent carrier;

(f) The actual intended transmission power stated as the maximum effective radiated power (ERP), both in dBm's and watts;

(g) A statement certifying that the wireless telecommunications facility and all attachments thereto are in compliance with the conditions of the approved special use permit;

*Ownership and Management:*

(h) The name, address and phone number of the person preparing the application;

(i) The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;

(j) The postal address and tax map parcel number of the property;

(k) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;

*Zoning and Planning:*

(l) The Zoning District or designation in which the property is situated;

(m) The size of the property on which the structure to be attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;

(n) The location, size and height of all existing and proposed structures on the property on which the structure is located and that is the subject of the application;

(o) A site plan showing the footprint, location and dimensions of access drives, landscaping and buffers, fencing and any other requirements of site plans;

(p) Elevations showing the vertical rendition of the wireless telecommunications facility identifying all users, attachments, and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;

(q) The azimuth, size and center line height location of all proposed and existing antennae on the supporting structure;

(r) The number, type and model of the antenna(s) proposed, along with a copy of the specification sheet(s) for the antennas;

*Safety:*

(s) The age of the tower in years, including the date of the grant of the original permit or authorization for the tower;

(t) A description of the type of tower, e.g. guyed, self-supporting lattice or monopole;

(u) The make, model, type and manufacturer of the telecommunications structure and the structural design calculations, certified by a professional engineer licensed in the state, proving the structure's capability to safely accommodate the facilities of the applicant without change or modification, or if any change or modification of the structure is needed, a detailed narrative explaining what changes are needed, why they are needed and who will be responsible to assure that the changes are made;

(v) A copy of the installed foundation design, as well as a geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for the tower site or other structure;

(w) For a tower that is five years old or older, or for a guyed tower that is three years old or older, a copy of the latest ANSI report done pursuant to the latest edition of ANSI-EIA/TIA 222F - Annex E for any self-supporting tower. If an ANSI report has not been done pursuant to the preceding schedule, an ANSI report shall be done and submitted as part of the application. No building permit shall be issued for any wireless facility where the structure

being attached to is in need of remediation, unless and until all remediation work needed has been completed or a schedule for the remediation work has been approved by the Planning Department;

(x) A structural report signed by a professional engineer licensed to do business in the state and bearing that engineer's currently valid stamp, showing the structural adequacy of the wireless telecommunications facility to accommodate the proposed modification or antenna array co-location, including any equipment shelter, unless the equipment shelter is located on the lowest floor of a building;

(y) If attaching to a structure other than a tower or where the proposed attachment is within 30 feet of areas to which the public has or could reasonably have or gain access to, documentation shall be provided, including all calculations, proving that the potential exposure to RF radiation (i.e. NIER or non-ion-emitting radiation), will be in compliance with the most recent Federal Communications Commission regulations governing RF radiation and exposure thereto, and further denoting the minimum distance from any antennas an individual may safely stand without being exposed to RF radiation in excess of the FCC's permitted standards and any portion(s) of the structure that would be exposed to RF radiation in excess of the FCC's permitted standards. In compliance with the FCC's regulations, in such an instance the RF radiation from all wireless facilities at that location shall be included in the calculations to show the cumulative effect on any area of the building or structure deemed accessible by the public or workers. Such report or analysis shall be signed and sealed by a professional engineer licensed in the state;

(z) In an instance involving a tower where the new wireless telecommunications facility will be ten meters or more above ground level, signed documentation such as the FCC's "Checklist to Determine whether a Facility may be Categorically Excluded" shall be provided to verify that the wireless telecommunication facility with the proposed installation will be in full compliance with the current FCC's RF emissions regulations. If not categorically excluded, a complete RF emissions study is required to enable verification of compliance, including providing all calculations so that such may be verified prior to issuance of a building permit;

(aa) If any section or portion of the structure to be attached to is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with yellow and black striped warning tape or a suitable warning barrier, as well as placing RF radiation signs as needed and appropriate to warn individuals of the potential danger; or

(bb) A signed statement that the applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.

(8) To protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling shall use camouflage or stealth techniques to match as closely as possible the color and texture of the structure.

(9) If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the applicant can prove that to locate elsewhere will prohibit or have the effect of prohibiting the provision of service. The provisions of the preceding division (H)(8) of this section shall also apply to any attachment to a water tank.

(10) The applicant shall provide a certification by a professional engineer licensed in the state, along with documentation (a structural analysis), including calculations, that prove that the wireless telecommunications facility and its foundation as proposed to be utilized are designed and were constructed to meet all local, Town, state, federal and ANSI structural requirements for loads, including wind and ice loads and the placement of any equipment on the roof a building after the addition of the proposed new facilities.

(11) So as to be the least visually intrusive wireless telecommunications facility reasonably possible given the facts and circumstances involved, and thereby have the least adverse visual effect and create the least intrusive or lowest profile or visual silhouette reasonably possible, unless it can be proven that such would be technologically impracticable, all antennas attached to a tower or other structure shall be flush mounted or as near to flush mounted as is possible without prohibiting or having the effect of prohibiting the provision of service so as to minimize the visual profile of the antennas, or prove technically, with hard data and a detailed narrative, that flush mounting cannot be used and would serve to prohibit or have the effect of prohibiting the provision of service.

(12) Unless it is deemed inappropriate or unnecessary by the Town given the facts and circumstances, the applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively buffer and screen from view the base and all related equipment and structures of the proposed wireless telecommunications facility up to a height of ten feet.

(13) The wireless telecommunications facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of stealth, camouflage or concealment technology as may be required by the Town and as is not impracticable under the facts and circumstances.

(14) All utilities installed for a new wireless telecommunications facility shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

(15) If deemed necessary or appropriate, an access road, turn around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion and shall comply with any local or state regulations for the construction of roads. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations.

(l) *Location of wireless telecommunications facilities.*

(1) Applicants for telecommunications towers shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, in the following order:

- (a) On existing wireless telecommunications facilities on Town-owned property without increasing the height of the tower or structure.
- (b) On other existing wireless telecommunications facilities without increasing the height of the tower or structure.
- (c) On Town owned properties or facilities.
- (d) On properties in areas zoned for business use.
- (e) On properties in areas zoned for rural use.
- (f) On properties in areas zoned for residential use.
- (g) On properties in designated Historic Districts.

(2) Applicants for all other wireless telecommunications facilities (e.g. distributed antenna systems or buildings) shall locate, site and construct said wireless telecommunications facilities in accordance with the following priorities, in order:

- (a) On existing wireless telecommunications facilities on Town-owned property without increasing the height of the tower or structure.
- (b) On other existing wireless telecommunications facilities without increasing the height of the tower or structure.
- (c) On Town owned properties or facilities.
- (d) On properties in areas zoned for business use.
- (e) On properties in areas zoned for rural use.
- (f) On properties in areas zoned for residential use.
- (g) On properties in designated Historic Districts.

(3) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation and justification must be provided as to why a site of all higher priority designations was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the wireless telecommunications facility as proposed.

(4) An applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected or because there is an existing lease with a landowner. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to

the reasonable satisfaction of the Town why co-location is technically or commercially impracticable. Agreements between wireless telecommunications facility owners limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.

(5) Notwithstanding the above, the Town may approve any site located within an area in the above list of priorities, provided that the Town finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Conversely, the Town may direct that the proposed location be changed to another location that is more in keeping with the goals of this section and the public interest as determined by the Town.

(6) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Town may disapprove an application for any of the following reasons:

- (a) Conflict with safety and safety-related codes and requirements;
- (b) Conflict with the historic nature or character of a neighborhood or district;
- (c) The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
- (d) The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers;
- (e) The placement and location of a wireless telecommunications facility would result in a conflict with or compromise in or change the nature or character of the surrounding area;
- (f) Conflicts with the provisions of this section;
- (g) Failure to submit a complete application as required under this section.

(7) Notwithstanding anything to the contrary in this section, for good cause shown, such as the ability to utilize a shorter or less-intrusive facility elsewhere and still accomplish the primary service objective, the Town may require the relocation of a proposed site, including allowing for the fact that relocating the site chosen by the applicant may require the use of more than one site to provide substantially the same service if the relocation could result in a less intrusive facility or facilities, singly or in combination. The existence of a lease entered into prior to the approval of an application shall not be deemed justification for the requested location.

(J) *Shared use of wireless telecommunications facilities structures.*

(1) The Town requires the co-location of antenna arrays on existing wireless telecommunications facilities as opposed to the construction of a new wireless telecommunications facility or increasing the height, footprint or profile beyond the conditions of the approved special use permit for an existing wireless telecommunications facility, unless such is proven to be technologically impracticable. The applicant shall submit a comprehensive report inventorying all existing wireless telecommunications facilities and other suitable structures within one mile of the

location of any proposed new wireless telecommunications facility, unless the applicant can show that some other distance is more appropriate and reasonable and demonstrate conclusively why an existing wireless telecommunications facility or other suitable structure cannot be used.

(2) An applicant intending to locate on an existing wireless telecommunications facility shall be required to document the intent of the existing owner to permit its use by the applicant.

(3) Such shared use shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.

(K) *Type and height of wireless telecommunications facilities.*

(1) All new towers, except stealth and DAS facilities, shall be of the monopole type, unless such is able to be proven to be technologically impracticable. No new towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly granted.

(2) The applicant shall submit documentation justifying the total height of any wireless telecommunications facility or antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to produce the studies at the requested height and a minimum of ten feet lower height to enable verification of the need for the requested height.

(3) For a new wireless telecommunications facility a reduction in the identified size of the identified service area of 10% or less of the predicted service area shall not be deemed justification for exceeding the otherwise maximum allowable height of a wireless telecommunications facility.

(4) The maximum permitted total height of a new wireless telecommunications facility shall be 120 feet above pre-construction ground level, unless it can be proven that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the community. The maximum permitted height is not an as-of-right height, but rather the maximum permitted height, absent proof of the technological need for a greater height.

(5) For a wireless facility to be located on an existing wireless telecommunications facility, such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown. A reduction in the size of the identified service area of 10% or less of the predicted service area shall not be deemed justification for increasing the height of a facility.

(6) Notwithstanding the preceding division (K)(4) of this section, wireless telecommunications facilities shall be no taller than the minimum height technologically necessary to enable the provision of wireless service coverage or capacity as needed within the community (i.e. the Town, and its jurisdiction).

(7) Documentation substantiating the height necessary to provide for the placement of an antenna array to provide wireless service to the community shall be submitted by the applicant prior to issuance of a building permit for a new wireless telecommunications facility, i.e. tower, but shall not be required prior to the issuance of the special use permit, unless the requested height exceeds the 120 foot maximum height. Such documentation shall be provided with an application

for the first attachment of an antenna array and for any proposed increase in the previously permitted height.

(8) Relief from the maximum height for new wireless telecommunications facilities shall only be considered where evidence substantiates a taller height is necessary for the provision of wireless service to the community, to the exclusion of any alternative option that is not technologically or commercially impracticable, and where denial of a taller height would have the effect of prohibiting the provision of wireless service to the community. Such documentation shall be provided prior to consideration of a special use permit when the requested height exceeds the 120 foot maximum height.

(9) Prior to issuing a building permit for the co-location of an antenna array on an existing wireless telecommunications facility, an applicant shall demonstrate that the co-location is located appropriately on the wireless telecommunications facility with the overall goal being to preserve the carrying capacity of the wireless telecommunications facility for future co-locations and to minimize the visual intrusiveness and impact, including the profile of the wireless telecommunications facility.

(10) In determining the necessary height for a wireless telecommunications facility, or the height or placement of a co-location on a wireless telecommunications facility, the signal strengths analyzed shall be the threshold or lowest signal strength at which the customer equipment is designed to function, which may be required to be determined by the manufacturer's published specifications for the customer equipment.

(11) As the Town has made the policy decision that more towers of a shorter height is in the public interest, as opposed to fewer taller towers, spacing, or the distance between towers, shall be such that the service may be provided without exceeding the maximum permitted height.

(L) *Visibility and noise of wireless telecommunications facilities.*

(1) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by federal regulations.

(2) Stealth. All new wireless telecommunications facilities, including, but not limited to, towers, shall utilize stealth or camouflage techniques and technology, unless such can be shown to be either commercially or technologically impracticable.

(3) Dual mode. In order to minimize the number of antenna arrays and thus the visual impact, the Town may require the use of dual mode antennas to be used, including by two different carriers, unless it can be proven that such will not work technologically and that such would have the effect of prohibiting the provision of service in the Town.

(4) Wireless telecommunications facilities finish/color. Structures shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this section.

(5) Lighting. If lighting is legally required or proposed, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations. For any wireless telecommunications facility for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents

the ground scatter effect so that it is not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least one mile in a level terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.

(6) In the event a wireless telecommunications facility that is lighted is modified, at the time of the modification the Town may require that the tower be retrofitted with the technology set forth in the preceding division (L)(5) of this section.

(7) Flush mounting. All new or replacement antennas, except omni-directional whip antennas, shall be flush-mounted or as close to flush-mounted as is technologically possible on any wireless telecommunications facility, so long as such does not have the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), unless the applicant can prove that it is technologically impracticable.

(8) Placement on building - facade. If attached to a building, all antennas shall be mounted on the fascia of the building and camouflaged so as to match the color and, if possible, texture of the building or in a manner so as to make the antennas as visually innocuous and undetectable as is possible given the facts and circumstances involved.

(9) All facilities at a wireless telecommunications facility, regardless of the owner of the facilities, shall comply with the Town's noise control and abatement regulations, without exception.

(10) As part of the final inspection prior to the grant of the certificate of completion, the applicant shall demonstrate compliance with the Town's noise control and abatement regulations in the presence of a Town representative by running all equipment, including any standby or backup electrical generator. Noise levels in decibels shall be taken at all property lines adjacent to the site using standard and general accepted equipment for determining noise levels.

(M) *Security of wireless telecommunications facilities.* All wireless telecommunications facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

(1) All wireless telecommunications facilities, including antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and

(2) Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

(N) *Signage.* Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

(O) *Setbacks.*

(1) All proposed telecommunication towers and any other proposed wireless telecommunications facility attachment structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: a distance equal to the height of the proposed tower or other wireless telecommunications facility structure plus 10% of the height of the telecommunications structure, otherwise known as the fall zone, or the existing setback requirement of the underlying zoning district, whichever is greater. Any accessory structure shall be located within the footprint as approved in the special use permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The fall zone shall be measured from the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile. Further, the nearest portion of any access road leading to a wireless telecommunications facility shall be no less than 15 feet from the nearest property line.

(2) There shall be no development of habitable buildings within the fall zone set forth in the preceding division (O)(1) of this section.

(P) *Retention of expert assistance cost to be borne by applicant.*

(1) The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any site inspections.

(2) To prevent the taxpayers from having to bear the cost related to the issue of the regulation of wireless telecommunications facilities, an applicant shall pay the Town's consultant fee based on the fixed hourly rate and the amount to be set forth in the Town's fee schedule. The amount of the fee shall be based on what has been usual and customary in the Town for the review and permitting assistance related to wireless telecommunications towers and facilities and shall be based upon the anticipated time customarily required for the review of similar applications to cover all reasonable costs of consultant and expert evaluation and consultation with the Town in connection with the submittal, review and permitting of any application, and where applicable, any lease negotiation, pre-approval evaluation and including any construction and modification of the site, once permitted. The placement of the initial consultant fee with the Town shall precede the pre-application meeting or any work being done as regards to processing an application. The Town will maintain accounting for the expenditure of all such funds. The Town's consultants/experts shall invoice the Town for all time expended for its services in reviewing the application, including the construction and modification of the site, once permitted. If at any time during the process this consultant fee has a balance of less than one-fourth of the initial consultant fee due to an incomplete application, incorrect information contained in the application or non-compliance with the requirements of this section, the applicant shall immediately, upon notification by the Town, provide a consultant fee equivalent to one-half of the initial consultant fee. Such additional funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount paid to the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant subsequent to the issuance of a certificate of completion, unless the application is abandoned or withdrawn, in which case there shall be no refund.

(3) There shall be four categories of consultant fees, such being: lease negotiations fee; application assistance and review fee; application amendment fee; and public hearing fee. Said fees

shall be set forth in the Town's published schedule of fees and may be adjusted from time to time by Town Council.

(4) The fixed fee shall be based on the hourly rate of the consultant, which may be adjusted from time to time, multiplied by the number of hours that have been usual and customary in the Town for similar applications for wireless telecommunications structures and facilities, which number of hours may also be adjusted from time to time based on experience. The total amount of the funds needed as set forth in division (P)(3) above may vary with the scope of what is requested (e.g. lease negotiations in addition to any application review) and the complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

(5) Records of all outside costs associated with the review and permitting process shall be maintained and available for public inspection, in compliance with applicable North Carolina law.

(Q) *Procedural requirements for a special use permit.*

(1) The procedures established for special uses in § 155.711 shall apply where wireless telecommunications facilities require a special use permit as required or otherwise specified in this section.

(2) The Town shall schedule the required public hearing once it finds the application is complete and is not required to set a date if the application is not complete. The Town, at any stage prior to issuing a special use permit, may require such additional information as it deems necessary as such relates to the issue of the siting, construction or modification of a wireless telecommunications facility.

(3) A special use permit shall be issued for a wireless telecommunications structure upon Town Council review and approval, but the building permit for said telecommunications structure shall not be issued until an applicant has provided substantiating documentation under the section governing the placement of the first antenna array prior to construction of a new wireless telecommunications facility.

(R) *Action on an application for a special use permit for wireless telecommunications facilities.*

(1) The Town will undertake a review of an application pursuant to this subchapter in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution.

(2) The Town may refer any application or part thereof to any advisory or other committee for a non-binding recommendation.

(3) After the public hearing and after formally considering the application, the Town may approve, approve with conditions, or deny a special use permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the applicant.

(4) If the Town approves the special use permit for the wireless telecommunications facility, then the applicant shall be notified of such approval in writing within 30 calendar days of the Town's

action, and the special use permit shall be issued within 30 days after such approval. Except for necessary construction plan documents, building permits, and subsequent certificates of compliance, once a special use permit has been granted hereunder, no additional site plan or zoning approvals, shall be required by the Town for the wireless telecommunications facilities covered by the special use permit. Each modification or co-location of an antenna array shall require the submission of a wireless telecommunications facility application and building permit application.

(5) If the Town denies the special use permit for wireless telecommunications facilities, then the applicant shall be notified of such denial at the Town Council meeting and in writing within 30 calendar days of the Town Council's action and shall set forth in writing the reason or reasons for the denial.

(S) *Extent and parameters of special use permit for wireless telecommunications facilities.* The extent and parameters of a special use permit for wireless telecommunications facilities shall be as follows:

(1) Such special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the Town.

(2) Following an opportunity to cure and, if not cured within the time frame set forth in the notice of violation, a hearing upon due prior notice to the applicant, such special use permit may be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit, or for a material violation of this section or other applicable law, rule or regulation. Notice of a violation and of the date, time and place of a hearing shall be provided by registered mail to the last known address of the holder of the special use permit.

(T) *Application fee.* At the time that a person submits an application for a special use permit for a new wireless telecommunications facility, such person shall pay a non-refundable application fee set forth in the Town's fee schedule as may be amended or changed from time to time.

(U) *Removal and performance security.* The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount of at least \$75,000 for a tower and with such sureties as are deemed sufficient by the Town to assure the faithful performance of the terms and conditions of this section and conditions of any special use permit issued pursuant to this section. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original special use permit.

(V) *Reservation of authority to inspect wireless telecommunications facilities.* In order to verify that the holder of a special use permit for wireless telecommunications facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

(W) *Liability insurance.*

(1) A holder of a special use permit for wireless telecommunications structures shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the special use permit in amounts as set forth below:

- (a) Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- (b) Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- (c) Umbrella coverage: \$3,000,000; and
- (d) Workers compensation and disability: statutory amounts.

(2) For a wireless telecommunications facility on Town property, the commercial general liability insurance policy shall specifically name the Town and its officers, boards, employees, committee members, attorneys, agents and consultants as additional insured.

(3) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A.

(4) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days prior written notice in advance of the cancellation of the insurance.

(5) Renewal or replacement policies or certificates shall be delivered to the Town at least 15 days before the expiration of the insurance that such policies are to renew or replace.

(6) Before construction of a permitted wireless telecommunications facilities is initiated, but in no case later than 15 days prior to the grant of the building permit, the holder of the special use permit shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

(7) A certificate of insurance that states that it is for informational purposes only and does not confer rights upon the Town shall not be deemed to comply with this section.

(X) *Indemnification.*

(1) Any application for wireless telecommunication facilities that is proposed for Town property, pursuant to this section, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the ordinance, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or

intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

(2) Notwithstanding the requirements noted in division (a) above, an indemnification provision will not be required in those instances where the Town itself applies for and secures a special use permit for wireless telecommunications facilities.

(Y) *Fines.*

(1) In the event of a violation of this section or any special use permit issued pursuant to this section, the Town may impose and collect, and the holder of the special use permit for wireless telecommunications facilities shall pay to the Town, fines or penalties as set forth in § 155.720.

(2) Notwithstanding anything in this section, the holder of the special use permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this section or any section of this chapter. An attempt to do so shall subject the holder of the special use permit to termination and revocation of the special use permit. The Town may also seek injunctive relief to prevent the continued violation of this section, without limiting other remedies available to the Town.

(Z) *Default and/or revocation.* If a wireless telecommunications structure or facility is repaired, rebuilt, placed, and moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this section or of the special use permit, then the Town shall notify the holder of the special use permit in writing of such violation. A permit holder in violation may be considered in default and subject to fines as in division (Y) of this section and if a violation is not corrected to the satisfaction of the Town in a reasonable period of time the special use permit is subject to revocation.

(AA) *Removal of wireless telecommunications facilities.*

(1) The owner of any wireless telecommunications facility or wireless facility shall be required to provide a minimum of 30 days written notice to the Town Clerk prior to abandoning any wireless telecommunications facility or wireless facility.

(2) Under the following circumstances, the Town may determine that the health, safety, and welfare interests of the Town warrant and require the removal of wireless telecommunications facilities.

(a) Wireless telecommunications facilities with a permit have been abandoned (i.e. not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365 day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days of abandonment;

(b) Permitted wireless telecommunications structures or facilities fall into such a state of disrepair that it creates a health or safety hazard;

(c) Wireless telecommunications structures or facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the

required special use permit, or any other necessary authorization and the special permit may be revoked.

(3) If the Town makes such a determination as noted in division (AA)(1) above, then the Town shall notify the holder of the special use permit for the wireless telecommunications facilities within 48 hours that said wireless telecommunications facilities are to be removed, the Town may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facilities.

(4) The holder of the special use permit, or its successors or assigns, shall dismantle and remove such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Town. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the Town.

(5) If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within 90 days after the permit holder has received notice, then the Town may order officials or representatives of the Town to remove the wireless telecommunications facilities at the sole expense of the owner or special use permit holder.

(6) If the Town removes, or causes to be removed, wireless telecommunications facilities, and the owner of the wireless telecommunications facilities does not claim and remove it from the site to a lawful location within ten days, then the Town may take steps to declare the wireless telecommunications facilities abandoned, and sell them and their components.

(7) Notwithstanding anything in this section to the contrary, the Town may approve a temporary use permit/agreement for the wireless telecommunications facilities, for no more than 90 days, during which time a suitable plan for removal, conversion, or relocation of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit, subject to the approval of the Town, and an agreement to such plan shall be executed by the holder of the special use permit and the Town. If such a plan is not developed, approved and executed within the 90 day time period, then the Town may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this section and utilize the bond in this division (AA).

(BB) *Relief.* Any applicant desiring relief, waiver or exemption from any aspect or requirement of this section may request such at the pre-application meeting, provided that the relief or exemption is contained in the submitted application for either a special use permit, or in the case of an existing or previously granted special use permit a request for modification of its wireless telecommunications facility and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the applicant to prove. The applicant shall bear all costs of the Town in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the Town, its residents and other service providers.

(CC) *Periodic regulatory review by the Town.*

(1) The Town may at any time conduct a review and examination of this entire section.

(2) If after such a periodic review and examination of this section, the Town determines that one or more provisions of this section should be amended, repealed, revised, clarified, or deleted, then the Town may take whatever measures are necessary in accordance with applicable ordinance in order to accomplish the same. It is noted that where warranted, and in the best interests of the Town, the Town may repeal this entire section at any time.

(3) Notwithstanding the provisions of subdivisions (1) and (2) above, the Town may at any time and in any manner (to the extent permitted by federal, state, or local law), amend, add, repeal, and/or delete one or more provisions of this section.

(DD) *Adherence to state and/or federal rules and regulations.*

(1) To the extent that the holder of a special use permit for wireless telecommunications facilities has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a special use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

(2) To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a special use permit for wireless telecommunications facilities, then the holder of such a special use permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

(EE) *Bi-annual meeting.* In order to develop a logical, rational plan of deployment and siting of wireless telecommunications facilities within the Town that provides reasonable coverage within the Town based on the needs of the Town and its residents, while minimizing the number and intrusiveness of the facilities and the most efficient use of wireless telecommunications facilities sites, twice annually within the months of January and June of each calendar year, the Town shall hold a meeting of all carriers and tower companies who have filed applications the previous year or anyone who has expressed an interest in filing an application to construct a wireless telecommunications facility. The Town shall notify each party of the date, time and place of the meeting no later than 30 days prior to the meeting at the last known address of the party and attendance shall be expected. In order to allow the allocation of the Town's resources to those applications deemed urgent or critical so that they may be permitted and service provided as expeditiously as is reasonably possible, lack of attendance shall be deemed as evidence of a lack of urgency or any critical need for the facility and subject the party not attending to a longer review process than for those attending. Consideration of applications by those not attending shall be addressed and considered by the Planning Board twice annually, at dates to be established by the Planning Board. Exceptions to this policy may be granted by the Director of Planning based on facts and circumstances deemed sufficient to warrant exception that are shown to be in the interest of the Town and its residents.

(FF) *Conflict with other laws.* Where this section differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the Town, state or federal government, this section shall apply.

(GG) *Effective date.* This section shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

(HH) *Authority.* This section is enacted pursuant to applicable authority granted by the state and federal government.

(II) *Severability.*

(1) If any word, phrase, sentence, part, section, subsection, or other portion of this section or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this section, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

(2) Any special use permit issued under this section shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the Town.

(Ord. 2005-11-02, passed 11-21-05; Am. Ord. 2008-10-03, passed 10-6-08)

**Duly adopted this \_\_\_\_ day of \_\_\_\_ 2012, while in regular session.**

\_\_\_\_\_  
**Jody L. McLeod**  
**Mayor**

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Sherry L. Scoggins, MMC**  
**Town Clerk**

\_\_\_\_\_  
**Katherine Ross**  
**Town Attorney**

**TOWN OF CLAYTON**  
**Amendment to the Code of Ordinances: Chapter 155**  
**Unified Development Code**

**BEING HEREBY ADOPTED BY THE TOWN COUNCIL FOR THE TOWN OF CLAYTON, NORTH CAROLINA to relocate Section 155.403(J) to Section 155.204(D) and to remove same from Section 155.403 (J):**

**(D) *Downtown Overlay District.*** The Downtown Overlay District is established for the purpose of fostering the economic vitality of the area within the district's boundaries. It is recognized that a vibrant downtown promotes the economic development and stability of the entire community. The standards established herein shall be applied to all nonresidential properties which are located within the district's boundaries.

**(1) *Designation of Downtown Overlay District.*** This district shall be an overlay district and shall include all commercially zoned properties located within the Downtown Overlay District of the Town Zoning Map.

**(2) *Permitted uses.*** All permitted, special and conditional uses of the underlying zoning district are allowed subject to the specific requirements and procedures for each classification.

**(3) *Dimensional requirements.*** The dimensional requirements of this Overlay District shall be the same as the underlying zoning district.

**(4) *Sign regulations.***

**(a) *Easels.*** Easels shall be permitted within the Downtown Overlay District provided that there is a minimum of five feet of sidewalk clearance. Easels shall be uniform in size (maximum six square feet) and type as selected by the Town Downtown Development Association. Easels will only be allowed during business hours. Only one easel shall be allowed per business.

**(b) *Window signs.*** One 11-inch by 17-inch window sign or two 8 1/2-inch by 11-inch window signs shall be permitted per business per street frontage. Changeable letter signs shall be prohibited in the Downtown Overlay District except for "historic signs."

**(c) *Promotional banners.***

**1.** Promotional banners not exceeding 12 square feet shall be permitted in the Downtown Overlay District for periods of up to 14 days. Promotional banners shall be allowed a maximum of four times per year. All promotional banners must

be reviewed and approved by Planning Director and a permit must be issued. Promotional banners must be removed immediately following the 14-day period.

2. Religious, governmental, civic, and bona fide nonprofit organizations may display a single promotional banner within or over a public right-of-way for a period not to exceed 14 days, subject to the issuance of a permit by the Planning Department. Such banner shall be erected by the Town in a manner which does not endanger the public use of said right-of-way. No organization may erect a promotional banner under the terms of this section more than twice in a 12 month period

(d) Decorative flags and banners. Decorative flags and banners shall be reviewed and approved by the Planning Director. Holiday decorations may be installed for a maximum period of seven weeks. Seasonal banners must correspond to the appropriate season.

Duly adopted this \_\_\_\_ day of \_\_\_\_\_ 2012, while in regular session.

\_\_\_\_\_  
Jody L. McLeod  
Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Sherry L. Scoggins, MMC  
Town Clerk

\_\_\_\_\_  
Katherine Ross  
Town Attorney

**TOWN OF CLAYTON  
CONSISTENCY AND REASONABLENESS STATEMENT**

Text Amendment to Article 2, Article 3, and Article 4

**THE TOWN COUNCIL OF THE TOWN OF CLAYTON HEREBY STATES:**

**Section 1: Text Amendments to Chapter 155 Article 2, Chapter 155 Article 3, and Chapter 155 Article 4 of the Unified Development Code are consistent with the Town of Clayton Strategic Growth Plan.**

**Section 2: Based upon information presented at the public hearings and based upon the recommendations and detailed information developed by staff and/or the Planning Board contained in the staff report, and considering the criteria of Section 155.703(H) of the Unified Development Code of the Town of Clayton, Text Amendment revisions to Chapter 155 Articles 2, 3 and 4 of the Unified Development Code are reasonable and in the public interest.**

Duly approved this \_\_\_\_ day of \_\_\_\_ 2012, while in regular session.

\_\_\_\_\_  
**Jody L. McLeod  
Mayor**

**ATTEST:**

\_\_\_\_\_  
**Sherry L. Scoggins, MMC  
Town Clerk**

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 6a Meeting Date: 12/3/12

TITLE: NOISE ORDINANCE – **TRACKING PURPOSES ONLY.**

DESCRIPTION: At its May 7, 2012, Council meeting, a spreadsheet comparing noise ordinances was presented to the Town Council.

The purpose of the discussion is to receive Council feedback and direction on this item.

At the September 17, 2012, Council meeting, Town Manager Biggs stated he spoke with personnel at Caterpillar and requested they obtain noise readings from around Town and to include Horne Square, neighborhoods, and the vicinity of Clayton High School in the evening hours.

On October 15, 2012, the Council held a special meeting on the Town Square for the purpose of a noise measurement demonstration.

During the October 15, 2012, work session, it was the consensus of the Council to receive information on the number of citations for noise complaints.

Police Chief Glen Allen submitted the following:

**From October 1, 2011 through September 30, 2012 there were two (2) people cited for noise ordinance violations.**

**During that span there were 236 calls for service related to noise, but that includes all sources (cars, explosions, music, parties, dogs barking, heavy equipment, etc.) .**

RELATED GOAL: Administrative

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
5-21-12	Discussion.	Spreadsheet.
6-04-12	Tracking.	None.
7-19-12	Discussion.	
8-06-12	Discussion.	N/A.
8-20-12	Discussion.	
9-04-12	Discussion.	
9-17-12	Discussion.	
10-01-12	Discussion.	
10-15-12	Discussion.	
11-05-12	Discussion.	
11-19-12	<b>TRACKING PURPOSES.</b>	N/A.
12-03-12	TRACKING PURPOSES.	N/A.

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 6b

Meeting Date: 12/3/12

TITLE: DEMOLITION ORDINANCE FOR 110 WEST FRONT STREET.

DESCRIPTION: Discussion.

At the July 16, 2012, Council work session, it was the consensus of the Council that staff draft the ordinance authorizing the building inspector to have the property demolished in the event Town does not see work initiated within the specified timeframe.

At its August 6, 2012, Council meeting, it was the consensus of the Council to continue this item for 90 days.

At its November 5, 2012, Council meeting, the Council received information from the lien holder of this property.

All Council members voted in favor of continuing this item to the November 19, 2012, Council meeting in order to receive additional information.

***This item may require Council action.***

RELATED GOAL: Think Downtown & Administrative

ITEM SUMMARY:

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
7-16-12	Discussion.	Ordinance.
8-06-12	Discussion.	Ordinance, map, NC GS 160A-439, and Town Code Of Ordinances section 153.027.
10-15-12	None – Tracking.	Ordinance, map, NC GS 160A-439, and Town Code Of Ordinances section 153.027.
11-05-12	Discussion.	Ordinance, map, NC GS 160A-439, and Town Code Of Ordinances section 153.027.
11-19-12	Discussion.	Ordinance, map, NC GS 160A-439, and Town Code Of Ordinances section 153.027.
12-3-12	Discussion.	Ordinance, Map, NC GS 160A-439, and Town Code of Ords section 153.027.

**TOWN OF CLAYTON, NORTH CAROLINA  
ORDINANCE DIRECTING THE ENFORCEMENT OFFICER TO REMOVE  
OR DEMOLISH THE NONRESIDENTIAL BUILDING OR STRUCTURE  
LOCATED AT 110 W. FRONT STREET**

**WHEREAS**, pursuant to the enforcement of the Nonresidential Building or Structure Code contained in Chapter 153 of the Town of Clayton Code of Ordinances, as authorized by the provisions of North Carolina General Statute 160A-439, the owner of the nonresidential building or structure described below has failed to comply with an Order of the Building Inspector to either (i) repair, alter or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by the Nonresidential Building or Structure Code or (ii) remove or demolish the nonresidential building or structure;

**WHEREAS**, the Town Council of the Town of Clayton, North Carolina does hereby find and determine that the owner of the nonresidential building or structure described below has been given a reasonable opportunity to bring the nonresidential building or structure in conformity with the minimum standards established by the Nonresidential Building or Structure Code contained in Chapter 153 of the Code of Ordinances for Clayton, North Carolina; and

**WHEREAS**, North Carolina General Statute 160A-439(f) and Section 153.027 of the Code of Ordinances for the Town of Clayton, North Carolina empower the Town Council to enact this ordinance to authorize and direct the Enforcement Officer to remove or demolish a nonresidential building or structure when the owner has failed to comply with an Order of the Enforcement Officer issued pursuant to the provisions of the Nonresidential Building or Structure Code;

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Clayton, North Carolina that:

**Section 1.** The Enforcement Officer is hereby authorized and directed to proceed to demolish and remove the nonresidential building or structure located at 111 W. Front Street in the Town of Clayton, North Carolina, and owned by Robert W. Bryant Sr. and Patricia H. Bryant as listed with the Tax Office for the County of Johnston and as described in DB 3214 Page 136 Johnston County Register of Deeds.

**Section 2.** The cost of demolition and removal shall constitute a lien against the real property described above. The lien shall be filed, have the same priority, and be enforced and the costs collected in the same manner as the lien for special assessment established by Article 10 of Chapter 160A of the North Carolina General Statutes. The amount of the costs shall also be a lien on any other real property of the owner located within the corporate limits of the Town of Clayton except for the owner's primary residence, said additional lien to be inferior to all prior liens and shall be collected as a money judgment.

**Section 3.** Any recoverable materials of the building or structure demolished or removed and any personal property, fixtures, or appurtenances found in or attached to the building or structure shall be offered for sale by the Enforcement Officer and the proceeds shall be credited against the cost of removal or demolition and any balance remaining shall be deposited in superior court where it shall be secured and disbursed in the manner provided by North Carolina General Statute 160A-439 (i)(3).

**Section 4.** This ordinance shall be recorded in the Office of the Register of Deeds of Johnston County and shall be indexed in the name of the property owner in the grantor index.

**Section 5.** This ordinance shall become effective upon its adoption.

[Remainder of page intentionally left blank.]

Duly adopted this the 3rd day of December 2012 while in regular session.

(SEAL)

\_\_\_\_\_  
Jody L. McLeod,  
Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Sherry L. Scoggins, MMC  
Town Clerk

\_\_\_\_\_  
Katherine Ross,  
Town Attorney

\*\*\*\*\*

**NORTH CAROLINA  
JOHNSTON COUNTY**

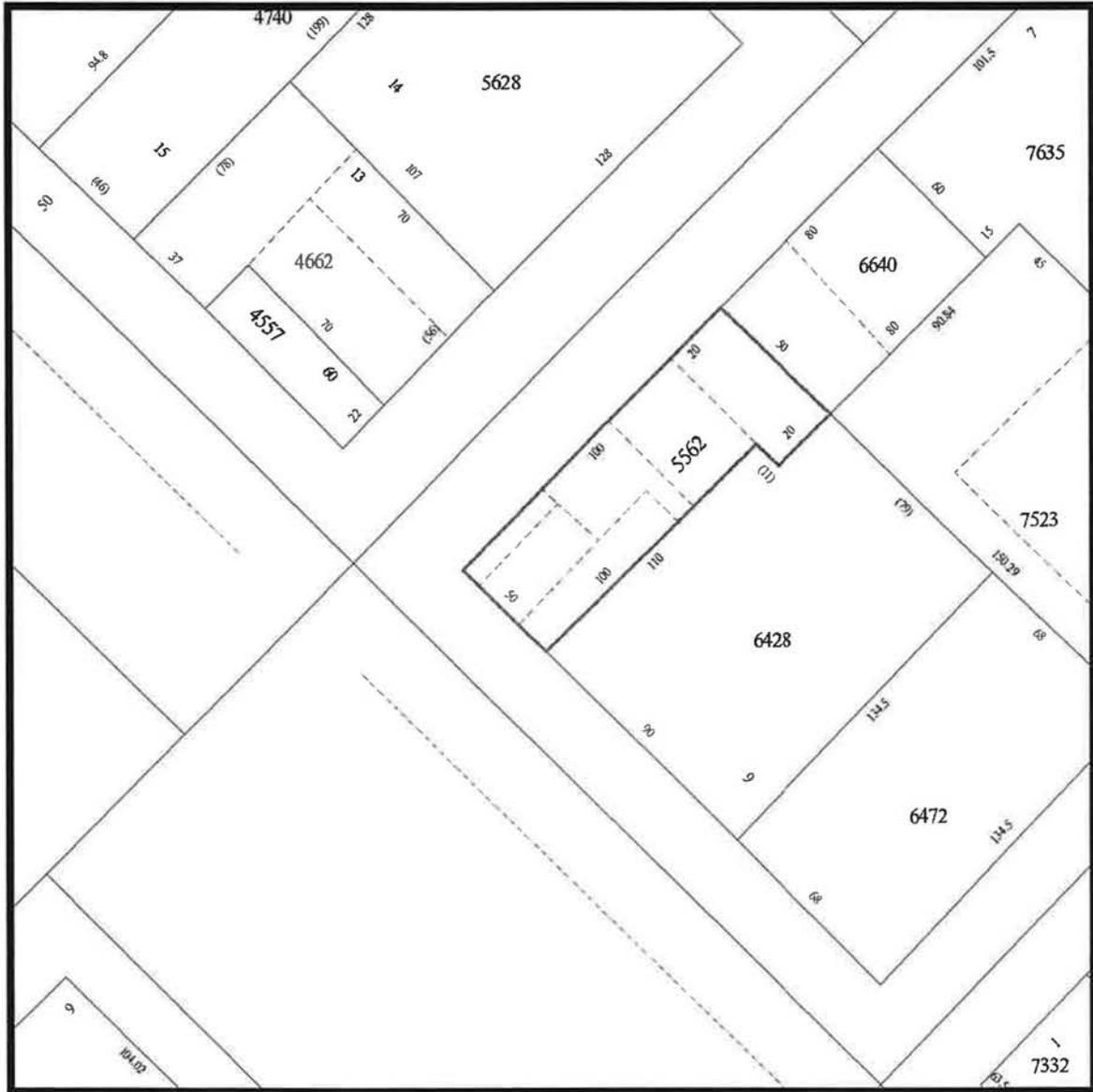
I, \_\_\_\_\_, a Notary Public, do hereby certify that Sherry L. Scoggins personally came before me this day and acknowledged that she is Town Clerk of the Town of Clayton and that by authority duly given and as the act of the Town the foregoing instrument was signed in its name by Jody L. McLeod, Mayor of the Town of Clayton.

Witness my hand and notarial seal this the \_\_\_\_\_ day of \_\_\_\_\_ 2012.

(SEAL)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Commission Expires



\*\*\* DISCLAIMER \*\*\*

Johnston County assumes no legal responsibility for the information.

**Query Parcel 1**

Tag: 05031012

NCPin: 166913-03-5562

Mapsheet No: 166913

Owner Name1: BRYANT, ROBERT W SR

Owner Name2: BRYANT, PATRICIA H

Mail Address1: 230 W WHITAKER ST

Mail Address2:

Mail Address3: CLAYTON NC 27520-0000

Site Address1: Not Available

Site Address2: Not Available

Book: 03214

Page: 0136

Market Value: 112010

Assessed Acreage: 0.13

Calc Acreage: 0.13

Sale Price: 155500

Sale Date: 2006-10-10



1 inch = 60 feet

(The scale is only accurate when printed landscape on a 8.5x11 in size sheet with page scaling set to none.)

Date July 30, 2012

**(f) Action by Governing Body Upon Failure to Comply With Order.**

(1) If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the nonresidential building or structure, the governing body may adopt an ordinance ordering the public officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the public officer found to be jeopardizing the health or safety of its occupants or members of the general public. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the public officer may cause the building or structure to be repaired, altered, or improved or to be vacated and closed. The public officer may cause to be posted on the main entrance of any nonresidential building or structure so closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a Class 3 misdemeanor.

(2) If the owner fails to comply with an order to remove or demolish the nonresidential building or structure, the governing body may adopt an ordinance ordering the public officer to proceed to effectuate the purpose of this section with respect to the particular property or properties that the public officer found to be jeopardizing the health or safety of its occupants or members of the general public. No ordinance shall be adopted to require demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with the minimum standards established by the governing body. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following adoption of an ordinance, the public officer may cause the building or structure to be removed or demolished.

**(g) Action by Governing Body Upon Abandonment of Intent to Repair.** If the governing body has adopted an ordinance or the public officer has issued an order requiring the building or structure to be repaired or vacated and closed and the building or structure has been vacated and closed for a period of two years pursuant to the ordinance or order, the governing body may make findings that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in its vacated and closed status would be inimical to the health, safety, and welfare of the municipality in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area. Upon such findings, the governing body may, after the expiration of the two-year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

(1) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards is less than or equal to fifty percent (50%) of its then current value, the ordinance shall require that the owner either repair or demolish and remove the building or structure within 90 days; or

(2) If the cost to repair the nonresidential building or structure to bring it into compliance with the minimum standards exceeds fifty percent (50%) of its then current value, the ordinance shall require the owner to demolish and remove the building or structure within 90 days.

In the case of vacant manufacturing facilities or vacant industrial warehouse facilities, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of five years before the governing body may take action under this subsection. The ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with the ordinance, the public officer shall effectuate the purpose of the ordinance.

**§ 153.027 IN REM ACTION BY THE INSPECTOR.**

After failure of an owner of a nonresidential building or structure to comply with an order of the Inspector issued pursuant to the provisions of this chapter and upon adoption by the Town Council of an ordinance authorizing and directing the owner to do so, as provided by G.S. § 160A-439(f) and § 153.022(D), the Inspector shall proceed to cause such nonresidential building or structure to be repaired, altered, or improved to comply with the minimum standards established by this chapter, or to be vacated and closed or to be removed or demolished, as directed by the ordinance of the Town Council. The Inspector may cause to be posted on the main entrance of any nonresidential building or structure which is to be vacated and closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a Class 3 misdemeanor.

(Ord. 2008-09-02, passed 9-2-08)

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 8c

Meeting Date: 12/03/12

TITLE: TOWN CLERK

DESCRIPTION: Calendar of Events:

- Planning Board Mtg – Monday, November 26, 2012 @ 6 PM
- Fire Advisory Board Mtg – Thursday, November 29, 2012 @ 7:30 PM
- Clayton Downtown Christmas Village & Tree Lighting Ceremony – Thursday, November 29, 2012; 6 PM to 8:30 PM
- 10 Year Anniversary Gala of the Clayton Center – Saturday, December 1, 2012
- Council Mtg – Monday, December 3, 2012 @ 6:30 PM
- Clayton Christmas Parade – Saturday, December 8, 2012, 3 PM – 5 PM
- Council Mtg – Monday, December 17, 2012 @ 6:30 PM
- Planning Board Mtg – **TUESDAY**, December 18, 2012 @ 6 PM
- Board of Adjustment Mtg – Wednesday, December 19, 2012 @ 6 PM
- Christmas Holiday – Monday, December 24, 2012; Tuesday, December 25, 2012; & Wednesday, December 26, 2012
- New Year’s Day Holiday – Tuesday, January 1, 2013
- Council Mtg – Monday, January 7, 2013 @ 6:30 PM
- “Youth Art Month” Arts Award Reception – Thursday, January 10, 2013, @ 6:30 PM at the Clayton Center
- Board of Adjustment Mtg – Wednesday, January 16, 2013 @ 6 PM
- Martin Luther King Jr.’s Birthday Holiday – Monday, January 21, 2013
- Council Mtg – **TUESDAY**, January 22, 2013 @ 6:30 PM
- Library Board Mtg – Thursday, January 24, 2013 @ 2:30 PM; Hocutt-Ellington Library, 100 S Church Street
- Planning Board Mtg – Monday, January 28, 2013 @ 6 PM
- Council Mtg – Monday, February 4, 2013 @ 6:30 PM
- Council Mtg – Monday, February 18, 2013 @ 6:30 PM
- Board of Adjustment Mtg – Wednesday, February 20, 2013 @ 6 PM
- Planning Board Mtg – Monday, February 25, 2013 @ 6 PM
- 5k Run for the Rockets – Saturday, March 2, 2013 @ Cooper Elementary from 9 AM to 12 noon
- Good Friday Holiday – Friday, March 29, 2013
- HeartChase – Saturday, May 18, 2013 @ Town Square and in Downtown Clayton from 10 AM to 12 noon; registration begins at 9 AM.
- Memorial Day Holiday – Monday, May 27, 2013
- Independence Day Holiday – Thursday, July 4, 2013
- Labor Day Holiday – Monday, September 2, 2013
- Veteran’s Day Holiday – Monday, November 11, 2013
- Thanksgiving Holiday – Thursday, November 28, 2013 & Friday, November 29, 2013
- Christmas Holiday – Tuesday, December 24, 2013; Wednesday, December 25, 2013; & Thursday, December 26, 2013

Date:  
12-03-12

Action:  
N/A.

Info. Provided:  
Calendar of Events.

**TOWN OF CLAYTON  
TOWN COUNCIL  
AGENDA COVER SHEET**

Agenda Item: 9c

Meeting Date: 12/03/12

**TITLE: JOHNSTON COUNTY ECONOMIC DEVELOPMENT COMMISSION  
TRACKING PURPOSES ONLY.**

**DESCRIPTION:** The Johnston County Board of Commissioners has noticed it is seeking applications for persons to serve on the Johnston County Economic Development Commission. Specifically, one representative from the following municipalities will be considered to serve a two-year term: Archer Lodge, Clayton, Pine Level, Princeton, and Selma. All applications received will be forwarded to the respective municipality so that the governing board may make a recommendation. Final appointments will be made by the Johnston County Board of Commissioners at its February 2013 regular meeting.

Currently, Mayor McLeod is the Town of Clayton municipality.

Applications for this board will be on the Council's January 2013 regular meeting agenda for discussion and action.

**RELATED GOAL:** Administrative

**ITEM SUMMARY:**

<u>Date:</u>	<u>Action:</u>	<u>Info. Provided:</u>
12-03-12	None – Information.	Johnston County Public Notice.

**PUBLIC NOTICE  
JANUARY APPOINTMENTS**

The Johnston County Board of Commissioners is now accepting applications for the following appointments: **Please note the deadline to apply is December 14, 2012.**

**Nursing Home/Adult Care Home Community Advisory Board** – 7 positions; 1 year term for new appointees or 3 year term for reappointed members. *“No person or immediate family member of a person with a financial interest in a home served by a committee, or an employee or governing board member of a home served by a committee, or immediate family member of a patient in a home served by a committee may be a member of a committee.”*

**Economic Development Commission** - 5 positions; 2 year terms (One position representing each of the following: Town of Archer Lodge, Town of Clayton, Town of Pine Level, Town of Princeton, and Town of Selma). *(Note: All applications received will be forwarded to the respective Town Council for recommendations. Final appointments will be made by the Johnston County Board of Commissioners at their February 2013 regular meeting.)*

Johnston County Citizens wishing to be considered may submit a short application form to the Clerk to the Board, P.O. Box 1049, Smithfield, North Carolina 27577 by **December 14, 2012**. Short application forms are available in the Clerk’s Office, Johnston County Courthouse Annex, (919) 989-5100 or may be downloaded from the County’s web site at: [www.johnstonnc.com/commissioners](http://www.johnstonnc.com/commissioners).

**Paula G. Woodard, Clerk  
Board of County Commissioners**