



Town of Gatesville,

North Carolina

Zoning Ordinance



Adopted by the Gatesville Town Council: February 4, 1987,
and includes amendments through November 1, 2023

TABLE OF CONTENTS

ARTICLE I. TITLE, ENACTMENT, AND PURPOSE	1
SECTION 1.01: TITLE AND INTENT	1
SECTION 1.02: SHORT TITLE	1
SECTION 1.03: PURPOSE	1
SECTION 1.04: EXEMPTIONS	2
SECTION 1.05: RELATIONSHIP TO COMPREHENSIVE PLAN.....	2
(A) Applicability.....	2
(B) Comprehensive Plan Contents.....	2
(C) Adoption and Effect of Plans.....	3
ARTICLE II. ESTABLISHMENT OF ZONING DISTRICTS AND PROVISION FOR ZONING MAP	5
SECTION 2.01: OFFICIAL ZONING MAP	5
SECTION 2.02: RULES GOVERNING THE INTERPRETATION OF DISTRICT BOUNDARIES.....	6
ARTICLE III. APPLICATION OF REGULATIONS	7
SECTION 3.01: TERRITORIAL APPLICATION	7
SECTION 3.02: SPLIT JURISDICTION	7
SECTION 3.03: PENDING JURISDICTION.....	7
SECTION 3.04: USE, OCCUPANCY, AND CONSTRUCTION.....	7
SECTION 3.05: HEIGHT, BULK, DENSITY, LOT COVERAGE, YARDS, AND OPEN SPACES	7
SECTION 3.06: COMPUTATION OF REQUIRED SPACES	8
SECTION 3.07: REDUCTION OF LOTS OR AREAS BELOW MINIMUM	8
SECTION 3.08: ONE PRINCIPAL BUILDING ON ANY LOT.....	8
SECTION 3.09: LOT ACCESS REQUIREMENTS	8
SECTION 3.10: VISION CLEARANCE AT INTERSECTIONS	8
SECTION 3.11: WALLS AND FENCES	8
SECTION 3.12: STRUCTURES EXCLUDED FROM HEIGHT LIMITATIONS.....	8
SECTION 3.13: REDUCTION OF FRONT YARD SETBACK REQUIREMENTS	9
SECTION 3.14: CONVERSION OF EXISTING STRUCTURES TO CONDOMINIUM OWNERSHIP.....	9
SECTION 3.15: FEES.....	9
SECTION 3.16: COMPUTATION OF TIME.....	9
ARTICLE IV. INTERPRETATION AND DEFINITION OF TERMS	11
SECTION 4.01: INTERPRETATION OF COMMON WORDS OR TERMS.....	11
SECTION 4.02: DEFINITION OF SPECIFIC TERMS AND WORDS	11

ARTICLE V. NON-CONFORMITIES	19
SECTION 5.01: INTENT	19
SECTION 5.02: REGULATION OF NON-CONFORMITIES.....	19
(A) Non-Conforming Lots of Record	19
(B) Non-Conforming Uses of Land	20
(C) Non-Conforming Mobile Homes	20
(D) Non-Conforming Structures	20
(E) Non-Conforming Uses of Buildings or of Buildings and Premises in Combination.....	21
(F) Repairs and Maintenance	22
(G) Uses Under Special Use Provisions Not Non-Conforming	22
ARTICLE VI. GENERAL PROVISIONS AND SUPPLEMENTARY REQUIREMENTS.....	23
SECTION 6.01: OFF-STREET PARKING REQUIREMENTS.....	23
(A) General Provisions	23
(B) Requirements for Parking Lots.....	24
(C) Minimum Parking Requirements	24
(D) Off-Street Loading.....	26
SECTION 6.02: REGULATIONS GOVERNING SIGNS.....	27
(A) Definition.....	27
(B) Number and Area.....	28
(C) Building Permit Required	28
(D) Material and Design	28
(E) Inspection Required	28
(F) Illuminated Signs	29
(G) Prohibited Signs	29
(H) Signs Permitted in the R-1 and R-2 Residential Districts	29
(I) Signs Permitted in the GB and HC Districts.....	30
SECTION 6.03: TEMPORARY USES.....	31
SECTION 6.04: HOME OCCUPATIONS	31
SECTION 6.05: GROUP DEVELOPMENT PROJECTS.....	32
(A) Design Standards – General	32
(B) Design Standards – Group Housing Projects.....	33
(C) Common Areas.....	33
(D) Additional Information.....	33
(E) Approval of Site Development Plan	33
(F) Modification of Approved Plans	34

SECTION 6.06: MOBILE PARK REGULATIONS	34
(A) General Regulations	34
(B) Specifications for Mobile Home Parks	35
SECTION 6.07: TEMPORARY HEALTH CARE STRUCTURES	37
ARTICLE VII. SCHEDULE OF DISTRICT REGULATIONS	39
SECTION 7.01: R-1 LOW DENSITY RESIDENTIAL DISTRICT	39
(A) Intent	39
(B) Permitted Uses	39
(C) Special Uses Permitted	39
(D) Dimensional Requirements for R-1 Low Density Residential Districts	39
SECTION 7.02: R-2 GENERAL RESIDENTIAL DISTRICT	40
(A) Intent	40
(B) Permitted Uses	40
(C) Special Uses Permitted	40
(D) Dimensional Requirements for R-1 Low Density Residential Districts	41
SECTION 7.03: GB GENERAL BUSINESS DISTRICT	41
(A) Intent	41
(B) Permitted Uses	41
(C) Special Uses Permitted	42
(D) Dimensional Requirements	42
SECTION 7.04: H-C HIGHWAY COMMERCIAL DISTRICT	43
(A) Intent	43
(B) Permitted Uses	43
(C) Special Uses	44
(D) Dimensional Requirements	44
SECTION 7.05: CONDITIONAL ZONING DISTRICT	45
ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT	47
SECTION 8.01: ZONING ADMININSTRATOR	47
(A) Authorization	47
(B) Duties	47
(C) Alternative Staff Arrangements	47
(D) Financial Support	48
SECTION 8.02: ZONING PERMIT REQUIRED	48
SECTION 8.03: HEALTH DEPARTMENT APPROVAL	48
SECTION 8.04: APPLICATION FOR ZONING PERMIT FOR PERMITTED USES	48

SECTION 8.05: APPLICATION FOR BUILDING PERMIT FOR SPECIAL USES	49
SECTION 8.06: CERTIFICATE OF OCCUPANCY REQUIRED.....	50
SECTION 8.07: ENFORCEMENT AUTHORITY	50
SECTION 8.08: NOTICES OF VIOLATION	50
SECTION 8.09: STOP WORK ORDERS.....	51
SECTION 8.10: REMEDIES.....	51
ARTICLE IX. PLANNING BOARD	53
SECTION 9.01: AUTHORITY	53
SECTION 9.02: PURPOSE	53
SECTION 9.03: MEMBERSHIP	53
(A) Generally	53
(B) Selection of Alternate Members.....	53
(C) Oath of Office.....	53
(D) Vacancies.....	53
(E) Attendance.....	53
SECTION 9.04: OPERATIONAL PROCEDURES	54
SECTION 9.05: MEETINGS	54
(A) Board Meetings.....	54
(B) Cancellation of Meetings	54
SECTION 9.06: GENERAL POWERS AND DUTIES	54
SECTION 9.07: MISCELLANEOUS POWERS AND DUTIES	55
SECTION 9.08: ZONING AMENDMENTS	55
SECTION 9.09: SUBDIVISION REGULATIONS	55
SECTION 9.10: PUBLIC HEARINGS	55
SECTION 9.11: ANNUAL REPORT.....	56
ARTICLE X. BOARD OF ADJUSTMENT	57
SECTION 10.01: BOARD OF ADJUSTMENT ESTABLISHED.....	57
SECTION 10.02: CHAIRMAN OF THE BOARD.....	57
SECTION 10.03: MEETING OF THE BOARD.....	57
SECTION 10.04: POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT.....	57
(A) Voting.....	57
(B) Appeals.....	58
(C) Interpretation.....	59
(D) Variances.....	60
(E) Requests to be Heard Expeditiously	61

(F) Burden of Proof in Appeals and Variances	61
SECTION 10.05: APPEALS FROM DECISION OF THE BOARD OF ADJUSTMENT	61
ARTICLE XI. CONFLICTS OF INTEREST	63
SECTION 11.01: GOVERNING BOARD.....	63
SECTION 11.02: APPOINTED BOARDS	63
SECTION 11.03: ADMINISTRATIVE STAFF.....	63
SECTION 11.04: QUASI-JUDICIAL DECISIONS	63
SECTION 11.05: RESOLUTION OF OBJECTION	64
SECTION 11.06: FAMILIAL RELATIONSHIP	64
ARTICLE XII. QUASI-JUDICIAL PROCEDURES.....	65
SECTION 12.01: HEARING REQUIRED ON APPEALS AND APPLICATIONS.....	65
SECTION 12.02: NOTICE OF HEARING	65
SECTION 12.03: ADMINISTRATIVE MATERIALS.....	66
SECTION 12.04: PRESENTATION OF EVIDENCE	66
SECTION 12.05: APPEARANCE OF OFFICIAL; NEW ISSUES	66
SECTION 12.06: OATHS	66
SECTION 12.07: SUBPOENAS.....	67
SECTION 12.08: MODIFICATION OF APPLICATION AT HEARING	67
SECTION 12.09: RECORD	67
SECTION 12.10: APPEALS IN NATURE OF CERTIORARI.....	67
SECTION 12.11: VOTING	67
SECTION 12.12: DECISION	68
SECTION 12.13: REHEARINGS	68
SECTION 12.14: JUDICIAL REVIEW	68
ARTICLE XIII. PROCESS FOR ADOPTION AND AMENDMENTS	69
SECTION 13.01: MOTION TO AMEND	69
SECTION 13.02: APPLICATION.....	69
SECTION 13.03: FEE.....	70
SECTION 13.04: NOTICE OF HEARING ON PROPOSED ZONING MAP AMENDMENTS	70
(A) Mailed Notice.....	70
(B) Optional Notice for Large Scale Zoning Amendments	70
(C) Posted Notice.....	70
(D) Actual Notice.....	70
SECTION 13.05: CITIZEN COMMENTS	71

SECTION 13.06: PLANNING BOARD REVIEW AND COMMENT.....	71
(A) Initial Zoning.....	71
(B) Zoning Amendments.....	71
(C) Review of Other Ordinances and Actions	71
(D) Plan Consistency	72
(E) Separate Board Required.....	72
SECTION 13.07: TOWN COUNCIL STATEMENT	72
(A) Plan Consistency	72
(B) Additional Reasonableness Statement for Rezonings	72
(C) Single Statement Permissible.....	73
ARTICLE XIV. MORATORIA.....	75
ARTICLE XV. VESTED RIGHTS AND PERMIT CHOICE	77
SECTION 15.01: FINDINGS.....	77
SECTION 15.02: PERMIT CHOICE.....	77
SECTION 15.03: PROCESS TO CLAIM VESTED RIGHT.....	77
SECTION 15.04: TYPES AND DURATION OF STATUTORY VESTED RIGHT	77
(A) Six Months – Building Permits	77
(B) One Year – Other Local Development Approvals	78
(C) Two to Five Years – Site Specific Vesting Plans.....	78
(D) Seven Years – Multi-Phase Developments	79
(E) Indefinite – Development Agreements.....	79
SECTION 15.05: CONTINUING REVIEW	79
SECTION 15.05: EXCEPTIONS	80
SECTION 15.06: MISCELLANEOUS PROVISIONS.....	81
ARTICLE XVI. DEVELOPMENT AGREEMENTS.....	83
SECTION 16.01: AUTHORIZATION.....	83
SECTION 16.02: DEFINITIONS.....	84
(A) Development.....	84
(B) Public Facilities.....	84
SECTION 16.03: APPROVAL OF TOWN COUNCIL REQUESTED	84
SECTION 16.04: SIZE AND DURATION	84
SECTION 16.05: PUBLIC HEARING.....	84
SECTION 16.06: CONTENT AND MODIFICATION.....	85
SECTION 16.07: VESTING	86
SECTION 16.08: BREACH AND CURE	86

SECTION 16.09: AMENDMENT OR TERMINATION.....	87
SECTION 16.10: CHANGE OF JURISDICTION.....	87
SECTION 16.11: RECORDATION	87
SECTION 16.12: APPLICABILITY OF PROCEDURES TO APPROVE DEBT	87
ARTICLE XVII. LEGAL STATUS PROVISIONS.....	89
SECTION 17.01: EFFECTS UPON OUTSTANDING BUILDING PERMITS.....	89
SECTION 17.02: CONFLICT WITH COVENANTS AND OTHER LAWS.....	89
SECTION 17.03: VALIDITY	89
SECTION 17.04: DEVELOPMENT APPROVALS RUN WITH THE LAND	89
SECTION 17.05: REFUND OF ILLEGAL FEES.	89
SECTION 17.06: EFFECTIVE DATE	90

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ARTICLE I. TITLE, ENACTMENT, AND PURPOSE

SECTION 1.01: TITLE AND INTENT

AN ORDINANCE, IN PURSUANCE OF THE AUTHORITY GRANTED BY THE NORTH CAROLINA GENERAL STATUTES CHAPTER 160D, FOR THE PURPOSES OF PROMOTING THE PUBLIC HEALTH, SAFETY, MORALS, AND GENERAL WELFARE; TO PROVIDE FOR THE ESTABLISHMENT OF DISTRICTS WITHIN GATESVILLE, NORTH CAROLINA; TO REGULATE WITHIN SUCH DISTRICTS THE LOCATION, HEIGHT, BULK, NUMBER OF STORIES AND SIZE OF BUILDINGS AND OTHER STRUCTURES, THE PERCENTAGE OF LOT THAT MAY BE OCCUPIED, THE REQUIRED OPEN SPACE, THE DENSITY OF POPULATION, AND THE USES OF LAND, BUILDINGS, AND OTHER STRUCTURES; TO PROVIDE METHODS OF ADMINISTRATION OF THIS ORDINANCE AND TO PRESCRIBE PENALTIES FOR THE VIOLATION THEREOF.

NOW, THEREFORE, the Town Council of the Town of Gatesville, North Carolina, does hereby ordain and enact into law the following Articles and Sections, this the 4th day of February 1987, including amendments through November 1, 2023.

SECTION 1.02: SHORT TITLE

This Ordinance shall be known as the “Zoning Ordinance.” The map herein referred to which is identified by the title “Official Zoning Map of Gatesville, North Carolina,” shall be known as the “Zoning Map.”

SECTION 1.03: PURPOSE

In accordance with the provisions of Chapter 160D, Article 7 Zoning of the General Statutes of North Carolina, the Town Council of Gatesville, having acted as the Planning Agency to prepare a Zoning Plan showing proposed district boundaries and recommending a procedure by which the Zoning Regulations and restrictions and boundaries of the zoning districts shall be determined, established and enforced, and from time to time amended, supplemented or changed, and having certified a plan taking into consideration the character of each district and its peculiar suitability for particular uses with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the town, hereby adopts this Zoning Ordinance.

The Zoning Ordinance has been prepared in accordance with a comprehensive plan for the development of Gatesville and is designed to promote the public health, safety, and general welfare. To that end, these regulations may address, among other things, the following public purposes: to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote the health, safety, morals, or the general welfare of the community; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements and to give reasonable consideration to the expansion and development of the town so as to provide for its orderly growth and development.

SECTION 1.04: EXEMPTIONS

- (A) These regulations shall not apply to any land or structure for which, prior to the effective date hereof, there is a properly approved site-specific plan as required by the requirements previously adopted or previously approved vested rights in accordance with NCGS 160D-108. Any preliminary or final subdivision plat approvals required for such approved or exempted site-specific plans shall be conducted in accordance with the requirements of the previous Zoning Ordinance.
- (B) In accordance with NCGS 160D-913, this zoning ordinance is applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions. Notwithstanding the provisions of any general or local law or ordinance, except as provided in Article 9, Part 4 of NCGS 160D, no land owned by the State of North Carolina may be included within an overlay district or a conditional zoning district without approval of the Council of State or its delegee.
- (C) The provisions of this Ordinance shall not apply to existing bona fide farms. A bona fide farm is any tract of land containing at least three acres which is used for the production of, or activities relating to, or incidental to, the production of crops, fruit, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural or forest products having a domestic or foreign market.

SECTION 1.05: RELATIONSHIP TO COMPREHENSIVE PLAN**(A) Applicability**

As a condition of adopting and applying zoning regulations, the Town of Gatesville shall adopt and reasonably maintain a comprehensive plan that sets forth goals, policies, and programs intended to guide the present and future physical, social, and economic development of the jurisdiction. The town's comprehensive plan is intended to guide coordinated, efficient, and orderly development throughout the town's planning jurisdiction based on an analysis of present and future needs. Planning analysis may address inventories of existing conditions and assess future trends regarding demographics and economic, environmental, and cultural factors. The planning process shall include opportunities for citizen engagement in plan preparation and adoption. In addition to a comprehensive plan, the town may prepare and adopt such other plans as deemed appropriate. This may include, but is not limited to, land use plans, small area plans, neighborhood plans, hazard mitigation plans, transportation plans, housing plans, and recreation and open space plans. If adopted pursuant to the process set forth in this section, such plans shall be considered in review of proposed zoning amendments.

(B) Comprehensive Plan Contents

A Comprehensive Plan may, among other topics, address any of the following as determined by the town:

- (1) Issues and opportunities facing the town, including consideration of trends, values expressed by citizens, community vision, and guiding principles for growth and development.
- (2) The pattern of desired growth and development and civic design, including the location, distribution, and characteristics of future land uses, urban form, utilities, and transportation networks.
- (3) Employment opportunities, economic development, and community development.
- (4) Acceptable levels of public services and infrastructure to support development, including water, waste disposal, utilities, emergency services, transportation, education, recreation, community facilities, and other public services, including plans and policies for provision of and financing for public infrastructure.
- (5) Housing with a range of types and affordability to accommodate persons and households of all types and income levels.
- (6) Recreation and open spaces.
- (7) Mitigation of natural hazards such as flooding, winds, wildfires, and unstable lands.
- (8) Protection of the environment and natural resources, including agricultural resources, mineral resources, and water and air quality.
- (9) Protection of significant architectural, scenic, cultural, historical, or archaeological resources.
- (10) Analysis and evaluation of implementation measures, including regulations, public investments, and educational programs.

(C) Adoption and Effect of Plans

Plans shall be adopted by the Town Council with the advice and consultation of the Planning Board. Adoption and amendment of the comprehensive plan is a legislative decision and shall follow the process mandated for zoning text amendments set by Article XIII. Plans adopted under NCGS 160D may be undertaken and adopted as part of or in conjunction with plans required under other statutes, including, but not limited to, the plans required by G.S. 113A-110. Plans adopted under NCGS 160D shall be advisory in nature without independent regulatory effect. Plans adopted under NCGS 160D do not expand, diminish, or alter the scope of authority for development regulations adopted under NCGS 160D. Plans adopted under NCGS 160D shall be considered by the Planning Board and Town Council when considering proposed amendments to zoning regulations as required by Sections 13.06 and 13.07.

If a plan is deemed amended by Section 13.07 by virtue of adoption of a zoning amendment that is inconsistent with the plan, that amendment shall be noted in the plan. However, if the plan is one that requires review and approval subject to G.S. 113A-110, the plan amendment shall not be effective until that review and approval is completed.

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ARTICLE II. ESTABLISHMENT OF ZONING DISTRICTS AND PROVISION FOR ZONING MAP

SECTION 2.01: OFFICIAL ZONING MAP

- (A) For the purposes of this Ordinance, the Town of Gatesville is hereby divided into zones or districts as shown on the "Official Zoning Map of Gatesville, N.C.," which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Ordinance.
- (B) The official Zoning Map shall be identified by the signature of the Mayor of the Town of Gatesville and attested by the Clerk and bearing the Seal of the town under the following words: "This is to certify that this is the Official Zoning Map referred to in Article II of the Zoning Ordinance of Gatesville, N.C.," together with the date of adoption of this Ordinance and most recent revision date.
- (C) If, in accordance with Article XIII of this Ordinance, changes are made in district boundaries or other matter portrayed on the Official Zoning Map, such changes shall be promptly entered on the Official Zoning Map after the amendment has been approved by the Town Council, with a record denoting the date of amendment, description of amendment, and signed by the Town Clerk. No amendment to this Ordinance which involves matter portrayed on the official zoning map shall become effective until after such change and record has been made.
- (D) No changes of any nature shall be made in the official zoning map or matter shown thereon except in conformity with the procedures set forth in this Ordinance and state law. Any unauthorized change of whatever kind by any person shall be considered a violation of this Ordinance and punishable as provided under Article VIII.
- (E) Regardless of the existence of purported copies of the Official Zoning Map which may be made or published, the Official Zoning Map, which shall be located in the Gatesville Town Hall, shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the town.
- (F) When the Zoning Map is officially replaced, unless the prior map has been lost, or has been totally destroyed, the prior map or any significant parts thereof remaining, shall be preserved together with all available records pertaining to its adoption or amendment.
- (G) Duly adopted zoning district maps shall be maintained for public inspection in the Gatesville Town Hall. Current and prior zoning maps may be maintained in paper or a digital format approved by the town.
- (H) This Ordinance may reference or incorporate by reference flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by the state and federal agencies. Where zoning district boundaries are based on these maps, said boundaries are automatically amended to remain consistent with changes in the officially promulgated state

or federal maps. A copy of the currently effective version of any incorporated maps shall be maintained for public inspection as provided in subsection (G).

SECTION 2.02: RULES GOVERNING THE INTERPRETATION OF DISTRICT BOUNDARIES

Where uncertainty exists with respect to the boundaries of any of the districts shown on the “Official Zoning Map of Gatesville, North Carolina,” the following rules shall apply:

- (A) Boundaries indicated as approximately following the center lines of streets, highways, or railroad rights-of-way shall be construed to follow such center lines.
- (B) Boundaries indicated as approximately following platted lot lines shall be construed as follows such lot lines.
- (C) Boundaries indicated as approximately following corporate limits shall be construed as following such corporate limits.
- (D) Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such centerlines.
- (E) Boundaries indicated as parallel to, or extensions of, features indicated in subsections (A) through (D) above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
- (F) Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or in other circumstances not covered by subsections (A) through (E) above, the Board of Adjustment shall interpret the district boundaries.
- (G) Where a district boundary line divides a lot which was in single ownership at the time of passage of this Ordinance, the Town Council may permit, as special use, the extension of the regulations for either portion of the lot not to exceed 50 feet beyond the district line into the remaining portion of the lot.

ARTICLE III. APPLICATION OF REGULATIONS

SECTION 3.01: TERRITORIAL APPLICATION

The provisions of this Ordinance shall apply to all lands, waters and structures and uses of them, within the zoning jurisdiction of Gatesville, N.C. as now or hereafter established. Such planning jurisdiction may be modified from time to time in accordance with NCGS 160D-202.

SECTION 3.02: SPLIT JURISDICTION

If a parcel of land lies within the planning and development regulation jurisdiction of more than one local government, the Town of Gatesville and Gates County may by mutual agreement and with the written consent of the landowner assign exclusive planning and development regulation jurisdiction for the entire parcel to either the town or the county. Such a mutual agreement shall only be applicable to development regulations and shall not affect taxation or other non-regulatory matters. The mutual agreement shall be evidenced by a resolution formally adopted by each governing board and recorded with the Gates County register of deeds within 14 days of the adoption of the last required resolution.

SECTION 3.03: PENDING JURISDICTION

After consideration of a change in local government jurisdiction has been formally proposed, the local government that is potentially receiving jurisdiction may receive and process proposals to adopt development regulations and any application for development approvals that would be required in that local government if the jurisdiction is changed. No final decisions shall be made on any development approval prior to the actual transfer of jurisdiction. Acceptance of jurisdiction, adoption of development regulations, and decisions on development approvals may be made concurrently and may have a common effective date.

SECTION 3.04: USE, OCCUPANCY, AND CONSTRUCTION

No building, structure, or land shall hereafter be used or occupied, and no structure or part of one shall hereafter be constructed except in conformity with all of the regulations specified in this Ordinance for the district in which it is located.

SECTION 3.05: HEIGHT, BULK, DENSITY, LOT COVERAGE, YARDS, AND OPEN SPACES

No building or other structure shall hereafter be erected or altered to exceed the height or bulk requirements of this Ordinance; nor to accommodate a greater number of families than allowed by this Ordinance; nor to occupy a greater percentage of lot area than allowed by this Ordinance; nor to have narrower or smaller front yards, side yards, rear yards, or other open spaces than required by this Ordinance; nor shall any building, structure or land be used in any other manner contrary to the provisions of this Ordinance.

SECTION 3.06: COMPUTATION OF REQUIRED SPACES

No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Ordinance, shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.

SECTION 3.07: REDUCTION OF LOTS OR AREAS BELOW MINIMUM

No yard or lot existing at the time of passage of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth in this Ordinance.

Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

SECTION 3.08: ONE PRINCIPAL BUILDING ON ANY LOT

Only one (1) principal building and its customary accessory buildings may hereafter be erected on any lot except as authorized by this Ordinance in Section 6.05 below.

SECTION 3.09: LOT ACCESS REQUIREMENTS

No structure requiring a building permit shall be erected on any lot which does not abut either a public right-of-way or a private street or easement at least 30 feet in width which has been approved by the Town Council and recorded by the Register of Deeds of Gates County.

SECTION 3.10: VISION CLEARANCE AT INTERSECTIONS

On a corner lot which abuts a state maintained right-of-way in any district, no planting, structure, fence, wall, or other obstruction to vision more than three (3) feet in height shall be placed or maintained within the triangular area formed by the intersecting street right-of-way lines and a straight line connecting points on said street lines each of which is twenty-five (25) feet distance from the point of intersection. On all other rights-of-way, proper setback for vision clearance shall be determined by the Zoning Administrator but in no case shall the requirement exceed that above.

SECTION 3.11: WALLS AND FENCES

The setback requirements of these regulations shall not prohibit any necessary retaining wall or prohibit any wall or fence. However, within or abutting any Residential District, no wall or fence shall exceed six (6) feet in height within a front or side yard.

SECTION 3.12: STRUCTURES EXCLUDED FROM HEIGHT LIMITATIONS

The height limits of these regulations shall not apply to a church spire, belfry, cupola, dome or ornamental tower, monument, water towers, transmission tower, chimney, smoke stack, conveyor, flag pole, radio or television tower, mast or aerial, parapet wall not extended more than four (4) feet above the roof line of the building, necessary mechanical appurtenances, and any other feature not for human occupancy.

SECTION 3.13: REDUCTION OF FRONT YARD SETBACK REQUIREMENTS

In any Residential District, where the average setback distance for existing buildings on all lots located wholly or partly within two hundred (200) feet of any lot, and within the same zoning district and fronting on the same side of the same street as such lot, is less than the minimum setback required in said zoning district, the setback on said lot may be less than the required setback, but not less than the existing average setback distance for all lots within the two hundred (200) feet and in no case shall the setback be less than fifteen (15) feet. When lots within the two hundred (200) feet are vacant, those vacant lots shall be considered as having the minimum required setback for the purpose of computing an average setback distance.

SECTION 3.14: CONVERSION OF EXISTING STRUCTURES TO CONDOMINIUM OWNERSHIP

Existing structures not in condominium ownership under the Unit Ownership Act of the State of North Carolina may be converted to unit ownership provided the owner or developer shall comply with all provisions of this Ordinance for obtaining a building permit and site plan approval, as applicable, as in new construction, and further, that before the existing structure shall be converted to unit ownership in accordance with the North Carolina Unit Ownership Act, the structure shall meet all the requirements and standards of the current building code in effect at the time the conversion is made.

SECTION 3.15: FEES

Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice, and similar matters may be charged to applicants for all development approvals, zoning amendments, street closings, major and minor site plan review, variances, appeals, and other administrative relief. The amount of the fees charged shall be set forth in the town's budget or as established by resolution of the Town Council filed in the Office of the Town Clerk. Fees established in accordance with this section shall be paid upon submission of a signed application or notice of appeal.

SECTION 3.16: COMPUTATION OF TIME

Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday, or legal holiday, that day shall be excluded. When the period of time prescribed is less than seven (7) days, intermediate Saturdays, Sundays, and holidays shall be excluded.

Unless otherwise specifically provided, whenever a person has the right or is required to do some act within a prescribed period after the service of a notice and the notice or paper is served by mail (Certified Mail/Return Receipt Requested), three days shall be added to the prescribed period.

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ARTICLE IV. INTERPRETATION AND DEFINITION OF TERMS

Certain words or terms used in this Ordinance shall be interpreted as follows:

SECTION 4.01: INTERPRETATION OF COMMON WORDS OR TERMS

Words used in the present tense include the future tense.

Words used in the singular number shall include the plural and words used in the plural shall include the singular.

The word “person” includes a firm, co-partnership, company, organization, trust, association, or corporation as well as an individual.

The word “lot” includes the words “plot,” “parcel,” or “tract.”

The word “building” includes the word “structure.”

The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged, or designed to be used or occupied.”

The word “shall” is always mandatory.

The word “may” is permissive.

SECTION 4.02: DEFINITION OF SPECIFIC TERMS AND WORDS

Alley: A minor right-of-way, dedicated to public use, which affords a secondary means of vehicular access to the back or side of properties otherwise abutting a street, and which may be used for public utility purposes.

Bona Fide Farm. Agricultural activities as set forth in NCGS 160D-903. Sufficient evidence that the property is being used for bona fide farm purposes includes the following: (1) a farm sales tax exemption certificate issued by the Department of Revenue; (2) a copy of the property tax listing showing that the property is eligible for participation in the present-use-value program pursuant to NCGS 105-277.3; (3) a copy of the farm owner’s or operator’s Schedule F from the owner’s or operator’s most recent federal income tax return; or (4) a forestry management plan.

Buffer Strip. A device of material and space used to provide sight and sound screening from adjoining properties. The required height and width of the buffer strip and the materials used in its construction vary according to use. Where a buffer strip is required under the provisions of this Ordinance, such buffer strip shall be approved by the Zoning Administrator.

Building. Any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry, or other purposes.

Building, Accessory. A subordinate building consisting of walls and a roof, the use of which is clearly incidental to that of a principal building on the same lot. Accessory buildings may be placed in any rear or side yard but may be no closer than five (5) feet from any property line.

Building, Principal. A building in which is conducted the principal use of the lot on which it is located.

Building Setback Line. A line parallel to or concentric with the street right-of-way establishing the minimum allowable distance between such right-of-way and the nearest portion of any building, excluding the outermost three feet of any uncovered porches, steps, eaves, gutters, and similar fixtures.

Conditional Zoning District. A zoning district in which site plans or individualized development conditions are imposed in response to a petition by all owners of the property to be included. Specific conditions may be proposed by the petitioner or the local government or its agencies, but only those conditions approved by the local government and consented to by the petitioner in writing may be incorporated into the zoning regulations.

Condominium. Ownership in common with others of a parcel of land and certain parts of a building thereon which would normally be used by all the occupants together with individual ownership in fee of a particular dwelling unit in such building.

Dedication. A gift, by the owner, or a right to use of land for a specified purpose or purposes. Because a transfer of property rights is entailed, dedication must be made by written instrument and is completed with an acceptance. All dedications must be recorded in the Register of Deeds Office at the expense of the developer.

Determination. A written, final, and binding order, requirement, or determination regarding an administrative decision.

Development Approval. An administrative or quasi-judicial approval made pursuant to NCGS 160D that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to NCGS Chapter 160D, including plat approvals, permits issued, development agreements entered into, and building permits issued.

Development Plan. A detailed drawing(s) containing specific information regarding proposed development within the town.

Development Regulation. A unified development ordinance, zoning ordinance, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention ordinance, mountain ridge protection regulation, stormwater control ordinance, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to NCGS Chapter 160D, or a local act or charter that regulates land use or development.

Drive-In Restaurant or Refreshment Stand. Any place or premises used for sale, dispensing, or serving of food, refreshments, or beverages to customers in automobiles, including those establishments where customers may serve themselves and may eat or drink the food, refreshments, or beverages on the premises.

Dwelling Unit. One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities for a single family.

Dwelling, Single-Family. A detached building designed for or occupied exclusively by one family.

Dwelling, Two Family (Duplex). A detached building divided horizontally or vertically and designed for or occupied by two single-family housekeeping units contained entirely under one roof and having one dividing partition common to each unit, or having the ceiling structure of the lower unit the floor structure of the unit above.

Dwelling, Multiple. A building or portion of one used or designed as a residence for three or more families living independently of each other and doing their own cooking therein. This definition includes apartment houses.

Evidentiary Hearing. A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under NCGS Chapter 160D.

Family. One or more persons occupying a single-family dwelling unit, provided that unless all members are related by blood or marriage, no such family shall contain more than five (5) persons.

Home Occupation. The accessory use of a dwelling unit for gainful employment involving the manufacture, provision, or sale of goods or services under the requirements of Section 6.04.

Junk Yard. Two hundred (200) square feet or more of land area used for the storage of junked or scrapped materials or for the storage of two or more unregistered motor vehicles.

Large Scale Zoning Amendment. The rezoning of more than fifty (50) parcels.

Legislative Decision. The adoption, amendment, or repeal of a regulation under NCGS Chapter 160D or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of NCGS Chapter 160D, Article 10.

Legislative Hearing. A hearing to solicit public comment on a proposed legislative decision.

Lot. A parcel of land which fronts on and has ingress and egress by means of a public right-of-way or an approved private street and which is occupied or intended to be occupied by a building or group of buildings as provided herein with the customary accessories and open spaces.

Lot Area. The total horizontal area included within lot lines.

Lot, Corner. A lot of which at least two adjoining sides abut for their full lengths on a street, provided that the interior angle at the intersection of two such sides is less than 135 degrees.

Lot Depth. The average distance from the street line of the lot to its rear line measured in a general direction of the side lines of the lot.

Lot Lines. The lines bounding a lot as defined herein.

- (1) Lot Line, Front. The line separating the lot from that street which is designated as the front street on the building permit, certificate of occupancy or subdivision plat.
- (2) Lot Line, Rear. The lot boundary opposite and most distant from the front lot line. In the case of a pointed or irregular lot, it shall be an imaginary line parallel to and farthest from the front lot line, not less than 30 feet long and wholly within the lot.
- (3) Lot Line, Side. A side lot line is any lot boundary line not a front lot line or rear lot line.

Lot Width. The width of a lot at the required building setback line measured at right angles to its depth.

Lot of Record. A lot which is part of a subdivision recorded in the office of the Gates County Register of Deeds, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

Medical Clinic. A building or structure or portion thereof where medical services are provided for outpatients only.

Mobile Home (includes Double-Wide and Triple-Wide Homes). A modular unit built on a chassis, with body width exceeding 8 feet or body length exceeding 32 feet, designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities. A travel trailer is not to be considered as a mobile home.

Mobile Home Park. A parcel or tract of land under single ownership which has been planned and improved for the placement of mobile homes for dwelling purposes; provided that each mobile home park existing at the time of passage of this Ordinance and not meeting the minimum requirements of this Ordinance, shall be considered a non-conforming use.

Modular Unit. A factory fabricated transportable building designed to be used by itself or to be incorporated with similar units at a building site into a modular structure. The term is intended to apply to major assemblies and does not include prefabricated panels, trusses, plumbing trees, and other prefabricated sub-elements which are to be incorporated into a structure at the site.

Non-Conforming Use. A use of building or land which does not conform with the regulations of the district in which such building or land is situated but was lawful before adoption of this Ordinance.

Open Space. An unoccupied space open to the sky.

Open Storage. Unroofed storage area, whether fenced or not.

Parking Space. A vehicular storage space of not less than ten (10) feet by twenty (20), plus the necessary access space. It shall always be located outside any dedicated right-of-way.

Quasi-Judicial Decisions. A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board. A site plan approval based solely upon application of objective standards is an administrative decision.

Sign. See Section 6.02.

Special Use Permit: A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits or special exceptions.

Standing: The following persons shall have standing to file an appeal:

- (1) Any person possessing any of the following criteria:
 - (a) An ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restrictions, or covenant in the property that is the subject of the decision being appealed.
 - (b) An option or contract to purchase the property that is the subject of the decision being appealed.
 - (c) An applicant before the decision-making board whose decision is being appealed.
- (2) Any other person who will suffer special damages as the result of the decision being appealed.
- (3) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.
- (4) A local government whose decision-making board has made a decision that the Town Council believes improperly grants a variance from or is otherwise inconsistent with the proper interpretation of a development regulation adopted by that Board.

Street.

- (1) Any permanently dedicated public right-of-way which has been accepted for maintenance by the state department of transportation; or
- (2) Any other open area providing the principal means of access for vehicles or pedestrians from a public right-of-way to a building or use of land and which:
 - (a) Is at least thirty (30) feet in width; and
 - (b) Has been approved by the Town Council as a street to satisfy the requirements of this Ordinance; and
 - (c) Is covenanted by its owner to remain open and unobstructed throughout the life of any building or use which depends thereon to satisfy any requirement of this Ordinance.

Structure. Anything constructed or erected, the use of which requires location on the ground, or attachment to something having location on the ground.

Temporary Health Care Structure. The following definitions shall apply:

- (1) Activities of Daily Living. Bathing, dressing, personal hygiene, ambulation, or locomotion, transferring, toileting, and eating.
- (2) Caregiver. An individual 18 years of age or older who (i) provides care for a mentally or physically impaired person and (ii) is a first or second degree relative of the mentally or physically impaired person for whom the individual is caring.
- (3) First or Second Degree Relative. A spouse, lineal ascendant, lineal descendant, sibling, uncle, aunt, nephew, or niece and includes half, step, and in-law relationships.
- (4) Mentally or Physically Impaired Person. A person who is a resident of this State and who requires assistance with two or more activities of daily living as certified in writing by a physician licensed to practice in this State.
- (5) Temporary Family Health Care Structure. A transportable residential structure, providing an environmental facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the State Building Code and NCGS 143-139.1(b). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

Townhouse. A single-family dwelling on its own individual lot but connected on two sides, by means of a common wall for at least ten (10) feet of its length, to two other single-family dwellings or an end dwelling of a row of such dwellings. No more than six (6) such dwelling units may be attached in a single group.

Trailer. Shall include any of the following:

- (1) Travel Trailer. A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, recreational, and vacation uses, and, when factory equipped for the roads, it shall have a body width not exceeding eight (8) feet, and a body length not exceeding thirty-two (32) feet.
- (2) Pick-Up Coach. A structure designed to be mounted on a truck chassis for use as a temporary dwelling for travel, recreational, and vacation.
- (3) Motor-Home. A portable, temporary dwelling to be used for travel, recreation, and vacation, constructed as an integral part of a self-propelled vehicle.
- (4) Camping Trailer. A folding structure of canvas or other material mounted on wheels and designed for travel, recreation, and vacation use.

Trailer Park. A parcel or tract of land under single ownership which has been planned and improved for the temporary placement of campers or trailers as a service to the traveling public. Each trailer park existing at the time of passage of this Ordinance which does not meet the minimum requirements established for trailer parks by this Ordinance shall be considered a non-conforming use.

Use. A "Use" is:

- (1) Any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied, or,
- (2) Any activity, occupation, business, or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

Use, Accessory. A use which is clearly incidental to and customarily found in connection with the principal use and located on the same lot with such principal use.

Use, Principal. The specific primary purpose for which land is used.

Use, Special. A use permitted in a particular zoning district by the Town Council after having held a public hearing and determined that the use in a specified location complies with certain findings of fact as specified in this Ordinance.

Variance. A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship. As used in this Ordinance, a variance is authorized only for height, area, and size of structure or size of yards and open spaces. The establishment or expansion of any use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or uses in an adjoining zoning district.

Vested Right. The right to undertake and complete the development and use of property under the terms and conditions of an approval secured as specified in NCGS Chapter 160D-108 or under common law.

Yard. A required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from 30 inches above the general ground level of the graded lot upward, provided however that fences, walls, poles, posts, and other customary yard accessories, ornaments, and furniture may be permitted in any yard subject to height limitations and requirement limiting obstruction of visibility or any other requirement of this Ordinance, and further provided that customary accessory buildings may be located in any side or rear yard no closer than five (5) feet to any property line and subject to other limitations of this Ordinance.

- (1) Yard, Front. A yard extending between side lot lines across the front of a lot adjoining the public street. Depth of required front yard shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding. Front and rear yard lines shall be essentially parallel.
- (2) Yard, Rear. A yard extending across the rear of the lot between side lot lines. Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line. In the case of lots abutting more than one street, there may be no rear yard, but only front and side yards.
- (3) Yard, Side. A yard extending from the rear line of the required front yard to the rear yard. Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.

Zoning Map Amendment or Rezoning. An amendment to a zoning regulation for the purpose of changing the zoning district that is applied to a specified property or properties. The term also includes (i) the initial application of zoning when land is added to the territorial jurisdiction of the Town that has previously adopted zoning regulations and (ii) the application of an overlay zoning district or a conditional zoning district. The term does not include (i) the initial adoption of a zoning map by the Town, (ii) the repeal of a zoning map and readoption of a new zoning map for the entire planning and development regulation jurisdiction, or (iii) updating the zoning map to incorporate amendments where there are no changes in the boundaries of the zoning district or land uses permitted in the district.

Zoning Permit. A permit issued by the Zoning Administrator which authorizes the recipient to make use of property in accordance with the requirements of this Ordinance.

ARTICLE V. NON-CONFORMITIES

SECTION 5.01: INTENT

Within the districts established by this Ordinance or amendments that may later be adopted there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before this Ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance or future amendments. It is the intent of this Ordinance to permit these non-conformities to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that non-conformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been carried on diligently. Actual construction is hereby defined to include the placing of construction materials in a permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, that excavation, demolition, or removal shall be considered to be actual construction, provided that work shall be carried on diligently.

SECTION 5.02: REGULATION OF NON-CONFORMITIES

(A) Non-Conforming Lots of Record

- (1) In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance, even though limitations may be imposed by other provisions of this ordinance. The lot must be in separate ownership and not be continuous frontage with other lots in the same ownership. This provision shall apply even though the lot fails to meet the requirements for area or width, or access, that are generally applicable in the district, provided that yard dimensions and requirements other than these applying to area or width, or access, of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the Board of Adjustment as established in Article X of this ordinance.
- (2) If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this ordinance.

(B) Non-Conforming Uses of Land

Where at the time of passage of this ordinance, lawful use of land exists which would not be permitted by the regulations imposed by this ordinance, and where the use involves no individual structure with a replacement cost exceeding \$1,000, the use may be continued so long as it remains otherwise lawful, provided:

- (1) No such non-conforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.
- (2) No such non-conforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this ordinance.
- (3) If any such non-conforming use of land ceases for any reason for a period of more than 30 days, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which the land is located.
- (4) No additional structure not conforming to the requirements of this ordinance shall be erected in connection with the non-conforming use of land.

(C) Non-Conforming Mobile Homes

Where an individual mobile home is located on a lot in a zoning district in which a mobile home is not a permitted use it may be replaced with another mobile home provided that:

- (1) All other applicable state and county requirements are met; and
- (2) That such replacement must occur within thirty (30) days. After such time, the non-conforming mobile home may only be replaced with a conforming structure.

(D) Non-Conforming Structures

Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, the structure may be continued so long as it remains lawful, subject to the following provisions:

- (1) No such non-conforming structure may be enlarged or altered in a way which increases its non-conformity, but any structure or portion of it may be altered to decrease its non-conformity.
- (2) If any such non-conforming structure or non-conforming portion of structure is destroyed by any means to an extent of more than seventy-five percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance. However, any destroyed non-conforming structure may be rebuilt to its original dimensions if a permit for rebuilding

is obtained within one hundred eighty (180) days from the date of destruction.

Thereafter, it shall not be rebuilt except in conformity with the regulations of the district in which it is located.

- (3) If any such structure is moved for any reason for any distance whatever, it shall then conform to the regulations for the district in which it is located after it is moved.

(E) Non-Conforming Uses of Buildings or of Buildings and Premises in Combination

If lawful use involving buildings with a replacement cost of \$1,000 or more, or of building and premises in combination, exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (1) No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- (2) Any non-conforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building.
- (3) If no structural alterations are made, any non-conforming structure or use of structures may be changed to any conforming use, or with the approval of the Town Council to any use more in character with uses permitted in the district. In permitting such a change, the council must find that the proposed use is more appropriate or equally as appropriate to the district as the existing non-conforming use and shall require appropriate conditions and safeguards necessary to ensure that the change is in keeping with provisions and spirit of this ordinance.
- (4) Any structure, or structure and land in combination, in or on which a non-conforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the non-conforming use may not thereafter be resumed.
- (5) When a non-conforming use of a structure, or structure and premises in combination, is discontinued or abandoned for six consecutive months (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
- (6) However, any destroyed non-conforming structure may be rebuilt to its original dimensions if a permit for rebuilding is obtained within one hundred eighty (180) days from the date of destruction. Thereafter, it shall not be rebuilt except in conformity with the regulations of the district in which it is located.

(F) Repairs and Maintenance

- (1) In any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of 12 consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent not exceeding 10 percent of the current replacement cost of the non-conforming structure or non-conforming portion of the structure as the case may be, provided that the cubic content existing when it became non-conforming shall not be increased.
- (2) If a non-conforming structure or portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and is declared by the Building Inspector to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.
- (3) Nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

(G) Uses Under Special Use Provisions Not Non-Conforming

Any use which is permitted as a special use in a district under the terms of this ordinance shall not be deemed a non-conforming use in such district but shall without further action be considered a conforming use.

ARTICLE VI. GENERAL PROVISIONS AND SUPPLEMENTARY REQUIREMENTS

SECTION 6.01: OFF-STREET PARKING REQUIREMENTS

At the time of erection of any building or structure, or at the time any main building or structure is enlarged or increased in capacity by adding dwelling units, guest rooms, seats or floor area, or before conversion from one zoning use or occupancy to another, permanent off-street parking space shall be provided according to the amounts and specifications provided by this ordinance.

(A) General Provisions

- (1) Each parking space shall have a minimum length of twenty (20) feet and a minimum width of ten (10) feet. It shall have vehicular access to a publicly dedicated street or alley, except as authorized in Section 6.05 of this ordinance for Group Development.
- (2) With the exception of required spaces for single-family and two-family dwelling units, sufficient maneuvering space shall be provided so that no vehicle will be required to back into the public right-of-way.
- (3) No parking spaces for residential use, except for single-family and two-family use, shall be located in the required front yard setback area.
- (4) Required parking spaces and driveways for other than single-family and two-family uses shall be graded, improved, and maintained in a manner which will provide a dust-free surface permitting safe and convenient use in all weather conditions.
- (5) Required off-street parking spaces are permanent areas and shall not be used for any other above-ground purpose.
- (6) For uses not specifically mentioned in this ordinance, off-street parking requirements shall be applied by the Zoning Administrator based upon requirements for similar use.
- (7) All space requirements which are based upon employment shall be computed on the basis of the greatest number of persons on duty at any one period during the day or night. In instances where calculations indicate a portion of one (1) space is required, an additional full space shall be provided.
- (8) Each application for a building permit or certificate of occupancy submitted to the Zoning Administrator 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 Administrator to determine whether or not the requirements of this Section are met.
- (9) 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 or on Sundays.

- (10) Any off-street parking space required by any use permitted in any Residential District shall be provided on the same lot with the use by which it is required. Off-street parking space in conjunction with commercial and industrial uses in other districts shall not be permitted in a Residential District.

(B) Requirements for Parking Lots

Where parking space for five (5) or more cars is permitted or required, the following provisions shall be complied with:

- (1) Yards. No parking lot shall be located closer than five (5) feet to a public right-of-way. The area between the parking lot and street right-of-way shall be planted and maintained in lawn or other appropriate planting, or shall be improved otherwise as approved in site plan review.
- (2) Curb Bumpers. The required front and side yards shall be set off from the parking area by a fixed curb of masonry or wood, not less than six (6) inches or more than two (2) feet high.
- (3) Lighting. Any lighting shall be so arranged as to direct the light and glare away from streets and adjacent property.
- (4) Surfacing. All parking lots shall be provided with an adequate surface to provide safe and convenient access in all weather conditions.
- (5) Drainage. Parking lots shall not drain onto or across public sidewalks, or into adjacent property except into a natural water course or a drainage easement.
- (6) Markings. Each parking space shall be marked off and maintained so as to be distinguishable.
- (7) Entrances. On all corner lots, no vehicular openings shall be located at closer than fifteen (15) feet from the point of intersection of the established street right-of-way lines. No entrance or exit shall exceed thirty (30) feet in width at the property line, or forty (40) feet at the curb line. There shall be a minimum distance between one-way driveways of twenty-five (25) feet measured along the curb line.
- (8) Internal Circulation. The internal circulation plan of parking lots shall be approved by the Zoning Administrator.

(C) Minimum Parking Requirements

The number of off-street parking spaces required by this section shall be provided on the same lot with the principal use except as provided in Subsection (A)(9) above and the required number of off-street parking spaces specified for each use shall be considered as the absolute minimum. Where a fraction of

a space is required by this ordinance the next whole number shall be provided. In addition, a developer shall evaluate his own needs to determine if they are greater than the minimum specified by this Ordinance.

RESIDENTIAL AND RELATED USES	REQUIRED PARKING
Single-family detached dwelling units, town houses, and condominiums	Two (2) parking spaces for each dwelling unit
Multi-family residence and group housing projects	1.5 parking spaces on the same lot for each unit
Hotel, tourist home, motel, motor court, rooming, or boarding house	1.25 parking spaces for each room to be rented.
Professional office in own residence	Three (3) parking spaces for office of home occupation in addition to residence requirements
PUBLIC AND SEMI-PUBLIC USES	REQUIRED PARKING
Hospital	One (1) parking space for each two (2) beds intended for patient use
Outpatient clinic	Five (5) parking spaces for each doctor in attendance
Nursing home	One (1) parking space for each four (4) beds intended for patient use
Churches	One (1) parking space for each four (4) seats in the sanctuary
Elementary school and junior high school	One (1) parking space for each classroom and administrative office
Senior high school	One (1) parking space for each five (5) students for which the building was designed plus one (1) parking space for each classroom and administrative office
Stadium	One (1) parking space for each three (3) spectator seats
Auditorium	One (1) parking space for each three (3) seats in the largest assembly room
Public or private clubs	One (1) parking space for each two hundred (200) square feet of gross floor area
RETAIL AND OFFICE USES	REQUIRED PARKING
General or professional offices and banks (other than doctors, dentists – see clinic req.)	One (1) parking space for each two hundred (200) square feet of gross floor area

RETAIL AND OFFICE USES (cont.)	REQUIRED PARKING
Restaurant, café, or public eating place	One (1) parking space for every three hundred (300) square feet of gross floor area
Drive-in restaurant or refreshment stand	Ten (10) parking spaces in addition to the requirements for a restaurant, café, or public eating space
Furniture, appliance, and grocery stores	One (1) parking space for each 500 square feet of gross floor area
Indoor entertainment facilities including bowling alleys, dance halls, skating rinks, amusement arcades, and similar facilities	One (1) parking space for each 200 square feet of gross floor area
Outdoor entertainment facilities including amusement parks, miniature golf courses, and similar facilities	One (1) parking space for each two hundred (200) square feet of gross ground area exclusive of the area required for parking and buffering
Theaters	One (1) parking space for each three (3) seats in the auditorium
Funeral home	One (1) parking space for each four (4) seats in the chapel or parlor
Retail uses not otherwise listed	One (1) parking space for each five hundred (500) square feet of gross floor area
WHOLESALE USES AND WAREHOUSES	REQUIRED PARKING
Wholesale uses	One (1) parking space for each employee on the largest shift
Industrial use	Two (2) parking spaces for each three (3) employees on the largest shift

(D) Off-Street Loading

Where off-street loading space is required under the dimensional requirements of a particular district, 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 building or structure erected after the enactment of this ordinance all to be in accordance with the requirements of the following table. A loading berth shall have minimum plan dimensions of 12 feet by 25 feet and a 14-foot overhead clearance. A loading space need not be necessarily a full berth but shall be sufficient to allow normal loading and unloading operations of a kind and magnitude appropriate to the property served thereby. The Zoning Administrator shall determine the sufficiency of loading space but in no case shall the use of such space hinder the free movement of vehicles and pedestrians over a street, sidewalk or alley.

USE CLASSIFICATION	SPACE REQUIREMENTS
Retail operation, including restaurant and dining facilities within hotels and office buildings, with a total usable floor area of 20,000 square feet or more devoted to that purpose	One (1) loading berth for every 20,000 square feet of floor area
Retail operations, and all first floor non-residential uses, with a gross floor area of less than 20,000 square feet and all wholesale and light industrial operations with a gross floor area of less than 10,000 square feet.	A loading space (not necessarily a full berth) as defined in this Section next above.
Office buildings and hotels with a total usable area of 100,000 square feet or more devoted to such purposes	One loading berth for every 10,000 square feet of floor area
Industrial and wholesale operations with a gross floor area of 10,000 square feet or over and as follows:	Minimum number of loading berths required:
10,000 – 40,000 square feet	1
40,000 – 100,000 square feet	2
100,000 – 160,000 square feet	3
160,000 – 240,000 square feet	4
240,000 – 320,000 square feet	5
320,000 – 400,000 square feet	6
Each 90,000 square feet above 400,000 square feet	1

SECTION 6.02: REGULATIONS GOVERNING SIGNS

(A) Definition

- (1) For the purpose of this Ordinance, a sign is any surface, fabric, or device bearing lettered, pictorial, or sculptured matter designed to convey information visually and exposed to public view, or any structures, including billboard or poster panels designed to carry visual information. However, the following shall not be included in the application of these regulations:
 - (a) Signs not exceeding one (1) square foot in area and bearing only property numbers, post box numbers, names of occupants of premises, or other identification of premises not having commercial connotations.
 - (b) Flags and insignia of any government except when displayed in connection with commercial promotion.
 - (c) Legal notices, identification, informational, or directional signs erected or required by governmental bodies or public utilities.

- (d) Integral decorative or architectural features of buildings, except letters, trademarks, moving parts, or moving lights.
 - (e) Signs directing and guiding traffic and parking on private property, but bearing no advertising matter.
- (2) Signs are defined as either on-site signs or off-site signs.
 - (a) An on-site sign is one relating in its subject matter to the premises on which it is located, or to products, services, accommodations, or activities on those premises.
 - (b) An off-site sign is any sign other than an on-site sign including signs erected for the provision of outdoor displays or display space as a business on a lease or rental basis.

(B) Number and Area

For the purpose of determining number of signs, a sign shall be considered to be a single display surface or display device containing elements organized, related, and composed to form a unit. Where matter is displayed in a random manner without organized relationship of elements, or where there is reasonable doubt about the relationship of elements, each element shall be considered to be a single sign.

The surface area of a sign shall be computed as including the entire area within a regular geometric form or combination of regular geometric forms comprising all of the display area of the sign and including all of the elements of the matter displayed. Frames and structural members not bearing advertising matter shall not be included in computation of surface area. The area of a double-faced sign shall be the area of one face of the sign, provided that the two faces are of the same size and are parallel to one another with no more than twenty-four (24) inches between each sign face.

(C) Building Permit Required

No sign shall hereafter be erected or attached to, suspended from, or supported on a building or structure nor shall any existing sign be structurally altered, remodeled, or relocated until a building permit has been issued by the Zoning Administrator. No permit is required for signs enumerated in Subsection (H).

(D) Material and Design

All signs shall be constructed and designed according to generally accepted engineering practices, to withstand wind pressures and load distribution as specified in Section 804 of the North Carolina Building Code, 1958, as amended.

(E) Inspection Required

Each sign may be subject to an annual inspection by the Zoning Administrator for the purpose of assuring that the structure is maintained in a safe condition. The fee for the annual inspection shall be in accordance with a regularly adopted fee schedule of the town. When a sign becomes structurally

unsafe, the Zoning Administrator shall give written notice to the owner of the sign or the owner of the premises on which the sign is located, that the sign shall be made safe or removed within ten (10) days of receipt of notice.

(F) Illuminated Signs

All signs in which electrical wiring and connections are to be used shall require a permit and shall comply with the North Carolina Electrical Code and be approved by the Zoning Administrator.

(G) Prohibited Signs

- (1) No sign may be erected or maintained which is a copy or imitation of an official highway sign and carrying the words "STOP" or "DANGER." No sign shall be erected or maintained which involves flashing or intermittent red, green, or amber illumination or resembles a traffic control signal or sign.
- (2) No sign may obstruct corner visibility or visibility at a driveway between a height of two (2) feet and ten (10) feet.
- (3) No sign may be posted on any telegraph, telephone, or electric light poles or on any tree along any street except for approved street name signs.
- (4) No sign may obstruct ingress and egress to any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any room or building as required by law.
- (5) No sign may violate any provision of any law of the State of North Carolina relative to outdoor advertising.
- (6) No sign may be erected which contains, employs, or utilizes lights or lighting which rotates, flashes, moves or alternates except for otherwise approved time or temperature signs.
- (7) No sign may be located within a public right-of-way or within 30 feet of the center line of any public thoroughfare.

(H) Signs Permitted in the R-1 and R-2 Residential Districts

- (1) An indirectly lighted name plate or professional sign not over two (2) square feet in area may be permitted with an approved home occupation.
- (2) Temporary real estate signs, not exceeding two (2) square feet in area, directing the way to premises which are for sale, rent, or lease; provided such signs shall be neatly painted or printed and shall be removed promptly when the property has been sold, rented, or leased.

- (3) Directional signs not over four (4) square feet in area indicating the location of churches, schools, hospitals, parks, scenic or historic places, or other places of general interest. Any such sign and mounting shall not exceed three (3) feet in total height.
- (4) One name sign or bulletin board not exceeding twelve (12) square feet for any permitted church, school, or other non-commercial institution. The sign or board may be indirectly lighted and shall be set back at least fifteen (15) feet from the property line.
- (5) Temporary real estate signs, not exceeding six (6) square feet in area, advertising the sale, rent or lease of the premises on which located. However, these signs shall not be less than fifteen (15) feet from any street or lot line, shall not be illuminated, shall be neatly painted and maintained, and shall be removed promptly when the property has been sold, leased or rented.
- (6) Temporary non-illuminated signs not exceeding six (6) square feet in area advertising the general contractor, contractor, subcontractor, architect, landscape architect or other such professional persons or organizations engaged in or associated with the lawful construction, alteration, remodeling, or demolition of any building or use. However, these signs shall be limited to one for each organization involved and shall be set back from the property line at least fifteen (15) feet and shall be removed within thirty (30) days after the completion of the general contract.
- (7) A sign not to exceed two (2) square feet in area announcing the name, owner, or location of a dwelling.
- (8) Non-illuminated signs not over twelve (12) square feet in area announcing the name of a subdivision or group housing project located on the premises at major entrances. However, these signs must be neatly constructed and maintained, limited to announcing only the name of the subdivision or group housing project and must not obstruct corner visibility.
- (9) Directional signs in parking lots if required by Section 6.01 of this ordinance.

(I) Signs Permitted in the GB and HC Districts

- (1) On-Site Signs. For each lot in commercial use, one (1) square foot of business sign area for each two (2) lineal feet of frontage on a public right-of-way may be allowed. However, the total sign area for any single lot may not exceed a total of five hundred (500) square feet. No single sign may exceed 64 square feet in area. The sign area may be in a single or in a combination of signs subject to the following limitations:
 - (a) One (1) free standing sign per lot may be located either temporarily or permanently on the ground but shall not exceed sixty-four (64) square feet in area and shall not exceed twenty (20) feet in height above street grade. For a lot which has frontage on more than one public right-of-way there may be two (2) signs, neither of which may exceed sixty-four (64) square feet in area.

- (b) Window signs shall be placed only inside a commercial building and shall not exceed seventy-five percent (75%) of the glass area of the pane upon which the sign is displayed.
 - (c) Projecting signs may project from the building over the street right-of-way, alley or other public space provided the sign does not exceed beyond a vertical plane twenty-four (24) inches inside the curb line. The bottom clearance of such sign shall be at least ten (10) feet above the finished grade of the sidewalk along the street and at least fourteen (14) feet above grade at alleys and comers.
 - (d) Wall signs placed against the exterior walls of buildings shall not extend more than six (6) inches beyond the building wall surface and shall not exceed twenty-five (25) percent of the exposed finished wall surface area including openings.
- (2) Off-Site Signs. None permitted except for directional signs which do not exceed thirty-two (32) square feet in area nor ten (10) feet in height.

SECTION 6.03: TEMPORARY USES

The Town Council may approve as special uses under the application provisions of Section 8.05 the Following temporary uses notwithstanding other restrictions of this Ordinance but including such additional conditions and safeguards as may be required by the Council as a provision of such approval.

- (A) Temporary Real Estate Sales Offices may be permitted in any residential district for on-site sales of land or residences located only within the subdivisions within which such office is located. Any such Temporary use must be terminated no more than thirty (30) days from the date that eighty percent (80%) of the lots or residences within that subdivision are sold.
- (B) Temporary construction offices may be permitted in any district to provide on-site quarters for the management and security of construction projects consisting of 20,000 square feet or more within the project. Any such temporary use must be terminated no more than fourteen (14) days from the date that construction is completed.

SECTION 6.04: HOME OCCUPATIONS

Horne occupations may be approved as special uses in residential districts by the Town Council under the provisions of Section 8.05 provided the following conditions are met as well as any additional conditions and safeguards that may be required by the Council as conditions of their approval.

- (A) Not more than 50% of the total floor area of the principal or accessory building may be used for a home occupation.
- (B) No electrical machinery may be used which has a rating of over two (2) horsepower.
- (C) There may be only one (1) person employed in the occupation other than those residing on the premises.

- (D) In addition to the parking requirements for a residence, off-street parking shall be provided for customers.
- (E) Only one sign not to exceed two (2) square feet may be erected. The sign may not be lighted.
- (F) No activity or mechanical devices may be used which cause the residential character of the neighborhood to be impaired by the generation of sounds, light, odor, or vibration.
- (G) Customer traffic shall be limited to the hours between 6:00 A.M. and 10:00 P.M.

SECTION 6.05: GROUP DEVELOPMENT PROJECTS

Group development projects are defined as two or more principal buildings devoted to a common or similar use and constructed on a single lot. They may be permitted as special uses in specified districts established by this ordinance, provided a mandatory pre-application conference is held between the Planning Board and the developer prior to filing the required application for review and approval of the project by the Town Council. Such review and approval shall be required for all group development projects. Adequate scaled site plans shall be submitted to allow for review of the size and location of all buildings, structures, streets, drives and parking spaces and their relationship to any open spaces and adjacent properties. Such group development plans shall also be accompanied by a computation or schedule expressed in acres, which indicates the area and percentage of the site devoted to: (1) Total Area, (2) Parking Area, (3), Building Coverage Area, and (4) Open Space.

(A) Design Standards – General

- (1) Street Access. Any building established as a part of a group development project which cannot properly be served by emergency or service vehicles from an abutting street shall be made accessible to such vehicles by a paved driveway having a roadbed width of not less than 20 feet, exclusive of parking spaces.
- (2) Off-Street Parking and Loading Facilities. Off-street parking and loading facilities established in connection with a group development project shall be of such design, location, and arrangement as will not interfere with the efficient flow of traffic through the area and as will not interfere with the access of emergency and service vehicles.
- (3) Separation of Buildings. All buildings established as a part of a group development project shall be separated by not less than 20 feet.
- (4) Setback Requirements. Unless otherwise provided by this ordinance or a specific type of group development, every project shall comply with the front yard setbacks, and the side and rear yard requirements established for the district in which located.
- (5) Uses Prohibited. In no case shall a use be permitted as a part of a group development project that is prohibited by this Ordinance in the district in which such project is to be located.

(B) Design Standards – Group Housing Projects

In addition to the other standards set forth in this Section, a group housing project shall comply with the following additional requirements.

- (1) Setbacks. All buildings established as a part of a group housing project shall be set back not less than twenty-five (25) feet from any side or rear property line.
- (2) Location. No dwelling structure established as a part of a housing project shall be located within twenty (20) feet of another dwelling structure within the development.
- (3) Lot Size. A group housing project shall be permitted only on a lot or plot or ground having an area of not less than 40,000 square feet.

(C) Common Areas

An area or architectural feature designated on the site plan of a Group Development as "common area" or as an area to be held in separate ownership for the use and benefit of residents occupying specified lots shown on such plan may be approved as part of the plan, provided that it meets the following requirements:

- (1) It shall be conveniently accessible to all residents of the development.
- (2) It shall be made available in its improved state as set forth on the site development plan in accordance with an approved time schedule.
- (3) It shall be maintained in accordance with an approved maintenance plan specifying what such maintenance shall consist of, whose responsibility it shall be, and assuring satisfactory execution of maintenance.
- (4) Provisions to insure its continuing availability shall be included in the deed to each parcel to be served by such common area.

(D) Additional Information

Additional information may be required by the Planning Board or the Council to determine the impact of the proposed development on the town.

(E) Approval of Site Development Plan

No building permit shall be issued in such development unless and until the Planning Board and Town Council shall have approved site development plans and reports for the development as a whole or stages or portions thereof deemed satisfactory in relation to total development. No structure or use other than as indicated in approved site development plans shall be permitted.

(F) Modification of Approved Plans

After review by the Planning Board, the Town Council may permit changes in an approved site development plan, but only on a finding that such changes are in accord with applicable current regulations.

SECTION 6.06: MOBILE PARK REGULATIONS(A) General Regulations

- (1) Location and Maintenance of Parks. No person may maintain, operate, or occupy a mobile home park within the zoning jurisdiction of the town unless the park meets the requirements of this ordinance. If two (2) or more mobile homes are located on the same undivided lot or tract of land, they must meet the requirements of this section.
- (2) Application for Park Permit. Application for a permit to develop, operate, alter, or maintain a Mobile Home Park shall be made to the Zoning Administrator under the provisions of Section 8.05. The application for a permit shall include the following:
 - (a) A plan for the general layout of the park containing the information required below:
 1. The area to be used for the park showing property lines and adjacent zoning and land use;
 2. Driveways, entrances, exits, roadways and walkways;
 3. Location of mobile home spaces and buildings;
 4. Location and quantity of proposed sanitary conveniences, including proposed toilets, washrooms, laundries, recreation and utility areas and utility rooms;
 5. Method and plan of sewage disposal;
 6. Location and quantity of refuse containers;
 7. Plan of water supply; and
 8. Plan of electric lighting.
 - (b) Plans and specifications for any building to be constructed on the site.
 - (c) Further information may be required by the Zoning Administrator or County Health Department to enable them to determine if the proposed park will comply with the regulations of this ordinance and other applicable laws.
- (3) Sanitary Facilities, Water Supply, Sewerage, Refuse Disposal and Utilities. In every Park and related permanent building, all installations of plumbing and electrical wiring, and all gas and oil appliances shall comply with the provisions of the building, plumbing and electrical, heating and gas ordinances and codes and any other applicable regulations of the town. In addition, the following requirements must be met:

- (a) Each mobile home space shall be provided with plumbing and electrical connections.
 - (b) Water Supply. Every mobile home park shall be connected to the Gatesville town water system. The water supply for each Mobile Home shall be obtained only from approved connections located on each mobile home space or inside each mobile home.
 - (c) Sewage Disposal. Every Park shall be provided with an adequate sewage disposal system constructed in compliance with the regulations of the County Health Department. All sewage wastes from each Park including wastes from toilets, and toilet rooms, showers, lavatories and wash basins and wastes from refrigerator drains, washing machines, sinks or faucets in mobile homes or on mobile home spaces shall be piped into the Park sewage disposal system. All sewage wastes from every trailer equipped with its own toilet facilities shall be piped into the Park sewage disposal system.
 - (d) Refuse Disposal. All garbage and refuse in every Park shall be stored in suitable receptacles in accordance with County Health Department requirements.
- (4) Registration. It shall be the duty of the operator of the Park to keep an accurate register containing a record of all mobile homes or trailers, owners, and occupants of the Park. The register shall contain the following information:
- (a) Name and address of owner and each occupant;
 - (b) License number and state of issue of each licensed vehicle;
 - (c) Space number in which the mobile home or trailer is parked;
 - (d) Date of entering Park;
 - (e) Date of leaving Park.

(B) Specifications for Mobile Home Parks

- (1) Every mobile home park shall be at least one (1) acre in area.
- (2) The amount of land for each individual mobile home space shall be determined by the Zoning Administrator after an investigation of soil conditions, the proposed method of sewage disposal, and proposed water system. However, in no case shall the size of a mobile home space be less than seventy-five hundred (7,500) square feet.
- (3) Each mobile home space shall be at least fifty (50) feet wide and clearly marked. There shall be at least twenty (20) feet clearance between mobile homes including mobile homes parked end to end. No mobile home shall be located closer than twenty (20) feet to any building within the park, within twenty (20) feet of any exterior boundary line of the park and no closer than fifteen (15) feet to the edge of any interior street.

- (4) All mobile home spaces shall abut upon an interior drive of no less than twenty (20) feet in width, which shall have unobstructed access to a public street or highway. It is the intent of this section that individual mobile home spaces shall not have unobstructed access to public streets or highways except through an interior drive. All interior drives shall be graded and maintained so that they are passable in all weather.
- (5) Dead end drives shall not exceed one thousand (1,000) feet in length. Any interior street designed to be permanently closed shall have a turnaround at the closed end.
- (6) Drives shall intersect as nearly as possible at right angles, and no drive shall intersect at less than seventy-five (75) degrees. Where a drive intersects a public street or highway, the design standards of the North Carolina Department of Transportation shall apply.
- (7) Suitable vehicular access for firefighting and emergency equipment, delivery of fuel, removal of refuse, parking and removal of mobile homes and for other necessary services shall be provided.
- (8) Each mobile home park shall have one (1) or more recreation areas with a minimum size of twenty-five hundred (2,500) square feet which shall be easily accessible to all park residents. Additional recreation space shall be based upon a minimum of two hundred (200) square feet for each mobile home space within the Park. Recreation areas shall be located to be free of traffic hazards and should, where topography permits, be centrally located.
- (9) Parking space sufficient to accommodate at least two (2) automobiles shall be located on each mobile home space.
- (10) No mobile home park shall be located on ground that is subject to flooding. The park shall be graded so as to prevent any water from ponding or accumulating on the premises. All ditch banks shall be sloped and seeded to prevent erosion.
- (11) The mobile home park shall have a visual buffer such as shrubbery or fencing not less than six (6) feet in height between the park and any adjacent residential uses other than mobile homes.
- (12) The area of the mobile home space shall be improved to provide an adequate foundation for the placement of the mobile home as required by the N.C. Building Code.
- (13) Each mobile home shall be securely anchored in accordance with the N. C. Building Code Standards.
- (14) Each mobile home space shall be equipped with plumbing and electrical connections and shall be provided with electrical current in sufficient amount to safely meet the maximum anticipated requirements of a mobile home.
- (15) Management. In each mobile home park, the permittee or duly authorized attendant or caretaker shall be in charge at all times to keep the mobile home park, its facilities, and equipment in a clean, orderly, safe and in a sanitary condition.

SECTION 6.07: TEMPORARY HEALTH CARE STRUCTURES

- (A) Placing a temporary family health care structure on a permanent foundation shall not be required or permitted.
- (B) The Town shall consider a temporary family health structure used by a caregiver in providing care for a mentally or physically impaired person on property owned or occupied by the caregiver as the caregiver's residence as a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings.
- (C) The Town shall consider a temporary family health care structure used by an individual who is the named legal guardian of the mentally or physically impaired person a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings in accordance with this section if the temporary family health care structure is placed on the property of the residence of the individual and is used to provide care for the mentally or physically impaired person.
- (D) Only one temporary family health care structure shall be allowed on a lot or parcel of land. The temporary family health care structures under subsections (B) and (C) of this section shall not require a special use permit or be subjected to any other local zoning requirements beyond those imposed upon other authorized accessory use structures, except otherwise provided in this section. Such temporary family health care structures shall comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure.
- (E) Any person proposing to install a temporary family health care structure shall first obtain a permit from the Town. The Town may charge a fee in accordance with the Town's fee schedule. The Town may not withhold a permit if the applicant provides sufficient proof of compliance with this section. The Town may require that the applicant provide evidence of compliance with this section on an annual basis as long as the temporary family health care structure remains on the property. The evidence may involve the inspection by the Town of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation and annual renewal of the doctor's certification.
- (F) Notwithstanding subsection (I) of this section, any temporary family health care structure installed under this section may be required to connect to any water, sewer, and electric utilities serving the property and shall comply with all applicable State law, local ordinances, and other requirements, including Article 11 of the NCGS, as if the temporary family health care structure were permanent real property.
- (G) No signage advertising or otherwise promoting the existence of the temporary health care structure shall be permitted either on the exterior of the temporary family health care structure or elsewhere on the property.
- (H) Any temporary family health care structure installed pursuant to this section shall be removed within 60 days in which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance provided for in this section. If the temporary family health care

structure is needed for another mentally or physically impaired person, the temporary family health care structure may continue to be used or may be reinstated on the property within 60 days of its removal, as applicable.

- (I) The Town may revoke the permit granted pursuant to subsection (E) of this section if the permit holder violates any provision of this section or G.S. 160A-202. The local government may seek injunctive relief or other appropriate actions or proceedings to ensure compliance with this section or G.S. 160A-202.
- (J) Temporary family health care structures shall be treated as tangible personal property for purposes of taxation.

ARTICLE VII. SCHEDULE OF DISTRICT REGULATIONS

Regulations limiting the use of buildings and land and the bulk and arrangement of buildings within the zoned areas established under this ordinance are hereby adopted for the Town of Gatesville, North Carolina. These district regulations may be amended by the Town Council as provided in Article XIII of this Ordinance.

SECTION 7.01: R-1 LOW DENSITY RESIDENTIAL DISTRICT

(A) Intent

The R-1 District is intended to encourage the development of permanent low-density residential neighborhoods. These districts are located primarily in areas which are protected from more intensive uses of the land. Each dwelling should be located on a lot with its own septic tank, and population density shall be such that the provision of public sewer systems will not be required.

(B) Permitted Uses

The following uses shall be permitted by right:

- (1) Detached single-family dwellings but not to include mobile homes or modular dwellings.
- (2) Customary accessory buildings including private swimming pools and tennis courts.

(C) Special Uses Permitted

The following uses are permitted subject to the requirements of this district, supplemental regulations, and upon review and approval by the Town Council as provided in Article VIII.

- (1) Churches and cemeteries require a minimum of one (1) acre.
- (2) Fire stations, schools, and other public buildings.
- (3) Home occupations under the conditions specified in Section 6.04 of this Ordinance.
- (4) Public utility facilities must provide a vegetated buffer strip at least ten (10) feet in height where the facility abuts a residential lot or use.
- (5) Funeral homes at least 1-acre minimum lot size and off-street parking as required. Funeral homes must front a North Carolina or U.S. highway.
- (6) Fraternal organizations 1-acre minimum lot size and off-street parking required.
- (7) Temporary health care structures.

(D) Dimensional Requirements for R-1 Low Density Residential Districts

- (1) Minimum Lot Size: As required by the County Health Department but not less than 20,000 square feet.

- (2) Minimum Lot Width: 75 feet (measured at the building setback line).
- (3) Minimum Front Yard: 25 feet.
- (4) Minimum Side Yard: 10 feet. An additional 10-foot side yard adjacent to the street is required for a corner lot.
- (5) Minimum Rear Yard: 25 feet.
- (6) Maximum Allowable Lot Coverage by Principal Use and All Accessory Structures: 30%.
- (7) Height Limitation: 35 feet.

SECTION 7.02: R-2 GENERAL RESIDENTIAL DISTRICT

(A) Intent

The General Residential District is established to control the development of areas which exhibit a pattern of urban growth characterized by a mixture of dwelling types in relatively close proximity. These regulations are intended to permit the continued development of those areas but to control factors which will minimize the conflict between residential use of the land and other uses.

(B) Permitted Uses

The following uses shall be permitted by right:

- (1) Detached single-family dwellings.
- (2) Mobile and modular dwellings.
- (3) Two family (duplex) dwellings.
- (4) Customary accessory buildings including private swimming pools and tennis courts.

(C) Special Uses Permitted

The following uses are permitted subject to the requirements of this district, supplemental regulations, and upon review and approval of the Town Council as provided in Article VIII.

- (1) Churches and cemeteries require a minimum of one (1) acre.
- (2) Fire stations, schools, and other public buildings.
- (3) Home occupations as defined in Section 6.04 of this Ordinance.
- (4) Public utility facilities must provide a vegetated buffer strip at least ten (10) feet in height where the facility abuts a residential lot or use.
- (5) Temporary health care structures.

(D) Dimensional Requirements for R-1 Low Density Residential Districts

- (1) Minimum Lot Size:
 - (a) Detached single-family residence: As required by the County Health Department but not less than 20,000 square feet.
 - (b) Two family (duplex) dwelling: As required by the County Health Department but not less than 30,000 square feet.
- (2) Minimum Lot Width: 75 feet (measured at the building setback line).
- (3) Minimum Front Yard: 25 feet.
- (4) Minimum Side Yard: 10 feet. An additional 10-foot side yard adjacent to the street is required for a corner lot.
- (5) Minimum Rear Yard: 20 feet.
- (6) Maximum Allowable Lot Coverage by Principal Use and All Accessory Structures: 30%.
- (7) Height Limitation: 35 feet.

SECTION 7.03: GB GENERAL BUSINESS DISTRICT**(A) Intent**

The intent of this district is to provide for a centrally located commercial, trade, and services area for the town. These regulations are designed to encourage the continued use of land for commercial purposes and to permit concentrated development of the district while maintaining a substantial relationship between intensity of land use and the capacity of utilities and streets.

(B) Permitted Uses

The following uses shall be permitted by right:

- (1) Offices, including:
 - (a) Business.
 - (b) Financial.
 - (c) Governmental.
 - (d) Medical and Professional.
- (2) Retail Stores, including:
 - (a) Clothing.
 - (b) Dry Goods.
 - (c) Drugs.
 - (d) Hardware.
 - (e) Gifts.

- (f) Jewelry.
 - (g) Sporting Goods.
 - (h) Food Stores.
 - (i) Appliances.
 - (j) Furniture.
 - (k) Florists.
- (3) Service Establishments, including:
- (a) Barber and Beauty Shops.
 - (b) Churches.
 - (c) Dry Cleaning and Laundry Pick-Up.
 - (d) Post Offices.
 - (e) Medical Clinics.
- (4) Customary Accessory Uses.
- (5) Government Buildings, including police and fire stations.
- (6) Signs, as permitted in Section 6.02.
- (7) Parking lots and loading areas.
- (8) Detached single-family dwelling excluding mobile homes.

(C) Special Uses Permitted

The following uses are permitted subject to the requirements of this district, supplemental regulations, and upon review and approval of the Town Council as provided in Article VIII:

- (1) Public utility facilities (must provide a vegetative buffer strip at least ten (10) feet in height where the facility abuts a residential lot or use).

(D) Dimensional Requirements

- (1) Minimum lot size: 20,000 square feet. Commercial lots shall be of sufficient size to meet the requirements of the County Health Department; to provide adequate siting for structures; and to provide off-street parking, loading, and maneuvering space for vehicles as required by Section 6.01 of this ordinance. In addition, a visual buffer is required where a commercial use or zone abuts a residential use or zone.
- (2) Minimum front yard: 5 feet.
- (3) Minimum side yard: 5 feet (no side yard is required if a commercial building is constructed with a common wall).
- (4) Height limitation: 35 feet.

- (5) Maximum lot coverage by principal use and all accessory structures including parking lots: 80%.

SECTION 7.04: H-C HIGHWAY COMMERCIAL DISTRICT

(A) Intent

The purpose of this district shall be to provide for and encourage the proper grouping and development of roadside uses which will best accommodate the needs of the motoring public.

(B) Permitted Uses

The following uses shall be permitted by right:

- (1) All uses allowed in the general business district.
- (2) Agricultural supplies and sales.
- (3) Auto, truck, and boat sales and service.
- (4) Banks.
- (5) Cafes and restaurants, including drive-in restaurants.
- (6) Construction companies and equipment storage.
- (7) Contractors' offices.
- (8) Convenience grocery stores.
- (9) Farm equipment sales and repair.
- (10) Garden centers and hardware sales.
- (11) Motels and hotels.
- (12) Mobile home sales.
- (13) Produce markets.
- (14) Poultry markets.
- (15) Repair services.
- (16) Supermarkets.
- (17) Woodworking and sales.
- (18) Signs, as permitted in Section 6.02.
- (19) Wholesale commodities and warehousing.
- (20) Indoor recreation centers.

(21) Parking lots and loading areas.

(22) Clothing manufacture.

(C) Special Uses

(1) Shopping centers.

(2) Gasoline stations, provided that no building or storage tank shall be located within fifty (50) feet of a residential use or district; and that no portion of a gasoline station building, equipment, or gas pumps shall be nearer than twenty-five (25) feet to any right-of-way.

(3) Modular units used as temporary units for commercial purposes. The special use permit for a modular unit shall expire one (1) year from the date of issuance.

(4) Chemical storage, sales shall not be any closer than 500 feet from an existing residence or residential district boundary.

(5) Junk Yards.

(a) Require a minimum of two (2) acres.

(b) May not be located within five hundred (500) feet of any existing residence or residential district.

(c) Must provide an opaque fence completely surrounding the entire site and a vegetated buffer on all sides of the site not adjacent to a road.

(d) Existing non-conforming junk yards must comply with the fencing and buffering requirements within three (3) years from the effective date of this ordinance.

(D) Dimensional Requirements

(1) Minimum lot size: 20,000 square feet. Lots shall be of sufficient size to meet the requirements of the County Health Department; to provide adequate siting for structures; and to provide off-street parking, loading, and maneuvering space for vehicles as required by Section 6.01 of this ordinance. In addition, a visual buffer is required where a commercial use or zone abuts a residential use or zone.

(2) Minimum front yard: 15 feet.

(3) Minimum side yard: 10 feet, except that a 15-foot side yard adjacent to a street is required for a corner lot.

(4) Minimum rear yard: 20 feet.

(5) Maximum allowable lot coverage by principal use and all accessory structures including parking lots: 60%.

(6) Height limitation: 35 feet.

SECTION 7.05: CONDITIONAL ZONING DISTRICT

The large site conditional zoning district (CZD) allows a site to be developed with a mixture of land uses according to an approved overall site plan. For example, a large tract may be developed with a mix of single-family and multi-family housing, with part of the site also devoted to commercial and office uses. The CZD allows for greater flexibility in dimensional standards (such as lot sizes and setbacks) upon approval of an overall master plan for the entire development. The district does not require a rigid separation of different land uses. Uses are limited to the uses identified in Article VII Schedule of District Regulations. All of the site-specific standards and conditions, including a site plan, are incorporated into the zoning district regulations for the CZD. Approval of the site plan will establish all zoning requirements for the subject property. A large site CZD district shall not be less than three (3) acres in area.

This negotiated approach to a legislative decision allows maximum flexibility to tailor regulations to a particular site and project. But it also has great potential for abuse - both in terms of impacts on individual landowners seeking approval and their neighbors and on the public interests zoning is supposed to promote. Thus, special restrictions have been placed on conditional zoning. Conditional Zoning Districts may only occur at the owner's request and cannot be imposed without the owner's agreement. The individual conditions and site-specific standards that can be imposed are limited to those that are needed to bring a project into compliance with county ordinances and adopted plans and to those addressing the impacts reasonably expected to be generated by use of the site. The Town must assure that all of the factors defining reasonable spot zoning are fully considered and that the public hearing record reflects that consideration.

Conditional zoning provides important opportunities to carefully tailor regulations to address the interest of the landowner, the neighbors, and the public. The Town may use conditional zoning when it concludes that a particular project should be approved but that the standards in the comparable conventional zoning district(s) are insufficient to protect neighbors or public interests (perhaps because the conventional zoning allows other uses not suitable for the site or dimensional standards inadequate to preserve the neighborhood). Conditional zoning often allows a developer to proceed with a project in a way that addresses site-specific concerns of neighbors and the Town of Gatesville. The petitioner must consent in writing to all conditions imposed by the conditional zoning. Requests for conditional zoning districts shall be processed/approved as required in Article VIII Administration and Enforcement.

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ARTICLE VIII. ADMINISTRATION AND ENFORCEMENT

SECTION 8.01: ZONING ADMININSTRATOR

(A) Authorization

In accordance with NCGS Section 160D-402, the Town Council may appoint administrators, inspectors, enforcement officers, planners, technicians, and other staff to develop, administer, and enforce this Ordinance. The person or persons to whom these functions are assigned shall be referred to in this Ordinance as the Zoning Administrator.

(B) Duties

Duties assigned to staff may include, but are not limited to, drafting and implementing plans and development regulations to be adopted pursuant to NCGS Chapter 160D; determining whether applications for development approvals are complete; receipt and processing applications for development approvals; providing notices of applications and hearings; making decisions and determinations regarding development regulation implementation; determining whether applications for development approvals meet applicable standards as established by law and local ordinance; conducting inspections; issuing or denying certificates of compliance or occupancy; enforcing development regulations, including issuing notices of violation, orders to correct violations, and recommending bringing judicial actions against actual or threatened violations; keeping adequate records; and any other actions that may be required in order to adequately enforce the laws and development regulations under the town's jurisdiction. A development regulation may require that designated staff members take an oath of office. The Town of Gatesville shall have the authority to enact ordinances, procedures, and fee schedules relating to the administration and the enforcement of this Ordinance. The administrative and enforcement provisions related to building permits set forth in Article 11 of NCGS Chapter 160D shall be followed for those permits.

(C) Alternative Staff Arrangements

- (1) The town may enter into contracts with another town, county, or combination thereof under which the parties agree to create a joint staff for the enforcement of State and local laws specified in the agreement. The governing boards of the contracting parties may make any necessary appropriations for this purchase.
- (2) In lieu of joint staff, the Town Council may designate staff from any other town or county to serve as a member of its staff with the approval of the Board of the other town or county. A staff member, if designated from another town or county under this section, shall, while exercising the duties of the position, be considered an agent of the town. The Town Council may request the governing board of the second local government to direct one or more of the second local government's staff members to exercise their powers within part or all of the town's jurisdiction, and they shall thereupon be empowered to do so until the town officially withdraws its request in the manner provided in NCGS 160D-202.

- (3) The town may contract with an individual, company, council of governments, regional planning agency, metropolitan planning organization, or rural planning agency to designate an individual who is not a town or county employee to work under the supervision of the local government to exercise the functions authorized by this section. The town shall have the same potential liability, if any, for inspections conducted by an individual who is not an employee of the town as it does for an individual who is an employee of the town. The company or individual with whom the town contracts shall have errors and omissions and other insurance coverage acceptable to the town.

(D) Financial Support

The town may appropriate for the support of the staff for any funds that it deems necessary. It shall have the power to fix reasonable fees for support, administration, and implementation of programs authorized by this Ordinance and all such fees shall be used for no other purposes. When an inspection, for which the permit holder has paid a fee to the town, is performed by a marketplace pool Code-enforcement official upon request of the Insurance Commissioner under NCGS 143-151.12(9)a, the town shall promptly return to the permit holder the fee collected by the town for such inspection. This applies to the following inspections: plumbing, electrical systems, general building restrictions and regulations, heating and air-conditioning, and the general construction of buildings.

SECTION 8.02: ZONING PERMIT REQUIRED

No building or other structure shall be erected or moved, nor shall any existing building or structure hereafter be altered in any manner, unless a zoning permit has been approved by the Zoning Administrator. The zoning permit shall expire by limitation six (6) months from date of issuance if work authorized by the permit has not commenced. If, after commencement, the work is discontinued for a period of twelve (12) months, the permit for it shall immediately expire. No work authorized by any permit that has expired shall then be performed until a new permit has been secured.

SECTION 8.03: HEALTH DEPARTMENT APPROVAL

The Zoning Administrator shall not approve a zoning permit for any building for which County Health Department approval is required until approval has been given by the Health Department.

SECTION 8.04: APPLICATION FOR ZONING PERMIT FOR PERMITTED USES

All applications for zoning permits shall be accompanied by plans in duplicate drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and the location and dimensions of the proposed building or alteration. The application shall include any other information which may be required by the Zoning Administrator, including existing or proposed building or alteration; existing or proposed uses of the building and land; and the number of families, housekeeping units, or rental units the building is designed to accommodate; conditions existing on the lot and on nearby lots; elevations of finished floors; and any other matters which may be necessary to determine conformance with and provide for the enforcement of this ordinance. One copy of the plans shall be returned to the applicant by the Zoning Administrator

after he has marked the copy either as approved or disapproved and attested to that by his signature on the copy. The second copy of the plans, similarly marked, shall be retained by the Zoning Administrator.

SECTION 8.05: APPLICATION FOR BUILDING PERMIT FOR SPECIAL USES

The Town Council may approve permits for special uses in the Zoning Districts where Special uses are specified by this ordinance. Applications for permits under Section 6.05, Group Development Projects and Section 3.12 Conversion of Existing Structures to Condominium Ownership shall also be processed under this section.

- (A) Written application for a special use permit shall be submitted to the Zoning Administrator at least twenty (20) days before the next regular monthly meeting of the Town Council. The written application shall indicate the section of this ordinance under which a permit is being sought and shall contain the information required by the appropriate section and any other information which may be required to ensure compliance with this ordinance.
- (B) The Town Council shall host an evidentiary hearing on any special use permit petition. Notice of evidentiary hearings conducted pursuant to this Ordinance shall be in accordance with Section 13.02.
- (C) The issuance of special use permits are quasi-judicial decisions and shall follow the requirements of Article XII.
- (D) Before they may grant any special use permit, the Town Council shall make findings that: (1) That the use would not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved by the issuance of the special use permit; (2) That the use meets all required conditions and specifications; (3) That the use would not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and (4) That the location and character of the use, if developed according to the plan as submitted and approved, would be in harmony with the area in which it is to be located and in general conformity with adopted comprehensive plans, the CAMA plan, and adopted special area plans.
- (E) Denial of a special use permit must be based upon competent material and substantial evidence which shall be made a part of the record in the case.
- (F) In granting any Special Use Permit, the Town Council may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of those conditions and safeguards, when made a part of the terms under which the special use permit is granted, shall be considered a violation of this ordinance and punishable under Article VIII of this ordinance.
- (G) The Town Council may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

- (H) A special use permit shall become null and void if construction or occupancy of the proposed use as specified on the special use permit has not commenced within two (2) years of the date of issuance.
- (1) An extension of time for a special use permit, not to exceed two 1-year extensions may be granted by the Zoning Administrator upon review and recommendation by the Town Council.
 - (2) A request for extension shall be submitted in writing prior to the original expiration date.
 - (3) In granting an extension, the Zoning Administrator shall not have the authority to amend the conditions of the special use permit nor to approve any major modifications to the approved plan as described in this section.

SECTION 8.06: CERTIFICATE OF OCCUPANCY REQUIRED

No land shall be used or occupied, and no building hereafter structurally altered, erected, or moved, shall be used or its use changed until a certificate of occupancy shall have been issued by the Zoning Administrator stating that the building and/or the proposed use thereof complies with the provisions of this ordinance. A like certificate shall be issued for the purpose of renewing, changing, or extending a non-conforming use. A certificate of occupancy, either for the whole or a part of a building, shall be applied for coincident with the application for a zoning permit and shall be issued within 10 days after the erection or structural alterations of such building, or part, shall have been completed in conformity with the provisions of this ordinance. A record of all certificates shall be kept on file in the Office of the Zoning Administrator.

A temporary certificate of occupancy may be issued by the Zoning Administrator for a period not exceeding 6 months during alterations or partial occupancy of a building pending its completion, provided that such temporary certificate may require such conditions and safeguards as will protect the safety of the occupants and the public.

SECTION 8.07: ENFORCEMENT AUTHORITY

This Ordinance shall be enforceable in accordance with provisions available in the General Statutes of North Carolina Chapter 160D.

SECTION 8.08: NOTICES OF VIOLATION

If the Zoning Administrator shall find that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violations of its provisions.

The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation shall be posted on the property. The Zoning Administrator shall certify to the town that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided in NCGS 160D-1123 or GS 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the Board of Adjustment pursuant to Section 10.04(B).

SECTION 8.09: STOP WORK ORDERS

Whenever any work or activity subject to regulation pursuant to this Ordinance or other applicable local development regulation or any State law delegated to the town for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the town that the order was delivered, and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by NCGS 160D-1112 and 160D-1208, a stop work order may be appealed pursuant to Section 10.04(B). No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

SECTION 8.10: REMEDIES

- (A) Any development regulation adopted pursuant to NC General Statutes Chapter 160D may be enforced by any remedy provided in NCGS 160A-175. If any building or structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building, structure or land is used or developed in violation of this ordinance or of any development regulation or other regulation made under authority of NCGS Chapter 160D,, the Zoning Administrator or any appropriate authority in addition to other remedies may institute any appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use or development, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.
- (B) When a development regulation adopted pursuant to authority conferred by NCGS Chapter 160D is to be applied or enforced in any area outside the planning and development regulation jurisdiction of the town, the town and the property owner shall certify that the application or enforcement of the town Zoning Ordinance is not under coercion or otherwise based on representation by the town that the town's development approval would be withheld without the application or enforcement of the town Zoning Ordinance outside the jurisdiction of the

town. The certification may be evidenced by a signed statement of the parties on any development approval.

- (C) In case any building, structure, site, area, or object designated as a historic landmark or located within a historic district designated pursuant to NCGS Chapter 160D is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed, or destroyed, except in compliance with the Zoning Ordinance, the town or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling, or removal, to restrain, correct, or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area, or object. Such remedies shall be in addition to any others authorized by Chapter 160D for violation of this Ordinance.

ARTICLE IX. PLANNING BOARD

SECTION 9.01: AUTHORITY

The Planning Board of the town is created pursuant to G.S. § 160D-301.

SECTION 9.02: PURPOSE

The Planning Board shall act in an advisory capacity to the Town Council in the matter of guiding and accomplishing a coordinated and harmonious development of the area within the town jurisdiction.

SECTION 9.03: MEMBERSHIP

(A) Generally

The Planning Board shall consist of five members. The five members shall be citizens of the town and shall be appointed by the Town Council. Initial terms of office shall be as follows: one member appointed for three years, two members appointed for two years, and two members appointed for one year. Upon completion of these initial terms of office, all additional appointments on the Board shall be for three-year terms.

(B) Selection of Alternate Members

The Town Council shall also appoint two alternate members to serve on the Planning Board in the absence, for any cause, of the Board's regular members. Alternate members shall be appointed for three-year terms. The alternate members, 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 and duties of the regular member so absent. Alternate members should attend all proceedings of the Board in order to gain experience.

(C) Oath of Office

All appointed members shall, before entering their duties, qualify by taking an oath of office.

(D) Vacancies

Any permanent vacancy in the membership shall be filled for the unexpired term of the vacancy. All members serve without pay but may be reimbursed for any unusual expenses incurred while representing the Board.

(E) Attendance

Faithful attendance at meetings of the Board and conscientious performances of the duties of the members of the Board shall be considered a prerequisite of continuing membership on the Board. The unexcused absence of three consecutive meetings shall be sufficient grounds for removal from the Board. The removal is subject to approval of a simple majority of a quorum as defined in subsection 9.04(F) below. A written statement of the reasons for removal shall be filed with the Town Clerk at the time of removal.

SECTION 9.04: OPERATIONAL PROCEDURES

- (A) The Planning Board shall elect a Chairperson and a Vice-Chairperson, and create and fill such other offices as it may deem necessary.
- (B) The term of the Chairperson and other offices shall be one year, with eligibility for re-election. The election shall be held the first regular meeting in January, or as soon thereafter as possible.
- (C) Proceedings of the Planning Board shall be conducted in accord with Robert's Rules of Order or other rules as may be adopted by the Planning Board.
- (D) A detailed record shall be maintained of its members' attendance and of its resolutions, discussions, findings, and recommendations which shall be a public record.
- (E) The Planning Board shall hold publicly advertised meetings as necessary to conduct business, and all of its meetings shall be open to the public.
- (F) A majority of the sitting members of the Planning Board shall constitute a quorum for taking any official action.

SECTION 9.05: MEETINGS**(A) Board Meetings**

The Board shall hold regular meetings on an as-needed basis, at a date and place designated by the Board and shall be open to the public. Special meetings may be called at any time at the request of the Chairperson or by the request of three or more Board members. At least 48 hours notice of the time and place of meetings shall be given, by the Chairperson, to each member of the Board.

(B) Cancellation of Meetings

Whenever there is no business for the Board or whenever so many regular members notify the Chairperson of the inability to attend that a quorum will not be available, the Chairperson may dispense with a meeting by giving notice to all members.

SECTION 9.06: GENERAL POWERS AND DUTIES

The general powers and duties of the Planning Board (with prior approval by the Town Council) are:

- (A) Prepare, review, maintain, monitor, and periodically update and recommend to the Town Council a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.
- (B) Facilitate and coordinate citizen engagement and participation in the planning process.
- (C) Develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
- (D) Recommend to the Town Council the approval or disapproval of major site plans and major subdivisions.
- (E) Advise the Town Council concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by NCGS 160D-604.

- (F) Exercise any functions in the administration and enforcement of various means for carrying out plans that the Town Council may direct.
- (G) Perform any other duties that the Town Council may direct.
- (H) In order to effectively carry out its powers and duties, the Planning Board is empowered to:
 - (1) With prior approval of the Town Council, gather statistics on past trends and present conditions with respect to population, property values, the economic base of the area and land use; and such other information as is important or likely to be important in determining the amount, direction and kind of development within the town's jurisdiction and its various parts;
 - (2) With prior approval by the Town Council, make, cause to be made, or obtain special studies on the location, the condition and the adequacy of specific facilities, which may include, but are not limited to, studies of housing; commercial and industrial facilities; recreation area; public facilities; and traffic and parking facilities; and
 - (3) Develop committees comprised of Planning Board members dedicated to participating in any areas of study, ordinance development, or for any other specific purpose within the Planning Board's jurisdiction. Such committees shall be responsible to the Planning Board and shall be advisory in nature. The development/appointment of any other committees will require prior approval by the Town Council.

SECTION 9.07: MISCELLANEOUS POWERS AND DUTIES

The Planning Board shall have the authority to promote public interest in the understanding of its recommendations, plans, reports and other materials. With prior approval of the Town Council, the Planning Board may publish and distribute copies of materials and may employ other means of publicity and education as it deems necessary.

SECTION 9.08: ZONING AMENDMENTS

The Planning Board may initiate from time-to-time proposals for amendments of the Zoning Ordinance and Zoning Map, based upon its studies and plans. It shall review and make recommendations to the Town Council concerning all proposed amendments to the Zoning Ordinance and Zoning Map.

SECTION 9.09: SUBDIVISION REGULATIONS

The Planning Board shall review, from time to time, the existing regulations for the control of land subdivision in the area and submit to the Town Council its recommendations, if any, for the revision of these regulations.

SECTION 9.10: PUBLIC HEARINGS

The Planning Board may conduct such public hearings as may be required to gather information necessary for the drafting, establishment, and maintenance of the plans. Before recommending any such plans to the Town Council, the Planning Board may hold a public hearing thereon in accordance with Section 12.02.

SECTION 9.11: ANNUAL REPORT

The Planning Board will each year submit in writing to the Town Council a report of its activities, and an analysis of the expenditures to date for the current fiscal year; and shall submit to the Town Council for budget consideration its requested budget of funds needed for operation during the ensuing fiscal year.

ARTICLE X. BOARD OF ADJUSTMENT

SECTION 10.01: BOARD OF ADJUSTMENT ESTABLISHED

Under the authority of NCGS Chapter 160D-302, the Gatesville Town Council (five members who are citizens and residents of the Town) serves as and performs any and all duties of the Board of Adjustment in addition to its other duties. All appointed members shall, before entering their duties, qualify by taking an oath of office.

SECTION 10.02: CHAIRMAN OF THE BOARD

The Board shall elect one (1) of the members as Chairman and another as Vice-Chairman who shall serve for one (1) year, with eligibility for re-election. The Town Clerk shall serve as secretary to the Board of Adjustment. The Board shall adopt from time to time such rules and regulations as it may deem necessary to carry into effect the provisions of this Article. The Chairman or any member temporarily acting as Chairman may administer oaths to witnesses coming before the Board.

SECTION 10.03: MEETING OF THE BOARD

All meetings of the Board shall be held at a regular place and shall be open to the public. A quorum for the Board of Adjustment shall consist of the number of members equal to four-fifths of the regular board membership (excluding vacant seats). A quorum shall be present at the designated meeting place before a vote is taken or final disposition of any appeal is made upon which the Board is required to pass. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, an indication of that fact. The final disposition of appeals shall be by recorded resolution indicating the reasons of the Board. All of the minutes, deliberations, and records of the Board shall be a public record. In the event a regular member shall be absent, an alternate member shall be notified to serve in the place of the regular member.

The Board shall conduct its meetings in accordance with the quasi-judicial procedures set forth in Section 10.04 Powers and Duties of the Board of Adjustment and Article XII Quasi-Judicial Procedures.

SECTION 10.04: POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT

(A) Voting

- (1) The concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- (2) A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances: (i) if the member has a direct financial interest in the outcome of the matter at issue; or (ii) if the matter at

issue involves the member's own official conduct; or (iii) if participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or (iv) if a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.

- (3) A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.
- (4) A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.
- (5) A roll call vote shall be taken upon the request of any member.

(B) Appeals

- (1) Administrative Review. The Board of Adjustment may hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Administrator in the enforcement of this ordinance.
- (2) Standing. An appeal from the decision of the Zoning Administrator may be taken to the Board of Adjustment by any person with standing as defined in Article IV, or by any officer, department, board, or bureau of the town affected by such decision. The appeal must be taken within thirty (30) days by filing with the Zoning Administrator and with the Board of Adjustment a notice of appeal specifying the grounds for it. A notice of appeal shall be considered filed with the Zoning Administrator when delivered to the Town Clerk's office, and the date and time of filing shall be entered on the notice by the Town staff.
- (3) Judicial Challenge. A person with standing may bring a separate and original civil action to challenge the constitutionality of the Ordinance or that it is *ultra vires*, preempted, or otherwise in excess of statutory authority without filing an appeal under this subsection.
- (4) Notice of Decision. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (5) Time to Appeal. The owner or other party shall have thirty (30) days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice pursuant to NCGS Chapter 160D-403(b) given by first class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

- (6) Record of Decision. The official who made the decision shall transmit to the Board of Adjustment all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (7) Stays. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board after the notice of appeal shall have been filed with him that: (1) by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property; or that, (2) because the violation charged is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In such case, proceedings shall not be stayed except by restraining order which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting development approvals or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for development approvals to use such property; in these situations, the appellant or County may request and the Board of Adjustment may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.
- (8) Alternative Dispute Resolution. The parties of an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution. The Ordinance may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution.
- (9) Decisions of the Board of Adjustment. In exercising the above-mentioned powers, the Board of Adjustment may, so long as the action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination that in its opinion ought to be made, and so shall have the powers of the Zoning Administrator.

(C) Interpretation

- (1) The Board of Adjustment shall interpret the Zoning Map and pass on questions of lot lines or district boundary lines and similar questions that may arise in the administration of the ordinance. If such questions arise in the context of an appeal from a decision of the Zoning Administrator, they shall be handled as provided in subsection 10.04(B) above.
- (2) An application for a map interpretation shall be submitted to the Board of Adjustment by filing an appeal form with the Zoning Administrator. The application shall contain sufficient information to enable the Board of Adjustment to make the necessary interpretation.

- (3) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the rules of interpretation as specified in Section 2.02 shall be applied. Where uncertainties continue to exist after application of the above rules, appeal may be taken to the Board of Adjustment as provided in subsection 10.04(B) above.
- (d) Interpretations of the location of floodway and floodplain boundary lines may be made by the Zoning Administrator as provided in the Town's Flood Damage Prevention Ordinance.

(D) Variances

- (1) An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Zoning Administrator. Applications shall be handled in the same manner as applications for development approvals.
- (2) When unnecessary hardships would result from carrying out the strict letter of the Ordinance, the Board of Adjustment shall vary any of the provisions of the Ordinance upon a showing of all of the following:
 - (a) Unnecessary hardship would result from the strict application of the Ordinance regulations. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - (b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
 - (c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - (d) The requested variance is consistent with the spirit, purpose, and intent of the Ordinance regulation, such that public safety is secured and substantial justice is achieved.
- (3) No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance development regulation that regulates land use or development may provide for variances from the provisions of those ordinances consistent with the provisions of this subsection.

- (4) The nature of the variance and any conditions attached to it shall be entered on the face of the development permit, or the development permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

(E) Requests to be Heard Expeditiously

The Board of Adjustment, Planning Board, and Town Council (as applicable) shall hear and decide all applications, appeals, variance requests, and requests for interpretations, including map boundaries, as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Section 12.02, and obtain the necessary information to make sound decisions.

(F) Burden of Proof in Appeals and Variances

- (1) When an appeal is taken to the Board of Adjustment in accordance with Section 10.04(B), the Zoning Administrator shall have the initial burden of presenting to the Board of Adjustment sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.
- (2) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Section 10.04(D)(2), as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

SECTION 10.05: APPEALS FROM DECISION OF THE BOARD OF ADJUSTMENT

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d). The governing board of the local government that is a party to the judicial review of the quasi-judicial decision shall have the authority to settle the litigation, subject to Article 33C of Chapter 143 of the General Statutes.

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ARTICLE XI. CONFLICTS OF INTEREST

SECTION 11.01: GOVERNING BOARD

A Gatesville Town Council member shall not vote on any legislative decision regarding a development regulation adopted pursuant to NCGS 160D where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Town Council member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

SECTION 11.02: APPOINTED BOARDS

Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to NCGS 160D where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

SECTION 11.03: ADMINISTRATIVE STAFF

- (A) No staff member shall make a final decision on an administrative decision required by this Ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by this Ordinance.
- (B) No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Ordinance unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the Town to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the Town, as determined by the Town.

SECTION 11.04: QUASI-JUDICIAL DECISIONS

A member of any board exercising quasi-judicial functions pursuant to this Ordinance shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed *ex parte* communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

SECTION 11.05: RESOLUTION OF OBJECTION

If an objection is raised to a board member's participation at or prior to the hearing or vote on that matter, and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

SECTION 11.06: FAMILIAL RELATIONSHIP

For purposes of this section, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

ARTICLE XII. QUASI-JUDICIAL PROCEDURES

SECTION 12.01: HEARING REQUIRED ON APPEALS AND APPLICATIONS

- (A) Before making a decision on an appeal or an application for a variance, special use permit, or interpretation, or a petition from the planning staff to revoke a special use permit, the Board of Adjustment or Town Council, as the case may be, shall hold a hearing on the appeal or application within thirty (30) days of the submittal of a completed appeal or application.
- (B) Subject to subsection 12.01(C), the hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments. All persons presenting evidence or arguments shall be sworn in prior to the presentation of any evidence or arguments. The oath may be administered by the Chairperson, any member acting as Chairperson, or the Clerk to the Board.
- (C) The Board of Adjustment or Town Council may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.
- (D) Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.
- (E) The required application fee and all supporting materials must be received by the Zoning Administrator before an application is considered complete and a hearing scheduled.

SECTION 12.02: NOTICE OF HEARING

The Zoning Administrator shall give notice of any hearing required by Section 12.01 as follows:

- (A) Notice of evidentiary hearings conducted pursuant to this Article shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; to the owners of all parcels within 150' of the subject parcel; and to any other persons entitled to receive notice as provided by this Ordinance. In the absence of evidence to the contrary, the town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.
- (B) The Board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

- (C) In the case of special use permits, notice shall be given to other potentially interested persons by publishing a notice in a newspaper having general circulation in the area one (1) time not less than ten (10) nor more than twenty-five (25) days prior to the hearing.
- (D) The notice required by this section shall state the date, time, and place of the hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

SECTION 12.03: ADMINISTRATIVE MATERIALS

The Zoning Administrator shall transmit to the Board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the Board prior to the hearing if at the same time they are distributed to the Board, a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board at the hearing.

SECTION 12.04: PRESENTATION OF EVIDENCE

The applicant, the town, and any person who would have standing to appeal the decision as defined in Article IV shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the Board. Objections regarding jurisdictional and evidentiary hearing issues, including but not limited to, the timeliness of an appeal or the standing of a party, may be made to the Board. The Board Chair shall rule on any objections and the Chair's ruling may be appealed to the full Board. These rulings are also subject to judicial review pursuant to NCGS 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

SECTION 12.05: APPEARANCE OF OFFICIAL; NEW ISSUES

The official who made the decision or the person currently occupying that position if the decisionmaker is no longer employed by the town, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.

SECTION 12.06: OATHS

All persons who intend to present evidence to the decision-making board, rather than arguments only, shall be sworn in. The Chairperson of the Board or any member acting as Chairperson and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor (refer to Article VIII Administration and Enforcement).

SECTION 12.07: SUBPOENAS

The decision-making Board making a quasi-judicial decision under this article, through the Chairperson, or in the Chairperson's absence, anyone acting as the Chairperson may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the town, and any persons with standing as defined under Article IV may make a written request to the Chairperson explaining why it is necessary for certain witnesses or evidence to be compelled. The Chairperson shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The Chairperson shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the Chairperson may be immediately appealed to the full decision-making board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the decision-making board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all property parties.

SECTION 12.08: MODIFICATION OF APPLICATION AT HEARING

- (A) In response to questions or comments made in sworn testimony by persons appearing at the hearing or recommendations by the Board of Commissioners or Board of Adjustment, the applicant may agree to modify his application, including the plans and specifications submitted.
- (B) Unless such modifications are so substantial or extensive that the decision-making board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the decision-making board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the Zoning Administrator.

SECTION 12.09: RECORD

- (A) A record shall be made of all hearings required by Section 12.01 and such recordings shall be kept as provided by state law. Minutes shall also be kept of all such proceedings. A transcript may be made, but is not required.
- (B) Whenever practicable, all documentary evidence, including any exhibits, presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the town in accordance with NCGS 160D-1402.

SECTION 12.10: APPEALS IN NATURE OF CERTIORARI

When hearing an appeal pursuant to NCGS 160D-947 or any other appeal in the nature of certiorari, the hearing shall be based on the record and the scope of review shall be as provided in 160D-1402(k).

SECTION 12.11: VOTING

As specified in Section 10.04(A), the concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.

SECTION 12.12: DECISION

The Board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the Board may reverse or affirm (wholly or partly) or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards, and be approved by the Board and signed by the Chairperson or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the Board or such other office or official as this Ordinance specifies. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify to the town that proper notice has been made. and the certificate shall be deemed conclusive in the absence of fraud.

SECTION 12.13: REHEARINGS

When an application involving a quasi-judicial procedure/petition is denied by the Town Council or Board of Adjustment, reapplication involving the same property, or portions of the same property, may not be submitted unless the petitioner can demonstrate a substantial change in the proposed use, conditions governing the use of the property, or conditions surrounding the property itself.

SECTION 12.14: JUDICIAL REVIEW

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to NCGS 160D-1402. Appeals shall be filed within the times specified in NCGS 160D-1405(d).

ARTICLE XIII. PROCESS FOR ADOPTION AND AMENDMENTS

SECTION 13.01: MOTION TO AMEND

The Town Council may, on its own motion or upon motion or petition by any person within the zoning jurisdiction of the town, after public notice and hearing, amend, supplement, change, modify, or repeal these regulations or the maps which are part of this ordinance, subject to the rules prescribed in this ordinance. Before adopting, amending, or repealing any ordinance or development regulation authorized by NCGS Chapter 160D, the Town Council shall hold a legislative hearing. A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper of general circulation in the town. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days prior to the date scheduled for the public hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

The following procedure shall be followed in processing legislative zoning amendments:

- (A) Applicant completes zoning amendment application form and pays fee at least ten (10) days prior to the Planning Board meeting at which the amendment is to be considered.
- (B) Zoning Administrator places item on Planning Board agenda.
- (C) Zoning Administrator evaluates request and gets comments from other departments and agencies for staff recommendation.
- (D) Planning Board makes a recommendation to the Town Council.
- (E) The Town Council schedules a public hearing. A public hearing must be held before any zoning amendment may be made. A development regulation adopted pursuant to NCGS Chapter 160D shall be adopted by ordinance.

SECTION 13.02: APPLICATION

An application for any change or amendment to the text of the ordinance shall contain a statement of the present and proposed zoning regulation. An application for a map change shall contain a legal description of the property involved. The application shall be filed with the Zoning Administrator not later than ten (10) days prior to the meeting of the Planning Board at which the application is to be considered.

The applicant for a change in the zoning classification of a parcel of land shall provide to the Zoning Administrator a list of names and addresses, as obtained from the county tax listings, of the owners of all abutting property and all owners of property within the area under consideration for rezoning along with a business (#10) envelope stamped with a first-class stamp and addressed to each person on the list. These addressed envelopes and the list shall be submitted at least 25 workdays prior to the Town Council's public hearing. The Zoning Administrator shall verify the list and mail notices of the public hearing to each person on the list and shall certify that fact to the Town Council at least three (3) days before the hearing.

SECTION 13.03: FEE

A nonrefundable fee, according to a regularly adopted fee schedule of the town, shall be paid to the town for each application for an amendment to defray some of the advertising and other administrative expenses involved.

SECTION 13.04: NOTICE OF HEARING ON PROPOSED ZONING MAP AMENDMENTS**(A) Mailed Notice**

This Ordinance provides for the manner in which zoning regulations and the boundaries of zoning districts are determined, established, and enforced, and from time to time may be amended, or changed, in accordance with the requirements of this Part. The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment by first-class mail at the last addressed listed for such owners on the county tax abstracts. For the purpose of this section, properties are “abutting” even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing.

(B) Optional Notice for Large Scale Zoning Amendments

The first-class mail notice required under subsection 13.04(A) of this section shall not be required if the zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the town elects to use the expanded published notice provided for in this subsection. In this instance, the town may elect to make the mailed notice provided for in subsection 13.04(A) of this section or, as an alternative, elect to publish notice of the hearing as required by Section 12.02, provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection 13.04(A) of this section.

(C) Posted Notice

When a zoning map amendment is proposed, the town shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the town shall post sufficient notices to provide reasonable notice to interested persons.

(D) Actual Notice

Except for town-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the landowner or authorized agent, the applicant shall certify to the town that the owner of the parcel of land as shown on the county tax listing has received

actual notice of the proposed amendment and a copy of the notice of the hearing. Actual notice shall be provided in any manner permitted under NCGS 1A-1, Rule 4(j). If notice cannot with due diligence be achieved by personal delivery, certified mail, or by a designated delivery authorized pursuant to 26 U.S.C. § 7502(f)(2), notice may be given by publication consistent with NCGS 1A-1, Rule 4(j1). The person or persons required to provide notice shall certify to the town that actual notice has been provided, and such certificate shall be deemed conclusive in the absence of fraud.

SECTION 13.05: CITIZEN COMMENTS

Zoning regulations may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the town submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment, to the Town Clerk at least two business days prior to the proposed vote on such change, the Town Clerk shall deliver such written statement to the Town Council. If the proposed change is the subject of a quasi-judicial proceeding under NCGS Chapter 160D-705 or any other statute, the Town Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the Town Council shall not disqualify any member of the Council from voting.

SECTION 13.06: PLANNING BOARD REVIEW AND COMMENT

(A) Initial Zoning

The Planning Board shall prepare or shall review and comment upon a proposed zoning regulation, including the full text of such regulation and maps showing proposed district boundaries. The Planning Board may hold public meetings and legislative hearings in the course of preparing the regulation. Upon completion, the Planning Board shall make written recommendation regarding adoption of the regulation to the Town Council. The Town Council shall not hold its required hearing or take action until it has received a recommendation regarding the regulation from the Planning Board. Following its required hearing, the Town Council may refer the regulation back to the Planning Board for any further recommendations that the board may wish to make prior to final action by the Town Council in adopting, modifying and adopting, or rejecting the regulation.

(B) Zoning Amendments

Subsequent to initial adoption of a zoning regulation, all proposed amendments to the zoning regulations or zoning map shall be submitted to the Planning Board for review and comment. If no written report is received from the Planning Board within 30 days of referral of the amendment to that Board, the Town Council may act on the amendment without the Planning Board report. The Town Council is not bound by the recommendations, if any, of the Planning Board.

(C) Review of Other Ordinances and Actions

Any development regulations other than a zoning regulation that is proposed to be adopted pursuant to NCGS Chapter 160D may be referred to the Planning Board for review and comment. Any development regulation other than a zoning regulation may provide that future proposed amendments of that

ordinance be submitted to the Planning Board for review and comment. Any other action proposed to be taken pursuant to NCGS Chapter 160D may be referred to the Planning Board for review and comment.

(D) Plan Consistency

When conducting a review of proposed zoning text or map amendments pursuant to this section, the Planning Board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Town Council. If a zoning map amendment qualifies as a “large-scale rezoning” under NCGS 160D-602(b), the Planning Board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendations made.

(E) Separate Board Required

Notwithstanding the authority to assign duties of the Planning Board to the Town Council as provided by this Ordinance, the review and comment required by this section shall not be assigned to the Town Council and must be performed by a separate board.

SECTION 13.07: TOWN COUNCIL STATEMENT

(A) Plan Consistency

When adopting or rejecting any zoning text or map amendment, the Town Council shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Town Council that at the time of action on the amendment the Board was aware of and considered the Planning Board’s recommendations and any relevant portions of an adopted comprehensive plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land use map in the approved plan, and no additional application or fee for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency amendment is not subject to judicial review. If a zoning map amendment qualifies as a “large scale rezoning” under Section 13.04(B), the Town Council statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

(B) Additional Reasonableness Statement for Rezoning

When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Town Council. This statement of reasonableness may consider, among other factors, (i) the size, physical condition, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors,

and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment, (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a “large-scale rezoning” under Section 13.04(B), the Town Council statement on reasonableness may address the overall rezoning.

(C) Single Statement Permissible

The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

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ARTICLE XIV. MORATORIA

In accordance with NCGS 160D-107, the Town of Gatesville may adopt temporary moratoria on any development approval required by law, except for the purpose of developing and adopting new or amended plans or development regulations governing residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions.

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ARTICLE XV. VESTED RIGHTS AND PERMIT CHOICE

SECTION 15.01: FINDINGS

Town approval of development typically follows significant investment in site evaluation, planning, development costs, consultant fees, and related expenses. Therefore, it is necessary and desirable to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the development regulation process, secure reasonable expectations of landowners, and foster cooperation between the public and private sectors in land-use planning and development regulation.

SECTION 15.02: PERMIT CHOICE

If an application made in accordance with local regulation is submitted for a development approval required pursuant to this Ordinance and a development regulation changes between the time the application was submitted and a decision is made, the applicant may choose which version of the development regulation will apply to the application. If the development permit applicant chooses the version of the rule or ordinance applicable at the time of the permit application, the development permit applicant shall not be required to await the outcome of the amendment to the rule, map, or ordinance prior to acting on the development permit. This section applies to all development approvals issued by the State and by local governments. The duration of vested rights created by development approvals are as set forth in Section 15.04.

SECTION 15.03: PROCESS TO CLAIM VESTED RIGHT

A person claiming a statutory or common law vested right may submit information to substantiate that claim to the Zoning Administrator, who shall make an initial determination as to the existence of the vested right. The Zoning Administrator's determination may be appealed under G.S. 160D-405. On appeal the existence of a vested right shall be reviewed *de novo*. In lieu of seeking such a determination, a person claiming a vested right may bring an original civil action as provided in G.S. 160D-405(c).

SECTION 15.04: TYPES AND DURATION OF STATUTORY VESTED RIGHT

Except as provided by this section and subject to Section 15.02, amendments to this Ordinance shall not be applicable or enforceable with regard to development that has been permitted or approved pursuant to this Ordinance so long as one of the approvals listed in this subsection remains valid and unexpired. Each type of vested right listed below is defined by and is subject to the limitations provided in this section and the cited statutes. Vested rights established under this section are not mutually exclusive. The establishment of vested right under one subsection does not preclude vesting under one or more other subsections or by common law principles.

(A) Six Months – Building Permits

Pursuant to NCGS 160D-1110, a building permit expires six (6) months after issuance unless work under the permit has commenced. Building permits also expire if work is discontinued for a period of twelve (12) months after work has commenced.

(B) One Year – Other Local Development Approvals

Pursuant to NCGS 160D-403(c), unless otherwise specified by this section, statute, or local ordinance, all other local development approvals expire one year after issuance unless work has substantially commenced. Expiration of a local development approval does not affect the duration of a vested right established as a site-specific vesting plan, a multiphase development plan, a development agreement, or vested rights established under common law.

(C) Two to Five Years – Site Specific Vesting Plans

- (1) Duration. A vested right for a site-specific vesting plan shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the Town. The Town may provide that rights regarding a site-specific vesting plan shall be vested for a period exceeding two years, but not exceeding five years if warranted by the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. This determination shall be made in the discretion of the Town and shall be made following the process specified by subsection (3) below for the particular form of a site-specific vesting plan involved.
- (2) Relationship to Building Permits. A right vested as provided in this subsection shall terminate at the end of the applicable vesting period which respect to buildings and uses for which no valid building permit applications have been filed. Upon issuance of a building permit, the provisions of NCGS 160D-1110 and 160D-1113 shall apply, except that the permit shall not expire or be revoked because of the running of time while a vested right under this section exists.
- (3) Requirements for Site-Specific Vesting Plans. For the purposes of this section, a “site-specific vesting plan” means a plan submitted to the Town describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a site plan, a preliminary or general development plan, a special use permit, a conditional zoning, or any other development approval as may be used by the Town. Unless otherwise expressly provided by the Town, the plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. The Town uses existing development approvals, such as a preliminary plat, a special use permit, or a conditional zoning, to approve a site-specific vesting plan. A variance shall not constitute a “site specific vesting plan,” and approval of a site-specific vesting plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. If a sketch plan or other document fails to

describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site-specific vesting plan.

- (4) Process for Approval and Amendment of Site-Specific Vesting Plans. If a site-specific vesting plan is based on an approval required by a local development regulation, the Town shall provide whatever notice and hearing is required for that underlying approval. If the duration of the underlying approval is less than two years, that shall not affect the duration of the site-specific vesting established by this subsection. If the site-specific vesting plan is not based on such an approval, a legislative hearing with notice as required by NCGS 160D-602 shall be held. The Town may approve a site-specific vesting plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested, although failure to abide by such terms and conditions will result in a forfeiture of vested rights. The Town shall not require a landowner to waive vested rights as a condition of developmental approval. A site-specific vesting plan shall be deemed approved upon the effective date of the Town's decision approving the plan or such other date as determined by the Town Council upon approval. An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the Town as follows: Any substantial modification must be reviewed and approved in the same manner as the original approval; minor modifications may be approved by staff, if such are defined and authorized by local regulation.

(D) Seven Years – Multi-Phase Developments

A multi-phased development shall be vested for the entire development with the Unified Development Ordinance in place at the time a site plan approval is granted for the initial phase of the multi-phased development. This right shall remain vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development. For the purposes of this subsection, "multi-phased development" means a development containing 100 acres of more that (i) is submitted for site plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

(E) Indefinite – Development Agreements

A vested right of reasonable duration may be specified in a development agreement approved under Article XVI of this Ordinance.

SECTION 15.05: CONTINUING REVIEW

Following approval or conditional approval of a statutory vested right, the Town may make subsequent reviews and require approvals by the Town to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval. The Town may revoke the original approval for failure to comply with applicable terms and conditions of the original approval or the applicable local development regulations.

SECTION 15.05: EXCEPTIONS

A vested right, once established as provided for by Section 15.04, precludes any zoning action by a local government that would change, alter, impair prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved vested right, except:

- (A) With the written consent of the affected landowner;
- (B) Upon findings, after notice and an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, and safety, and welfare if the project were to proceed as contemplated in the approved vested right;
- (C) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approved by the Town, together with interest as is provided in Section 3.15. Compensation shall not include any diminution in the value of the property that is caused by such action;
- (D) Upon findings, after notice and an evidentiary hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the Town of the vested right; or
- (E) Upon the enactment or promulgation of a State or Federal law or regulation that precludes development as contemplated in the approved vested right, in which case the Town may modify the affected provisions, upon a finding that the change in State or Federal law has a fundamental effect on the plan, after notice and an evidentiary hearing.

The establishment of a vested right under subsection 15.05(D), shall not preclude the application of overlay zoning or other development regulation that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to development regulation by the Town including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise, applicable new regulations shall become effective with respect to property that is subject to a vested right established under this section upon the expiration or termination of the vested rights period provided for in this section.

Notwithstanding any provision of this section, the establishment of a vested right under this section shall not preclude, change or impair the authority of the Town to adopt and enforce development regulation provisions governing nonconforming situations or uses.

SECTION 15.06: MISCELLANEOUS PROVISIONS

A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a vested right under this section, all successors to the original landowner shall be entitled to exercise such rights.

Nothing in this section shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

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ARTICLE XVI. DEVELOPMENT AGREEMENTS

SECTION 16.01: AUTHORIZATION

- (A) In accordance with NCGS 160D-1002, the Town of Gatesville finds:
- (1) Development projects often occur in multiple phases over several years, requiring a long-term commitment of both public and private resources.
 - (2) Such developments often create community impacts and opportunities that are difficult to accommodate within traditional zoning processes.
 - (3) Because of their scale and duration, such projects often require careful coordination of public capital facilities planning, financing, and construction schedules and phasing of the private development.
 - (4) Such projects involve substantial commitments of private capital which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.
 - (5) Such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas.
 - (6) To better structure and manage development approvals for such developments and ensure their proper integration into local capital facilities programs, the Town needs flexibility to negotiate such developments.
- (B) The Town may enter into development agreements with developers, subject to the procedures of this section. In entering into such agreements, the Town may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law.
- (C) This section is supplemental to the powers conferred upon the Town and does not preclude or supersede rights and obligations established pursuant to other law regarding development approvals, site-specific vesting plans, phased vesting plans, or other provisions of law. A development agreement shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the Town's development regulations. When the Town Council approves the rezoning of any property associated with a development agreement executed and recorded pursuant to this article, the provisions of Section 13.07 apply.
- (D) Development authorized by a development agreement shall comply with all applicable laws, including all ordinances, resolutions, regulations, permits, policies, and laws affecting the development of property, including laws governing permitted uses of the property, density, intensity, design, and improvements.

SECTION 16.02: DEFINITIONS

The following definitions apply in this section:

(A) Development

The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. When appropriate to the context, “development” refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

(B) Public Facilities

Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and facilities.

SECTION 16.03: APPROVAL OF TOWN COUNCIL REQUESTED

- (A) The Town of Gatesville may establish procedures and requirements, as provided in this article, to consider and enter into development agreements with developers. A development agreement must be approved by the Town Council following the procedures specified in Section 16.05.
- (B) The development agreement may, by ordinance, be incorporated, in whole or in part, into any development regulation adopted by the Town. A development agreement may be considered concurrently with a zoning map or text amendment affecting the property and development subject to the development agreement. A development agreement may be concurrently considered with and incorporated by reference with a sketch plan or preliminary plat required under a subdivision regulation or a site plan or other development approval required under a zoning regulation. If incorporated into a conditional district, the provisions of the development agreement shall be treated as a development regulation in the event of the developer's bankruptcy.

SECTION 16.04: SIZE AND DURATION

The Town of Gatesville may enter into a development agreement with a developer for the development of property as provided in this article for developable property of any size. Development agreements shall be of a reasonable term specified in the agreement.

SECTION 16.05: PUBLIC HEARING

Before entering into a development agreement, the Town shall conduct a legislative hearing on the proposed agreement. The notice provisions of Section 13.04 applicable to zoning map amendments shall be followed for this hearing. The notice for the public hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained.

SECTION 16.06: CONTENT AND MODIFICATION

- (A) A development agreement shall, at a minimum, include all of the following:
- (1) A description of the property subject to the agreement and the names of its legal and equitable property owners.
 - (2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.
 - (3) The development uses permitted on the property, including population densities, and building types, intensities, placement on the site, and design.
 - (4) A description of public facilities that will serve the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development. In the event that the development agreement provides that the Town shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development, such as meeting defined completion percentages or other performance standards.
 - (5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions agreed to by the developer that exceed existing laws related to protection of environmentally sensitive property.
 - (6) A description, where appropriate, of any conditions, terms, restrictions, or other requirements for the protection of public health, safety, or welfare.
 - (7) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.
- (B) A development agreement may also provide that the entire development or any phase of it be commenced or completed within a specified period of time. If required by ordinance or in the agreement, the development agreement shall provide a development schedule, including commencement dates and interim completion dates at no greater than five-year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to Section 16.08 but must be judged based upon the totality of the circumstances. The developer may request a modification in the dates as set forth in the agreement.
- (C) If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement. A local or regional utility authority may also be made a party to the development agreement.

- (D) The development agreement also may cover any other matter, including defined performance standards, not inconsistent with this Ordinance. The development agreement may include mutually acceptable terms regarding provision of public facilities and other amenities and the allocation of financial responsibility for their provision, provided any impact mitigation measures offered by the developer beyond those that could be required by the local government pursuant to G.S. 160D-804 shall be expressly enumerated within the agreement, and provided the agreement may not include a tax or impact fee not otherwise authorized by law.
- (E) Consideration of a proposed major modification of the agreement shall follow the same procedures as required for initial approval of a development agreement. What changes constitute a major modification may be determined by ordinance adopted pursuant to Section 16.03 or as provided for in the development agreement.
- (F) Any performance guarantees under the development agreement shall comply with the Town's Subdivision Ordinance.

SECTION 16.07: VESTING

- (A) Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.
- (B) Except for grounds specified in subsection 16.08, the Town may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement.
- (C) In the event State or Federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the Town may modify the affected provisions, upon a finding that the change in State or Federal law has a fundamental effect on the development agreement.
- (D) This section does not abrogate any vested rights otherwise preserved by law.

SECTION 16.08: BREACH AND CURE

- (A) Procedures established pursuant to subsection 16.03 may require periodic review by the Zoning Administrator or other appropriate officer of the Town, at which time the developer shall demonstrate good-faith compliance with the terms of the development agreement.
- (B) If the Town finds and determines that the developer has committed a material breach of the agreement, the Town shall notify the developer in writing setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination and providing the developer a reasonable time in which to cure the material breach.
- (C) If the developer fails to cure the material breach within the time given, then the Town unilaterally may terminate or modify the development agreement, provided the notice of

termination or modification may be appealed to the Board of Adjustment in the manner provided by Section 10.04(A).

- (D) An ordinance adopted pursuant to subsection 16.03 or the development agreement may specify other penalties for breach in lieu of termination, including, but not limited to, penalties allowed for violation of a development regulation. Nothing in this Article shall be construed to abrogate or impair the power of the Town to enforce applicable law.
- (E) A development agreement shall be enforceable by any party to the agreement notwithstanding any changes in the development regulations made subsequent to the effective date of the development agreement. Any party to the agreement may file an action for injunctive relief to enforce the terms of a development agreement.

SECTION 16.09: AMENDMENT OR TERMINATION

Subject to the provisions of Section 16.06, a development agreement may be amended or terminated by mutual consent of the parties.

SECTION 16.10: CHANGE OF JURISDICTION

- (A) Except as otherwise provided by this Section, any development agreement entered into by the Town before the effective date of a change of jurisdiction shall be valid for the duration of the agreement or eight years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the Town assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction.
- (B) The Town, in assuming jurisdiction, may modify or suspend the provisions of the development agreement if the Town determines that the failure of the Town to do so would place the residents of the territory subject to the development agreement or the residents of the Town, or both, in a condition dangerous to their health or safety, or both.

SECTION 16.11: RECORDATION

The developer shall record the agreement with the Gates County Register of Deeds within 14 days after the Town and developer execute an approved development agreement. No development approvals may be issued until the development agreement has been recorded. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

SECTION 16.12: APPLICABILITY OF PROCEDURES TO APPROVE DEBT

In the event that any of the obligations of the Town in the development agreement constitute debt, the Town shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the Town, with any applicable constitutional and statutory procedures for the approval of this debt.

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ARTICLE XVII. LEGAL STATUS PROVISIONS

SECTION 17.01: EFFECTS UPON OUTSTANDING BUILDING PERMITS

Nothing contained in this ordinance shall require any change in the plans, construction, size, or designated use of any building, structure, or part of one for which a building permit has been granted by the Building Inspector prior to the time of passage of this ordinance. However, where construction is not begun under any outstanding permit within a period of one hundred and eighty (180) days subsequent to the passage of this ordinance or where it has not been prosecuted to completion within eighteen (18) months subsequent to passage of this ordinance, the permit shall expire and any further construction or use shall be in conformity with the provisions of this ordinance.

SECTION 17.02: CONFLICT WITH COVENANTS AND OTHER LAWS

Whenever they are interpreted and applied, the provisions of this Ordinance shall be held to be minimum requirements for the promotion of the public safety, health, convenience, prosperity, and general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties. Where this ordinance, made under the authority of NCGS 160D, imposes a greater restriction upon the use of building or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, or by easements, covenants, or agreements, the provisions of this ordinance shall govern. Where the provisions of any other ordinance, law, or covenant require more restrictive standards than are required by the regulations made under authority of NCGS 160D, such provisions shall govern.

SECTION 17.03: VALIDITY

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, that decision shall not affect the validity of the remaining portions of this ordinance. The Town Council declares that it would have passed this ordinance and each Article, Section, Clause, and Phrase of it even if any one or more Articles, Sections, Sentences, Clauses, or Phrases may be declared invalid.

SECTION 17.04: DEVELOPMENT APPROVALS RUN WITH THE LAND

Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approval made pursuant to this Ordinance attach to and run with the land.

SECTION 17.05: REFUND OF ILLEGAL FEES.

If the Town of Gatesville is found to have illegally imposed a tax, fee, or monetary contribution for development or a development approval not specifically authorized by law, the town shall return the tax, fee, or monetary contribution plus interest of six percent (6%) per annum to the person who made the payment or as directed by a court if the person making the payment is no longer in existence.

SECTION 17.06: EFFECTIVE DATE

This ordinance shall become effective from and after its passage by the Town Council of Gatesville, North Carolina.