

# ***TOWN OF FALCON ZONING ORDINANCE***



**ADOPTED: March 4, 1991**

**EFFECTIVE DATE: March 5, 1991  
(With Amendments Through September 8, 2008)**

# FALCON ZONING ORDINANCE

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# **ARTICLE I. PURPOSE, AUTHORITY AND JURISDICTION**

## **SECTION 1.1 PURPOSE**

The zoning regulations and districts as herein set forth have been made in accordance with a comprehensive plan and are designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. These regulations have been made with reasonable consideration, among other things, as to the character of each district and its peculiar suitability for particular uses and with a view to conserving the value of building and encouraging the most appropriate use of land throughout the Town of Falcon.

## **SECTION 1.2. AUTHORITY**

The Town Commissioners of the Town of Falcon, pursuant to the authority conferred by Chapter 160A, Article 19, Part 3, of the General Statutes of North Carolina, does hereby ordain and enact into law these articles and sections.

## **SECTION 1.3. TITLE**

This ordinance shall be known and may be cited as the "Zoning Ordinance, Town of Falcon, North Carolina."

## **SECTION 1.4. JURISDICTION**

These regulations shall govern the use of all lands lying within the Town.

## **SECTION 1.5. EXEMPTION**

The provisions of this ordinance do not apply to bona fide farms. This ordinance does not exercise controls over crop lands, timber lands, pasture lands, or other farm lands, not over any farm house, barn, poultry house, or other farm buildings including tenant or other houses for persons working on said farms, as long as such houses shall be in the same ownership as the farm and located on the farm. Residences for nonfarm use or occupancy and other nonfarm uses are subject to the provisions of this ordinance.

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## ARTICLE II. GENERAL ZONING DISTRICT CLASSIFICATIONS

### SECTION 2.1. STATEMENT OF INTENT, PURPOSE AND ZONE CHARACTERISTIC

For the purpose of this ordinance the areas affected as described herein are divided into the following general classes of districts.

#### **2.11. Residential Districts.**

Residential districts are composed of certain existing residential areas of the Town and certain areas where similar residential development appears likely to occur. The regulations for these districts are designed to stabilize and protect the essential characteristics of each district by promoting and encouraging a suitable environment for family life and prohibiting certain activities of a commercial or industrial nature. To these ends, development is limited to dwellings which provide homes for the residents plus certain additional uses as schools, parks, recreation facilities and certain other public facilities. This system of classification is utilized to optimize orderly development by providing a variety of living environments based on different levels of permitted population density, facilitating the adequate provision of transportation and other public facilities.

**R40A Residential District.** A district designed primarily for single family dwelling units including the use of manufactured homes, class A on individual lots, with a lot area of forty thousand (40,000) square feet or above.

**R20 Residential District.** A district designed primarily for single-family units with a lot area of 20,000 square feet or above.

**R20A Residential District.** A district for traditionally rural use with lots of twenty thousand (20,000) square feet or above. The principal use of the land is for low-density residential including manufacture homes, class A and agricultural purposes. These districts are intended to insure that residential development not having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at a sufficiently low density to provide a healthful environment.

**R15 Residential District.** A district designed primarily for single family dwelling units with a lot area of fifteen thousand (15,000) square feet or above.

**R15A Residential District.** A district designed primarily for single family dwelling units including the use of manufactured homes, class A on individual lots, with a lot area of fifteen thousand (15,000) square feet or above.

**R7.5 Residential District.** A district designed primarily for single-family dwellings on lots with a lot area of 7,500 square feet or above.

**R6 Residential District.** A district designed for a mix of single and multi-family dwellings with a typical lot area of 6,000 square feet or above.

**2.12. O&I Office and Institutional District.** This district is designed primarily for agencies and offices rendering specialized services in the professions, finance, real estate and brokerage as well as the traditional institutional functions both public and private, public assembly, religious and certain cultural and recreational activities and group housing. The uses in this district classification may be characterized as having no retail or wholesale trade, except as incidental use. The district is normally small and often situated between business and residential areas. The regulations are designed for maintaining more compatibility with nearby residential districts than would exist with a commercial district.

**2.13. C-1 Local Business District.** This district is designed to cater to the ordinary shopping needs of the immediate neighborhood with emphasis on convenience goods. This district is customarily located adjacent to an arterial street and generally surrounded by residential areas.

**2.14. C(P) Planned Commercial District.** The intent of this district is to assure the grouping of buildings on a parcel of lands as to constitute a harmonious, efficient and convenient retail shopping area. To promote the essential design features within this district, plan approval is required. Any site plan shall assure traffic safety and the harmonious and beneficial relations between the commercial area and contiguous land.

**2.15. C-3 Heavy Commercial District.** This district is designed primarily for a wide variety of retail and wholesale business, commercial and contract services, commercial recreation and amusement, public assembly and office uses. Since this district has such a wide selection of uses, it will not be expanded without consideration as to its effects on surrounding lands and is limited to those areas of mixed commercial activity which lie adjacent [to] or at the intersection of arterials and those areas which exhibit a highly mixed composition of commercial land uses.

**2.16 H Industrial District.** This district is designed primarily for basic manufacturing and processing industries, all of which normally create a high degree of nuisance and are not generally compatible with residential, or commercial and service uses. The general intent is to encourage the continued use of certain land in the town for heavy industrial purpose. The district is customarily located on larger tracts of land with good highway and rail access buffered from residential districts by other more compatible uses. Commercial activities are not permitted except those having only limited contact with the general public and those not involving the sale of merchandise at retail except

for items produced on the premises or for the purpose of serving employees, guests and other persons who are within the district with an industrial activity.

**2.17. CD Conservancy District.** This district is designed to preserve and protect identifiable natural resources from encroachment. The general intent of the district is to provide protection for such resource areas that will continue to provide limited development potential while preserving existing conditions to the extent feasible. Areas to be zoned in this district shall be identifiable as any land area deemed desirable for protection from development and may include, but not limited to: swamp, marsh, flood land, poor or very severe soils areas or managed and unmanaged woodland on USGS (Geological Survey) maps, soil maps prepared by the USDA (Department of Agriculture) Soil Conservation Service or other appropriate sources.

**2.18. Conditional Use Districts.**

**2.181. Companion Districts.** Each district includes a companion Conditional Use District (e.g. R15 has R15/CUD) where no uses are permitted by right. All uses in the companion Conditional Use Districts also require a Conditional Use Permit.

2.182. Reserved for future use.

2.183. Reserved for future use.

**SECTION 2.2. ZONING MAPS AND INTERPRETATION OF DISTRICT BOUNDARIES**

**2.20 Zoning Maps.**

All the territory included in each of the zoning areas described in Section 2.1 is hereby classified into one or more zoning districts as established in Section 1.4 and the boundaries of each of these districts are hereby adopted as shown on a series of map sheets entitled "Zoning Maps, Town of Falcon, North Carolina." The zoning maps and all notations, references and all amendments thereto, and other information shown thereon are hereby made a part of this ordinance, the same as if such information set forth in the map were all fully described and set out herein. The zoning maps, properly attested, shall be kept on file with the Planning Board and available for inspection by the public. Regardless of the existence of purported copies of the zoning map which may from time to time be made or published, the zoning maps on file with the Planning Board and amendments thereto entered in the minutes of the Town Council shall be final authority as to the current zoning status of lands, buildings, and other structures in the zoning areas.

## **2.21 Interpretation of District Boundaries.**

If dispute exists as to the boundaries of any district shown on the zoning maps, the following rules shall apply:

**2.211. Extensions of Line.** Where such district boundaries are indicated as approximately following street or railroad rights-of-way, alley lines and lot lines, or extensions of such lines, shall be considered to be such boundaries. Where district boundaries are indicated as approximately following the centerline of stream beds or river beds, or such centerlines extended, such centerlines shall be considered to be such boundaries.

**2.212. Unsubdivided Property.** In unsubdivided property or where a district boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions shown on the map, shall be determined by the use of the scale of the map.

**2.213. Physical or Cultural Features.** Where physical or cultural features existing on the ground are at variance with those shown on the zoning maps, or in other circumstances not covered by Sections 2.211 and 2.212, the Board of Adjustment shall interpret the district boundaries.

# ARTICLE III. PERMITTED PRINCIPAL USES AND STRUCTURES

## SECTION 3.1 TABULATION OF PERMITTED USES

Within the various use districts, as established in Article II and subject to the requirements of this ordinance, no land, building or structure shall be used and no building or structure shall be erected which is intended or designed to be used in whole or in part for any use other than the uses permitted by the various districts as established herein. The use regulations for the various districts are intended to be permissive in nature and none other than those specifically listed shall be construed as being allowable uses. "Some land uses, may be allowed through conditional use district and approval of a permit or by issuance of a special use permit only upon findings that certain conditions exist or should be applied, and is requested and agreed to by the property owner. The establishment of these uses shall be allowed only after review through appropriate measures and approval of plans."

Permitted uses in the various districts are indicated under the appropriate heading of the following tables. Special uses, with Board of Adjustment approval and issuance of the permit, and some conditional use districts, after Board of Commissioner approval and issuance of the permit, are also indicated in the tables. All proposed uses in any planned district require site plan review and approval and shall be in compliance with the standards of this ordinance and the Town's Subdivision Ordinance.

### TABLE 1-A

#### PERMITTED AND SPECIAL USES RESIDENTIAL DISTRICTS-R-40A

##### PERMITTED USES ( X )

Accessory Uses, incidental to any permitted use (see Section 3.3.)  
Agricultural or Rural Farm Use  
Children's Home  
Dwelling-Multifamily  
Dwelling-Single-family  
Home Occupation, incidental  
Library  
Manufactured Home, Class A, individual, for residential occupancy  
Public Agency Owned and Operated Recreation, such as neighborhood center buildings, parks, museums, playgrounds and similar facilities  
Religious Worship Activities  
Schools, public  
Swimming Pools, incidental to a principal use (see Section 3.3., subsection 3.34 as an incidental use in every zoning district)  
Telephone Exchange Operations

Temporary Construction Building

**SPECIAL USES (S)**

Boarding House  
Operations  
Cemetery  
Children's Day Care Facility  
Club or Lodge, except such uses defined and/or regulated in Section 3.4  
Convalescent Home  
Fire Station Operations  
Golf Courses Home Care  
Unit Home for the Aged  
Hospital or Sanitarium  
Manufactured Home, Class B, individual, for residential occupancy  
Mobile Home, individual, for construction office, and exhibition  
Nursing Home  
Private Recreation Club or Swimming Club, activities not operated as a business for profit  
Public and Community Utility Stations or Substations  
Rooming House Operation  
Schools-For nurses or other medically oriented professions  
Schools-Private, elementary or secondary  
(Ord. of 11-16-78; Ord. of 8-26-80; Ord. of 5-26-81; Ord. of 1-21-85, § 1; Ord. of 9-27-88, § 2)

**TABLE 1-A.1  
PERMITTED AND SPECIAL USES  
RESIDENTIAL DISTRICT - R20**

**PERMITTED USES (X)**

Accessory Uses, incidental to any permitted use  
Agricultural or Rural Farm Use  
Children's Home  
Dwelling - multi-family  
Dwelling - single-family  
Home Occupations, incidental  
Group Home, six or less clients  
Library  
Recreation, public agency owned and operated, such as neighborhood center buildings, parks, museums, playgrounds and similar facilities  
Religious Worship Activities  
Schools, public  
Swimming Pools, incidental to a principal use (Section 3.34.)  
Telephone Switching/Booster Station  
Temporary Construction Building



**SPECIAL USES (S)**

Assemblies, including: community and assembly hall, armory, stadium, community center, fairgrounds, etc.  
Bed and Breakfast  
Cemetery  
Club or Lodge, except such uses defined and/or regulated in Section 3.44  
Day Care Facility  
Equestrian Facility  
Fire Station Operations/Emergency Services  
Golf Courses  
Group Quarters  
Nursing Home/Convalescent Home/Hospital/Retirement Home  
Public/Community Utility Stations or Substations  
Recreation, private, not operated as a business for profit, such as neighborhood centers, parks, museums, swimming pools, etc., and not regulated by Section 3.44  
Schools, nursing or other medically oriented professions  
Schools, private - elementary or secondary  
Special Information Signs  
Tower

**TABLE 1-B  
PERMITTED AND SPECIAL USES  
RESIDENTIAL DISTRICTS-R20A**

**PERMITTED USES ( X )**

Accessory Uses, incidental to any permitted use (see Section 3.3.)  
Agricultural or Rural Farm Use  
Airport Operations  
Blacksmith Services  
Children's Day Care Facility  
Children's Home  
Convalescent Home  
Dwelling, single-family  
Greenhouse Operations, Commercial  
Home Care Unit  
Home for the Aged  
Home Occupations, incidental  
Library  
Manufactured Home, Class A, individual, for residential occupancy  
Nursing Home  
Public Agency Owned and/or Operated Recreation, such as neighborhood center buildings, parks, museums, playgrounds and similar facilities Public Agency Owned and/or Operated Solid Waste Disposal Facilities Public and Community Utility Stations or Substations Radio or Television Transmitting

Religious Worship Activities  
Riding Academy Activity  
School-Private; only offering a similar curriculum as public elementary or secondary schools  
School-Public, elementary or secondary  
Septage Disposal Site  
Swimming Pools, incidental to a principal use (see Section 3.3, subsection 3.34, as an incidental use in every zoning district) Temporary Construction Building

**SPECIAL USES (S)**

Animal Medical Care, including kennel operations  
Assemblies, Community, assembly hall, armory, stadium, coliseum, community center  
Cemetery  
Club or Lodge, except such uses defined and/or regulated in Section 3.4  
Fairground Activities, including carnivals and circuses Fire Station  
Operations  
Golf Courses  
Hospital or Sanitarium  
Livestock Sales and Auctioning  
Manufactured Home, Class B, individual, for residential occupancy  
Mobile Home, individual, for construction, office and exhibition  
Nursery Operations (Plants), retail and production  
Private Recreation Club or Swimming Club, activities not operated as a business for profit  
Privately Owned and Operated Solid Waste Disposal Facilities  
Schools, for nurses or other medically oriented professions  
Telephone Exchange Operations  
Theater Productions, outdoor, which show only films previously submitted to and rated by the Motion Picture Association of America

**TABLE 1-C  
PERMITTED AND SPECIAL USES  
RESIDENTIAL DISTRICTS-R15**

**PERMITTED USES (X)**

Accessory Uses incidental to any permitted use (Section 3.3)  
Agricultural or Rural Farm Use  
Children's Home  
Dwelling-Multifamily  
Dwelling-Single-family  
Home Occupation, incidental  
Library  
Public Agency Owned and operated Recreation, such as neighborhood center buildings, parks, museums, playgrounds and similar facilities

Religious Worship Activities  
Schools, Public  
Swimming Pools, incidental to a principal use (see Section subsection 3.34, as an incidental use in every zoning district)  
Telephone Exchange Operations  
Temporary Construction Building

**SPECIAL USES (S)**

Boarding House Operations  
Cemetery  
Children's Day Care Facility  
Club or Lodge, except such uses defined and/or regulated in Section 3.4  
Convalescent Home  
Fire Station Operations  
Home Care Unit  
Home for the Aged  
Hospital or Sanitarium  
Mobile Home, individual, for construction, office and exhibition  
Nursing Home  
Private Recreation Club's Swimming Club, activities not operated as a business for profit  
Public and Community Utility Stations or Substations  
Radio or Television Transmitting  
Rooming House Operation  
Schools-Private, elementary or secondary

**TABLE 1-D  
PERMITTED AND SPECIAL USES  
RESIDENTIAL DISTRICT-R15A**

The following uses are permitted in the R15A Residential District:

**PERMITTED USES (X)**

1. Any permitted use allowed in the R15 Residential District.
2. Manufactured home, Class A, individual, for residential occupancy.

**SPECIALS USES (S)**

1. Any special use allowed in the R15 Residential District.
2. Manufactured home, Class B, individual, for residential occupancy.

**TABLE 1-D.1  
PERMITTED AND SPECIAL USES  
RESIDENTIAL DISTRICTS – R7.5 AND R6**

**PERMITTED USES (X)**

Any permitted use allowed in the R20 Residential District

**SPECIAL USES (S)**

All special uses allowed in the R20 Residential District except for “Equestrian Facility” which is not allowed in these districts.

**TABLE 1-E  
PERMITTED AND SPECIAL USES  
OFFICE AND INSTITUTIONAL DISTRICT - (O & I)**

**PERMITTED USES ( X )**

Accessory Uses, incidental to any permitted use (see Section 3.3)

Ambulance Service

Automobile-Off-Street Parking, commercial lots

Bank, Savings and Loan Company and Other Financial Activities

Books and Printed Matter, distribution, except as defined and regulated in Section 3.4

Children's Home

Clinic Services, medical and dental

Club or Lodge, except such uses defined and/or regulated in Section 3.4

Convalescent Home

Delicatessen Operations, including catering

Dwelling-Single-family, R-15 standards

Fire Station Operations

Funeral Home

Home for the Aged

Hospital or Sanitarium

Laboratory Operations, medical or dental

Laboratory, research

Library

Newsstand Sales

Nursing Home

Office Use-Of a doctor, dentist, osteopath, chiropractor, optometrist, physiotherapist or other medically oriented profession

Office Use-With no on-premises stock of goods for sale to the general public and the operations and services of which are customarily conducted and concluded by means of written, verbal or mechanically reproduced communications material

Optician Services

Post Office

Printing and Reproduction

Private Recreation Club or Swimming Club Activities, not operated as a business for profit  
 Radio or television Studio Activities Only  
 Reducing Salon Care, not including massage parlors as defined in Chapter 7, Article IV of this Code and as regulated in this appendix at Section 3.4 Religious Worship Activities  
 School for Nurses or Other Medically Oriented Profession  
 Swimming Pools, incidental to a principal use (see Section 3.3, subsection 3.34, as an incidental use in every zoning district) Teaching of Art, Music, Dance, Dramatics of Other Fine Arts Telephone Exchange Operations  
 Temporary Construction Building

**SPECIAL USES (S)**

Boarding House Operations  
 Children's Day Care Facility  
 Mobile Home, individual, for construction office, and exhibition  
 Public Recreation, such as neighborhood center buildings, parks, museums, playgrounds and similar facilities operated on a non-profit basis Public and Community Utility Stations or Substations Rooming House Operation  
 School-Private, elementary or secondary  
 School-Public  
 (Ord. of 8-26-80; Ord. of 5-26-81)

**TABLE 1-F  
 PERMITTED AND SPECIAL USES  
 C-1 LOCAL BUSINESS DISTRICT**

**PERMITTED USES (X)**

Accessory Uses, incidental to any permitted use (see Section 3.3)  
 Addressing Service  
 Ambulance Service  
 Apparel and Accessory Sales  
 Auction Sales, excluding livestock auctioning  
 Automobile Off-Street Parking, commercial lots  
 Automobile Parts and Accessories Sales, contained within a building and without outside storage  
 Automobile Service Station Operations  
 Baking, on premises and retail only  
 Bank, savings and loan company and other financial activities  
 Barbering and Hairdressing Services  
 Books and Printed Matter  
 Candy or Confectionery Making, on premises and retail only  
 Clinic Services, medical and dental  
 Club or Lodge  
 Dairy Products Sales, on premises, retail sales only

Delicatessen Operations, including catering  
Dry Cleaning and Laundry Collection, no cleaning on premises except in conjunction with service counter, provided not more than twenty-five hundred (2,500) square feet are devoted to these processes Eating or Drinking Facilities  
Fire Station Operations  
Flower Shop  
Food Sales  
Hardware, Paint and Garden Supply Sales  
Laundry or Drycleaning Customer Self-Service  
Library  
Newsstand Sales  
Office Use-Of a doctor, dentist, osteopath, chiropractor, optometrist, physiotherapist, or other medically oriented profession  
Office Use-With no on-premises stock of goods for sale to the general public and the operations and services of which are customarily conducted and concluded by means of written, verbal or mechanically reproduced communications material  
Pharmaceutical Sales  
Post Office  
Private Recreation Club or Swimming Club Activities, not operated as a business for profit  
Reducing Salon Care  
Religious Worship Activities  
Repair, Rental and/or Servicing, of any product the retail sale of which is a use by right in the same district  
Swimming Pools, incidental to a principal use (see Section 3.3, subsection 3.34, as an incidental use in every zoning district) Tailoring (Dressmaking)  
Taxicab Stand Operations  
Teaching of Art, Music, Dance, Dramatics or Other Fine Arts  
Telephone Exchange Operations  
Temporary Construction building  
Variety, Gift and Hobby Supply Sales  
Vending Machines Operations Outdoor

### **SPECIAL USES (S)**

Assemblies, Community, assembly hall armory, stadium, coliseum, community center  
Children's Day Care Facility  
Mobile Home, individual, for construction office and exhibition  
Public Recreation, such as neighborhood center buildings, parks, museums, playground and similar facilities operated on a non-profit basis Public and Community Utility Stations or Substations

**TABLE 1-G  
PERMITTED AND SPECIAL USES  
C(P) PLANNED COMMERCIAL AND C-3 HEAVY  
COMMERCIAL DISTRICTS**

**PERMITTED USES ( X )**

Accessory Uses, incidental to any permitted use (see Section 3.3)  
Addressing Service  
Ambulance Service  
Apparel and Accessory Sales  
Auction Sales, excluding livestock auctioning  
Automobile Off-Street Parking, commercial lots  
Automobile Parts and Accessories Sales, contained within a building  
and without outside storage  
Automobile and Truck Rental  
Automobile Repair and/or Body Work, excluding commercial wrecking,  
dismantling or storage of junked vehicles  
Automobile Sales, new and used  
Automobile Service Station Operations  
Automobile Washing  
Baking, on-premises and retail only  
Bakery Production and Wholesale Sales  
Bank, savings and loan company and other financial activities  
Barber or Beauty C  
Barbering and Hairdressing Services  
Bicycle Sales and Repairing  
Blacksmith Services  
Boats and Accessories, retail sales and service  
Book Binding  
Books and Printer Matter  
Bus Repair and Storage Terminal Activities  
Bus Station Activities  
Candy or Confectionery Making, on premises and retail only  
Carpet and Rug Cleaning  
Catalogue Sales  
Children's Day Care Facility  
Clinic Services, medical and dental  
Club or Lodge  
Convalescent Home  
Curio and Souvenir Sales  
Dairy Products Sales, on premises retail sales only  
Delicatessen Operations (including catering)  
Dry Cleaning and Laundry Collection, no cleaning on premises except in  
conjunction with service counter, provided not more than twenty-five hundred  
(2500) square feet is devoted to these processes Eating or Drinking Facilities,  
operated as commercial enterprises Employee's Service, not designed for or

available to public customers  
 Exterminating Service  
 Farm Supplies Merchandising, excluding farm machinery  
 Fire Station Operations  
 Flower Shop  
 Food Freezer Operations  
 Food Sales  
 Funeral Home  
 Fur Sales, including cold storage  
 Greenhouse Operations, commercial  
 Hardware, Paint and Garden Supply Sales  
 Home Furnishing and Appliance Sales  
 Hospital or Sanitarium  
 Janitorial Service  
 Laboratory Operations, medical or dental  
 Laboratory, Research  
 Laundry or Drycleaning Customer Self-Service  
 Library  
 Locksmith, Gunsmith  
 Mobile Home Sales, but excluding any residential occupancy  
 Monument Sales  
 Newspaper Publishing  
 Newsstand Sales  
 Office Supplies and Equipment Sales and Service  
 Office Use-Of a doctor, dentist, osteopath, chiropractor, optometrist,  
 physiotherapist or other medically oriented profession Optician Services  
 Pawn Shop  
 Pet Sales, excluding kennel activities or outside storage of animals  
 Pharmaceutical Sales  
 Photography, commercial  
 Plant Husbandry, including sale of produce raised on premises  
 Post Office  
 Printing and Reproduction  
 Private Recreation Club or Swimming Club Activities, not operated as a business  
 for profit  
 Public Utility Works, Shops or Storage Yards  
 Radio or Television Studio Activities Only  
 Railroad Station Operations  
 Reducing Salon Care  
 Recreation or Amusement Enterprise-Conducted inside a building and for profit,  
 and not otherwise listed herein  
 Recreation or Amusement Enterprise-Conducted outside a building and for  
 profit, and not otherwise listed herein  
 Religious Worship Activities  
 Repair, Rental and/or Servicing, of any product the retail sale of which is a use  
 by right in the same district



Retailing or Servicing, with operations conducted and merchandise stored entirely within a building and not otherwise listed herein  
Second Hand, Pawn and Swap Shop Sales  
School-Business and commercial  
School-For nurses or other medically oriented profession  
School-Private, elementary or secondary  
School-Public  
School-Trade or vocational  
Swimming Pools, incidental to a principal use (see Section 3.3, subsection 3.34, as an incidental use in every zoning district) Tailoring (Dressmaking)  
Taxicab Stand Operations  
Teaching of Art, Music, Dance, Dramatics or Other Fine Arts  
Telephone Exchange Operations  
Temporary Construction Building  
Theater Productions-Indoor  
Trades Contractor Activities, excluding outside storage of equipment or supplies  
Trading Stamp Redemption  
Trailer Rentals, including terminal activities hauling and/or storage, incidental to same, but excluding miniwarehousing as defined herein Transient Lodgings  
Truck Terminal Activities Repair and Hauling and/or Storage  
Upholstering or Furniture Refinishing  
Variety, Gift and Hobby Supply Sales  
Vehicle (Commercial, Government) Repair or Storage Vending Machine Operations Outdoor  
Vending Machine Rental  
Wholesale Sales with operations conducted and merchandise stored entirely within a building and not otherwise listed herein

### **SPECIAL USES (S)**

Animal Medical Care, including kennel operations  
Assemblies, Community, assembly hall, armory, stadium, coliseum, community center  
Automobile Wrecking Yards and Junkyards  
Boarding House Operations  
Builders Supply, no outside storage  
Fairground Activities, including carnivals and circuses  
Farm Machinery Sales and Servicing  
Mobile Home, individual, for construction office and exhibition  
Public Recreation, such as neighborhood center buildings, parks, museums, playground and similar facilities operated on a non-profit basis Public and Community Utility Stations or Substations Recreation Vehicle Park  
Rooming House Operations  
Theater Productions, outdoor, which show only films previously submitted to and rated by the Motion Picture Association of America Special Entertainment Uses, as defined and regulated in Section 3.

**TABLE 1-H  
PERMITTED AND SPECIAL USES  
M INDUSTRIAL DISTRICT**

**PERMITTED USES ( X )**

Abattoir Operations  
Accessory Uses, incidental to any permitted uses (see Section 3.3)  
Airport Operations  
Automobile Off-Street Parking, commercial lots  
Automobile and Truck Rental  
Automobile Repair and/or Body Work, excluding commercial wrecking,  
dismantling or storage of junked vehicles  
Automobile Washing  
Bakery Production and Wholesale Sales  
Blacksmith Services  
Book Binding  
Books and Printed Matter, distribution, except as defined and regulated in  
Section 3.4  
Bottled Gas Distributing, bulk storage  
Bottling  
Builders Supply-With or without outside storage  
Bus Repair and Storage Terminal Activities  
Cabinet Making  
Carpet and Rug Cleaning  
Coal Sales and Storage  
Construction Storage, outside  
Dairy Products Sales and  
Processing Dry Cleaning,  
commercial  
Employee's Service, not designed for or available to public customers  
Exterminating Service  
Farm Machinery Sales and Servicing  
Farm Supplies Merchandising, excluding farm machinery  
Fire Station Operations  
Food Freezer Operations  
Greenhouse Operations  
Commercial Hatchery  
Operations Ice Manufacturing  
Industrial Operations Not Otherwise Prohibited  
Industrial Sales of Equipment or Repair Service  
Industry, Pilot Operation Laboratory, research  
Laundry, commercial  
Livestock Sales and Auctioning  
Machine Tool Manufacturing or Welding Mini-warehousing  
Monument Sales  
Monument Works

Newspaper Publishing  
 Nursery Operation (Plants), retail and production  
 Plant Husbandry, including sale of produce raised on premises  
 Printing and Reproduction  
 Public and Community Utility Stations or Substations  
 Public Utility Works, shops or storage yards Radio or  
 Television Transmitting Railroad Station Operations  
 Repair, Rental and/or Servicing, of any product the retail sale of which is  
 a use by right in the same district  
 Sawmill or Planning Activities  
 Second Hand, Pawn and Swap Shop  
 Sales Sheet Metal Fabrication  
 Storage-Flammable  
 Storage-Open  
 Storage-Warehouse  
 Swimming Pools, incidental to a principal use (see Section 3.3, subsection  
 3.34, as an incidental use in every zoning district)  
 Telephone Exchange Operations  
 Temporary Construction Building  
 Tire Recapping  
 Tobacco Processing  
 Tobacco Sales Warehouse  
 Trades Contractor Activities, excluding outside storage of equipment or supplies  
 Trades Contractor Activities, with outside storage of equipment or supplies  
 Trailer Rentals  
 Truck Terminal Activities, repair and hauling and/or Storage  
 Upholstering or Furniture Refinishing  
 Vehicle, commercial, government, repair or storage

**SPECIAL USES (S)**

Automobile Wrecking Yards and Junkyards  
 Mobile Home, individual, for construction office and exhibition  
 Privately Owned and Operated Solid Waste Disposal Facilities  
 Quarry Operations

**TABLE 1-I**  
**PERMITTED AND SPECIAL USES**  
**CD CONSERVANCY DISTRICT**

**PERMITTED USES (X)**

Accessory Uses, incidental to any permitted use  
 Agricultural or Rural Farm Use  
 Fish Hatchery  
 Home Occupations, incidental  
 Nursery Operations/Plant Husbandry/Greenhouses

Public/Community Utility Stations/Sub-stations  
Recreation/Amusement Outdoor, conducted outside building for profit, not otherwise listed and not regulated by Section 3.44  
Sawmill and/or Planning Operation  
Swimming Pools, incidental to a principal use (Section 3.34)

**SPECIAL USES (S)**

Recreation or Amusement, Public/Private, not operated as a business for profit including playgrounds, neighborhood center buildings, parks, museums, swimming pools, etc, and not regulated by Section 3.44  
Recreation Vehicle Park and/or Campgrounds  
Special Information Signs  
Tower

**SECTION 3.2 TEMPORARY USES**

The zoning inspector may issue a temporary certificate of occupancy for the following uses in accordance with the provisions of this section. In cases where the desirability of permitting the use is questionable, the matter shall be referred to the Board of Adjustment for a decision.

**3.21. Temporary Events.**

The zoning inspector may insure a temporary occupancy permit for bazaars, carnivals, religious revivals, sports events, circuses, festivals and similar uses for a fixed period of time not to exceed thirty (30) days in any one calendar year, and subject to limitations as the zoning inspector may impose the character of the district affected.

**3.22. Temporary Construction Offices.**

The zoning inspector may issue a temporary occupancy permit for construction offices in any district at any site where erection, addition, relocations, and/or structural alterations are taking place, provided that such construction office shall be removed immediately upon completion of the project.

**3.23. Temporary Office and Exhibition.**

The zoning inspector may issue a temporary occupancy permit for mobile structures used solely as offices or for purposes of exhibition in any district for a fixed period of time not to exceed six (6) months and only upon satisfactory evidence that the use of such mobile structure shall not violate any code or regulation or the intent of this ordinance. The temporary permit may be renewed upon similar evidence of use of such mobile structure.

## **SECTION 3.3. INCIDENTAL USES**

### **3.31. Home Occupations.**

Home occupations are permitted only as an incidental use. Provided further home occupations shall be permitted subject to the following limitations:

- (a) No display of products shall be visible from the street;
- (b) No mechanical equipment shall be installed or used except such that is normally used for domestic or professional purposes and which does not cause noises or other interference in radio and television reception;
- (c) No accessory buildings or outside storage shall be used in connection with the home occupation;
- (d) Not over twenty-five (25) percent of the total actual floor area or five hundred (500) square feet, whichever is less, shall be used for a home occupation;
- (e) Only residents of the dwelling and one additional individual may be engaged in the home occupation; and
- (f) Traffic generation shall not exceed the traffic volumes generated by nearby residents

### **3.32. Outside Storage and Display.**

Outside storage of goods, equipment and material shall be prohibited in any O&I, C(P) or C-1 district.

Outside display of merchandise which is normally required in conducting the commercial operation is permitted in any of the above named district except the O&I district.

### **3.33. Other Incidental Uses.**

Incidental accessory retail uses include apothecary shops, incidental to a hospital or clinic, variety, book, cafeterias, soda bars, coffee and barber shops incidental to institutional or professional office buildings or manufacturing facility. Incidental retail uses shall be conducted solely for the convenience of the employees, patients, patrons, students or visitors and not the general retail public. Such retail use which is conducted wholly within the principal building without access thereto other than from within the building, without exterior advertising display shall be permitted.

Accessory structures shall not be rented or occupied for gain or inhabited by other than employees performing services on the premises of the owner, leasee or tenant of the premises. No accessory building to be used for living quarters shall be constructed upon a lot until the construction of the principal building has commenced.

### **3.34. Swimming Pools.**

Every swimming pool as defined by the Cumberland County Board of Health regulations (Section 1, Definitions) is permitted as an incidental use and shall be regulated as follows:

- (a) That the setback for a swimming pool from any side or rear lot line equal ten (10) feet plus one (1) foot for each foot over ten (10) of vertical length or height of pool in the case of aboveground pools.
- (b) That a fence be erected to a minimum height of three (3) feet to completely enclose the portion of yard containing the pool with a gate that can be securely fastened for below ground pools.
- (c) That all mechanical equipment be located a minimum of five (5) feet from any property line.
- (d) That all floodlights be shielded from adjacent properties to reduce offensive glare.
- (e) That all electrical wiring shall be in conformance with the National Electrical Code.
- (f) That a water discharge plan for the proposed use be submitted showing the location of buildings, yard dimensions and other pertinent data. This plan shall also stipulate the type of system used for disposal of waste from the site. No permit shall be issued until the zoning enforcement officer determines that the water discharge plan is adequate by meeting one or more of the following criteria:
  - (1) The discharge system shall drain directly into the street storm drainage system, other public storm drainage systems, or natural stream; or
  - (2) Enough hose is made available to discharge such water into the above public ways; or
  - (3) That water discharge can be accomplished on the lot without threat of discharge onto adjacent lots.

(g) That a swimming pool in any zoning district may not be located in a required front yard, including residential corner lots subject to Section 7.17.

### **SECTION 3.4. SPECIAL USES**

The various special uses set forth in tables in Article III, because of special site or design requirements, operating characteristics or potential adverse effects on surrounding property and neighborhood, shall be permitted only upon approval by the Board of Adjustment in accordance with the standards and conditions as set forth in the following subsections.

#### **SECTION 3.41. GENERAL PROVISIONS**

In granting approval for a special use permit the Board of Adjustment shall impose such reasonable terms and conditions as it may deem necessary for protection of health, the general welfare and the public interest, including the requirement that detailed plans for each special use proposal be submitted as part of the application for a special use permit. Any change, enlargement or alteration in such use shall be reviewed by the Board of Adjustment and new conditions may be imposed where findings require. In granting a special use permit the board shall give due consideration to:

(a) The location, size, design and operating characteristics of the proposed development so that it will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood;

(b) The harmony in scale, bulk, coverage, function and density of the proposed development;

(c) The availability of public facilities and utilities;

(d) The generation of traffic and the capacity of surrounding streets; and

(e) The purpose and intent of the general land use plans for the physical development of the district and the protection of the environment.

Developers are encouraged to discuss their special use plans with the Planning Board staff before submission. The staff shall assist the developer upon request by reviewing special use plans to insure that the technical requirements of this section are met before submission to the Board of Adjustment.

### **SECTION 3.42. CHILDREN'S DAY CARE FACILITIES**

Regardless of any other requirements in this ordinance, the following specific provisions shall be met as minimum standards prior to the approval of any children's day care facility as a special use in a residentially zoned area:

- (a) Minimum lot size: Twenty thousand (20,000) square feet.
- (b) Building setback minimum from any public or private street: Thirty (30) feet.
- (c) Rear yard setback minimum: Thirty-five (35) feet.
- (d) Side Yard setback minimum: Twenty (20) feet.
- (e) Corner lot setback minimum from interior lot lines: Twenty (20) feet.
- (f) Minimum distance to another children's day care facility as defined herein, whether conforming or nonconforming, shall be two thousand five hundred (2,500) feet.
- (g) Minimum off-street parking spaces: Two (2) plus one (1) for each employee.
- (h) Minimum off-street loading and unloading area: In addition to the off-street parking area, there shall be sufficient driveway to accommodate at least two (2) autos at one time for the purpose of loading and unloading passengers.
- (i) All children's outside play areas shall be enclosed with at least a four-foot high fence.
- (j) Other conditions as deemed necessary by the Board of Adjustment in accordance with section 4.2.

The above requirements are minimum standards which must be met by the applicant and may not be varied by the Board of Adjustment. Once these requirements are met the applicant shall be entitled to a special use permit.

### **SECTION 3.43. GOLF COURSES; SPECIFIC PROVISIONS**

Regardless of any other requirements in this ordinance, the following specific provisions shall be met as minimum standards prior to the approval of any golf course (privately owned) as a special use in a residentially zoned area:



- (a) Minimum lot size: Ten (10) acres.
- (b) Building or facility setback from any public street: One hundred (100) feet.
- (c) Rear yard setback minimum: Two hundred (200) feet.
- (d) Side yard setback minimum: Two hundred (200) feet.
- (e) Corner lot setback minimum front interior lot lines: Two hundred (200) feet.

(Note: The above setbacks are intended to include any permanent or temporary structure such as, but not limited to, clubhouse, equipment storage, green house, swimming pool, tennis courts and restaurant.)

(f) Minimum off-street parking spaces: Four (4) per hole, plus one (1) per two hundred (200) square feet of restaurant and/or retail space, and one (1) space per employee.

(g) Incidental uses to a golf course may include pro shop, eating establishment, drinking establishment when in conjunction with an eating establishment (not including those operating under section 3.4 of this ordinance) tennis courts, swimming pool, and practice area.

Permitted incidental uses may only exist as long as the golf course is in operation and open daily.

(h) Any other conditions as deemed necessary by the Board of Adjustment in accordance with section 4.2

### **SECTION 3.44. SPECIAL ENTERTAINMENT USES**

It is recognized that there are some uses which, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances, thereby having a deleterious effect upon adjacent areas. Special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this section.

#### **3.44a. Definitions.**

(a) **Adult bookstore.** An establishment having a substantial or significant portion of its stock in trade in books, magazines and other periodicals

which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," or an establishment with a segment or section devoted to the sale or display of such material.

(b) **Adult motion picture theater.** An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating specified sexual activities or specified anatomical areas for observation by patrons therein.

(c) **Adult motels and hotels (transient lodges, adult).** A place where motion pictures not previously submitted to or not rated by the Motion Picture Association of America are shown in rooms designed primarily for lodging; which said motion pictures have as the dominant or primary theme matters depicting, describing or relating to specified sexual activities.

(d) **Massage parlors.** Any establishment which offers service in the form of massage, baths, exercises, or similar services in combination, to club members or to the public for a charge.

(1) The term massage parlor does not include:

(a) Hospitals, nursing homes, medical clinics, or the offices or quarters of a licensed physician, a surgeon or an osteopath.

(b) Exercise clubs exclusively for members or clientele of one sex alone where the service, without massage in any form, is performed by persons of the same sex as the members or clientele.

(c) Barbershops and beauty parlors.

(2) For the purposes of this article, the terms massage parlors, health clubs or health salons are used synonymously as defined herein, by the above definition for massage parlors.

(d) Specified anatomical areas. For the purpose of this section, specified anatomical areas are defined as:

(1) Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(e) Specified sexual activities. For the purpose of this section, specified sexual activities are defined as:

(1) Human genitals in a state of sexual stimulation or arousal;

(2) Acts of human masturbation, sexual intercourse or sodomy;

(3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

#### **3.44b. Permitted Uses.**

The following uses are permitted as a specified conditional use in the C-3 Heavy Commercial District subject to the locational limitations stated herein and subject to the minimum lot dimensional requirements of Section 7.3.

(a) Adult bookstores

(b) Adult motion picture theaters housed in a permanent indoor structure

(c) Clubs, lodges and other places of entertainment operated as a commercial enterprise providing nude or semi-nude entertainment such as topless dancing.

(d) Eating and drinking establishment including drive-in curb service providing nude or semi-nude entertainment such as topless dancing.

(e) Physical culture establishments, masseurs, massage parlors and health salons.

(f) Adult motels and hotels (transient lodges, adult).

#### **3.44c. Location of Uses.**

(a) No use permitted as a special use under this section may be located within one (1) mile of a church, educational institutional or a children's home.

(b) No use permitted as a special use under this section may be within five hundred (500) feet of any area zoned for residential uses, which will be measured from the exterior walls of the building(s) containing such regulated use.

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## **ARTICLE IV. COMPANION DISTRICTS-CONDITIONAL USE DISTRICTS**

### **SECTION 4.1. GENERAL**

The conditional use zoning districts set forth herein are authorized by N.C. Gen. Stat. §160A-382, and are intended to modify the use to which the parallel zoning district is restricted. Generally, an applicant, by seeking to rezone property to a Conditional Use District, will propose to restrict or eliminate Permitted, Conditional or Special Uses. Request for Conditional Use District rezoning shall be processed administratively in the same manner as for amendments to this Ordinance as established in Article 12.5.

Conditional Use Districts are floating districts that parallel general zoning districts. Conditional Use Districts are identical to their corresponding general zoning districts in all respects except that a Conditional Use Permit is required as a prerequisite to any use (Permitted, Conditional or Special) or development within them.

Parallel Conditional Use Districts are provided as a voluntary alternative method of petitioning the Board of Commissioners for a zoning map or classification change. The owner may submit conditions that restrict the uses that would otherwise be allowed in the zoning district and only those uses specifically requested in the application shall be considered.

### **SECTION 4.2. RESTRICTIONS ON FILING OF APPLICATIONS**

A request for a Conditional Use District rezoning shall be initiated only by an application [petition] signed by all current record owners of the property.

### **SECTION 4.3. CONTENT OF APPLICATIONS AND CONDITIONS**

A properly submitted application for a Conditional Use District incorporates a petition for rezoning and an application for a Conditional Use Permit, which may be combined in one application. The Conditional Use District application shall provide the minimum information requirements set forth below, however, additional information may be required by the Planning and Inspections Staff, Planning Board or the Board of Commissioners when requested if any of the aforementioned deem it necessary in order to be able to make a recommendation on, or decision regarding, a required finding. Such requests may include a requirement for a more detailed site plan, or one modified in accordance with additional or modified conditions and other performance criteria.

(a) Proposed Uses: Proposed uses shall be set forth in detail, including the compatibility with the uses in the neighboring districts. Any limitations or conditions to be placed on the proposed uses to enhance compatibility with and benefit to surrounding areas shall also be set forth.

(b) Dimensional Requirements: The application shall show that the uses comply with dimensional requirements for the district requested. If the applicant proposes to vary the dimensional requirements for the district requested, it shall be demonstrated that the public purposes to be accomplished by any such dimensional requirement are met to an equal or greater degree.

(c) Sign Requirements: The application shall indicate the location of signs in accordance with Article IX, Sign Regulations. If the applicant proposes to vary the sign provisions for the district requested, it shall be demonstrated that the public purposes to be accomplished by any such provisions are met to an equal or greater degree.

(d) Off-Street Parking Requirements: The application shall indicate the location of all off-street parking and internal drive areas in accordance with Article VIII, Off-Street Parking and Loading, provisions. If the applicant proposes to vary the off-street parking provisions of this ordinance for the use requested, it shall be demonstrated that the public purposes to be accomplished by any such provisions are met to an equal or greater degree.

(e) Miscellaneous Provisions: The application for a Conditional Use Permit may also set forth other conditions and performance criteria, such as days and hours of operation, numbers of employees, exterior lighting, and noise, odor and smoke emission controls or other environmental conditions, which might be proposed to make the use of the property compatible with surrounding areas and uses allowed therein.

(f) Site Plan Requirement: The application shall include a site plan drawn to the specifications of Section 12.45. If the proposed uses involve development subject to the Town's Subdivision Ordinance, the site plan required may be general in nature, showing a generalized street pattern, if applicable, and the location of proposed uses. If the proposed uses include development not subject to the Town's Subdivision Ordinance, the site plan shall be of sufficient detail to allow the Planning and Inspections Staff, the Planning Board, and the Board of Commissioners to analyze the proposed uses and arrangement of uses on the site. It shall also include the footprints of all buildings to be placed on the site, the proposed number of stories, and the location and number of off-street parking and loading spaces. The site plan shall show proposed points of access to existing streets and internal circulation patterns. In addition, the location of all proposed buffers and fences shall be included on the site plan.

#### **SECTION 4.4. ACTION BY THE JOINT PLANNING BOARD**

The joint Planning Board may hold a public hearing during which the applicant may voluntarily make modifications to the Conditional Use Permit request. The hearing shall follow quasi-judicial requirements including sworn testimony, the reliance on competent evidence, avoiding ex parte contact and bias, and basing findings of fact on evidence in the record. Board members shall disclose on the record at the public hearing any site visit they may have made to the affected property or any incidental ex parte contact he/she may have had with an affected party. The Planning Board shall review the request for a Conditional Use Permit and Conditional Use District rezoning and make a recommendation to the Board of Commissioners. When favorably recommending approval of the Conditional Use District, the Planning Board shall issue a statement addressing the reasonableness of the proposed rezoning, in addition to addressing the request's consistency with the current Land Use Plan. In recommending the Conditional Use Permit, the Planning Board shall find that:

- (a) The use will not materially endanger the public health or safety if located according to the plan submitted and recommended;
- (b) The use meets all required conditions and specifications;
- (c) The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and
- (d) The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and in general conformity with the Town's most recent Land Use Plan and adopted planning policies.

#### **SECTION 4.5. ACTION BY THE FALCON BOARD OF COMMISSIONERS**

The Board of Commissioners shall hold a public hearing to consider the Conditional Use District rezoning and Conditional Use Permit. The hearing shall follow quasi-judicial requirements including sworn testimony, the reliance on competent evidence, avoiding ex parte contact and bias, and basing findings of fact on evidence in the record. Board members shall disclose on the record at the public hearing any site visit they may have made to the affected property or any incidental ex parte contact he/she may have had with an affected party.

The Board of Commissioners shall review the application, recommendations from the Joint Planning Board, suggested conditions, and other information presented at the public hearing. If the Board of Commissioners approves the rezoning application, a statement analyzing the reasonableness of the proposed rezoning along with addressing the consistency of the request with the current Land Use

Plan shall be made a part of the record. Only upon approval of the Conditional Use District shall the Board of Commissioners consider approval of the Conditional Use Permit.

In approving the application, the Board of Commissioners, by separate motion, shall approve the Conditional Use Permit and may attach such reasonable requirements in addition to those specified in the Joint Planning Board's recommendation, and shall find that the application meets the findings listed in Section 4.4. Sub-sections (a) through (d). All conditions shall be stated in the permit and no condition shall be less restrictive than the standards of the parallel general use district. The conditions may include, but shall not be limited to:

- (a) The location of the proposed use on the property;
- (b) The number and location of structures;
- (c) The location and extent of accessory and support facilities, such as
- (d) parking lots, driveways, fences and access streets;
- (e) The location and extent of buffer areas and other special purpose areas on the property;
- (f) The height of any structure;
- (g) The phasing of development;
- (h) Other restrictions on the use of the property that adhere to the purposes of this ordinance and maintain the public health, safety and welfare; and
- (i) Such other matters as the applicants shall propose.

The record shall reflect that the applicant voluntarily agrees to all conditions proposed for approval of the Conditional Use Permit.

#### **SECTION 4.6 MODIFICATION TO APPROVE CONDITIONAL USE DISTRICTS & PERMITS**

All modifications, including changes in use and/or increase in density, to approved Conditional Use Districts and Permits, other than those listed below, shall be reviewed in the same manner as a new project.

The following minor modifications to the Conditional Use Permit may be approved by the Planning and Inspections Staff without re-approval by the Board



of Commissioners, provided no variance is required, the use does not change, the intent and layout of the approved plan is generally followed, density is not increased, conditions of approval are not violated, and such changes do not cause a significant adverse impact:

- (a) Slight variations in the building dimensions that do not depart from the general approved layout and not exceeding ten percent of the original approved dimensions;
- (b) Minor changed in parking lot or traffic lane dimensions;
- (c) Minor dimensional changed to individual lots;
- (d) Minor site modifications due to necessary engineering requirements;
- (e) Change of location of elements included on the site plan that generally maintains relative alignment and orientation to the approved site plan; and
- (f) Other similar insignificant changes.

In reviewing such changes, the Planning and Inspections Staff may require that the modification be handled in the same manner as a new application.

#### **SECTION 4.7. TIME LIMIT**

Once the conditional Use District rezoning and Conditional Use Permit are approved, all conditions attached thereto shall be binding upon the property and all subsequent development and use of the property shall be in accordance with the approved permit and conditions. Since the intent of this type of district is to provide for workable alternative uses of property, it is intended that land will be zoned in accordance with firm plans to develop. Therefore, at the end of two years from the date of approval, the Board of Commissioners may examine progress made to determine if active efforts are proceeding. If the Board of Commissioners determines that active efforts to develop are not proceeding, the board may institute proceedings to rezone the property to its previous zoning classification.

#### **SECTION 4.8. FAILURE TO COMPLY**

If for any reason any condition imposed pursuant to this section is found to be illegal, or if the applicant should fail to accept any condition, the authorization of such Conditional Use Permit shall be null and void and of no effect, and the

property shall remain in, or revert to, its previous zoning classification.

Compliance with all conditions of a Conditional Use Permit is an essential element of the Conditional Use Permit's continued validity and effectiveness. If the Planning and Inspections Director, hereinafter *Director*, determines that a developer has failed to comply with a condition of an approved Conditional Use Permit, the Director shall so notify the developer or the developer's successor in interest in writing and shall place the matter on the Board of Commissioners' agenda, after consideration by the Joint Planning Board and upon issuance of its recommendation, for the Board of Commissioners' hearing and decision whether or not to revoke the Conditional Use Permit. Such hearing shall be on reasonable written notice to the developer or the developer's successor in interest and shall be a quasi-judicial proceeding according to quasi-judicial procedures. The decision of the Board of Commissioners shall be a final decision, and a decision to revoke the Conditional Use Permit may be appealed to the Superior Court of Cumberland County within 30 days after the developer or the developer's successor in interest has been served with written notice of the Board of Commissioners decision. Service by personal delivery or certified mail, return receipt requested, of a certified copy of the Board of Commissioners' approved minutes for its meeting at which such decision is made, shall constitute written notice and service of the Board of Commissioners' decision hereunder.

#### **SECTION 4.9. VALIDATION OF EXISTING CONDITIONAL USE OVERLAYS**

Nothing in this ordinance shall be interpreted to affect or impair any rights accrued pursuant to any Conditional Use Overlay District and Permit, under the Town Zoning Ordinance of March 5, 1991, and subsequent amendments, prior to the effective date of this amendment. All valid and legally approved Conditional Use Overlay Districts and Permits shall continue to be valid provided that terms of the permit are not substantially or materially altered or expanded in any manner, that all conditions and requirements of the permit are and continue to be complied with and that the use does not cease for a period of one year. Failure to comply with the conditions of the Permit for the Conditional Use Overlays will subject the developer and/or current owner to possible revocation pursuant to Section 4.8 above.

## **ARTICLE V. NONCONFORMING USES**

### **SECTION 5.1. CLARIFICATION**

Any structure or use of land, existing at the time of the enactment of this ordinance, or any amendment thereto, used for a purpose not permitted in the zoning district in which it is located shall be considered a nonconforming use and shall be regulated as follows.

### **SECTION 5.2. GENERAL PROVISIONS**

No structure or land containing a nonconforming use shall hereafter be extended, nor shall its total value be enhanced, except as provided in this article.

#### **5.21. Discontinuance Open-Air Uses.**

All nonconforming uses not carried on within a structure, except those which are incidental and necessary to activities within a structure, shall be discontinued within three (3) years from the effective date of this ordinance for the zoning area. All such uses which are made nonconforming by an amendment of this ordinance or extension of the area in which this ordinance is applicable shall be discontinued within three (3) years after the date of such amendment or extension. Uses to be discontinued under this section shall include outdoor sales areas, automobile parking lots not immediately adjacent to and used in conjunction with a structure which the parking lot serves, storage yards, signs, billboards and similar uses. Where nonconforming use status applies to structure and premises in combination, if the building is removed or destroyed, the nonconforming use of the land shall cease and any subsequent use of the land and buildings placed thereon shall be in conformity with the provision of this ordinance.

#### **5.22. Continuance of Nonconforming Uses.**

Any nonconforming use may not be changed to any other nonconforming use, unless the Board of Adjustment finds that such use is no more detrimental to the neighborhood than the initial nonconforming use of the property in question, and no change of title or possession, or right to possession of property involved shall be construed to prevent the continuance of such nonconforming use.

#### **5.23. Continuance of Nonconforming Structures.**

A nonconforming structure may be enlarged or extended provided that its nonconformity is not increased and provided further that if such structure is to be remodeled or rebuilt to an extent exceeding one-third of its then reproducible

value, as determined by the zoning inspector, the entire building or structure must be in conformity with the dimensional requirements of the district.

**5.24. Reconstruction Prohibited.**

Any nonconforming structure or any structure which has been damaged by fire or other causes, may be reconstructed and used as before if it be done within one year of such damage.

**5.25. Resumption of Nonconforming Use Prohibited.**

The resumption of a nonconforming use of a structure shall not be permitted if such nonconforming use is discontinued, or ceases regardless of intent, for a continuous period of one year.

**SECTION 5.3 PROVISIONS FOR MANUFACTURED HOME LOTS AND PARKS**

Notwithstanding any other provisions of this Article V to the contrary, the continuance of the use of land and structures for individual manufacture home or manufacture home park districts in which individual manufacture homes or manufacture home parks, are not a permitted use shall be regulated as follows:

**5.31. Continuance of Individual Nonconforming Home Uses.**

Individual lots in districts not zoned for individual manufactured home use on which there is located a pre-existing (i.e., existing thereon at the time of such zoning) nonconforming manufactured home may continue to be used as an individual manufactured home lot, subject to the following conditions:

(a) In the event that the use of the nonconforming individual lot as a site for a pre-existing individual manufactured home is discontinued for a period of one (1) year or more, such use of the lot shall not be resumed and only the uses permitted for the zoning district in which the lot is located shall be allowed.

(b) The land area of the individual manufactured home lot, as it existed at the time of the zoning of the district in which the lot is located, shall not be expanded.

(c) A manufactured home which was located on a nonconforming individual manufactured home lot at the time the district in which the lot is located was zoned shall not be replaced except in accordance with provisions of this Section.

### **5.32 Continuance of Pre-Existing Nonconforming Manufactured Home Park Uses.**

Tracts or parcels of land in districts not zoned for manufactured home park use on which there is located a pre-existing nonconforming manufactured home park may continue to be used as a manufactured home park, subject to the following conditions,

(a) In the event that the use of a tract or parcel of land, or part thereof, as a manufactured home park is discontinued for a period of one (1) year or more, such use of the land, or part thereof, shall not be resumed and only the uses permitted for the zoning district in which the land is located shall be allowed.

(b) The land area of the manufactured home park, as it existed at the time of the zoning of the land on which the park is located, shall not be expanded.

(c) A manufactured home which was located in a pre-existing nonconforming manufactured home park at the time the district in which the park is located was zoned shall not be replaced except in accordance with provisions of this section.

### **5.33 Replacement of Pre-Existing Manufactured Homes on Individual Nonconforming Lots.**

A pre-existing manufactured home on an individual nonconforming manufactured home lot may be replaced by another manufactured home during the period in which the pre-existing nonconforming use of the lot is allowed to continue, provided that the replacement structure, as newly positioned on the lot, conforms to the following requirements:

(a) The replacement structure in any residentially zoned district shall be a class A manufactured home and the replacement structure in any of the following nonresidential zoning districts, O&I Office and Institutional, the C1 Local Business, the C3 Heavy Commercial, the C(P) Planned Commercial, and the M Industrial shall be a Class A or Class B manufactured home as defined in this section, provided that such replacement structures are used exclusively for residential purposes.

(b) The replacement structure shall meet the structure setback and other applicable provisions of this Appendix A for the zoning district in which the lot is located.

(c) The replacement structure shall meet the current requirements of the Cumberland County Fire Prevention Ordinance and the fire prevention code adopted therein.

(d) The replacement structure shall meet the current requirements of the Cumberland County Minimum Housing Code.

(e) The replacement structure shall meet the current requirements of the Cumberland County Public Health regulations pertaining to sewerage and water systems.

(f) In the event of conflict among the requirements set forth above, the replacement structure must meet the stricter of the conflicting requirements.

#### **5.34 Replacement of Pre-Existing Manufactured Homes in Nonconforming Home Manufactured Parks.**

A pre-existing manufactured home in a nonconforming manufactured home park may be replaced by another manufactured home during the period in which the pre-existing nonconforming use of the land on which the park is located is allowed to continue, provided that the replacement structure, as newly positioned in the park, conforms to the following requirements:

(a) The replacement structure shall be placed in the manufactured home park so that the structure in place is set back from the external boundaries of the park a distance which meets the setback and other applicable provisions of this Appendix A for the zoning district in which the park is located, as though the park were a single lot or tract within such district. For the purposes of this subsection, front yard setback requirements shall be measured from a public street constituting an external boundary of the park, if any. Other setback requirements shall be treated as rear and side yard setbacks, as appropriate, and be measured from the boundary of the park other than a public street.

(b) The replacement structure and the manufactured home lot on which it is emplaced shall meet the current internal dimensional requirements for a "mobile home park" as defined and set forth in this Appendix A, to include without limitation lot area, density, and yard space requirements.

(c) The replacement structure shall meet the current requirements of the Cumberland County Fire Prevention Ordinance and the fire prevention code adopted therein.

(d) The replacement structure shall be a Class B or better manufactured home and shall otherwise meet the current construction and other standards for manufactured homes established by applicable local ordinance and North Carolina and Federal law and regulations.

(e) The replacement structure shall meet the current requirements of the Cumberland County Health Department regulations pertaining to manufactured homes and manufactured home parks.

(f) The replacement structure shall meet the current requirements of the Cumberland County Minimum Housing Code.

(g) In the event of conflict among the requirements set forth above, the replacement structure must meet the stricter of the conflicting requirements.

### **5.35 Map of Pre-Existing Nonconforming Manufactured Home Lot or Park.**

Every owner of land on which a pre-existing nonconforming manufactured home individual lot or park is located shall file with the Cumberland County Planning Department, for the use of the county zoning inspector, a map or site plan of the land area of such lot or park showing the dimensions to scale of the area at the time of the zoning of the land on which the lot or park is located, showing the location and external dimensions to scale of each manufactured home existing therein at such time, and showing such other pertinent information as the planning department and the zoning inspector may require.

### **5.36 Zoning Permit Required.**

No replacement of a pre-existing nonconforming manufactured home hereunder shall be permitted unless the owner of such replacement has made application to the zoning inspector for a zoning permit for such replacement and the permit has been issued. The application shall describe the proposed replacement manufactured home by manufacturer's name, model and serial number, year of manufacture and dimension and shall show the proposed location of the replacement by outline on a copy of the map of the manufactured home individual lot or park on file with the planning department. The zoning inspector shall issue a zoning permit for the replacement only upon a determination that the replacement and its location meets the requirements for replacing a pre-existing nonconforming manufactured home set forth above. The zoning inspector may demand any additional information reasonably required to make such a determination and may deny a permit if such information is not submitted. No provision herein shall waive or release any other requirement for a permit pertaining to the replacement or lot or park in which it is to be located which may be set forth in this appendix or other local, state or federal law.

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## **ARTICLE VI. PLANNED DISTRICTS**

### **SECTION 6.1. GENERAL OBJECTIVES**

This article recognizes that through ingenuity, imagination and quality design community development can be improved. The careful review of development plans by the Planning Board is a process which will:

(a) Permit creative approaches to the development of land, reflecting changes in the technology of land development;

(b) Smaller networks of utilities and streets and thereby lower development costs;

(c) Provide and insure an environment of stable character compatible with surrounding land uses;

(j) Accomplish a more desirable environment than would otherwise be possible; and

(k) Enhance the appearance of the community.

See Article XII for administrative procedures.

### **SECTION 6.2. GENERAL PROVISIONS**

The burden shall be on the developer to show that his plans are in the best interests of the community and the users of the proposed developments. Site planning in the proposed development shall provide protection of the development from potentially adverse surrounding influences, and protection of surrounding areas from potentially adverse influences within the development. The development plan shall show and careful review shall be given the following information:

(a) Proposed land uses, the location of various land uses, their types and densities;

(b) Proposed circulation pattern for vehicles and pedestrians;

(c) Proposed parks and other common open space areas, proposed means of dedication of any common open space areas and organizational arrangements for the ownership, maintenance and preservation of common open space;

- (d) Delineation of the units or phases to be constructed in progression;
- (e) Relation to land uses in surrounding areas and to the general development plan;
- (f) The layout of car parking and loading areas, service areas, entrances, exits, yards, courts and landscaping, control of signs, lighting, noise or other potentially adverse influences as to protect the residential character within and/or adjacent to the planned development; and
- (g) The setbacks' size and screening of various land uses.

In any planned district no zoning permit or certificate of occupancy shall be issued by the zoning inspector except in conformance with a plan submitted to and approved by the Planning Department and Town Council.

### **SECTION 6.3. PLANNED DISTRICTS**

Plans for the Planned Commercial District C(P) must meet all of the general provisions of this article and the yard, lot, parking, building, sign and other requirements pertaining to these districts as contained in this ordinance. In addition, the Planning Department may require that additional information be shown which is needed to properly evaluate the merits of the proposed development as to the adherence to the general land use plan and the impact of the proposed development on surrounding land uses.

## **ARTICLE VII. LOT AND YARD REGULATION**

### **SECTION 7.1. LOT REGULATION**

General lot regulations shall apply as herein set forth.

#### **7.11. One Principal Structure Per Lot.**

Every principal structure hereafter erected shall be located on a lot as herein defined. In no case shall there be more than one main residential building and its accessory buildings on one lot of record except as provided for Group Developments, (Section 7.18).

#### **7.12. Street Access.**

No structure shall be erected on a lot which does not abut a public street or approved private street for at least twenty (20) feet, such frontage (abutting) to be continuous from the property line to the front yard building setback line, where the lot width must conform with the provisions of Section 7.3.

#### **7.13. Reduction of Lot Size Prohibited.**

No lot shall be reduced in area so that lot and/or yard areas below the minimum required under this ordinance shall result. If two (2) or more adjacent platted lots are in common ownership and are platted on record in the office of the Register [Registrar] of Deeds of Cumberland County on the effective date of this ordinance for the zoning area, and such platted lots individually are too small to meet the yard and area requirements of the district in which they are located, such groups of platted lots shall be considered as defined herein and the lot or lots shall be subject to the requirements of this ordinance. However, lots fifty (50) feet or more in width may be treated as recorded lots less than minimum width.

#### **7.14. Recorded Lots Less Than Minimum Requirement.**

Where any lot of record on the effective date of this ordinance or amendment thereto for the zoning area in a district which allows residential uses does not contain sufficient land to permit conformance to the dimensional requirements of this ordinance, such lot may be used as a building site for a single family residence, provided that the lot area and yard dimensions are not reduced below the minimums specified in this ordinance by more than seventeen (17) percent in the R20, R15, R15A, R7.5 and R6 Residential Districts.

### **7.15. Lots without Community Water and/or Sewer.**

Any lot that is not served by community water and/or sewer, in addition to the regulations of the district in which said lot is located, must be certified by the Cumberland County Health Department to be large enough to meet all applicable regulations regarding water supply and/or sewage disposal.

### **7.16. Building Lines on Irregularly Shaped Lots.**

Locations of front, side and rear buildings lines on irregularly shaped lots shall be determined by the zoning inspector. Such determinations shall be based on the spirit and intent of the district regulations to achieve spacing and location of buildings or groups of buildings on individual lots.

### **7.17. Corner Lots.**

All structures on corner lots in residential districts shall be set back at least fifteen (15) feet from the side street property lines or forty (40) feet from the center line of the side street, whichever is the greater distance. Structures on corner lots in residential districts on which houses are to front on each of the intersecting streets shall observe the front yard requirements on each of the intersecting streets within the same block if they are located within subdivisions which are recorded after the effective date of this ordinance. Structures on corner lots in residential districts which observe the front yard requirements of the two intersecting streets may reduce the required rear yard by twenty (20) feet.

### **7.18. Group Developments.**

In no case shall any part of a residential building be located closer than twenty (20) feet to any part of another principal building. For each story of height over the first, an additional ten (10) feet of separation shall be added. One vehicular access to a public street shall be provided for each sixty (60) parking spaces or a fraction thereof. No parking space shall be located within fifteen (15) feet of any street right-of-way line. Each parking space shall be within two hundred (200) feet of the residential building it is designed to serve. Five hundred (500) square feet of open space or recreation area, not to be devoted to any other purpose, shall be provided for each dwelling unit.

### **7.19 Density in Condominium and Zero Lot Developments.**

In any condominium or zero lot line development, the average lot area per dwelling unit in all condominium and zero lot line development shall be as listed in Section 7.3.

### **7.19.1. Lot Area Exception in Conservancy Districts.**

In the CD Conservancy District, the area may be used as part of any contiguous zoning district for calculating density of an entire development and satisfying setback requirements for lots within the development. That portion of such lots within the development falling within the CD District shall only be used for open space uses, and no principal or accessory structures shall be permitted, except boat landing piers when permitted by applicable Federal, State, or local regulations.

## **SECTION 7.2. YARD REGULATION**

General yard regulations shall apply as follows:

### **7.21. Projection into Yard Space.**

Every part of a required yard shall be open from its lowest point (grade level) to the sky, unobstructed except for the ordinary projections of sills, belt courses, buttresses, cornices, ornamental features, sundecks, balconies, open porches and eaves; provided that none of the above projections shall project into a required yard more than four (4) feet. Canopies, eaves and marquees may extend into a required yard in a commercial or industrial district provided that no more than ten (10) percent of the square footage within the required yard is covered by such canopies, eaves and marquees, and provided further that supports for such canopies, eaves and marquees shall not be solid and shall not interfere with the free movement of traffic, the required off street parking and the sight view of adjacent properties.

Open fire escapes, outside stairways, the ordinary projection of chimneys and flues, swimming pools, flag poles, decorative fountains and other similar items may be erected in required yards when placed so as not to obstruct light and ventilation necessary for the structure.

### **7.22 Determination of Front Yard Setback.**

The front yard requirements of this ordinance shall not apply on lots where the average depth of existing front yards on developed lots, located within one hundred (100) feet on each side of a lot, within the same block and zoning district as such lot, is greater or lesser than the minimum required front lot depth. In such cases the depth of the front yard on such lot shall not be less than the average front yard depth on such developed lots. This provision shall not require a structure to set back from the street or road a greater distance than that distance set forth in this ordinance or the setback line observed by the closer of the two (2) existing main buildings on immediately adjoining lots. In no case, however, shall any residential structure be placed closer than fifty (50) feet from the center line of a street on which it faces or within forty (40) feet from the

centerline of a side street. The location of a residential structure with respect to the street line in any commercial or industrial district shall not be used as a factor in determining the required setback from the street line for any new buildings to be erected in such districts.

### **7.23. Fences and Walls.**

The setback requirements of this ordinance shall not apply to any retaining wall. Open fences and walls may be erected to any height. Solid fences and walls shall be limited to three (3) feet in height when projected into or enclosing a minimum front yard; shall be limited to seven (7) feet in height when projecting into or enclosing a minimum side yard and/or rear yard; provided, that in no case shall a solid fence or wall exceed three (3) feet in height within twenty-five (25) feet of a public right-of-way line.

### **7.24. Corner Visibility.**

In all districts, no fence, wall, shrubbery, sign or other obstruction to vision between the heights of three (3) feet and fifteen (15) feet shall be permitted within twenty (20) feet of the intersection of two (2) streets.

### **7.25. Rear Yards On Through Lots.**

The depths of rear yards on through lots shall be at least equal to the minimum required front yards for the district in which it is located and no accessory buildings shall be located in the rear yard on through lots.

### **7.26. No other Building In Required Yard Space.**

No part of a yard or other open space required about any structure for the purpose of complying with the provisions of this ordinance shall be included as part of a yard or other open space required under this ordinance for another building. When two (2) or more uses occupy the same building, sufficient parking areas, yard widths, lot area, open space, etc., must be provided so that the dimensional requirements pertaining to each of the uses will be met in full.

### **7.27. Buffer Requirements.**

Where a commercial off-street parking and loading space, utility regulating and pressure control stations, protective service buildings abut residential areas and where an office, commercial or industrial district abuts a residential district to the side or rear property line, there shall be installed and maintained along such side and rear property line a buffer. Also, a buffer shall be required to effectively screen from any residential district which abuts a side or rear yard or from any street, any outside storage of materials, equipment and products.

### **7.28. Location of Accessory Buildings in Any District.**

No accessory building shall be erected in any required front or side yard or within fifteen (15) feet of any side street line or within five (5) feet of any lot line not a street line or within five (5) feet of, any building or other accessory building. In no case, however, shall an accessory building be placed closer to a street than the principal building.

### **7.29. Building Height.**

Multiple family dwellings and office, commercial and industrial buildings shall not be limited to height except that for each one foot of height greater than thirty-five (35) feet the side and rear yard setbacks shall be increased by one foot.

### **7.30. Side Yard Exception.**

In the C-3 commercial zoning districts, where the lot has a width of one hundred fifty (150) feet or less at the front yard setback line, the minimum side yard width requirement shall apply on to one side.

### **7.31. Satellite Dishes.**

Satellite antenna receiving dishes shall not be located in the front yard area. Satellite dishes located in the side or rear yard shall not be located within five (5) feet of the property line.

### **7.32. Yard Space Landscape Requirements.**

All requirements as set forth below shall be applied to new non-residential developments for which a zoning permit is issued on or after January 10, 2006.

Yard space landscaping shall be installed for all building areas of new non-residential developments visible from a public street as follows:

(a) Required plant materials: 1 ornamental tree for every 50 linear feet of building length and/or width and 2 shrubs for every 10 linear feet of building length and/or width. If the calculation of the required number of trees and shrubs results in a fraction of  $\frac{1}{2}$  or greater, 1 additional tree or shrub is required and less than  $\frac{1}{2}$  shall be ignored.

(b) All building areas visible from a public street must have a yard space sufficient in size to accommodate the required plantings and to allow room for flexibility in the landscape design.

(c) Trees shall not be planted within the right-of-way, and may be

clustered.

(d) Healthy existing trees may be used to meet these requirements.

(e) All utilities shall be underground except for 25kv or greater electrical lines.

Maintenance of landscaping:

(a) All required plant material shall be maintained by the property owner, including replacing dead or unhealthy trees and shrubs. Trees shall be maintained in a vertical position at all times.

(b) All planting areas shall be kept free of weeds and debris.



**SECTION 7.3. DISTRICT DIMENSIONAL PROVISIONS\***

Except for the special provisions as noted in Sections 7.1 and 7.2., the following district dimensional regulations shall be met:

District	Minimum Lot Size (See Paragraphs 7.13, 7.14, 7.15 and 7.19)				Minimum Yard Regulations				
	Square Feet Dwelling Unit			Frontage (in feet)	Side Yard Setback (in feet) (See Paragraphs 7.17, 7.29)				
	First Dwelling Unit	2 <sup>nd</sup> , 3 <sup>rd</sup> & 4 <sup>th</sup> Dwelling Units	5 or more Dwelling Units		Front Yard Setback (in feet) (See Para. 7.23) Measured from R/W line	1 Story	2 Story	For each Additional Story greater than 2, add:	Rear Yard Setback (in feet) (See Para. 7.17, 7.25, 7.29)
R40A	40,000	40,000	40,000	100	50	15	15	10 ft/story	35
R20	20,000	20,000	20,000	100	30	15	15	10 ft/story	35
R20A	20,000	20,000	20,000	100	30	15	15	10 ft/story	35
R15	15,000	15,000	15,000	75	30	10	15	10 ft/story	35
R15A	15,000	15,000	15,000	75	30	10	15	10 ft/story	35
R7.5	7,500	7,500	7,500	75	30	10	15	8 ft/story	35
R6	6,000	5,000	4,000	60	25	10	12	6 ft/story	30
District	Minimum Area (See Paragraph 7.15)		Minimum Yard Regulations						
			Front Yard Setback In Feet (See Paragraph 7.23)		Side Yard Width Except As Regulated By Paragraphs 7.29 & 7.30		Rear Yard Depth In Feet (See Paragraphs 7.27 & 7.29)		
			Measured from R/W Line	Measured from Street Centerline					
O&I*			35	65	15		20		
C1			45	75	15		20		
C3			45	75	15		20		
C(P)			50	80	30		30		
M			50	80	30		30		
CD			50	80	50		50		

\*Single Family Dwellings use R15 standards

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## **ARTICLE VIII. OFF-STREET PARKING AND LOADING**

### **SECTION 8.1. GENERAL PROVISIONS**

All uses of land and building shall be provided with adequate off-street parking and loading space to meet the minimum standards in accordance with the provisions of this article.

#### **8.11. Plan Approval.**

Each application for a zoning permit or certificate of occupancy shall include information as to the location and dimensions of off-street parking and loading space and the means of ingress and egress to such space. This information shall be in sufficient detail to enable the zoning inspector to determine whether or not the requirements of this article are met.

#### **8.12. Certificate of occupancy.**

The certificate of occupancy for the use of any building, structure or land where off-street parking space is required shall be withheld by the zoning inspector until the provisions of this article are fully met. If at any time such compliance ceases, any certificate of occupancy which shall have been issued for use of the property shall immediately become void and further use of the premises shall cease until the requirements of this article are met.

#### **8.13. Combination.**

The required parking space for any number of separate uses may be combined in one lot but the required space assigned to one use may not be assigned to another use, except that one-half of the parking space required for churches, theaters, or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night and on Sundays.

#### **8.14. Permanency.**

The off-street parking and loading space required by this article shall be permanent space and shall not be used for any other purposes unless other space is provided which will fully meet the requirements of this ordinance.

#### **8.15. Remote Parking Space.**

Except for residential uses, if the off-street parking space required by this ordinance cannot be reasonably provided on the same lot on which the principal use is located, such space may be provided on any land within four hundred (400) feet of the main pedestrian entrance to such principal use, provided such

land is in the same ownership, by deed or long term lease. In such cases, the applicant for a permit for the principal use shall submit with his application and instrument duly executed and acknowledged, which subjects said land to parking use in connection with the principal use.

#### **8.15.1. Combination and Shared Parking.**

The required parking space for any number of separate uses may be combined in one lot as long as the minimum number of spaces for each separate use is provided, except that the requires space assigned to one use within a shopping center may be assigned to another use provided that the hours of operation for each use do not coincide or overlap and one-half of the parking spaces required for churches, theaters or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night and on Sundays.

#### **8.16. Existing Parking Facilities.**

Accessory off-street parking facilities in existence on the effective date of this ordinance and located on the same lot as the use served shall not hereafter be reduced below the minimum requirements of this article.

#### **8.17. Permissive Parking and Loading Facilities.**

Off-street parking or loading facilities which serve any existing use of land or buildings are permitted in any district provided that all regulations herein governing the location, design, and operation of such facilities are adhered to.

#### **8.18. Increased Intensity of Existing Use.**

When the intensity of use of any building or premises shall be increased through addition of dwelling units, gross floor area, seating capacity, or other units specified herein for the computation of required parking and loading facilities, parking and loading facilities shall be provided for such increase in intensity of use.

#### **8.19 Change of Existing Use.**

Whenever the existing use of a structure shall hereafter be changed to a new use, parking and loading facilities shall be provided as required for such new use. However, if the structure was erected prior to the adoption of this ordinance, additional parking or loading facilities are not mandatory, for non-residential uses.

## SECTION 8.2 OFF-STREET PARKING

### 8.21. Minimum Off-Street Parking Requirements.

Off-street parking spaces shall be provided and permanently maintained by the owners or occupants of the following types of property uses on the basis indicated:

<u>Uses</u>	<u>Required Parking</u>
All dwelling units	two (2) spaces for each dwelling unit, except for one and one-half (1 1/2) spaces for each dwelling unit in a multi-family complex located in R-6, R5-A, and R-5.
Art galleries, libraries, museums	one space for each four hundred (400) square feet of gross floor area
Automobile gas stations	fifteen (15) parking spaces
Automobile repair and/or sales garage	one space for each two hundred (200) square feet of gross floor not used exclusively for storage area
Banks	one space for each two hundred (200) square feet of gross floor space plus; one space for each two (2) employees
Commercial amusement	one space for each four (4) persons in design capacity
Drive-in restaurants	one space for each four (4) inside seats in addition to any outside serving spaces
Funeral homes	one space for each four (4) seats in chapel

Furniture Stores	one space for each four hundred (400) square feet of gross floor space
General, professional, governmental offices	one space for each three hundred (300) square feet of gross floor space
Hospitals	one space for each two (2) beds intended for patient use, plus one space for each employee on the largest shift
Lodges, fraternal, and social organizations	one space for each three hundred (300) square feet of gross floor area
Manufacturing, processing, fabrication, assembly, construction, contracting trades	one space for each vehicle used directly in the building conduct of the use, plus two (2) additional spaces for each (3) employees on the largest shift
Medical clinics, doctors' and Dentists' offices	five (5) spaces for each doctor practicing on the premises
Mobile home and travel trailer sales lot	one space for each employee and one space for each three thousand (3,000) square feet of display area
Motel, hotel, tourist home	one space for each room or unit to be rented plus; one space for each three (3) employees; plus one space for each one hundred (100) square feet of floor area utilized for meeting rooms
Nursery, kindergarten, elementary, and junior high schools	one space for each employee

Nursing homes, convalescent and old age homes.	one space for each four beds intended for resident use, plus; one parking space for each employee on the largest shift
Planned shopping center	parking ratio of five and five tenths (5.5) parking spaces to every one thousand (1,000) square feet of gross leasable floor area for centers whose floor areas are under four hundred thousand (400,000) square feet; five (5) parking spaces to every one thousand (1,000) square feet of gross leasable floor area for centers of four hundred thousand (400,000) square feet and over.
Religious Worship	one space for each five (5) seats
Retail stores, service shops, food and beverage establishments, exclusive of planned shopping centers and furniture stores	one space for each two hundred (200) square feet of gross floor area
Rooming or boarding house	one space for each bedroom
Senior high schools	four (4) spaces for each classroom and administrative office
Veterinary clinics	four (4) spaces for each veterinarian
Vocational and business schools	one space for each three hundred (300) square feet of gross floor space
Wholesale establishments	one space for nine hundred (900) square feet of gross floor area

## **8.22 Computation.**

When determination of the number of off-street parking spaces required by this ordinance results in a requirement of a fractional space, any fraction of one-half or less may be disregarded, while a fraction in excess of one-half shall be counted as one parking space.

## **8.23. Size.**

A required off-street parking space shall be at least eight (8) feet six (6) inches in width and at least twenty (20) feet in length measured at right angles to the axis of the vehicle exclusive of access drives, aisles or ramps. Such space shall have a vertical clearance of at least six (6) feet, six (6) inches. For parallel parking, the length of the parking space shall be increased to twenty-three (23) feet.

## **8.24. Access.**

Each required off-street parking space shall open directly upon an aisle or driveway of such width and design as to provide safe and efficient means of vehicular access to such parking space. All off-street parking facilities shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movement. All commercial and industrial off-street parking areas and all off-street parking lots for residential use where three (3) or more spaces are required shall be so arranged that egress from the parking space is by forward motion of the vehicle.

### **8.24.1. Lateral Access.**

All non-residential and multi-family developments shall provide lateral vehicular access to the adjacent property when it is zoned or developed non-residentially. This lateral access must be located at least 50 feet back from an access point to the public street system. Exceptions can be made when the developer can demonstrate that the nature of the proposed development does not lend itself to lateral access.

## **8.25. Lighting.**

Any lighting used to illuminate off-street parking areas shall be directed away from residential districts and public streets.

## **8.26. Public Areas.**

No portion of any street right-of-way or public parking facility shall be considered as fulfilling or partially fulfilling area requirements for off-street parking space required by the provisions of this ordinance.



### **8.27. Residential Parking Limitation.**

Where parking for more than five (5) cars are [is] permitted or required in residential districts, the lot may be used only for parking and not for any type of loading, sales, repair work, dismantling, servicing or long term storage, either of merchandise or vehicles.

### **8.28. Parking Area Landscape Requirements.**

All requirements as set forth below shall be applied to new non-residential developments for which a zoning permit is issued on or after January 10, 2006.

Paved parking areas having 20 or more parking spaces shall be landscaped as follows:

- (a) Required plant materials: 1 large shade tree or 2 ornamental shade trees for every 20 spaces.
- (b) Trees shall be protected from vehicles.
- (c) Trees shall not be planted within the right-of-way, and may be clustered.
- (d) Healthy existing trees may be used to meet these requirements.
- (e) All utilities shall be underground except for 25kv or greater electrical lines.

Maintenance of landscaping:

- (a) All required plant materials shall be maintained by the property owner, including replacing dead or unhealthy trees and shrubs. Trees shall be maintained in a vertical position at all times.
- (b) All planting areas shall be kept free of weeds and debris.

## **SECTION 8.3. OFF-STREET LOADING**

Off-street loading spaces accessory to use permitted in any district shall be provided in accordance with the following regulations. The zoning inspector shall determine the sufficiency of loading spaces permitted or required by this ordinance.

### 8.31. Minimum Off-Street Loading Requirements.

Off-street loading spaces shall be provided and permanently maintained by the owners or occupants of the following types of land uses on the basis indicated:

<u>Use</u>	<u>Required Space</u>
Retail operations, and all first floor nonresidential uses, with a gross floor area of less than twenty thousand (20,000) square feet, and all wholesale and light industrial operations with a gross floor area of less than ten thousand (10,000) square feet.	One loading space.
Retail operations, (including restaurant and dining facilities within hotels and office buildings) with a total usable floor area of twenty thousand (20,000)	One loading berth for every twenty thousand (20,000) square feet of floor area requiring not more than 7spaces.
Office buildings and hotels with a total usable floor area of one hundred (100,000) square feet or more devoted to such purposes.	One (1) loading berth for every one hundred thousand (100,000) square feet of floor area.
Industrial and wholesale operations with a gross floor area of ten thousand (10,000) square feet or over and as follows:	Minimum number of loading berths required:
10,000 to 40,000 sq. ft.	One (1) loading berth.
40,000 to 100,000 sq. ft.	Two (2) loading berths.
100,000 to 160,000 sq. ft.	Three (3) loading berths.
160,000 to 240,000 sq. ft.	Four (4) loading berths.
240,000 to 320,000 sq. ft.	Five (5) loading berths.
320,000 to 400,000 sq. ft.	Six (6) loading berths.
Each 90,000 above 400,000 sq. ft.	One (1) loading berth.

### **8.32. Location.**

One or more loading berths or other space shall be provided for standing, loading and unloading operations either inside or outside a building and on the same or adjoining premises with every structure erected after the enactment of this ordinance.

### **8.33. Screening.**

All motor vehicle loading spaces abutting any residential district shall be completely screened.

### **8.34. Size.**

A loading berth shall have minimum plan dimensions of twelve (12) feet by twenty-five (25) feet and fourteen (14) feet overhead clearance. A loading berth shall be sufficient to allow normal loading operations of a kind and magnitude appropriate to the use served thereby.

### **8.35. Access.**

Each required off-street loading space shall be designed with appropriate means of vehicular access to a street or alley, without hindering the movement of vehicles over a street or alley, and of pedestrians over a sidewalk.

### **8.36. Utilization.**

Space allocated to any off-street loading space shall not, while so allocated, be used to satisfy the space requirements for any off-street parking spaces or access drives or aisles.

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## **ARTICLE IX. SIGN REGULATIONS**

The purpose of these regulations is to minimize any detrimental effects of signs on adjacent land uses, and to insure that permitted signs do not become a public nuisance or hazard. All signs erected, altered, relocated or maintained shall be in accordance with the provisions of this article.

### **SECTION 9.1. GENERAL PROVISIONS**

#### **9.11. Zoning Permit Required.**

No sign requiring a permit shall hereafter be erected or attached to, suspended from or supported on a structure nor shall any existing sign be enlarged, replaced or relocated until a zoning permit has been issued by the zoning inspector. Signs ten (10) square feet in area or less is exempted from this provision.

#### **9.12. Measurement of Sign Area.**

Sign area shall be computed by measuring the smallest shape to encompass each portion of the sign devoted to conveying a message, making anything known or attracting attention, excluding structural supports. Signs that employ moving or-extending parts shall be measured when moved or extended to form the largest possible silhouette. The total sign area for a double-faced sign or "V" type sign shall be measured on the largest face of the sign; however, advertising matter may be posted on both sides of such permitted signs, provided that any "V" type sign with a "V" angle of grater than forty-five (45) degrees shall be subject to measurement of sign area on both sides.

#### **9.13. Maintenance and Appearance of Signs.**

All signs together with braces, guys, and supports shall at all times be maintained in a safe condition and kept in good repair, free from excessive rust, corrosion, peeling paint, or other surface deterioration.

#### **9.14. Signs Facing Residential Districts.**

No billboard shall face or be oriented toward any adjoining or abutting residentially zoned district within two hundred (200) feet of the residential district boundary line. Illuminated signs shall be so placed as not to be a nuisance to residents of neighboring residential property.

**9.15. On Site Interference.**

The location and structural design of freestanding signs shall be such as to not interfere with the safe and efficient use of off-street parking and loading areas including aiseways and access driveways.

**9.16. Unsafe and Unlawful Signs.**

If the zoning inspector shall find that any sign is unsafe or is a menace to the public or has been constructed, erected, or is being maintained in violation of this ordinance he shall give written notice of such violation to the owner of the sign. If the owner of the sign fails to remove or alter the structure so as to comply with the required standards within thirty (30) days after such notice, such sign may be removed, or altered to comply, by the zoning inspector at the expense of the owner of the sign. The zoning inspector may cause any sign or other advertising structure which is an immediate peril to persons or property to be promptly removed by the sign owner.

**9.17. Cessation of Purpose and Removal.**

Bona fide business conducted, or a product sold, shall be taken down and removed by the owner, agent or person having the beneficial use of the building or land or structure upon which such sign may be found. Such sign shall be removed within thirty (30) days after written notification from the zoning inspector except that temporary activities sign posting shall be removed by the permittee within seven (7) days following the date of termination of such events. Upon failure to comply with any notice within the time specified the zoning inspector is authorized to cause removal of such sign, and any expense incident thereto shall be paid by the owner of the sign.

**9.18. Signs Permitted in Conjunction with Nonconforming Uses.**

Any nonconforming use in any district may maintain such business signs as would be allowed for such use in the most restrictive district in which the use would be permitted, or such signs as are existing at the time the use becomes nonconforming, whichever is the most restrictive with regards to sign size.

**SECTION 9.2. SIGNS PROHIBITED**

Erection or maintenance of signs having any of the following characteristics is prohibited.

**9.21. Signs not to Constitute Traffic Hazard.**

No sign or advertising structure shall be erected or maintained at the intersection

of any streets or roads so as to obstruct free and clear vision; or at any location where, by reason of the position, illumination, shape or color, it may impair, obstruct the view or be confused with any authorized traffic sign, signal, or device; or which makes use of the words "stop," "look," "drive-in," "danger" or any other word, phrase, symbol or character in such manner as to interfere with, mislead or confuse traffic. In any case signs shall be prohibited within twenty (20) feet of a street intersection measured to the intersection of the two (2) nearest street lines.

#### **9.22. Signs Erected on Public Streets.**

No sign shall be erected or maintained within any public street right-of-way nor be allowed to extend over or into any public street, provided that this section shall not apply to public signs necessary in the performance of a governmental function or required to be posted by law.

#### **9.23. Obstruction of Ingress or Egress of Building.**

No sign shall be erected or maintained that obstructs ingress and/or egress to or from any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, ingress or egress to or from any room or building as required by law.

#### **9.24. Obscene Matter Prohibited.**

No sign shall be erected or maintained which bear[s] or contain[s] statements, words, or pictures of an obscene character.

#### **9.25. Signs on Private Property; Consent Required.**

No sign may be erected by any person on private property of another person without first obtaining the verbal or written consent of such owner.

### **SECTION 9.3 SIGNS PERMITTED IN ANY DISTRICT**

The following types of signs are permitted in all zoning districts subject to any specific requirement or prohibition provided herein for any particular zone.

#### **9.31. Temporary Real Estate Sales Signs.**

For the purpose of advertising a specific lot, building, or premise for sale, lease, or rent, temporary real estate sale signs are permitted not exceeding eight (8) square feet in area and provided only one such sign shall be displayed for each street abutting the lot or premise set back at least five (5) feet from any property line.

### **9.32. Temporary Signs Advertising Real Estate Subdivisions.**

For the purpose of advertising real estate subdivisions for which a plat has been officially recorded, one sign is permitted at each main entrance to the development named on the sign, such sign not to exceed thirty-two (32) square feet in area.

### **9.33. Temporary Signs Pertaining to Construction.**

For the purpose of identifying the firm or company involved in construction taking place on the lot, temporary signs are permitted for the duration of such construction, limited to one sign for each firm, company, or use, not exceeding twenty (20) square feet for each sign and setback at least five (5) feet from any property line.

### **9.34. Traffic Control Signs.**

Signs which only regulate traffic on private property are permitted.

### **9.35. Transportation Facilities Signs.**

For the purpose of identifying public transportation facilities signs are permitted provided that such signs shall not contain commercial advertising or related messages.

### **9.36. Special Informational Signs.**

Signs and on-site signs pertaining to specified conditional uses where not otherwise permitted may be approved by the Board of Adjustment subject to a conditional use permit specifying the size, location, lighting, design, and display. Such signs shall be limited to those which are necessary to inform the public as to location and information concerning facilities, institutions, business districts, fraternal orders and service clubs, or such other activity as the board may judge to be beneficial to the total community.

### **9.37. Portable Signs.**

Any sign whether on its own trailer, wheels, or otherwise, which is designed to be transported from one place to another and typically has space provided for advertising messages that may be changed at will by the replacement of lettering or symbols is allowed in any district for a period of two weeks in any six month period. Portable signs may be illuminated, but nonflashing and motionless.



## SECTION 9.4. SIGNS PERMITTED BY DISTRICT

In addition to the aforementioned signs the following signs are also permitted:

### 9.41. Residential District.

**9.411. Dwelling Identification Sign.** One identification sign not exceeding two (2) square feet in area is permitted for each residential dwelling unit. For one and two family dwelling units identification signs shall be at least five (5) feet from any street or property line. For multi-family dwelling units, identification signs shall be mounted flat to the main wall of the building. Identification signs may be illuminated but nonflashing and motionless.

**9.412. Large Scale Residential Development Signs.** Identification signs are permitted on the premises of residential group development limited to one sign for each public street front, each sign not to exceed ten (10) square feet in area. Such signs may be lighted, but nonflashing and motionless and located not less than five (5) feet from any street right-of-way line.

**9.413. Special Gate Signs.** A permanent sign is permitted as an integral part of a gate or entrance structure which identifies a subdivision, group housing development, estate, farm or other residential entity, provided there are not more than two (2) signs for each main entrance, with a total sign area for each such entrance not to exceed thirty-two (32) square feet. Under this provision, if such a special gate sign is utilized no other main entrance identification sign is permitted.

#### 9.41.1 O&I Office and Institutional District.

Signs for uses permitted in the O&I District shall be regulated as follows:

**9.41.1(a) Signs Permitted.** One identification sign and one bulletin board sign per business shall be permitted. When detached from the building, all identification signs representing business within one building must be on the same support pole or structure. One bulletin board sign attached to the building and listing the building(s) occupants shall be permitted per building.

**9.41.1(b) Sign Area.** Identification signs shall have a maximum area of 10 square feet per business with an overall sign area not to exceed 50 square feet; bulletin boards attached to the building shall have a maximum sign area of six square feet.

**9.41.1(c) Illumination.** Any illuminated sign shall be lighted only with nonflashing and motionless illumination. Any lights used for illumination shall be so arranged as to reflect light away from any adjoining residential district, and shall be so arranged as to reflect light away from the streets.

**9.41.1(d) Sign Height.** No part of any detached sign shall be more than 35 feet above the ground at its base and no sign shall be located closer than five feet to any property line or right-of-way line.

**9.41.1(e) Location.** No sign shall be located less than five feet from any street or property line.

## **9.42. C(P) District.**

Signs for uses permitted in the planned commercial C(P) district shall be regulated as follows:

**9.421. Signs Permitted.** Two (2) detached signs are permitted bearing the name of the shopping center and the names of types of businesses, except that three (3) such detached signs are permitted for shopping centers having frontage on two (2) or more public streets with no more than two (2) such signs for each street front. One attached business sign is permitted for each business and which is integral with or attached to the principal building except structures with frontage on two (2) streets may have two (2) attached business signs, one per street frontage.

**9.422. Sign Area.** Attached business signs shall not exceed one (1) square foot in area for each front foot of the structure or portion wherein the use referred to is conducted. Frontage to be used in calculating the permitted attached business sign area shall include frontage whereon a sign may be erected on each of these frontages. Detached business signs shall not exceed one hundred (100) square feet each, except as follows:

(a) When only one (1) detached business sign is to be erected on a lot such sign shall not exceed two hundred (200) square feet.

**9.423. Illumination.** Any illuminated sign shall be lighted with nonflashing and motionless illumination.

**9.424. Location.** Detached business signs one hundred (100) feet or less in height shall be set back from any street giving driveway access to the property a distance of one (1) foot for each foot of height above ground level; provided, that no such detached business sign shall be located closer than fifteen (15) feet to any property line.

Detached business signs more than one hundred (100) feet in height shall be set back from any property line a distance of one (1) foot for each foot of height above ground level.

Attached business signs shall be placed on the building or on canopies attached to the building in which the use referred to takes place. Business signs placed

on buildings or canopies shall extend no more than eighteen (18) inches from the surface.

#### **9.43. C-3 Districts.**

Signs for uses permitted in the C-3 District shall be regulated as follows:

**9.431. Signs Permitted.** Business signs are permitted with no limitation on number of business signs which are integral with or attached to the principal building or located within the buildable area of the lot. One sign for each business occupant may be detached and placed in the required yard space, except on through lots or lots having frontage on three (3) or more streets, in which case two (2) detached signs per business occupant shall be permitted. Billboards are permitted as regulated below.

**9.432. Sign Area.** The combined total sign area of all signs for a single business occupant shall not exceed seven hundred fifty (750) square feet or four (4) square feet of sign area per linear foot of frontage on a public street whichever is the lesser. No detached sign shall exceed one hundred (100) square feet in area. No billboard sign shall exceed six hundred fifty (650) feet in area.

**9.433. Illumination.** Any illuminated sign shall be lighted only with nonflashing and motionless illumination.

**9.434. Height.** Detached business and billboard signs shall not exceed a height of thirty-five (35) feet above ground from the base.

**9.435. Location.** Business signs shall not be located closer than five (5) feet to any street line and no sign not integral with or attached to a building shall be located nearer than five (5) feet to any property line. Billboards shall not be located closer than thirty (30) feet to any street line, closer than five (5) feet to any side property line, or closer than fifty (50) feet to any detached sign or structure located on the same lot or on land in the same ownership or located within three hundred (300) feet of any billboard.

**9.436. Temporary Activities Sign Posting.** For the purpose of endorsing or advertising temporary activities such as displays, festivals, circuses, fairs, contests, fund drives, elections, campaigns, exhibits, meetings, conventions, sales, performances, dances, drives, and the like, signs are permitted in the C3 District after first obtaining a sign permit from the zoning inspector for such a temporary sign or group of signs. The zoning inspector may refer the request to the board of adjustment for final determination if there is doubt as to the merits of such a request.

#### **9.44. C1 District.**

Signs for uses permitted in the C1 district shall be regulated as follows:

**9.441. Signs Permitted.** An unlimited number of business signs are permitted which are located in the buildable area of the lot. One sign per establishment may be placed in the required yard space, except through lots or lots having frontage on three (3) or more streets, in which case two (2) detached signs per establishment shall be permitted.

**9.442. Sign Area.** No detached sign shall exceed fifty (50) square feet in area. The combined total sign area of all signs on the premises shall not exceed four hundred (400) square feet or two (2) square feet of sign area per linear foot or frontage on a public street, whichever is the lesser.

**9.443. Illumination.** Any illuminated sign shall be lighted only with nonflashing and motionless illumination. Any lights used for illumination shall be so arranged as to reflect light away from any adjoining residential district.

**9.444. Sign Height.** No sign shall be attached to a building so as to extend more than ten (10) feet above any part of the roof or, if projecting from the outer walls of the building, so as to have any part of the sign ten (10) feet higher than the nearest edge of the roof. No part of any detached sign shall be more than thirty-five (35) feet above the ground at its base.

**9.445. Location.** No sign shall be located closer than five (5) feet to any street line. Detached signs shall be set back from any street line a distance of one foot for each foot of height above ground level provided that no detached sign shall be located closer than five (5) feet to any street or property line. In no case shall any sign be erected or displayed on the-side street side of a corner building, nor on the rear of any building if such building be located within one hundred (100) feet of a residential district.

#### **9.45. M District.**

Signs in the M District shall be the same as permitted in the C-3 District.

## ARTICLE X. DEFINITION OF TERMS

For the purpose of interpreting this ordinance certain words or terms are herein defined.

### SECTION 10.1 INTERPRETATION OF COMMONLY USED TERMS

Words used in the present tense include the future tense.

Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.

The word "person" includes a firm, association, corporation, trust and company, as well as an individual.

The words "used" or "occupied" include the words "intended", "designed", or "arranged to be used or occupied".

The word "structure" shall include the word "building."

The word "lot" shall include the words "plot" or "parcel".

The word "shall" is always mandatory and not merely directory.

The word "County" means County of Cumberland.

The word "Town" means Town of Falcon.

The word "Town Council" means Falcon Town Council.

The word "Planning Board" means Cumberland County Joint Planning Board.

The word "Planning Department" means Cumberland County Joint Planning Department.

### SECTION 10.2 DEFINITIONS OF SPECIFIC TERMS AND WORDS

**Accessory building or use:** A building or use, not including signs, which is:

(a) Conducted or located on the same zoning lot as the principal building or use, or off-street parking, as specifically provided for in this ordinance;

(b) Clearly incidental to, subordinate in area and purpose to, and serving the principal use; and

(c) Either in the same ownership as the principal use or clearly operated and maintained solely for the comfort, convenience, necessity or benefit of the occupants, employees, customers or visitors of or to the principal use.

**Agriculture:** The practice of cultivating the soil, producing crops, and raising livestock; such as but not limited to dairying, pasturage, viticulture, horticulture, hydroponics, floriculture, aquaculture, truck farming, orchards, forestry and animal and poultry husbandry. The operation of any accessory uses shall be secondary to that of the normal agricultural activities.

**Assembly:** An event causing a company of persons to collect together in one place, and usually for some common purpose, such as for deliberation and legislation, worship or social entertainment.

**Alley:** A public or private way which affords only a secondary means of access to abutting property and not intended for general traffic circulation.

**Automobile service station:** A building or lot where gasoline, oil, grease, and accessories are supplied and dispensed to the motor vehicle trade and where battery charging, tire repair, and minor mechanical services are rendered.

**Automobile wrecking yard:** A business of buying, selling, or dealing in used vehicles of a type required to be licensed under the laws of this state for the purpose of wrecking, dismantling, disassembling such vehicles to obtain second hand parts or component material thereof and including processing automobiles for scrap involving crushing, smashing, baling, burning or reduction of metal for industrial consumption.

**Bed and Breakfast:** A form of temporary/transient housing with breakfast included, but no other meals available. There is no restaurant, but overnight guests may use a dining room, which is open only during breakfast hours.

**Board of Commissioners:** The governing body of Town of Falcon.

**Buffer:** A buffer is a site-obscuring fence or wall or a site-obscuring hedge or other natural plantings of comparable opacity. When planted the natural planting shall have an initial height of at least three (3) feet and of such variety that an average height of six (6) feet could be expected by normal growth within four (4) years from the time of planting.

**Campground/RV parks/recreational vehicle park:** Land upon which shelters (such as tents, travel trailers and recreational vehicles) are erected or located for occupation by transients and/or vacationers. They may include such permanent

structures and facilities as are normally associated with the operation of a campground.

**Cemetery:** As defined in Chapter 65, Article 9, of the General Statutes of North Carolina, any one or a combination of more than one of the following in a place used or to be used and dedicated or designed for cemetery purposes: a) burial park for earth interment; b) mausoleum; c) columbarium.

**Club or lodge (private, nonprofit, civic or fraternal):** A nonprofit association of persons, who are bona fide, dues-paying members, which own, hire or lease a building, or portion thereof, the use of such premises being restricted to members and their guests. The affairs and management of such "private club or lodge" are conducted by a board of directors, executive committee or similar body chosen by the members. It shall be permissible to serve food and meals on such premises provided that adequate dining room space and kitchen facilities are available.

**Code Enforcement Coordinator:** The individual assigned the position with this title within the Cumberland County's job position classifications that is charged with the day-to-day interpretation and enforcement of this ordinance.

**Conditional use:** A use or occupancy of a structure, or a use of land, permitted only upon the successful rezoning to a Conditional Use District and subsequent issuance of a Conditional Use Permit and made subject to the limitations and conditions specified therein.

**Condominium development:** A project of two (2) or more units in one or more multi-unit buildings designed and constructed for unit ownership as permitted by the North Carolina Unit Ownership Act [G.S. S 47A-1 et seq] when approved under the requirements for condominium developments set forth in the County Subdivision Ordinance.

**Convalescent home (nursing home):** An institution that is advertised, announced or maintained for the express or implied purpose of providing nursing or convalescent care for persons unrelated to the licensee. A convalescent home is a home for chronic or nursing patients who, on admission, are not as a rule acutely ill and who do not usually require special facilities such as an operating room, x-ray facilities, laboratory facilities or obstetrical facilities. A convalescent home provides care for persons who have remedial ailments or other ailments for which continuing medical and skilled nursing care is indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision. A major factor that distinguishes convalescent homes is that the residents will require the individualization of medical care.

**Coordinator:** See Code Enforcement Coordinator.

**Children's home:** Long term residential institutional for children and youths (3-21 years of age).

**Day care facility:** A building, dwelling or premises regularly used for recreational or supervisory care of six or more persons (adults or children), not including the operator's own family members, during any 24-hour period. It does not matter where it is located, whether the same or different persons attend and whether or not it is operated for profit. The following are not included: public schools; nonpublic schools, as described in N.C. GEN. STAT. §110-86(2); summer camps having children in full-time residence; foster homes summer day camps; specialized activities or instruction such as athletics, clubs, the arts, etc.; and bible schools normally conducted during vacation periods.

**Density:** The average number of families, persons, housing units or buildings per unit of land.

**Director:** See Planning and Inspections Director.

**Dwelling:** A building or portion thereof designed, arranged or used for permanent living quarters. The term "dwelling" shall not be deemed to include a travel trailer, recreational vehicle, motel, hotel, tourist home or other structures designed for transient residence.

**Dwelling, multiple family:** A residence designed for or occupied by two (2) or more families, with separate housekeeping and cooking facilities for each.

**Dwelling, single family:** A detached residence designed for or occupied by one family only.

**Equestrian facilities:** Commercial stand alone facilities or as an integral part of and in conjunction with residential developments, including: horse ranches, boarding stables, riding schools and academies, trails, and horse exhibition facilities. Barns, stables, corrals, paddocks and the like are considered accessory and incidental to the foregoing uses.

**Family:** One or more persons occupying a single housekeeping unit and using common cooking facilities, provided that unless all members are related by blood or marriage, no such family shall contain over five (5) persons.

**Golf course:** Land developed for the recreational purpose of golf, excluding miniature golf courses and including country clubs, private and public courses, driving ranges and pro and snack shops.

**Gross floor area:** The total number of square feet within building devoted to a particular use, including the space occupied by such supporting facilities as storage areas, work areas, toilets, mechanical equipment and the like.



**Group development:** A group of two (2) or more principal structures built on a single lot, tract, or parcel of land.

**Group home:** A home with support and supervisory personnel, some or all of whom are nonresident, that provides room and board, personal care and habilitation services in a residential environment to not more than six resident handicapped persons 24 hours a day, seven days a week.

**Group quarters:** A building or group of buildings, which houses more than two persons in other than a traditional family setting. Housing may be in individual rooms or communal rooms with bathroom facilities and other common use areas. Housing may be free of charge or with a fee (monetary or service). This definition shall not include foster care homes, therapeutic foster care homes or other uses specifically listed in Article III. Permitted Principal Uses and Structures, i.e., group homes. It does include, but is not limited to, rooming/boardings houses, membership lodgings, residence halls and dormitories, halfway houses, alcohol and drug abuse centers, homeless shelters, hospice facilities, retirement homes, orphanages and religious quarters.

**Handicapped person:** A person with a temporary or permanent physical, emotional or mental disability, including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments, but not including mentally ill persons who are dangerous to others as defined in N.C. GEN. STAT. § 122C-3 (11)(b).

**Home occupation, incidental:** Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof, and in connection with which there is no display, no stock-in-trade, nor commodity sold which is not produced on the premises and only one person, not a resident on the premises, is employed specifically in connection with the incidental home occupation.

**Joint Planning Board (also Planning Board):** The Cumberland County Joint Planning Board created by and with members appointed by the Town, County Board of Commissioners and other municipalities within Cumberland County for purposes of offering recommendations to the Commissioners and the governing body of contracted municipalities on planning and land use matters and issuing final rulings on matters specifically delegated to the board by the Town Commissioners.

**Junk yard, salvage yard:** The use of more than 200 square feet of a lot for the storage, dismantling, wrecking, abandonment, buying or selling or otherwise dealing in either wholesale or retail, any castoff, secondhand salvage or unsalvageable material of any sort. This definition shall be deemed not to

include such uses which are clearly accessory and incidental to any agricultural or other business use permitted in the zone or material or equipment kept on any premises for use in construction of any building on said premises.

**Kennel:** Any premises where four (4) or more dogs which are five (5) months old or older are kept commercially or as pets, excluding pet grooming shops, veterinary clinics, and veterinary hospitals.

**Land, gross area:** "Gross area" shall include all the area included within the external boundary of the area to be committed to the Planned Neighborhood Development excluding existing public streets and railroad rights-of-way.

**Land, net area:** "Net area" shall mean the land area required to meet the minimum dimensional standards for the zoning districts, as required by this ordinance.

**Loading area or space, off-street:** An area logically and conveniently located for bulk pickups and deliveries, and accessible to such vehicles. Required off-street loading space is not to be included as off-street parking space in computing required off-street parking space.

**Lot:** A lot is a parcel of land in undivided ownership of at least sufficient size to meet minimum zoning requirements for use, coverage, and area and to provide such yards and other open spaces as herein required. A lot must have frontage on a public street, or on such other means of access frontage on a public street, or on such other means of access as may be deemed in accordance with the provisions of law to be adequate as a condition of the issuance of a building permit for a structure on such land, and may consist of:

(a) A single lot of record, or

(b) A combination of complete lots of record, of complete lots of record plus portions of lots of record, or of portions of lots of record, provided that in no case of division or combination shall any residential lot or parcel be created which does not meet the requirements of this ordinance.

**Lot, corner:** A lot abutting the intersection of two (2) or more streets or a lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at any angle of less than one hundred thirty-five (135) degrees.

**Lot, interior:** A lot other than a corner lot.

**Lot lines:** The property lines bounding a lot.

**Lot measurements:**

(a) Depth of lots shall be considered to be distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.

(b) Width of lots shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the minimum building setback line.

**Lot of record:** A lot which is a part of a subdivision, a plat of which has been recorded in the office of the Register of Deeds of Cumberland County, or a lot described by the metes and bounds, the description of which has been recorded in the office of the Register of Deeds of Cumberland County.

**Lot, through:** An interior lot having a frontage on two (2) streets, or a corner lot having frontage on three (3) streets.

**Manufactured home:** A dwelling unit that (i) is not constructed in accordance with the standards set forth in the North Carolina State Building Code, (ii) is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis, and (iii) exceeds forty (40) feet in length and eight (8) feet in width.

**Manufactured home, Class A:** A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies the following additional criteria:

(1) The manufactured home has 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.

(2) The pitch of the roof of the manufactured home has a minimum vertical rise of two and two-tenths (2.2) feet for each twelve (12) feet of horizontal run and the roof is finished with a type of shingle that is commonly used in standard residential construction.

(3) All roof structures shall provide an eave projection of no less than six (6) inches, which may include a gutter.

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

construction.

(5) The manufactured home is set up in accordance with the standards set by the North Carolina Department of Insurance and continuous, permanent masonry or masonry curtain wall, unpierced except for required ventilation and access, is installed under the perimeter of the manufactured home.

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

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

**Manufactured Home, Class B:** A manufactured home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction, but that does not satisfy all of the criteria necessary to qualify the house as a Class A manufactured home.

**Manufactured Home, Class C:** Any manufactured home that does not meet the definitional criteria of a Class A or Class B manufactured home.

**Mini-warehouse:** A building or buildings designed to provide separate access to individually rented storage compartments used exclusively for storing personal property including non-combustible office or business supplies, and, without any direct retail or wholesale sales conducted on the site.

**Mobile Home Park (Manufacture Home Park):** Any site or tract of land upon which is [are] located three (3) or more mobile home or manufacture home dwellings capable of being occupied for dwellings or sleeping purposes, regardless of whether a charge is made for such services; and, which meets the minimum area requirements of this ordinance.

**Modular dwelling:** A factory manufactured dwelling structure designed for year-round living with major components or modules pre-assembled and transported to a site for final assembly and utility connections. All exterior walls are supported by a permanent foundation approved by the building inspector enclosing the area between the ground and the floor. A modular dwelling has an average width of at least sixteen (16) feet, and average length of at least forty (40) feet and at least one thousand (1,000) square feet of living area.

**Nonconforming structure:** An existing structure which does not comply with the dimensional requirements of this ordinance for the district in which it is

located either at the effective date of this ordinance or as a result of subsequent amendments thereto.

**Nonconforming use:** Any existing use of land or structure which does not comply with the use regulations of this ordinance for the district in which it is located either at the effective date of this ordinance or as a result of subsequent amendments thereto.

**Open fence or wall:** An open fence or wall is defined as one in which the openings through which clear vision and the free passage of air is possible from one side to the other on a horizontal plane occupying seventy-five (75) percent or more of the side area of the fence or wall. All others are solid fences or walls.

**Ordinance:** This, the Town of Falcon Zoning Ordinance, including any amendments. Whenever the effective date of the ordinance is referred to, the reference includes the effective date and the effective date of any amendment to the Town Zoning Ordinance. This ordinance consists of two parts – a text and a map, in hardcopy or digital format.

**Parking space:** The standing storage space for one automobile, plus the necessary driveway access space.

**Planning and Inspections Department:** The County agency that is contracted with the Town for planning and inspections services and is responsible for and tasked with planning, land use and inspections matter for the Town and the surrounding area.

**Planning and Inspections Director:** The individual responsible for the leadership of the Cumberland County Planning and Inspections Department, and who serves as advisor to the Cumberland County Joint Planning Board. Throughout this ordinance, references to Director include the individual assigned to this position and/or the Director's designee.

**Planning and Inspections Staff:** The staff members assigned to the Cumberland County Planning and Inspections Department who, under the supervision of the Planning and Inspections Director, supports the Cumberland County Joint Planning Board and the Town on planning, land use and inspections matters.

**Premises:** A lot and the structure or structures located on it.

**Principal structure/principal uses:** The primary building(s), purpose(s) or function(s) that a parcel or structure serves or is intended to serve.

**Public water and/or sewer:** Municipal, sanitary district, community, and privately owned water and or sewer systems as regulated and controlled by the

North Carolina Utilities Commission, North Carolina State Board of Health and the Cumberland County Health Department.

**Recreation, indoor:** An establishment providing completely enclosed recreation activities. Accessory uses shall be permitted to include the preparation and serving of food and/or the sale of equipment related to the enclosed uses. Included in this definition shall be bowling, roller-skating or ice-skating, billiards, pool, motion picture theatres and related amusements.

**Recreation, outdoor:** An area free of buildings except for restrooms, dressing rooms, equipment storage, maintenance buildings, open-air pavilions and similar structures used primarily for recreational activities.

**Recreation vehicle:** A vehicle which is built on a single chassis or capable of being placed in or on a vehicle; designed to be self-propelled or towable by a light duty truck; and designed primarily for use as temporary living quarters for recreational, camping, travel or seasonal use. The basic entities are travel trailer, camping trailer, truck camper, and motor home.

Recreational vehicle park/RV park: See "campground" above.

**Religious worship activity:** Any premises, the principal purpose of which is religious worship and in which the principal structure is the principal place of worship. Accessory uses may include religious education classrooms, assembly rooms, kitchen, library room or reading room, recreation hall and a one-family dwelling unit, but excluding day care nurseries and facilities for residence or training of religious orders.

**Site plan:** A scaled drawing depicting uses and structures proposed for a parcel of land as required by this ordinance and the Town's Subdivision Ordinance. It includes such things as lot lines, streets, building sites and setbacks, means of access, parking, reserved open space, buildings, major landscape features-both natural and manmade-and, depending on requirements, the locations of proposed utility lines. The specific criteria for site plans are found in Section 12.45.

**Solid waste disposal facilities:** Any depository of solid waste, excluding earth for fill.

**Sign:** Any words, lettering, parts of letters, figures, numerals, phrases, sentences, devices, designs, trade names, or trademarks by which anything is made known, such as the designation of any individual, business, commodity, product, service, or entertainment, which are visible from any public way and used to attract attention. The word "sign" does not include the flag, pennant, or insignia of any nation, state, other political unit, nor does the word "sign" include official notices posted by any public officer in performance of a public duty, or by

any person in giving legal notice; nor does it include directional, warning, traffic, or informational structures required by or authorized by law, or by federal, state, county or city authority.

Types of signs:

(a) **Identification sign:** A sign used to identify only the name and/or address of the individual, family, organization, enterprise, subdivision, group housing development, or other such facility occupying the premises; the profession practiced on the premises, the name of the building on the premises on which the sign is displayed.

(b) **Bulletin board:** A sign used to announce meetings, programs, occupants, purposes, operating hours and other such information on the premises of churches, schools, auditoriums, libraries, recreation areas, and other such nonresidential uses permitted in residential districts.

(c) **Business sign:** A sign which directs attention to a business, industry, profession, commodity, service, or entertainment sold, produced or offered upon the premises where such sign is located or to which it is attached.

(d) **Billboard:** A sign which directs attention to a business, industry, profession, commodity, service or entertainment not sold, produced or offered upon the premises upon which such sign is located.

(d) **Incidental Sign:** A sign carrying no advertising message, but giving information for the convenience and necessity of the public such as "entrance," "exit," "no admittance," "telephone," "parking," etc.

**Special informational signs:** For the purpose of giving directions and information, on-site signs pertaining to specified conditional uses where not otherwise permitted, and off-premises signs may be approved by the Board of Adjustment subject to subject to a permit specifying the size, location, lighting, design and display in accordance with Article IX. Sign Regulations. Such signs shall be limited to those which are necessary to inform the public as to location and information concerning facilities, institutions, business districts, fraternal orders and service clubs, or such other activity as the Board may judge to be beneficial to the total community.

**Special Use:** Those uses for which a permit is required for the proposed activities which are essentially compatible with other uses or activities permitted in a zoning district, but which present unique challenges or possess unique characteristics, or qualities that require comprehensive review at a quasi-judicial public hearing by the Town's Board of Adjustment and which may be allowed only after the findings of fact and the imposition of reasonable conditions.

**Street:** A dedicated and accepted public right-of-way for vehicular traffic which afford[s] the principal means of access to abutting properties.

**Street, centerline:** A line officially determined to be lying halfway between the two edges of the street right-of-way.

**Street line:** The dividing line between a street or road right-of-way and the contiguous property.

**Swimming pool, private:** Any structure which contains water over 24 inches in depth and which is used, or intended to be used, for swimming or recreational bathing in connection with a single-family residence and which is available only to the family and guests of the house holder. This includes in-, on- and above-ground swimming pools.

**Swimming pool, public:** Any swimming pool that does not meet the definition of "private, swimming pool" located above. In addition to this ordinance, the Town Subdivision Ordinance and the County Health Department also regulate public swimming pools.

**Tower:** Any fabricated structure or device including, but not limited to, relay stations for commercial operations, such as cable television, telecommunication, radio, television stations and the operation of such uses. "Tower" shall not include structures that support antennae or similar devices that support or facilitate HAM radio or Citizen Band communication.

**Town Subdivision Ordinance:** The Falcon Subdivision Ordinance, which governs the division and development of property located within the jurisdictional boundary of the Town of Falcon.

**Transient lodgings:** Land used or intended to be used or occupied by a group of two (2) or more detached or semidetached buildings, except mobile homes, or by a multiple building containing guest rooms, with automobile parking space and incidental utility structures which are provided in connection therewith, all of which is used or designed for use primarily by automobile transients.

**Yard:** A space on the same lot with a principal building, open, unoccupied and unobstructed by buildings or structures from the ground to the sky, except where encroachments and accessory buildings are expressly permitted herein.

**Yard, front:** A yard extending across the full width of the lot adjoining the street on which the lot fronts.

**Yard, rear:** A yard extending across the full width of the lot adjoining the rear lot line.



**Yard, side:** A yard adjacent to any side lot line extending from the front yard to the rear yard.

**Zoning:** A police power measure, enacted by the Town Board of Commissioners pursuant to enabling statutes, in which the Town is divided into districts or zones within which Permitted, Conditional, and Special Uses are established, as are regulations governing lot size, building bulk, placement, and other development standards. Requirements vary from district to district, but they must be uniform within districts.

**Zoning district:** An area established by this ordinance where the individual properties are designed to serve compatible functions and to be developed at compatible scales.

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## **ARTICLE XI. BOARD OF ADJUSTMENT**

### **SECTION 11.1 ESTABLISHMENT OF BOARD OF ADJUSTMENT**

The Falcon Town Council pursuant to G.S. Chapter 160A, Section 160-388 does hereby establish a Board of Adjustment. Such board shall consist of a least five (5) members and will be the Town of Falcon Council Members (includes Mayor and 4 Councilmen). The appointments shall be for two-year terms. The Councilmen shall also appoint two (2) alternate members at large to serve on the board in the absence of any regular member for a two-year terms. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and exercise all the powers of and duties of any regular member absent from the meeting.

### **SECTION 11.2 PROCEEDINGS OF BOARD OF ADJUSTMENT**

The board shall elect a chairman and vice-chairman from among its members and may appoint a secretary. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman is authorized in his official capacity to administer oaths and compel the attendance of witnesses in any matter coming before the board. Any member of the board while temporarily acting as chairman shall have and exercise like authority. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact. The board shall also keep records of its examinations and official action.

### **SECTION 11.3. POWERS AND DUTIES**

#### **11.31. Administrative Review.**

The Board of Adjustment shall have the powers and duty to act in all matters relating to the administrative review of any order, requirement, decision or determination made by the zoning inspector or other administrative official.

#### **11.32. Variance.**

The Board of Adjustment shall have the power, in passing upon appeals, to vary or modify any of the regulations or provisions of the zoning ordinance relating to the use, construction or alteration of buildings or structures or the use of land, where there are unnecessary hardships in the way of carrying out the strict letter of this ordinance, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.

### **11.33. Special Uses.**

The Board of Adjustment shall have the authority to permit exceptions, called specified conditional uses, in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance.

### **11.34 Interpretation.**

The Board of Adjustment shall have the responsibility to interpret the official zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in administration of this ordinance. The board shall hear and decide all matters referred to it or upon which it is required to pass under any such ordinance.

## **SECTION 11.4. REQUIRED VOTE**

The concurring vote of four-fifths of the members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official charged with the enforcement of this ordinance. A concurring vote of four-fifths of the members of the board is also required to decide in favor of an applicant on any matter which the board is required to pass including granting variance from the provisions of this ordinance and issuing a Special Use Permit.

## ARTICLE XII. ADMINISTRATIVE PROVISIONS

### SECTION 12.1 INTERPRETATION

The district regulations shall be enforced and interpreted according to the following rules:

#### **12.11. Uses by Right.**

All uses of property shall be prohibited except those which are permitted under the terms of this ordinance as permitted uses and nonconforming uses. Special Uses are permitted according to specific criteria and approval of the Board of Adjustment.

#### **12.12. Minimum provisions.**

Provisions set forth by this ordinance shall be minimum provisions. If the district requirements set forth in this section are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive or higher criteria shall govern.

#### **12.13. Fractional Requirements.**

When any requirement of this ordinance results in a fraction of a unit, a fraction of one-half or more shall be considered a whole unit and a fraction of less than one-half shall be disregarded. When the determination of the number of dwelling units, permitted on a lot results in fraction of a dwelling unit, a fraction of one-half or more shall be considered a dwelling unit and a fraction of less than one-half shall be disregarded.

### SECTION 12.2 GENERAL APPLICATION

The regulations set forth in this ordinance affect all land, every structure and every use of land and/or structures and shall apply as follows:

#### **12.21. Zoning Affects Every Building and Use.**

No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered unless in conformity with the provisions of this ordinance.

#### **12.22. Completion of Existing Buildings.**

Nothing herein contained shall require any change in plans, construction or

designated use of a building for which a building permit has been heretofore issued. If any amendment to this ordinance is here this paragraph shall apply in the same manner as when originally adopted.

### **12.23. Conforming Uses of Structures.**

After the effective date of this ordinance, any existing building or uses of land or buildings which conforms with the regulations for the district in which it is located may continue without a specific permit. Any subsequent structural alteration or change in use shall conform with the regulations herein specified.

## **SECTION 12.3. ENFORCEMENT**

### **12.31. Enforcing Inspector.**

The provisions of this ordinance shall be administered and enforced by the County director of inspections who shall also be known as the town zoning inspector. This official or his representative shall have the right to enter upon the premises including area located in Sampson County necessary to carry out his duties in the enforcement of this ordinance.

It is the intention of this ordinance that all questions arising in connection with enforcement and interpretation shall be presented first to the zoning inspector who is charged with the enforcement of this ordinance. If the zoning inspector finds that he is not authorized to make a determination or judgment or that the question automatically falls within the jurisdiction of the Board of Adjustment, he shall refer such matters to the board for review and decisions. From the decision of the Board of Adjustment recourse shall be had to the courts as provided by law.

### **12.32. Zoning Permit.**

**12.321. Zoning Permit Required.** It shall be unlawful to commence the excavation for or the construction of any building or other structure including accessory structures or to commence the moving, alteration or repair of any structure or the use of any land or building including accessory structures, until the zoning inspector has issued a zoning permit for such work or use including a statement that the plans, specifications and intended use of such land, or structure in all respects conforms with the provisions of this ordinance. Application for a zoning permit shall be made in writing to the zoning inspector on forms provided for that purpose. Zoning permits shall be void after six (6) months from date of issue unless substantial progress on the project has been made by that time.

**12.322. Approval of plans.** It shall be unlawful for the zoning inspector to approve any plans or issue a zoning permit for any purpose regulated by this ordinance until he has inspected such plans in detail and found them in conformity with this ordinance. To this end, the zoning inspector shall require that every application for a zoning permit be accompanied by a plan or plat drawn to scale and showing the following in sufficient detail to enable the zoning inspector to ascertain whether the proposed activity is in conformance with this ordinance,

- (a) The actual shape, location and dimensions of the lot.
- (b) The shape, size and location of all buildings or other structures to be erected, altered or moved and of any building or other structures already on the lot.
- (c) The existing and intended use of all such buildings or other structures.
- (d) Such other information concerning the lot or adjoining lots as may be essential for determining whether the provisions of this ordinance are being observed.

**12.323. Issuance of Zoning Permit.** If the proposed activity as set forth in the application is in conformity with the provisions of this ordinance, the zoning inspector shall issue a zoning permit for such purpose. If any application for a zoning permit is not approved, the zoning inspector shall state in writing on the application the cause for such disapproval. Issuance of a permit shall, in no case, be construed as waiving any provision of this ordinance.

### **12.33. Certificate of Occupancy Required.**

No land or structure (except for signs) or part thereof hereafter erected, moved or altered in its use shall be used until the zoning inspector shall have issued a certificate of occupancy stating that such land, structure or part thereof is found to be in conformity with the provisions of this ordinance. Within three (3) days after notification that a structure or premises or part thereof is ready for occupancy or use, it shall be the duty of the zoning inspector to make a final inspection thereof, and to issue a certificate of occupancy, if the building or premises or part thereof is found to conform with the provisions of this ordinance or, if such certificate is refused, to state refusal in writing with the cause.

### **12.34. Violations.**

**12.341. Procedural Remedies.** In case any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land use is in violation of this ordinance, the Town of Falcon, in

addition to other remedies, may institute any appropriate action or proceedings:

- (a) To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use.
- (b) To restrain, correct or abate such violation.
- (c) To prevent the occupancy of said building, structure or land.
- (d) To prevent any illegal act, conduct, business or use in or about such premises.

**12.342. Penalties.** A violation of this ordinance shall also constitute a misdemeanor, punishable upon conviction thereof, by a fine not exceeding fifty dollars (\$50.00) or imprisonment not exceeding thirty (30) days. Each day that the violation continues to exist shall be considered a separate offense.

## **SECTION 12.4. ADMINISTRATIVE PROCEDURES**

### **12.41. Hearings.**

Any case involving an appeal, variance or a specified conditional use permit requires a public hearing to be held by the Board of Adjustment and any case involving a change of zoning district classification and other ordinance changes requires a public hearing to be held by the Town Council.

Each board shall fix a reasonable time for hearing and give public notice as well as due notice to the parties in interest. At the hearing any person or party may appear in person or by agent or attorney. Each board shall take action on a matter within a reasonable time after the termination of the proceedings.

### **12.42. Appeal.**

Appeals may be taken to the Board of Adjustment by any person aggrieved, or by an officer, department, board or bureau of the county affected by any decision of an administrative official charged with the enforcement or interpretation of this ordinance thought to be in error. Such appeals shall be filed with the Board of Adjustment by notice specifying the grounds for appeal. Appeal shall be filed within six (6) months from the date of the action being appealed. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken together with any additional written reports or documents as he deems pertinent. The Board of Adjustment may, after public hearing, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or in part, or may modify any order, requirement,



decision or determination as ought to be made, and to that end shall have the powers of the administrative official from whom the appeal is taken.

#### **12.43. Variance.**

The Board of Adjustment may authorize in specific cases such variances from the terms of this ordinance upon request of a property owner or his authorized agent and may require any evidence necessary to make a determination of the case. Before any variance may be granted by the board, the board must find that all of the following conditions exist for an individual case:

(a) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.

(b) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located.

(c) A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.

(d) The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.

(e) The special circumstances are not the result of the actions of the applicant.

(f) The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.

(g) The variance is not a request to permit a use of land, building or structure which is not permitted by right or by special exception in the district involved and will not constitute any change in district boundaries.

(f) The existence of a nonconforming use of neighboring land, buildings or structures in the same district or of permitted or nonconforming uses in other districts does not constitute a reason for the requested variance. In granting a variance, the board may attach and the record reflect such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable. The record shall also state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the board finds to exist.

Any variance granted becomes null and void if not exercised within the time specified in such approvals, or if no date is specified, within one year from the date of such approval.

The Board of Adjustment is not authorized to grant variances to the conditional uses allowed in conditional use overlay districts or to the specific conditions or other performance criteria imposed upon such uses.

#### **12.44. Special Use Permit.**

The Board of Adjustment, upon request of a property owner or his authorized agent after public hearing may authorize and subject to appropriate conditions and safeguards which the board deems necessary, special use permits, when in its judgment, the public convenience and welfare will be substantially served and the appropriate use of neighboring property will not be substantially or permanently injured.

Any special use granted becomes null and void if not exercised within the time specified in such approvals, or if no date is specified, within one year from the date of such approval.

#### **12.45. Planned Commercial District.**

In the C(P) Planned Commercial District no zoning permit or certificate of occupancy shall be issued by the zoning inspector except in conformance with a plan submitted to and approved by the Planning Department.

Plans for developments shall be submitted to the Planning Department in accordance with the schedule established by the Planning Board. The Planning Department shall study the plan to determine its compliance with this ordinance and shall negotiate with the developer for required changes in order that the development shall comply with the intent of such ordinances. The Planning Board may approve alternate yard requirements if such approval will provide a more logically planned development.

Plans submitted for approval shall be in twelve (12) copies, drawn to scale of not less than one (1) inch equals one hundred (100) feet, and shall show all information necessary to properly evaluate the plan including:

- (a) The dimensions and location of the property; buildings and existing and proposed streets.
- (b) The parking and general circulation plan, including entrances, exits and pedestrian ways.
- (c) The service area, including off-street loading facilities, service drives

and dimensions thereof and proposed uses of all buildings.

(d) The proposed location and material of fences, walls, buffer strips and landscaping.

(e) The name of the developer, the date, the scale, the north arrow and the person or firm preparing the plan.

The Planning Department shall either approve the plan and state the conditions of such approval, if any, or shall disapprove the plan and state its reasons. The development plan must be forwarded to the town Council for approval or disapproval.

An aggrieved developer may appeal the action of the Planning Department to the Planning Board, then Town Council in accordance with the Planning Board policy for hearing appeals.

The approved plan shall be filed with the zoning inspector. The approved plan may be amended in the same manner as provided for original plan approval.

## **SECTION 12.5. AMENDMENTS**

The provisions of this ordinance, including but not limited to the regulations thereof and the number, area, boundaries, and classifications of the zoning districts thereof, may be amended, supplemented, changed, modified or repealed by the Town Council upon petition, recommendation of the Planning Board, or on its own motion after a public notice and hearing as provided by law. No amendment shall become effective unless and until it is first submitted to, considered by, and reported on by the Planning Board and thereafter approved by the Town Council. Submissions for amendments and other changes to the ordinance to the Planning Board and its consideration thereof and the approval by the Town Council of amendments and changes shall be governed by the following provisions:

### **12.51. Submissions to and Consideration Thereof by the Planning Board.**

(a) Petitions for amendments or other changes of this ordinance shall be submitted in the form set forth in this ordinance, if applicable, or otherwise as prescribed by the Planning Board. Submissions by the Town Council or by the Planning Board on its own initiative are not subject to any requirement of form.

(b) The Planning Board, upon receipt of a proposal for amendment, by petition or otherwise, and upon notice to land owners as by law required, will consider each proposed amendment or change and may hold public hearings, public notice of which shall be given, for such consideration. Upon petition or

other proposal for an amendment of the ordinance for the purpose of establishing a specific zoning district or specifically establishing a specific zoning district or for the purpose of establishing a Conditional Use District or specifically changing the classification of a existing district or part thereof, the Planning Board may consider amending the ordinance to provide a classification or reclassification other than that specifically requested, and so recommend, provided that the notice to land owners and notice of public hearing required by law states that classifications or reclassifications other than that requested will be considered. If upon receipt of a proposal to reclassify one type of general zoning district to another, the Planning Board proposes or has received a proposal from the Town Board of Commissioners to consider establishment of a Conditional Use District, it must refer such proposal to the owners of the property to be included in such district for submission of a petition in accordance with the provisions of Article IV hereof; no consideration of such a proposal can be made unless and until such a petition is received.

(c) Following consideration of proposed amendments, supplements, changes, modifications, or repeal of provisions of the ordinance, the Planning Board will report all proposals it has considered to the Town Council and make recommendations pertaining thereto. Failure of the Planning Board to make a report and recommendation within a period of thirty (30) days after a petition for a specific amendment has been referred to it will constitute a favorable report and recommendation for such amendment.

#### **12.52. Petitions for Amendments Limited; Reapplications Limited.**

After the initial zoning process in a zoning area, an initial petition to amend the zoning ordinance so as to reclassify property in that area may be submitted at any time. After the first such petition has been submitted, regardless of the outcome thereof, no subsequent petition, by the same or other persons, to reclassify the same property or any portion thereof, whether in conjunction with other property or not, shall be considered earlier than one (1) full year after the date of the last public hearing before the Town Council on the most recent prior application to reclassify such property or portion thereof. A petition to amend the zoning ordinance so as to reclassify property may be withdrawn without establishing a new one-year time limit only by a written instrument submitted to the office of the planning director prior to the first official notification to the public concerning the petition. If the instrument withdrawing a petition to reclassify property is received after such first notification of the public, the withdrawal shall be effective, but a subsequent petition to reclassify the same property or part thereof, as set forth above, shall not be considered earlier than one (1) full year after the date of the receipt of the withdrawal instrument. The foregoing time limits on petitions to reclassify property shall not apply to amendments of any nature initiated by the planning board or the town council.

### **12.53. Approval by the Town Board of Commissioners.**

(a) Upon receipt of reports and recommendations from the Planning Board concerning proposed amendments, supplements, changes, modifications, or repeal provisions of this ordinance, the Town Council shall schedule a public hearing, upon notice to landowners of proposed action and notice of the public hearing as required by law, and thereafter shall approve or deny the proposed action. A failure to approve a proposed action shall constitute a denial of the proposal.

(b) The Town Council may approve an amendment of the ordinance to provide a classification or reclassification of a zoning district or part thereof, other than that specifically requested by a petitioner, provided that the notice to land owners and the notice of public hearing required by law states that classifications or reclassifications other than that requested will be considered and further provided that the Planning Board has considered such other classifications or reclassifications and reported on them to the Town Council. If such notice or such consideration has not been accomplished, the Town Council shall refer its proposal to amend the ordinance in a way other than that proposed by the petitioner to the Planning Board for further action in accordance with this ordinance.

(c) To approve any amendment, supplement, change, modification, or repeal of any provision of this ordinance, the Town Board of Commissioners shall address the consistency of the action with the current Land Use Plan; and make a finding and determination, entered in the minutes of the meeting, that such action is reasonable, neither arbitrary or unduly discriminatory and in the public interest. In the case of the approval of the establishment of a general zoning district or the reclassification of an existing general zoning district to another type of general zoning district, the board shall make an additional finding and determination that the property within the district is suitable for all uses permitted by the new classification. Consideration of any Conditional Use District is governed by Article IV of this ordinance.

### **SECTION 12.6. FEES**

Each applicant shall pay a fee to the Cumberland County Planning and Inspections Department, in accordance with the Fee Schedule approved by the Falcon Board of Commissioners.

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## **ARTICLE XIII. LEGAL STATUS PROVISIONS**

### **SECTION 13.1. APPLICATION**

In their interpretation and application, the provisions of this ordinance shall be considered minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, general welfare and protection of the property rights of the community. Where other ordinances or regulations heretofore adopted hereafter impose greater restrictions than those specified herein, compliance with such other ordinances or regulations is mandatory.

### **SECTION 13.2. VALIDITY**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Commissioners hereby declares that it would have passed this ordinance and each section, subsection, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

### **SECTION 13.3. EFFECTIVE DATE**

This ordinance shall be in full force and effect from and after its passage by the Town Council of the Town of Falcon, this the 5<sup>th</sup> day of 1991.

**TOWN OF FALCON ZONING ORDINANCE  
FEE SCHEDULE\***

REQUESTED ZONING DISTRICTS <sup>1</sup>	LESS THAN 5 ACRES	5 TO 50 ACRES	50 TO 100 ACRES	100+ ACRES
CD R40A R20 R20A R15 R15A R7.5 R6	\$200	\$400	\$500	\$500
O&I C1 C(P) & C3 M	\$400	\$500	\$600	\$800
CONDITIONAL USE <u>DISTRICTS</u> <sup>2</sup>  RESIDENTIAL	\$500	\$500	\$500	\$500
CONDITIONAL USE <u>DISTRICTS</u> <sup>2</sup>  NONRESIDENTIAL	\$700	\$800	\$800	\$800
ALL TEXT AMENDMENTS	\$100			
ZONING ORDINANCE TEXT	\$ 5			
SUBDIVISION ORDINANCE TEXT	\$ 5			
<u>BOARD OF ADJUSTMENT*</u>				
SPECIAL USES		\$200		
VARIANCE				
ADMINISTRATIVE REVIEW		\$100		
INTERPRETATIONS				
NONCONFORMING USES				

\* A non-refundable fee of twenty-five (\$25.00) dollars is to be paid to the Town of Falcon for processing and advertising (excludes requests originating with the Town of Falcon).

<sup>1</sup>If more than one zoning district is requested in the same application, the highest fee for the district requested will apply.

<sup>2</sup>If a general rezoning is requested and based on recommendations of the Joint Planning Board or Board of Commissioners, a Conditional Use District application is to be filed; the original application fee will be credited toward the Conditional Use District application fee.

*Revised: August 19, 2008*