ZONING

ORDINANCE

TOWN OF HILDEBRAN, N.C.

Prepared by:
WESTERN PIEDMONT COUNCIL OF GOVERNMENTS

In conjunction with:
TOWN OF HILDEBRAN PLANNING BOARD

Adopted: February 19, 2008
Last Updated: Mar. 2012
Jul. 2013
Apr. 2015
Sept. 2015
Sept. 2017
Jun. 2019

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ARTICLE I

PURPOSE AND AUTHORITY

For the purpose of promoting the health, safety and the general welfare of the community, an ordinance regulating the uses of buildings, structures and land for trade, industry, commerce, residence, recreation, public activities or other purposes; the size of yards, courts and other open spaces; the location, height, bulk, number of stories and size of buildings and other structures; the density and distribution of populations; creating districts of said purposes, and establishing the boundaries thereof; defining certain terms used herein; providing for the method of administration, amendment and enforcement; providing penalties for violations; providing for a Board of Adjustment and defining the duties and powers of said board; repealing conflicting ordinances; and for other purposes pursuant to the authority granted by the General Statutes of North Carolina, Chapter 160-A, Article 19, Part 3.

ARTICLE II

SHORT TITLE

This Ordinance shall be known as the "Zoning Ordinance of the Town of Hildebran, North Carolina" and may be referred to as the "Zoning Ordinance," and the map which is identified by the title "Official Zoning Map, Hildebran, North Carolina," may be known as the "Zoning Map."

ARTICLE III

ENACTMENT CLAUSE

The Town Council of the Town of Hildebran, in pursuance of the authority granted by the General Statutes of North Carolina, particularly Chapter 160A, Article 19, Part 3, hereby ordains and enacts into law the following Articles and Sections.

ARTICLE IV

ZONING INTERPRETATION AND APPLICATION

Section 4.1 Interpretation and Application.

In interpreting and applying this Ordinance, the requirements contained herein are declared to be the minimum requirements necessary to carry out the purposes of the Ordinance. Except as herein provided, this Ordinance shall not be deemed to interfere with, abrogate, annul, or otherwise affect in any manner whatsoever any easements, covenants, or other agreements between parties. Whenever the provisions of this Ordinance imposes greater restrictions upon the use of the land or buildings or upon the height of buildings or requires a larger percentage of lot to be left unoccupied than the provisions of other ordinances, rules, regulations, permits or any easements, covenants or other agreements between parties, the provisions of this Ordinance shall govern, except as provided in *Article XIX* of this Ordinance.

Section 4.2 Compliance with Ordinance.

No land, building, or structure shall be used, no buildings or structure shall be erected, and no existing building or structure shall be moved, added to, enlarged or altered except in conformity with this Ordinance.

Section 4.3 Zoning Jurisdiction.

The provisions of this Ordinance shall be applicable to all property within the corporate limits of the Town of Hildebran.

Section 4.4 Bona Fide Farms Exempt.

This Ordinance shall in no way regulate, restrict, prohibit or otherwise deter any bona fide farm and its related uses.

Section 4.5 Zoning of Annexed Areas.

Any areas annexed into the Town of Hildebran shall, immediately upon such annexation, be automatically classified as one of the zoning districts listed in *Article VIII*, upon recommendation by the Planning Board, and following the notifications and public hearings as required by the N.C. General Statutes.

ARTICLE V

PROVISIONS FOR OFFICIAL ZONING MAP

Section 5.1 Official Zoning Map.

The districts established in *Article VII* of this Ordinance as shown on the Official Zoning Map which, together with all explanatory matter thereon, are hereby adopted as part of this Ordinance.

A. Identification of Official Zoning Map.

The Official Zoning Map shall be identified by signature of the Mayor, and attested by the Town Clerk.

ARTICLE VI

DEFINITION OF TERMS

Section 6.1 Interpretation and Definition of Certain Terms and Words.

For the purpose of interpreting this Ordinance, certain words or terms are herein defined. Unless otherwise stated, the following words shall for the purpose of this Ordinance have the meaning herein indicated.

A. Words used in the present tense include the future tense.

B. Words used in the singular tense include the plural and words used in the plural number include the singular.

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

D. The word "lot" includes the word "structure."

E. The word "building" includes the word "structure."

F. The word "shall" is mandatory, not directory.

G. The words "used" or “occupied" as applied to any land or buildings shall be construed to include the words "intended, arranged or designed to be used or occupied."

H. The word "Zoning Inspector" shall include the term "Watershed Administrator."

Section 6.2 Definitions.

Accessory Use. A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

Accessory Building. A building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building, and located on the same lot therewith.

Agriculture. Farming, including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, or harvesting for the production of food and fiber products (except commercial logging and timber harvesting.)

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

Animal Hospital. An establishment for the care and treatment of small animals, including household pets.

Animal Shelter. Any premises designated by the county for the purpose of impounding and caring for cats and dogs found running at large or otherwise subject to impoundment in accordance with the provision of this law.

Bed and Breakfast Establishment. A residence or building which has six or more guest units which exhibits a character of use consistent with a motel or hotel and which may have a restaurant open to the general public as well as the guests.

Best Management Practices (BMP). A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

Boarding House: A building other than a motel or hotel where, for compensation and by prearrangement for definite periods, where meals or lodging is provided for three or more persons, but not to exceed eight persons. The owner of the boarding house shall reside on the premises.

Buffer (Watershed). An area of natural or planted vegetation through which storm water runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering or pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

Buffer Strip. A strip of land consisting of walls, fences, vegetation and/or combination thereof provided between varying zoning districts and/or land uses.

Building. Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or chattels.

Building Height. The vertical distance measured from the average elevation of the finished lot grade at the front building line to the highest point of the roof beams adjacent to the front of the wall in the case of a flat roof, to the average height of the gables in the case of a pitched roof, and to the deck line in the case of a mansard roof.

Building Setback Line. A line establishing the minimum allowable distance between the nearest portion of any building (excluding the outermost three feet of any uncovered porches, steps, eaves, gutters, and similar fixtures), and the street or highway right-of-way line when measured perpendicularly thereto. When no right of way exists, then a 50-foot distance will be used to determine the setback (25-feet on each side from the center of the road). This distance is measured from the middle of the existing road or street.

Built-Upon Area. That portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities, etc., excluding wooden slatted decks and the water area of a swimming pool.

Corner Lot. A lot which occupies the interior angle at the intersection of two street lines which make an angle of more than 45 degrees and less than 135 degrees with each other. The street line forming the least frontage shall be deemed the front of the lot except where the two street lines are equal, in which case the owner shall be required to specify which is the front when requesting a zoning compliance permit.

Child Care Facility. A non-residential facility, built to comply with the International Building Code and licensed by the State, where at any one time, there are three (3) or more pre-school age children or nine or more school age children that receive child care. The term includes day care centers and day nurseries.

Child Care Home. A child care arrangement located in a residence, licensed by the State, where at any one time, more than two children, but less than nine children, who do not reside in the home, receive child care. The residence must be constructed to standards of the International Building Code and comply with all other state and local regulations regarding such use.

Cluster Development. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes non-residential development as well as single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.

Customary Home Occupation. An accessory use of a dwelling unit utilized for gainful employment that is clearly a customary, incidental and secondary use of a dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood.

Development Activities. Any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

Duplex. A building designed or containing two dwelling units.

Domestic Pets. Animals that are customarily kept for company, pleasure, or enjoyment within the home or yard such as domestic dogs, domestic cats, domestic tropical birds, domestic rodents, domestic rabbits, and domestic fish. (See 10.8 Animal Keeping in Special Requirements)

Dwelling Unit. A building or portion thereof designed, arranged or used for permanent living quarters for one family. The term "dwelling unit" shall not be deemed to include a motel, hotel, tourist home, mobile home or other structure designed for transient residence.

Electronic Gaming Establishment. A business which provides electronic gaming on computers or machines. This definition includes mixed use establishments which combine electronic gaming with other uses. This definition shall also include the terms sweepstakes, internet sweepstakes, electronic sweepstakes, internet gaming and internet café. This definition excludes traditional arcade games (i.e. Pac-man etc).

Existing Development. Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this Ordinance based on at least one of the following criteria:

A. Having expended substantial of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or

B. Having an outstanding valid building permit as authorized by the General Statutes (G.S.) 153A-344.1 and G.S. 160A-385.1, or

C. Having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385. 1).

Family Care Home. A home licensed by the North Carolina State Department of Human Resources with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six (6) resident handicapped persons defined by the State of North Carolina. Such family care homes shall not be within a one-half mile radius of an existing family care home or group home as measured from property line to property line. This definition shall also include the term Group Home.

Fowl. Include the following: chickens, game hens, ducks, swans, geese and other birds typically used as food. This definition for the purpose of animal keeping does not include parrots, parakeets, and other non-food birds.

Grade. An average level of the finished surface of the ground adjacent to the exterior walls of the building or structure.

Gross Floor Area. The total floor area of all buildings in a project including basements, mezzanines and upper floors exclusive of stairways and elevator shafts. It excludes separate service facilities outside the main building such as boiler rooms and maintenance shops.

Horticulture. The use of land for the growing or production for income of fruits, vegetables, flowers, nursery stock, including ornamental plants and trees, and cultured sod.

Hotels, Motels and Inns. A building in which lodging is provided and offered to the public for compensation, and which is open to transient guests and is not a bed and breakfast as herein defined.

Impervious Surface. Any hard-surfaced, man-made area that does not readily absorb or retain water, including, but not limited to building roofs, parking and driveway areas, graveled areas, sidewalks, and paved recreation areas.

Kennel, Commercial. Any location where boarding, caring for or keeping of more than a total of three dogs or cats or other small animals or a combination thereof (except litters of animals of not more than six months of age) is carried on, and also raising, breeding, caring for or boarding dogs, cats, or other small animals for commercial purposes.

Kennel, Noncommercial. Any location where the boarding, caring for and keeping of more than three (3) but not more than ten (10) dogs or cats or other small animals or combination thereof (except litters of animals of not more than six months of age) is carried on, not for commercial purposes, but as a hobby such as the raising of show and hunting dogs.

Long-term care facility. A home for the aged or ill persons in which three (3) or more persons not of the same immediate family are provided with food, shelter and care for compensation; but not including hospitals, clinics, or similar institutions devoted primarily to diagnosis and treatment.

Lot. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessory uses and open spaces belonging to the same.

Lot Coverage. The area of a lot covered by a building or buildings, expressed as a percentage of the total lot area.

Lot Depth. The mean horizontal distance between the front and rear lot lines.

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

Lot Width. The distance between side lot lines measured at the building setback line.

Major Watershed Variance. A variance that results in any one or more of the following:

A. The complete waiver of a management requirement;

B. The relaxation, by a factor of more than ten (10) percent, of any management requirement that takes the form of a numerical standard;

C. The relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.

Manufactured Home. A dwelling unit constructed after July 1, 1976, that meets or exceeds the construction standards of the U.S. Department of Housing and Urban Development on the date of its manufacture. A manufactured home is at least eight feet wide and forty feet in length, may be composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis and be placed on temporary or permanent foundation. This definition shall also include the term "mobile home." The Appearance and Classification Criteria for manufactured homes are established in *Article VIII, Section 8.3* of this Ordinance.

Manufactured Home Park. Land used or intended to be used, leased or rented for occupancy by two (2) or more manufactured homes which are mounted on wheels, anchored in place by a foundation or other stationary support, to be used for living purposes and accompanied by automobile parking space and incidental utility structures and facilities required and provided in connection therewith. This definition shall not include sales lots on which unoccupied manufactured homes are parked for purposes of inspection and/or sale.

Manufactured Home Stand. That part of an individual lot which has been reserved for the placement of one manufactured home unit.

Medical Offices. A facility providing medical, psychiatric, or surgical service for sick or injured persons exclusively on an out-patient basis, including emergency treatment, diagnostic services, training, administration, and services to outpatients, employees, or visitors.

Minor Watershed Variance. A watershed variance that does not qualify as a major variance.

Mixed-use Structure. A building containing residential in addition to non-residential uses permitted in the zone.

Mobile Food Vendor. A readily movable trailer or motorize wheeled vehicle, currently registered with the N.C. Division of Motor Vehicles, designed and equipped to serve items that provide nourishment. This shall not include alcoholic beverages. This definition shall also include the term food trucks.

Modular Home. A dwelling unit constructed in accordance with the standards set forth in the North Carolina State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a modular home may consist of two or more sections transported to the site in a manner similar to a manufactured home (except that the modular home meets the North Carolina State Building Code), or a series or panels or room sections transported on a truck and erected or joined at the building site.

Multi-Family Dwelling. A building designed for or containing three or more dwelling units.

Nonconforming Use. A building or land lawfully occupied by a use that does not conform with use regulations of the district in which it is located.

Non-Residential Development. All development other than residential development, agriculture and silviculture.

Open Space. Any front, side or rear yards, courts, usable open space provided about a building in order to meet the requirements of this Ordinance.

Overlay District. An area where certain additional requirements are superimposed upon a base zoning district or underlying district and where the requirements of the base or underlying district may or may not be altered.

Parking Lot. Any designated area designed for temporary accommodation of motor vehicles of the motoring public in normal operating conditions whether for a fee or as a service.

Planned Unit Development (PUD). A form of development characterized by a unified site design for a number of housing units, clustering of buildings and providing common open space, increased density, mixed uses and a mix of building types. It permits the planning of a project and a calculation of densities over the entire development rather than on an individual lot-by-lot basis. The site must include two or more principal buildings. Such development shall be based on a plan which allows for flexibility of design not available under normal district requirements.

Principal Building. A building in which is conducted the main or principal use of the lot on which said building is situated.

Protected Area. Area five miles upstream and draining to water supply reservoirs, or ten miles upstream and draining to water intakes located in streams or rivers, or to the ridge line of the watershed, whichever comes first.

Recycling Establishment. An establishment for the processing (separation and/or recovery) or collection of recyclable materials from solid wastes. Recycling of oil or other liquids may also occur.

Sexually Oriented Establishment. Any principal or accessory use which excludes minors by reason of age. This definition does not apply to applicable alcoholic beverage laws or voluntary restrictions of the motion picture industry. This classification includes but is not limited to:

> Adult Bookstore. An establishment which has a substantial portion of its stock and trade in books, magazines, other printed materials or videos and excludes minors by reason of age.
>
> Adult Picture Theater. An enclosed building or part thereof, used for showing movies, slide shows, closed circuit television or similar offerings and excludes minors by reason of age.
>
> Adult Cabaret. An establishment which features go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainment and excludes minors by reason of age.
>
> Adult Sexual Paraphernalia Store. Any retail store specializing in the sale of paraphernalia, devices, or equipment distinguished or characterized by an emphasis on depicting or describing specific sexual conduct or used in connection with specified sexual conduct.

Single-family Dwelling. A building designed for and containing one dwelling unit.

Solar Energy System. Any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for generating energy primarily for onsite power needs, for use off-site or for resale. Residential scale systems serving individual homes are considered an accessory structures (see Section 10.2).

Street (Road, Lane, Way, Terrace, Drive). A dedicated, recorded and accepted public right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Structure. Anything constructed or erected, the use of which requires more or less permanent location on the ground or which is attached to something having more or less permanent location on the ground.

Subdivision. All divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose (whether immediate or future) of sale, lease, legacy or building development; it includes all divisions of land involving a new street to which the public has access (whether public or private) or a change in an existing street, and includes re-subdivision and, where appropriate to the context, relates to the process of subdividing or to the land or area subdivided; provided, however, that the following are not included within this definition:

A. The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the standards of these regulations; and

B. The division of land into parcels of five acres or more where no new street is involved.

Temporary Health Care Structure. A transportable residential structure, providing an environment 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 G.S. 143-139.1(b). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted. (amended 4/27/15)

Traffic Impact Study. A study or analysis of how any use, plan or development will affect traffic in a surrounding area

Variance. The term "Variance" shall mean a modification of the literal provisions of the Zoning Ordinance granted when strict enforcement of the Zoning Ordinance would cause undue hardship owing to circumstances unique to the individual property on which the variance is granted.

Water Dependent Structure. Any structure for which the use requires access to or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

Watershed. The entire land area contributing surface drainage to a specific point (e.g. the water supply intake.)

Watershed Administrator (Zoning Enforcement Officer). An official designated by the Town of Hildebran responsible for administration and enforcement of this Ordinance.

Watershed Variance. A permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this Ordinance.

Winery. An agricultural processing plant used for the commercial purpose of processing grapes, other fruit products, or vegetables to produce wine or similar spirits. Processing includes wholesale sales, crushing, fermenting, blending, aging, storage, bottling, administrative office functions for the winery and warehousing. Retail sales and tasting facilities of wine and related promotional items may be permitted as part of the winery operations.

Yard. An open space on the same lot with a principal building, unoccupied and unobstructed from the ground upward.

Yard, Front. An open space on the same lot with a principal building, between the front line of the building (exclusive of steps) and the front property or street right-of-way line and extending across the full width of the lot.

Yard, Rear. An open, unoccupied space extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot.

Yard, Side. An open, unoccupied space situated between the side line of the building and adjacent side line of the lot and extending from the rear line of the front yard to the front line of the rear yard.

Zoning Enforcement Officer (Zoning Administrator). Town of Hildebran official charged with the responsibility of enforcing this Ordinance.

Zoning Permit. Permit issued by the Zoning Enforcement Officer indicating that a proposed use is in compliance with requirements of this Ordinance.

ARTICLE VII

ESTABLISHMENT OF DISTRICTS

Section 7.1 Use Districts.

For the purposes of this Ordinance, the Town of Hildebran is hereby divided into six (6) use districts and two (2) overlay districts with the designations as listed below:

1. R-20 Residential Low Density District
2. R-10 Residential High Density District
3. MHO Manufactured Home Overlay District
4. N-B Neighborhood Business District
5. CBD Central Business District
6. H-B Highway Business District
7. G-M General Manufacturing District
8. IOD Interstate Overlay District

Section 7.2 District Boundaries Shown on Map.

The boundaries of the districts are shown on the map accompanying this Ordinance and made a part thereof entitled "Official Zoning Map, Hildebran, North Carolina." The Zoning Map and all the notations, references and amendments thereto, and other information shown thereon are hereby made a part of this Ordinance the same as if such information set forth on the map were all fully described as set forth herein. The Zoning Map properly attested is posted at the Hildebran Town Hall and is available for inspection by the public.

Section 7.3 Due Consideration Given to District Boundaries.

In the creation of this Ordinance of the respective districts, careful consideration is given to the general suitability of each and every district for the particular uses and regulations applied thereto, and the necessary and property grouping and arrangement of various uses and densities of population in accordance with a well-considered comprehensive plan for the physical development of the Town.

Section 7.4 Rules Governing Boundaries.

Where uncertainty as to the boundaries of any aforesaid districts as shown on the Zoning Map, the following rules shall apply, such uncertainty shall be determined by the Board of Adjustment:

A. Where district boundaries are indicated as approximately following the center line of streets or highways, railroad right-of-way lines or such lines extended, such center lines, street lines, or railroad right-of-way lines shall be construed to be such boundaries.

B. Where District boundaries are so indicated that approximately follow lot lines, such lot lines shall be construed to be such boundaries.

C. Where District boundaries are so indicated that they are approximately parallel to the center lines of streets, highways, or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on

the Zoning Map. If no distance is given, such dimensions shall be determined by use of the scale shown on said map.

D. Where a District boundary line divides a lot in single ownership, the district requirements for the least restrictive portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such a lot more than thirty-five (35) feet beyond the district boundary line. The term "least restrictive" shall refer to zoning restrictions, not lot or tract size.

ARTICLE VIII

USE REQUIREMENTS BY DISTRICTS

Within the districts indicated on the Zoning Map, no building or land shall be used, and no building shall be erected or altered which is intended or designed to be used in whole or in part, for any use other than those listed as permitted for that district in this Article and the following *Table of Permitted Uses*. The *Table of Permitted Uses* is intended for quick reference of the use requirements for the districts. Please refer to the individual district sections for detailed requirements.

Table of Permitted Uses

x - permitted by right *CU - conditional use, requires a public hearing* **MHO - permitted within Manufactured Home Overlay District* **HO - must comply with home occupation requirements* *gfa – gross floor area*	Low Density Residential	High Density Residential	Neighborhood Business	Central Business	Highway Business	General Manufacturing
Use	**R-20**	**R-10**	**NB**	**CBD**	**HB**	**GM**
Single family dwelling	x	x	x	x		
Modular homes	x	x	x	x		
Duplexes		x	x	x		
Multi-family dwellings		CU		CU		
Manufactured homes		*MHO				
Manufactured home parks		*MHO/CU				
Mixed use buildings			CU	x		
Accessory uses & buildings (see *Section 10.2*)	x	x	x	x	x	x
Home occupations (see *Section 10.1*)	x	x	x	x		
Agriculture & horticulture	x	x	x		x	x
Animal hospitals, veterinary offices & clinics (no outside kennels)			CU		x	x
Animal hospitals, veterinary offices & clinics (with outside kennels)					CU	CU
Animal pound or shelter					CU	CU
Animal Keeping (see *Section 10.8*)	X	X				
Appliance repair (no front yard storage)			CU		x	x
Auto, boat, recreation vehicle & motorcycle sales					x	x
Automobile accessories sales				x	x	x
Automobile body shops					x	x
Automobile service & repair					x	x
Bakery (production & distribution)					CU	x
Bakery shop			x	x	x	x
Banks & other financial establishments			CU	x	x	x
Barbershops, salons & spas	*HO	*HO	x	x	x	x
Bed & breakfast establishments	CU	CU	x	x	x	
Boat service & repair					x	x
Bus station				x	x	x
Car wash					x	x
Cemeteries	CU	CU	CU	CU	CU	CU
Churches & other places of worship	CU	CU	CU	x	x	x

Use	R-20	R-10	NB	CBD	HB	GM
Clubs & lodges	CU	CU	CU	x	x	x
Commercial indoor recreation establishments				CU	x	x
Commercial outdoor recreation establishments					CU	CU
Commercial Laundry Facilities					CU	x
Community centers	CU	CU	x	x	x	x
Public community swimming pools	CU	CU	CU	CU	CU	
Concrete or paving materials plant						CU
Convenience store (with gas) or gas station					x	x
Convenience store (without gas)			x	x	x	x
Child care facilities (see *Section 10.3*)	CU	CU	CU	CU	x	
Child care home (see *Section 10.3*)	*HO	*HO	x	x		
Drug stores & pharmacies			CU	x	x	x
Dry cleaning			x	x	x	x
Electronic Gaming Establishment					CU	
Emergency response facilities	CU	CU	x	x	x	x
Family care & group homes	x	x	x	x	x	x
Florist	*HO	*HO	x	x	x	x
Funeral homes & mortuaries			CU		x	x
Golf courses	CU	CU	CU		CU	CU
Government facilities			x	x	x	x
Group project commercial (see *Section 10.5*)				CU	CU	
Group project industrial (see *Section 10.5*)						CU
Heavy equipment service & repair					CU	CU
Heavy equipment sales & rental					CU	x
Hospitals				CU	x	x
Hotels, inns & motels				CU	CU	CU
Institutional facilities, such as libraries & other nonprofits			x	x	x	x
Kennels (commercial)					CU	CU
Kennels (non-commercial)	CU	CU	CU			
Laundromat			CU		x	x
Long-term care facility	CU	CU	CU	CU	CU	CU
Manufacturing (building resuse)					CU	x
Manufacturing (new buildings less than 25,000 sqft gfa)					CU	x
Manufacturing						x
Material & equipment storage						x
Medical offices			CU	x	x	x
Mini-storage				CU	CU	CU
Mobile Food Vendors (see *Section 10.7*)			X	X	X	X
Movie theaters				CU	CU	CU
Museums & art galleries			x	x	x	x
Offices, business, professional & public	*HO	*HO	x	x	x	x
Parking lot (see *Article XIII*)			x	x	x	x
Performing theaters				x	x	x
Pet Grooming	*HO	*HO	x	x	x	x
Photography services	*HO	*HO	x	x	x	x
Photography, dance, art & music studios			x	x	x	x
PUD (see *Section 10.4*)	CU	CU	CU	CU	CU	CU
Printing & copy services			x	x	x	x
Radio & TV broadcasting			CU	CU	CU	CU
Radio, TV & computer repair	*HO	*HO	x	x	x	x
Railroad station				x	x	x

Use	R-20	R-10	NB	CBD	HB	GM
Recycling establishment						x
Restaurants (with drive thru, drive-in or walk up)					x	x
Restaurants (without drive thru, drive-in or walk up)			CU	x	x	x
Retail sales (less than 3,000 sqft gfa)			CU	x	x	x
Retail sales & shopping centers (3,000-10,000 sqft gfa)				CU	x	x
Retail sales & shopping centers (greater than 10,000 sqft gfa)					CU	CU
Schools & colleges	CU	CU	CU	CU	CU	CU
Sexual oriented establishment (see *Section 8.6 B. 20)*)					CU	
Solar Energy Farms						x
Towing service					CU	CU
Winery				x	x	x
Warehousing & distribution (Building reuse)					CU	x
Warehousing & distribution (new buildings 25,000 sqft gfa or less)					CU	x
Warehousing & distribution						x
Wholesale establishments (Building reuse)					CU	x
Wholesale establishments (new buildings25,000 sqft gfa or less)					CU	x
Wholesale establishments						x

Section 8.1 R-20 Residential Low Density District.

This district is composed of certain quiet, low density residential sections of the community, plus certain open areas where similar residential development appears likely to occur, as indicated by the Land Development Plan. Pedestrian facilities in this district should provide safe corridors for leisurely walking, exercise and connections to other areas in Town. The regulations of this district are intended to discourage any use which, because of its character, would substantially interfere with the development of single family residences in the district and which would be detrimental to the quiet residential nature of the areas included within this district.

A. The following uses are permitted:

1) Single family dwellings built in accordance with the NC Building Code.

a) According to General Statute 143-139.1 of North Carolina, single-family modular homes must meet or exceed the following construction and design standards:

(1) Roof pitch. – For homes with a single predominant roofline, the pitch of the roof shall be no less than five feet rise for every 12 feet of run.
(2) Eave projection. – The eave projections of the roof shall be no less than 10 inches, which may not include a gutter around the perimeter of the home, unless the roof pitch is 8/12 or greater.
(3) Exterior wall. – The minimum height of the exterior wall shall be at least seven feet six inches for the first story.
(4) Siding and roofing materials. – The materials and texture for the exterior materials shall be compatible in composition, appearance, and durability to the exterior materials commonly used in standard residential construction.
(5) Foundations. – The home shall be designed to require foundation supports around the perimeter. The supports may be in the form of piers, pier and curtain wall, piling foundations, a perimeter wall, or other approved perimeter supports.

2) Accessory buildings to residential uses, provided that no accessory building shall be rented or occupied for gain unless permitted as a Home occupation.

3) Any form of agriculture or horticulture.

4) Home occupation, refer to *Section 10.1*.

5) Family care and group homes, provided there is not another family care home within a 0.25-mile radius as measured from the property boundary.

6) Animal Keeping refer to *Section 10.8*

B. Conditional Uses.

The following conditional uses are permitted when authorized by the Hildebran Board of Adjustment after said Board holds a public hearing, with the exception of Planned Unit Developments which require Town Council authorization.

1) Cemeteries

2) Child care facilities, see *Section 10.4*

3) Churches, and other places of worship.

4) Kennels (non-commercial).

5) Fire stations or similar emergency response facilities.

6) Schools and colleges.

7) Planned unit developments, refer to *Section 10.4*.

8) Community centers, clubs and lodges, golf courses and public community swimming pools.

9) Long-term care facilities.

10) Bed and breakfast establishments.

C. Minimum Lot Sizes and Maximum Lot Coverage.

Development activities that do not require a Sedimentation/Erosion Control Plan under State law are subject only to *Subsection 1)* below:

1) Lots located **outside** the WS-4 Protected Area or lots located **within** the WS-4 Protected Area deeded **before October 1, 1993**, the effective date of the Watershed Protection Act:

without water or sewer:	20,000 square feet;
with water or sewer:	15,000 square feet;

Maximum permissible lot coverage by development activities shall not exceed 30% of the total lot area.

2) Lots located **within** the WS-4 Protected Area deeded **on or after October 1, 1993**, the effective date of the Watershed Protection Act:

without water or sewer: 20,000 square feet;
with water or sewer: 15,000 square feet;

Maximum permissible impervious surface coverage as defined in this Ordinance shall not exceed 36% of the total lot area **or 24% of the total lot area if the lot abuts a curb and gutter street system.**

3) Lots that are to be developed for two-family dwellings or multi-family dwellings, regardless of date of recordation:

Minimum Lot Area: 10,000 square feet for single family detached dwellings.
10,000 square feet for the first unit,
5,000 square feet for the second unit, and
3,000 square feet for each additional unit, up to a maximum of 8 units per acre.

D. Dimensional Requirements.

1) Minimum required mean lot width: 100 ft.

2) Minimum required front yard: 40 ft.

3) Minimum required side yard: 12 ft.
Side yard abutting a street: 15 ft.

4) Minimum required rear yard: 30 ft.

5) Height of Buildings: No building shall exceed thirty-five (35) feet.

E. Location of accessory buildings. See *Article X, Section 10.2* of this Ordinance

F. Off-street parking. Off-street parking and landscaping shall be provided, as required in *Article XIII* of this Ordinance.

G. Building Design Guidelines. Development within the Interstate Overlay District (IOD) shall adhere to the requirements of *Section 8.8* of this Ordinance.

H. Corner Visibility. On a corner lot, no planting, structure, sign, fence, wall, or obstruction to vision more than three (3) in height measured from the center line of the street or road shall be placed or maintained within the triangular area formed by the intersecting street or road right-of-way lines and a straight line connecting points on said streets or road right-of-way lines each of which is thirty-five (35) feet distance from the point of intersection.

Section 8.2 R-10 Residential High Density District.

The R-10 Residential High Density District is established as a district in which the principal use of land is for single-family, two-family, and multi-family residences and manufactured homes on individual lots and manufactured home parks (only in the MHO). The regulations of this district are intended to provide areas in the community for those persons desiring small residences and multi-family structures in relatively high density neighborhoods. Pedestrian facilities in this district should provide safe corridors for leisurely walking, exercise and connections to other areas in Town. The regulations are intended to prohibit any use, which, because of its character, would interfere with the residential nature of this district. It is expected that municipal water and sewage facilities will be available to each lot in such districts.

A. The following uses are permitted.

1) All uses permitted in the R-20 Residential District.

2) Duplexes.

3) Manufactured homes (only permitted in the Manufactured Home Overlay District, MHO), refer to *Section 8.3*.

B. Conditional uses.

The following conditional uses are permitted when authorized by the Hildebran Board of Adjustment after said Board holds a public hearing, with the exception of Manufactured Home Parks and Planned Unit Developments which require Town Council authorization.

1) All conditional uses permitted in the R-20 Residential District.

2) Child care facilities, see *Section 10.3*.

3) Multi-family dwellings.

4) Manufactured home parks (only in the Manufactured Home Overlay District, MHO), see *Section 8.3*.

C. Minimum Lot Sizes and Maximum Lot Coverage.

Development activities that do not require a Sedimentation/Erosion Control Plan under State law are subject only to *Subsection 1)* below:

1) Lots located **outside** the WS-4 Protected Area or lots located **within** the WS-4 Protected Area deeded **before October 1, 1993**, that are to be developed for single family detached dwellings:

Minimum Lot Area: 10,000 square feet for single family detached dwellings.
10,000 square feet for the first unit,
5,000 square feet for the second attached unit, and
3,000 square feet for each additional attached unit, up to a maximum of 8 units per acre.

Maximum permissible lot coverage by development activities shall not exceed 30% of

the total lot area.

2) Lots located **within** the WS-4 Protected Area deeded **on or after October 1, 1993** that are to be developed for single-family detached dwellings or lots to be developed for two-family dwellings or multi-family dwellings, regardless of date of recordation:

Minimum Lot Area: 10,000 square feet for single family detached dwellings.
10,000 square feet for the first unit,
5,000 square feet for the second unit, and
3,000 square feet for each additional unit, up to a maximum of 8 units per acre.

Maximum permissible impervious surface coverage as defined in this Ordinance shall not exceed 36 % of the total lot area, **or 24% of the total lot area if the lot abuts a curb and gutter street system.**

D. Dimensional requirements.

Within the R-10 Residential High Density District(s), as shown on the Zoning Map, the following dimensional requirements shall be complied with:

1) Minimum required mean lot width: 75 ft.

2) Minimum required front yard setback: 30 ft.

3) Minimum required side yard for principal building: 10 ft.
Side yard abutting a street: 12 ft.

4) Minimum required rear yard: 30 ft.

5) Height of buildings shall not exceed thirty-five (35) feet unless the depth of the front and total width of the side yards required herein shall be increased by one (1) feet for each two (2) feet or fraction thereof of building height in excess of thirty-five (35) feet.

E. Location of accessory buildings. See *Article X, Section 10.2* of this Ordinance

F. Off-street parking. Off-street parking shall be provided, as required in *Article XIII* of this Ordinance.

G. Building Design Guidelines. Development within the Interstate Overlay District (IOD) shall adhere to the requirements of *Section 8.8* of this Ordinance.

H. Corner Visibility. On a corner lot, no planting, structure, sign, fence, wall, or obstruction to vision more than three (3) in height measured from the center line of the street or road shall be placed or maintained within the triangular area formed by the intersecting street or road right-of-way lines and a straight line connecting points on said streets or road right-of-way lines each of which is thirty-five (35) feet distance from the point of intersection.

I. Sidewalks and Greenways. All multi-family development, when abutting a corridor where the adopted Pedestrian Plan shows a proposed sidewalk and/or greenway, shall construct the sidewalk and/or greenway facilities according to the Pedestrian Plan. The facilities must meet the sidewalk and greenway landscaping and design criteria in Section 10.6.

The following uses may request exemption from Section 8.2 I. at the Board of Adjustment CUP hearing:
Cemeteries
Churches and other places of worship
Fire stations or similar emergency response facilities
Schools and colleges
Community centers, clubs and lodges, golf courses and public community swimming pools
Long-term care facilities
Bed and breakfast establishments

Section 8.3 MHO Manufactured Home Overlay District.

The Manufactured Home Overlay District is established to provide for existing and proposed neighborhoods, which include or are proposed to include manufactured homes. The requirements herein are intended to ensure compatibility with existing housing stock by imposing supplemental appearance standards for manufactured housing. The Manufactured Home Overlay district may be applied to tracts zoned Residential High Density (R-10). It supplements the range of residential types permitted in the underlying district. For existing neighborhoods, the MHO district may be established by map adoption; for proposed neighborhoods, the MHO district requires zoning approval accompanied by a detailed development plan and supporting materials.

A. Regulations Governing Manufactured Home Parks.

The purpose of these manufactured home park regulations is to provide an acceptable environment for they are in fact small communities of manufactured homes. New manufactured home parks may be located only in the MHO District, subject to a finding by the Town Council that the following conditions will be met:

1) Plans clearly indicating the developer's intention to comply with the provisions of this section be submitted to and approved by the Town Council. Such plans, drawn to a scale of no less than 1" = 200', must show the area to be used for the proposed manufactured home park; the ownership and use of neighboring properties; all proposed entrances, exits, driveways, walkways, off-street parking spaces, and buffer and screening plans; the location of manufactured home spaces, recreation areas and service buildings; the location of sanitary conveniences, including toilets, laundries, and refuse receptacles; the proposed plan of water supply, sewage disposal and electric lighting; indications of how future expansions will be made, if applicable; in the case of irregular topographic features, existing contours and finished contours (by separate map or otherwise). Said map, maps, and plans shall also clearly show the name of the proposed park, proposed street names, and any other features of the park not herein mentioned. The Town Council may, prior to final approval of the proposed development, forward said plans to the Planning Board for its review and recommendations. The Town Council shall have the authority to impose such reasonable conditions and safeguards on the proposed development as it deems necessary for the protection of adjoining properties and the public interest.

2) The lot area for a manufactured home park shall be at least two acres. All areas to be included in said park shall be clearly shown on the plans required by *Section 8.3 A. 1).*

3) Each manufactured home in the manufactured home park shall occupy a designated space having at least 6,000 square feet, with a width of at least fifty (50) feet, exclusive of common driveways.

4) Each manufactured home space shall abut a driveway within the park; said driveways shall be paved with asphalt or concrete to a continuous width of twenty-five (25) feet, exclusive of required parking spaces.

5) Parking and landscaping shall be provided according to *Article XIII* of this Ordinance. Required parking spaces may be included within the 6,000 square feet required for each manufactured home space.

6) At least 200 square feet of recreation space for each manufactured home space shall be reserved within each manufactured home park as common recreation space for the residents of the park. Such areas shall, along with driveways and walkways, be adequately lighted for safety.

7) No manufactured homes or other structures within a manufactured home park shall be closer to each other than twenty-five (25) feet, except that storage or other auxiliary structure for the exclusive use of the manufactured home may be closer to that manufactured home than twenty-five (25) feet.

8) No manufactured home shall be located closer than thirty (30) feet to the exterior boundary of the park, or a bounding street right-of-way. Buildings used for laundry or recreation purposes shall be located no closer than forty (40) feet to the exterior boundary of the park or the right-of-way of a bounding street.

9) Proposed water supply and waste disposal facilities for each manufactured home in the park shall be approved in writing by the Burke County Health Officer or his representative.

10) Each manufactured home space shall be provided with an electrical outlet supplying at least 100-115/220-250 volts; 100 amperes shall be provided for each manufactured home space.

11) Each manufactured home space shall be improved to provide adequate support for the placement and tie-down of the manufactured home, thereby securing the superstructure against uplift, sliding, rotation and overturning.

    a) The manufactured home stand shall not heave, shift or settle unevenly under the weight of the manufactured home due to frost action, inadequate drainage, vibration or other forces acting on the structure.

    b) The manufactured home stand shall be provided with anchor and tie-downs such as cast-in-place concrete "dead men," screw augers, arrowhead anchors, or other devices securing the stability of the manufactured home.

c) Anchors and tie-downs shall be placed at least at each corner of the manufactured home stand and each shall be able to sustain a minimum tensile strength of 2,800 pounds.

12) Buffers strips shall be provided between the park and adjacent properties according to the requirements of *Article XII*.

13) The running lights and hitch shall be removed from each manufactured home.

B. Provisions for Individual Manufactured Homes or Mobile Homes.

The purpose of these regulations is to promote sound neighborhood development and appearance, protect community property values, and to preserve the integrity and character of neighborhoods.

A manufactured home is a dwelling unit constructed after July 1, 1976, that meets or exceeds the construction standards of the U.S. Department of Housing and Urban Development on the date of its manufacture. A manufactured home is at least eight feet wide and forty feet in length, may be composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis and be placed on temporary or permanent foundation. Manufactured homes are for dwelling purposes only and are not to be used as accessory buildings or for office space except as temporary offices on construction sites or sales offices on manufactured home sales lots. This definition shall also include the term "mobile home."

1) Manufactured homes in the Town of Hildebran are classified in the following categories:

Class A: A double-wide or multi-sectioned manufactured housing unit that meets the U.S. Housing and Urban Development Department manufactured home construction standards and adhere to the following appearance criteria:

a) The main portion of the building shall have a length not exceeding four times its width. The minimum width shall be sixteen (16) feet.

b) The pitch of the main roof of the building shall have a minimum rise of three (3) feet for each twelve (12) feet of horizonal run. The roof shall be finished with a type of shingle that is commonly used in residential construction. The eave projection shall be no less than six (6) inches, which may include a gutter.

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

d) All Class A manufactured homes shall be placed on brick, concrete block, or other masonry foundation. The foundation shall be continuous and unpierced except for ventilation as required by the state of North Carolina Regulations for Manufactured Mobile Homes.

e) Class A manufactured homes shall have either a deck or a porch with steps. This structure shall be located in the front of the home. This deck or porch must meet or exceed the requirements outlined in *Section 8.3 B. 12)*.

f) The towing apparatus and tongue shall be removed upon final placement of the unit and underskirted or screened with shrubbery. Such shrubbery shall be of a height and density to assure a total visual barrier of the towing apparatus and maintained to continue its effectiveness.

Class B: A single-wide manufactured housing unit that meets the U.S. Department of Housing and Urban Development manufactured home construction standards and also meets the following appearance criteria:

a) Roof pitch is at least a three (3) foot rise for every twelve (12) feet of horizontal run. The roof shall be finished with a type of shingle that is commonly used in residential construction.

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

c) Class B manufactured homes must be underpinned. This underpinning may consist of vinyl or masonite materials manufactured for that purpose or the home may be placed on a permanent foundation of masonry materials such as brick, block, or stone.

Class C: Double-wide manufactured housing unit existing in the Town of Hildebran prior to Jan. 1, 2000, that meets the U.S. Department of Housing and Urban Development manufactured home construction standards, but does not meet the Town's appearance criteria for Class A or Class B. Such manufactured homes may only be relocated to mobile home parks or on lots of record in the MHO District in existence prior to Jan. 1, 2000. At that time, the home must be underpinned with either masonry materials or other products manufactured expressly for the purpose of underpinning and installed in accordance with the manufacturer's specifications.

Class D: Single-wide manufactured housing unit existing in the Town of Hildebran prior to Jan. 1, 2000, that meets the U.S. Department of Housing and Urban Development manufactured home construction standards, but does not meet the Town's appearance criteria for Class A or Class B. Such manufactured homes may only be relocated to mobile home parks or lots of record in the MHO District in existence prior to Jan.1, 2000. At that time, the home must be underpinned with either masonry materials or other products manufactured expressly for the purpose of underpinning and installed in accordance with the manufacturer's specification.

Class E: Any manufactured housing unit that does not meet the U.S. Department of Housing and Urban Development manufactured home construction standards. Class E manufactured will not be permitted in the Town after Jan. 1, 2000. Class E homes existing in the Town's jurisdiction prior to Jan. 1, 2000, will be allowed to remain in their current location as nonconforming uses, but may not be relocated anywhere within the Town's Jurisdiction.

1) The lot must be recorded as an individual lot.

2) If municipal utilities are not available, the well and/or septic tank must be approved by the Burke County Health Department.

3) All yard dimensional requirements for the underlying district must be met.

4) Unless located in a manufactured home park, manufactured homes are to be placed on the lot to be in harmony with nearby site built structures. Where there are no nearby structures for comparison, it shall be sited with the front running parallel to the street.

5) Placement of homes: All homes should face the road lengthwise if setbacks allow. No lot shall be subdivided for a manufactured home placement that will not allow for adequate road frontage to place the home lengthwise on the property.

6) Off street parking and landscaping shall be provided as required in *Article XIII* of this Ordinance.

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

8) Manufactured homes may be placed on undeveloped land for temporary purposes incidental to construction or development of property within the Town of Hildebran for a period not to exceed 180 days. Extensions may be granted for a period as may be determined by the Town Council, but no longer than construction shall continue. Furthermore, no manufactured home shall be placed on land until construction commences nor when there is any existing structure or facility on the property which may be suitable or designed for the purpose for which the manufactured home is sought to be used. Manufactured homes may also be used as temporary living quarters in the event of a natural disaster such as fire, flooding, etc., which would render the former residence uninhabitable.

9) Exterior finishes shall be in good repair and in no case shall the degree of reflectivity of the exterior siding, foundation skirting and roofing exceed that of gloss white.

10) A continuous enclosure, foundation or underpinning meeting the requirements of the class designation in *Section 8.3 B. 1)* shall be installed prior to granting a Certificate of Occupancy. Any wood framing for foundation skirting shall be constructed with treated lumber.

11) All manufactured homes shall have a deck, porch or a concrete patio. The minimum area is 48 square feet. Permanent stairs shall be constructed at all exterior doors. They shall be attached firmly to the primary structure, deck, or porch and anchored securely to the ground. Steps shall not be less than thirty-six (36) inches wide and risers not more than seven and one quarter (7 1/4) inches high with tread proportional to riser so that an easy run is obtained. The width of the tread, including nosing, shall not be less than ten and one-fourth (10 1/4) inches and shall not extend beyond the riser board more than one and one-eighth (1 1/8) inches. Steps exceeding four (4) risers shall have handrails, a minimum of thirty (30) inches high on all open spaces. The steps, porches, entrance platforms, ramps and other means of entrance and exit to and from the home shall be installed or constructed in accordance with the standards set by the North Carolina Department of Insurance,

attached firmly to the primary structure and anchored securely to the ground.

12) The running lights and hitch shall be removed.

13) All standards listed in this subsection must be met prior to issuance of a Certificate of Occupancy.

Section 8.4 N-B Neighborhood Business District.

The N-B Neighborhood Business District is intended for the use of those businesses and other uses which are properly located near residential areas and which cater to the everyday needs of a limited residential area. Pedestrian facilities in this district should connect residential areas to businesses. Businesses should have a limited impact on the surrounding residential neighborhoods.

A. The following uses are permitted.

1) All uses permitted by right in the R-20 and R-10 Districts with the exception of Animal Keeping and Manufactured Homes.
2) Bakery shop.
3) Barbershops, salons and spas.
4) Bed & breakfast establishments.
5) Dry cleaning.
6) Child care homes, see *Section 10.3*.
7) Community centers.
8) Convenience store (without gas).
9) Emergency response facilities.
10) Florist.
11) Government facilities.
12) Institutional facilities, such as libraries and other nonprofits.
13) Mobile Food Vendors, *see Section 10.7*
14) Museums and art galleries.
15) Offices, business, professional and public.
16) Parking lot, see *Article XIII*.
17) Pet grooming
18) Photography services, such as printing and developing.
19) Photography, dance, art and music studios.
20) Printing and copy services.
21) Radio, TV and computer repair.

B. Conditional uses.

The following uses are permitted when authorized by the Hildebran Board of Adjustment after said Board holds a public hearing, with the exception of Planned Unit Developments which require Town Council authorization.

1) All conditional uses in the R-20 and R-10 Districts with the exception of those permitted by right, manufactured home parks, and multi-family dwellings.
2) Animal hospitals, veterinary offices and clinics (no outside kennels).
3) Appliance repair (no front yard storage).
4) Banks and other financial establishments.
5) Drug store and pharmacies.
6) Funeral homes and mortuaries.
7) Laundromat.
8) Medical offices.
9) Mixed use buildings.
10) Radio and TV broadcasting.
11) Restaurants (without drive thru, drive-in or walk up).
12) Retail sales (less than 3,000 square feet gross floor area).

C. Minimum Lot Sizes and Maximum Lot Coverage.

1) Within the N-B Neighborhood Business District as shown on the Zoning Map, the minimum lot size is 8,000 square feet, and development activities can cover 50% of the total lot area.

2) For development activities located within the WS-4 Protected Area that require a Sedimentation/Erosion Control Plan, the maximum permissible impervious surface coverage, as defined in this Ordinance, shall not exceed 36% of the total lot area, **or 24% of the total lot area if the lot abuts a curb and gutter street system.**

D. Dimensional requirements. Within the N-B District as shown on the Zoning Map, the following, dimensional requirements shall be complied with:

1)	Minimum required lot width:	100 ft.
2)	Minimum required front yard setback:	35 ft.
3)	Minimum required side yard setback: Side yard when abutting a street:	12 ft. 15 ft.
4)	Minimum rear yard setback:	30 ft.

5) The maximum height of any building or other structure erected in the N-B district shall be thirty-five (35) feet, unless the total width or depth of each yard requirement be increased by one (1) foot for every two (2) feet, or fraction thereof, in height in excess of thirty-five (35) feet.

E. Location of accessory buildings. See *Article X, Section 10.2* of this Ordinance.

F. Off-street parking. Off-street parking shall be provided, as required in *Article XIII* of this Ordinance.

G. Buffers and screening. Buffers and screening shall be provided as required in *Article XII* of this Ordinance.

H. Building Design Guidelines. Development within the Interstate Overlay District (IOD) shall adhere to the requirements of *Section 8.8* of this Ordinance.

I. Signs: Signs shall adhere to the requirements of *Article X* of this Ordinance.

J. Sidewalks and Greenways. All Conditional Uses listed in Section 8.4 B, when abutting a corridor where the adopted Pedestrian Plan shows a proposed sidewalk and/or greenway, shall construct the sidewalk and/or greenway facilities according to the Pedestrian Plan. The facilities must meet the sidewalk and greenway landscaping and design criteria in Section 10.6.

The following uses may request exemption from Section 8.4 J. at the Board of Adjustment CUP hearing:
Cemeteries
Churches and other places of worship
Fire stations or similar emergency response facilities
Schools and colleges
Community centers, clubs and lodges, golf courses and public community swimming pools
Long-term care facilities
Bed and breakfast establishments

Section 8.5 CBD Central Business District.

The CBD Central Business District is intended to serve as the center of the town's financial business, professional, cultural, and governmental activities by providing a variety of supporting personal services and retail trades used by the entire town, which normally require a central location. It is intended that this district shall develop and be maintained as a tightly knit core activity. Pedestrian traffic is a key element to a successful downtown. Pedestrian facilities should provide a safe means to get to and from the various shops, businesses and parking areas.

A. The following uses are permitted.

1) All uses permitted by right in the R-20 and R-10 Districts with the exception of Animal Keeping and Manufactured Homes.
2) Automobile accessories sales.
3) Bakery shop.
4) Banks and other financial establishments.
5) Barbershops, salons and spas.
6) Bed & breakfast establishment.
7) Bus station.
8) Dry cleaning.
9) Child care homes, see *Section 10.3*.
10) Churches and other places of worship.
11) Clubs and lodges.
12) Community centers.
13) Convenience store (without gas).
14) Drug stores and pharmacies.
15) Emergency response facilities.
16) Florist.
17) Government facilities.
18) Institutional facilities, such as libraries and other nonprofits.
19) Medical offices.
20) Mixed Use Building
21) Mobile Food Vendor see *Section 10.7*.
22) Museums and art galleries.
23) Offices, business, professional and public.
24) Parking lot, see *Article XIII*.
25) Performing theaters.
26) Pet grooming.
27) Photography services.
28) Photography, dance, art and music studios.

29) Printing and copy services.
30) Radio, TV and computer repair.
31) Railroad station.
32) Restaurants (without drive thru, drive-in or walk up).
33) Retail sales (less than 3,000 square feet gross floor area).
34) Winery – prior to issuance of a Zoning Permit the following permits are required: State and Federal winery manufacturing permit, wine wholesale permit, unfortified wine on-premise permit

B. Conditional uses.

The following uses are permitted when authorized by the Hildebran Board of Adjustment after said Board holds a public hearing, with the exception of Planned Unit Developments which require Town Council authorization.

1) Child care facilities, see *Section 10.3*.
2) Cemeteries.
3) Commercial indoor recreation establishments.
4) Group project commercial, see *Section 10.5*.
5) Hospitals.
6) Hotels, inns and motels.
7) Mini-storage
8) Movie theaters.
9) Multi-family dwellings.
10) Planned unit developments, see *Section 10.4*.
11) Public community swimming pools.
12) Radio and TV broadcasting.
13) Retail sales and shopping centers (3,000-10,000 square feet gross floor area).
14) Schools and colleges.
15) Long-term care facilities.

C. Minimum Lot Sizes and Maximum Lot Coverage.

1) Within the CBD Central Business District, as shown on the Zoning Map, there is no minimum lot size and development activities can cover 100% of the total lot area.

2) For development activities located within the WS-4 Protected Area that require a Sedimentation/Erosion Control Plan, the maximum permissible impervious surface coverage, as defined in this Ordinance, shall not exceed 36% of the total lot area, **or 24% of the total lot area if the lot abuts a curb and gutter street system.**

D. Dimensional requirements. Within the CBD Central Business District, as shown on the Zoning Map, the following dimensional requirements shall be complied with:

1) There is no minimum lot width. Minimum frontage on a public street shall be thirty-five (35) feet.

2) No minimum front yard setback required.

3) No minimum side yard setback required. The minimum side yard setbacks for lots abutting a residential district shall be at least fifteen (15) feet.

4) No minimum rear yard setback required. The minimum rear yard setbacks for lots abutting a residential district shall be at least fifteen (15) feet.

5) Buildings used wholly for residential purposes shall comply with the dimensional requirements of the R-10 Residential District; buildings used wholly or in part for permitted nonresidential uses shall meet the dimensional requirements of the CBD.

6) The maximum height of any building or other structure erected in the CBD district shall be fifty (50) feet, unless the total width or depth of each yard requirement be increased by one (1) foot for every two (2) feet, or fraction thereof, in height in excess of fifty (50) feet.

E. Location of accessory buildings, Refer to *Article X, Section 10.2* of this Ordinance

F. Off-street parking. Off-street parking and landscaping shall be provided, as required in *Article XIII* of this Ordinance.

G. Buffers and screening. Buffers and screening shall be provided as required in *Article XII* of this Ordinance.

H. Building Design Guidelines.

1) Building facades and walls facing public streets shall be clad with decorative split block masonry, brick, stone, wood shingle, wood lapped siding, vertical board and batten, glass, or stucco. Similar alternative building materials are permissible subject to approval by the Zoning Administrator.

2) The use of vinyl, unpainted cinder-block walls, or metal paneling shall be prohibited except when used on exterior walls not facing public streets.

3) Accessory structures shall be of consistent design with the primary structure and be constructed of like or architecturally compatible materials.

4) Where existing single family dwellings are constructed, prior to the effective date of this Ordinance, of prohibited materials; additions, expansions, and accessory structures are permitted to be constructed of the same material as the existing single family dwelling.

I. Signs. Signs shall adhere to the requirements of *Article X* of this Ordinance.

J. Sidewalks and Greenways. All multi-family and commercial developments, when abutting a corridor where the adopted Pedestrian Plan shows a proposed sidewalk and/or greenway, shall construct the sidewalk and/or greenway facilities according to the Pedestrian Plan. The facilities must meet the sidewalk and greenway landscaping and design criteria in Section 10.6.

Section 8.6 H-B Highway Business District.

The H-B Highway Business Districts are located on major thoroughfares and collector streets in the Hildebran Planning Area. They are intended to provide for offices, personal services, and the retailing of goods for the community. Because these commercial uses are subject to public view and are important to the economy of the community, they should have ample parking, controlled traffic movement and suitable landscaping. Because the types of uses in this district usually involve heavy vehicular traffic, it is critical that pedestrians in this district are provided with safe corridors and crossings.

A. The following uses are permitted.

1) Accessory uses & buildings, see *Section 10.2*.
2) Agriculture & horticulture
3) Animal hospitals veterinary offices and clinics (no outside kennels).
4) Appliance repair (no front yard storage).
5) Auto, boat, recreation vehicle and motorcycles sales.
6) Automobile accessories sales.
7) Automobile body shops.
8) Automobile service and repair.
9) Bakery shop.
10) Banks and other financial institutions.
11) Barbershops, salons and spas.
12) Bed & breakfast establishments.
13) Boat service and repair.
14) Bus station.
15) Car wash.
16) Child care facilities, see *Section 10.3*.
17) Churches and other places of worship.
18) Clubs and lodges.
19) Commercial indoor recreation establishment.
20) Community centers
21) Convenience store (with gas) or gas station.
22) Convenience store (without gas).
23) Drug stores and pharmacies.
24) Dry cleaning.
25) Emergency response facilities.
26) Family care homes.
27) Florist.
28) Funeral homes and mortuaries.
29) Government facilities.
30) Hatcheries.
31) Hospitals.
32) Institutional facilities, such as libraries and other nonprofits.
33) Laundromat.
34) Medical offices.
35) Mobile Food Vendor, *see Section 10.7*
36) Museums and art galleries.
37) Offices, business, professional and public.
38) Parking lot, see *Article XIII*.
39) Performing theaters.
40) Pet grooming.
41) Photography services.
42) Photography, dance, art and music studios.
43) Printing and copy services.
44) Radio, TV and computer repair.
45) Railroad station.
46) Restaurants (with drive thru, drive-in or walk up).
47) Restaurants (without drive thru, drive-in or walk up).
48) Retail sales (less than 3,000 square feet gross floor area).

49) Retail sales and shopping centers (3,000-10,000 square feet gross floor area).
50) Winery – prior to issuance of a Zoning Permit the following permits are required: State and Federal winery manufacturing permit, wine wholesale permit, unfortified wine on-premise permit

B. Conditional uses. The following uses are permitted when authorized by the Hildebran Board of Adjustment after said Board holds a public hearing, with the exception of Planned Unit Developments which require Town Council approval.

1) Animal hospitals, veterinary offices and clinics (with outside kennels).
2) Animal pound or shelter.
3) Bakery (production and distribution).
4) Cemeteries.
5) Commercial outdoor recreation establishments.
6) Commercial laundry facilities.
7) Electronic Gaming Establishments
   a) Limited to a maximum of twenty (20) computers, machines or stations.
   b) Shall not be located closer than five hundred (500) feet to the nearest: residential zone, house of worship, child care facility, school or park
8) Golf courses.
9) Group projects commercial, see *Section 10.5*.
10) Heavy equipment service and repair.
11) Heavy equipment sales and rental.
12) Hotels, inns and motels.
13) Kennels (commercial).
14) Manufacturing (Building reuse)
15) Manufacturing (new buildings less than 25,000 square feet gross floor area)
16) Mini-storage.
17) Movies theaters.
18) Planned unit developments, see *Section 10.4*.
19) Public community swimming pools.
20) Radio and TV broadcasting.
21) Retail sales and shopping centers (greater than 10,000 square feet gross floor area).
22) Schools and colleges.
23) Sexual Oriented establishment subject to the following requirements, as with other conditional uses the Board of Adjustment may place additional conditions on the use.
   a) No adult use business may be located closer than 1000' to the nearest: Residential Zone, House of worship, Child Care Facility, School, Public Park, Public Library, Cemetery, Motion Picture Theater regularly showing G or PG rated movies to the public, Any other area where large numbers of minors regularly travel or congregate
   b) All windows, doors, openings, entries, etc. for all adult uses shall be so located, covered, screened, or otherwise treated so that views into the interior of the establishment are not possible from any public or semi-public area, street, or way.
   c) The lot containing the adult use shall not be located within a 1000' radius of another lot containing an adult use.
   d) All buildings used for permitted adult uses must be designed in such a way as to prevent the escape of noise from the premises.
22) Long-term care facilities.
23) Towing service.

24) Warehousing and distribution (building reuse)
25) Warehousing and distribution (new buildings 25,000 square feet gross floor area or less).
26) Wholesale establishments (building reuse)
27) Wholesale establishments (new buildings 25,000 square feet gross floor area or less).

C. Minimum Lot Sizes and Maximum Lot Coverage.

1) Within the H-B Highway Business District, as shown on the Zoning Map, there is no minimum lot size and development activities can cover up-to 70% of the total lot area.

2) For development activities located within the WS-4 Protected Area that require a Sedimentation/Erosion Control Plan, the maximum permissible impervious surface coverage, as defined in this Ordinance, shall not exceed 36% of the total lot area, **or 24% of the total lot area if the lot abuts a curb and gutter street system.**

D. Dimensional requirements. Within the H-B Highway District, as shown on the Zoning Map, the following dimensional requirements shall be complied with:

1)	Minimum required lot width:	One hundred (100) feet.
2)	Minimum required front yard setback:	Fifty (50) feet.
3)	Minimum required side yard setback: Side yard when abutting street:	Fifteen (15) feet. Twenty (20) feet.
4)	Minimum required rear yard setback:	Thirty (30) feet.

5) The maximum height of any building or other structure erected in the H-B district shall be fifty (50) feet, unless the total width or depth of each yard requirement be increased by one (1) foot for every two (2) feet, or fraction thereof, in height in excess of fifty (50) feet.

E. Location of accessory buildings. Refer to *Article X, Section 10.2* of this Ordinance

F. Off-street parking. Off-street parking and landscaping shall be provided, as required in *Article XIII* of this Ordinance.

G. Buffers and screening. Buffers and screening shall be provided as required in *Article XII* of this Ordinance.

H. Building Design Guidelines. Development within the Interstate Overlay District (IOD) shall adhere to the requirements of *Section 8.8* of this Ordinance.

I. Signs. Signs shall adhere to the requirements of *Article X* of this Ordinance.

J. Sidewalks and Greenways. All multi-family, commercial, manufacturing and warehousing developments, when abutting a corridor where the adopted Pedestrian Plan shows a proposed sidewalk and/or greenway, shall construct the sidewalk and/or greenway facilities according to the Pedestrian Plan. The facilities must meet the sidewalk and greenway landscaping and design criteria in Section 10.6.

Section 8.7 G-M General-Manufacturing.

This district provides a place for the location of industrial and other uses which would be inimical or incompatible with general business areas. It is intended to permit in this district, any use which is not inherently obnoxious to urban areas because of noise, odor, smoke, light, dust or the use of dangerous materials.

A. The following uses are permitted.

1) All uses permitted in the H-B District with the exception of Bed & breakfast establishments and Child care facilities.
2) Bakery (production and distribution).
3) Commercial laundry facilities.
4) Heavy equipment sales and rental.
5) Manufacturing (Building reuse)
6) Manufacturing.
7) Material and equipment storage.
8) Mobile Food Vendor, *see Section 10.7*
9) Recycling establishment.
10) Solar Energy System
    a) Solar power collection and electrical generation structures shall not exceed 25ft in height
    b) Solar power collection and electrical generation structures shall be setback at least 30 feet from property lines abutting a public street and 20 feet from all other property lines.
    c) All equipment shall be located and situated so glare is not to interfere with traffic on public streets and highways or the reasonable use of residential property.
    d) Roof mounted systems shall not extend more than 10ft from top of roof.
    e) In the event a solar farm ceases operation as an ongoing business entity, the site must be restored to its former state of development. A plan for decommissioning shall be filed with the Town; a fine up to $50.00 per day may be assessed if a plan is not filed with the Town and a site is no longer in service. A fine of up to $50.00 per day may be assessed each day that the site is not restored beyond the approved deadline for removal.
11) Warehousing and distribution (building reuse).
12) Warehousing and distribution.
13) Wholesale establishments (building reuse).
14) Wholesale establishments.
15) Winery – prior to issuance of a Zoning Permit the following permits are required: State and Federal winery manufacturing permit, wine wholesale permit, unfortified wine on-premise permit

B. Conditional uses.

The following conditional uses are permitted when authorized by the Hildebran Board of Adjustment after said Board holds a public hearing, with the exception of Planned Unit Developments which require Town Council authorization.

1) Manufacturing uses not otherwise named herein which come within the spirit and intent of this Section.
2) All conditional uses in H-B Districts with the exception of those permitted by right and public community swimming pools, sexual oriented establishments and group projects commercial.
3) Concrete or paving materials plant.

4) Group project industrial see *Section 10.5*.

C. Minimum Lot Sizes and Maximum Lot Coverage.

1) Within the G-M General manufacturing District, as shown on the Zoning Map, the minimum lot size shall be one (1) acre, and development activities can cover up to 70% of the total lot area.

2) For development activities located within the WS-4 Protected Area that require a Sedimentation/Erosion Control Plan, the maximum permissible impervious surface coverage, as defined in this Ordinance, shall not exceed 36% of the total lot area, **or 24% of the total lot area if the lot abuts a curb and gutter street system.**

D. Dimensional requirements. Within the G-M manufacturing district(s) as shown on the Zoning Map, the following dimensional requirements shall be complied with:

1) Minimum required mean lot width: Two-hundred (200) feet.

2) Minimum required front yard setback: Fifty (50) feet.

3) Minimum required rear yard setback: Thirty (30) feet

4) Minimum required side yard setback: Twenty (20) feet
Side yard when abutting street: Twenty-five (25) feet

5) The maximum height of any building or other structure erected in the G-M district shall be sixty-five (65) feet, unless the total width or depth of each yard requirement be increased by one (1) foot for every two (2) feet, or fraction thereof, in height in excess of sixty (65) feet.

E. Location of accessory buildings. Refer to *Article X, Section 10.2* of this Ordinance

F. Off-street parking. Off-street parking and landscaping shall be provided, as required in *Article XIII* of this Ordinance.

G. Buffers and screening. Buffers and screening shall be provided as required in *Article XII* of this Ordinance.

H. Building Design Guidelines. Development within the Interstate Overlay District (IOD) shall adhere to the requirements of *Section 8.8* of this Ordinance.

I. Signs. Signs shall adhere to the requirements in *Article X* of this Ordinance.

J. Sidewalks and Greenways. All multi-family, commercial, manufacturing and warehousing developments, when abutting a corridor where the adopted Pedestrian Plan shows a proposed sidewalk and/or greenway, shall construct the sidewalk and/or greenway facilities according to the Pedestrian Plan. The facilities must meet the sidewalk and greenway landscaping and design criteria in Section 10.6.

Section 8.8 IOD Interstate Overlay District.

The purpose of this district is to promote safety, traffic efficiency, aesthetics, economic development, and compatible residential uses for the properties surrounding the interchanges on Interstate 40 and other primary roads within this district. The intent of this section is to promote economic development and increased quality of life through distinctive and innovative design, access management, protection of aesthetic qualities, and reducing the impact on the community.

A. This section applies to the following development activities within the district.

1) Development of vacant tracts that occurs after the effective date of this Ordinance.
2) Any change of use to a non-residential use, mixed-use, or multi-family use of an existing property or structure.
3) Any extension or enlargement to an existing non-residential, mixed-use, or multi-family structure or use.
4) Major Subdivisions as defined by the Town of Hildebran Subdivision Regulations.
5) Planned Unit Developments.
6) Group Commercial Developments.
7) Group Industrial Developments

B. This following uses are exempt from requirements of this Section.

1) Existing single family dwellings, manufactured homes and duplexes that are used for residential purposes.
2) Additions and accessory uses to uses listed in *Section 8.8 B. 1)* above, subject to the requirements of the underlying zoning district.
3) Existing single family dwellings and duplexes that are partially or fully destroyed may be repaired or rebuilt as a matter of right and consistent with *Section 9.4* of this Ordinance if such use is non-conforming.

C. Conformity with underlying zoning district.

All lot size, lot coverage, dimensional requirements, and other regulations shall be consistent with the underlying zoning district. Permitted and conditional uses within the IOD shall be consistent with the underlying zoning district except as prohibited below:

1) Sexual oriented establishment
2) Asphalt and concrete plants
3) Automobile parts recycling facilities
4) Junkyards
5) Flea markets
6) Mines and quarries
7) Scrap yards
8) Landfills (sanitary)
9) Land clearing and inert debris landfills
10) Mobile home parks

D. Building Design Standards.

Development within the IOD shall meet the following design standards:

1) Manufactured, mobile and metal units are prohibited except when permitted as a temporary use for office management and storage during the construction phase of a development.
2) On exteriors facing NC DOT maintained roads, building materials should consist of decorative split-block masonry, brick, stone, wood shingle, wood lapped siding, vertical board and batten, glass, or rough textured stucco. Similar alternative building materials are permitted subject to approval by the Zoning Administrator or Town Planner.
3) The use of smooth vinyl, unpainted cinder block walls, or metal paneling is prohibited except when used on exteriors not facing NC DOT maintained roads.
4) Accessory structures and signage shall be of consistent design with the primary structure and be constructed of like or architecturally compatible materials.
5) A primary entrance shall be designed for the pedestrian and be oriented towards new interior streets or access drives. Additional entrances are permitted to be oriented towards side and rear parking areas or on-street parking areas when permitted.
6) Buildings shall be oriented to maximize the convenience of pedestrian access and maintain an aesthetic, quality design. Development patterns shall avoid the excessive linear rooflines of a strip plaza.
7) Flat roofs or roof pitches less than 3:12 shall include cornice trim along the tops of walls, roof line offsets, and/or the use of a parapet wall to avoid the appearance of strip development and create a prominent edge and architectural interest when viewed against the sky.
8) In order to ensure that buildings do not display blank, unattractive walls to adjacent streets and residential areas, walls facing public or private street right-of-ways and residential uses and zoning shall comply with the following:
    a) Commercial, office, and institutional uses shall not have blank walls greater than thirty (30) feet in length.
    b) Industrial uses shall not have blank walls greater than sixty (60) feet in length
    c) The use of masonry, belt courses of different color and texture, projecting cornice, projecting canopy, windows and doors, decorative tile work, trellis containing planting, medallions, lighting fixtures, columns, artwork, building wall offsets such as projections, recesses, and changes in floor level, or other architectural elements as approved by the Zoning Administrator or Town Planner that meet the intent of this Ordinance may be incorporated into these walls.
9) The use of decorative elements such as fountains, outdoor seating, benches, works of art and statues are encouraged in pedestrian and open space areas.

E. Access Management.

Access management is a process for providing access to the development of land, while preserving traffic flow on surrounding roadways in terms of safety, capacity, and speed. This is achieved through managing location, design and operation of driveways, median openings, and street connections to a roadway. Additionally, access management involves the use of auxiliary lanes, such as turn lanes or bypass lanes, to remove turning vehicles from through-traffic movement.

1) Traffic Impact Study Required. A Traffic Impact Study (TIS) shall be prepared and submitted by the developer of projects when a TIS is recommended by the NC DOT District Engineer or when required as part of a conditional use permit as necessary to protect the functional integrity of the affected roads or highways. The traffic impact study shall be prepared by a qualified transportation or traffic engineer or certified planner and shall include the following information:

   a) Existing traffic conditions within the study area boundary, as determined by the NC DOT;
   b) Traffic volumes generated by the existing and proposed development on the project area, including the morning peak, afternoon or evening peak, and average annual traffic levels;
   c) The distribution of existing and proposed trips through the street network;
   d) Analysis of capabilities of intersections and access points located within the study area boundary;
   e) Recommendations for improvements designed to mitigate traffic impacts of the proposed development and to enhance pedestrian access to the development from the public right-of-way, and;
   f) Other pertinent information including but not limited to accidents, noise, and impacts on air quality and other natural resources.

2) Location of Access Points. On existing or proposed arterials and major collectors, driveways shall conform to the following requirements. When conflict exists between NC DOT policy and these regulations, the stricter of the two standards applies.

   a) Road frontage is less than 500 feet – one (1) driveway allowed, a minimum of 400 feet of spacing is required between driveways
   b) Road frontage is 501 to 999 feet – two (2) driveways allowed, a minimum of 400 feet of spacing is required between driveways
   c) Road frontage is more than 1,000 feet – three (3) driveways allowed, a minimum of 400 feet of spacing is required between driveways

3) Distance from State Road Intersections. The minimum distance between a driveway and an existing State Road intersection on an existing or proposed arterial or major collector shall be five-hundred (500) feet. On local streets, the minimum distance between a driveway and an existing State Road intersection shall be two-hundred (200) feet. No commercial driveways or road rights-of-ways shall be placed within five-hundred (500) feet of an I-40 interchange rights-of-way. When conflict exists between NC DOT policy and these regulations, the stricter of the two standards applies.

4) Off-Site Traffic Improvements. Transition tapers and deceleration lanes shall be required for all IOD development projects where a site access study requires or a recommendation from NC DOT indicates that such improvements are necessary. The costs of such improvements shall be the responsibility of the owner or the developer of the property.

5) Shared Access. Mutual shared access agreements shall be required between adjacent property owners with frontage on existing or proposed arterials and major collectors when site plans are submitted concurrently. When access is to be shared, easements, liability arrangements, and a maintenance agreement must be submitted to the local government prior to occupancy. Where no mutual shared access is feasible due to

topographical or other physical constraints, access shall be in conformance with *Section 8.8 E. 2)* of this Ordinance or the NC DOT policy, whichever is stricter.

6) Connected Interior Driveways and Parking.

a) Interior driveways and parking areas shall be designed to provide safe and efficient circulation, in accordance with commonly accepted traffic engineering practices and subject to the review and approval of the site plan.
b) Adjacent commercial developments with access to existing or proposed arterials and major collectors shall connect interior parking and driveways. Where adjacent commercial property is vacant, sufficient provisions to connect to the properties shall be submitted.
c) Parcels with frontage on existing or proposed arterials and major collectors shall also be required to reserve sufficient access to any adjacent properties with poor or non-existent access. Such reserved areas for future roads shall be shown on the site plan at a location where, according to sound engineering practices, actual construction of the road would be practicable.

7) Channelization. Channelization, or the separation of conflicting traffic movements into well defined paths of travel by traffic islands or significant pavement markings, shall be considered when a site access study is required. All Planned Unit Developments, group commercial projects, and group industrial projects shall provide for the installation of a median-type entranceway when located on proposed or existing arterials and major collectors.

8) Signalization. Signalizations may be installed only after all other traffic improvements have been explored. Although traffic signals may reduce the frequency of turning conflicts, signals significantly disrupt efficient traffic flow.

9) Street Design.

a) All streets shall be designed, constructed, and maintained to NC DOT road standards. Streets may be designated as either public or private.
b) A maintenance agreement is required for all private and public roads until such time the road(s) is accepted for public maintenance.
c) NC DOT road plan approval is required prior to the issuance of a zoning permit.
d) For multi-phase developments, road, parking, and access management improvements for initial phases must be completed prior to approval to begin construction on subsequent phases.

F. Pedestrian Design.

1) To provide a safe, comfortable, and convenient environment for visitors and employees, developments shall be designed in a manner to provide a unified and well organized arrangement of buildings, parking areas, pedestrian and landscaped common areas to permit the pedestrian to conduct business with a minimum of conflict with vehicles.
2) All planned unit developments, group commercial projects, and group industrial projects shall include provisions for pedestrian scale amenities such as benches, picnic tables, courtyards, plazas, water attractions, trash receptacles, bicycle parking, and other such elements that promote an efficient and functional pedestrian environment and maintain a

sense of place.

3) All planned unit developments, multi-family developments, commercial, and industrial projects when abutting a corridor where the adopted Pedestrian Plan shows a proposed sidewalk and/or greenway, shall construct the sidewalk and/or greenway facilities according to Section 10.4 and 10.5. The facilities must meet the sidewalk and greenway landscaping and design criteria in Section 10.6.
4) Loading zones and maintenance areas shall be located and arranged to prevent the interference with pedestrian movement within the development.
5) Linkages for pedestrian movement, such as sidewalks, bikeways, and walking paths, shall be provided between buildings or building clusters within a development and should connect adjacent uses when feasible.
6) Linkages for pedestrian movement, such as sidewalks, bikeways, and walking paths, shall connect buildings or building clusters in a development to existing sidewalk facilities and/or future sidewalk and greenway facilities shown in the adopted Pedestrian Plan.
7) Pedestrian ways shall be located and designed in a manner that reduces congestion and hazards with vehicular traffic.

G. Location of accessory buildings. Refer to *Article X, Section 10.2* of this Ordinance.

H. Signs. Signs shall adhere to the requirements of *Article XI* of this Ordinance.

H. Parking. When feasible, all parking areas should be designed to allow linkages to adjacent developments to promote efficient traffic flow and encourage shared parking areas to reduce the use of land for parking and development costs and impacts associated with impervious surfaces. Internal areas between buildings in a development should incorporate shared parking areas. Refer to *Article XIII* for additional Parking and Landscaping requirements.

I. Landscaping. The following landscaping is required in addition to those in *Article XIII* of this Ordinance.

1) Medians, when required, shall be grassed and landscaped. Landscaping and plantings shall not affect visibility within site triangles and entrance drives.
2) For all developments with multiple tenants, parcels, or buildings, shade trees shall be planted along both sides of all interior streets, excluding those not typically used by the public. Typical plantings must include a minimum of fourteen (14) shade trees per 1,000 linear feet which are at least eight (8) feet tall at planting and will be a minimum of twenty (20) feet tall at maturation.

J. Buffers. The use of buffers and screening in the design of developments in the IOD is required to enhance the natural beauty by creating the appearance that manmade development is situated within a natural setting. Additionally, these requirements are designed to reduce the impact of development on neighboring uses and residential communities existing and developed within the IOD. As such, development should occur in a manner that maintains and enhances the pre-existing, surrounding natural landscape and appearance along the corridor. The following buffers are required in addition to those in *Article XII* of this Ordinance. When conflict exists the stricter of the two shall apply.

1) Stormwater retention areas, kept in good aesthetic and functioning condition, may be placed in buffer areas except for the “Interstate 40 (I-40) Buffer” as described in *Article XII*.

2) When natural bodies of water are on site, a minimum thirty (30) foot natural vegetative buffer shall be maintained.
3) Properties located in water supply watershed are subject to the vegetative buffer requirements in *Article XV* of the Watershed Protection Ordinance.
4) When a development is proposed adjacent to an Interstate 40 interchange that has not been improved to current NC DOT standards, a building setback of two-hundred (200) feet shall apply until a study of the interchange is conducted to determine necessary space required for such improvements. Upon completion of a study of the deficient interchange, the building setback line shall be set from the future right-of-way line. This requirement is consistent with the findings of intersection deficiencies in the Burke County Thoroughfare Plan
5) All loading, shipping, storage and maintenance areas shall be heavily landscaped with mature trees, at least six (6) feet tall, or other screening of at least equal height, while maintaining sufficient space for ingress and egress of vehicles. Mechanical areas on the tops of buildings shall be screened in a manner consistent with the building design or compatible in appearance with roofing materials.

K. Public Utility Requirements.

1) For multi-family and non-residential development and when technically applicable, the developer will connect to a public water and/or sewer system if located within 1,000 feet of the property to be developed and such lines can be extended within public road rights-of-way and property easements.
2) For single-family and duplexes and when technically applicable, the developer will connect to a public water and/or sewer system if adjacent to the property to be developed.
3) Review and approval from NC DENR is required for both new systems and extensions to existing systems for both public water and sewer utilities. Proof of plan approval is required prior to issuance of a zoning permit, but is not necessary for site plan approval.
4) When the proposed water or sewer system is to be connected to an existing system, approval of the project must also be obtained from the owner of the existing system prior to construction, and the system shall be constructed according to the specifications and standards of the existing system. A letter of approval from the owner of the existing system shall also be submitted prior to issuance of a zoning permit.
5) Where a development is to be constructed in phases, the infrastructure and improvements must be in place on the initial phase before subsequent phases are developed.
6) Site Plan Requirements for Utilities
    a) Proposed utility easements, proposed line location, line capacity, and line size shall be shown on all applicable site plans;
    b) Location of existing public utilities on or adjacent to the site and existing lighting when applicable, and;
    c) Proposed lighting plans showing location, type of lighting, and area that will be lighted.
7) Utilities shall be located within public road rights-of-ways or within utility easements. Utility easements shall not be located laterally within the interstate buffer laterally, but may cross vertically when necessary.
8) All on-site utilities should be located underground unless technical restrictions exist for not doing so. When utilities must be located above ground, provisions shall be made to significantly reduce the visual impact of the utility from public road rights-of-way and pedestrian areas.

9) Encroachment Agreement: The developer should obtain a right-of-way encroachment agreement from NC DOT when any utility lines are constructed or expanded in the State's rights-of-way.

L. Preservation of Cultural and Historical Sites.

In order to promote tourism and economic development through the preservation of Burke County's unique cultural and historical heritage, developments within the IOD shall meet the following requirements:

1) All cultural, historical, or naturally significant sites shall be identified on the development site plan.
2) Developments shall be designed to preserve and minimize the impact of development on the historic, cultural, and naturally significant sites when feasible.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1 Application.

No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered except in conformity with the regulations herein specified for the district in which it is located.

Section 9.2 Reduction of Lot and Yard Areas Prohibited.

No yard or lot existing at the time of passage of this Ordinance shall be reduced in size or area below the minimum requirements set forth herein, except for street widening. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.

Section 9.3 Relationship of Building to Lot.

Every building hereafter erected, moved or structurally altered shall be located on a lot of record and in no case shall there be more than one principal building and its customary accessory buildings on any lot of record, except in the case of a specially designed complex of institutional buildings, cluster housing, multi-family residential areas, planned unit developments, and group projects commercial and industrial in an appropriate zoning district.

Section 9.4 Nonconforming Uses.

After the effective date of this Ordinance, existing structures, or the uses of land or structures which would be prohibited under the regulations for the district in which it is located (if they existed on the adoption date of this Ordinance), shall be considered as nonconforming. Nonconforming structures or uses (as defined in *Section 6.2* of this Ordinance) may be continued provided they conform to the following provisions:

A. Continuing Nonconforming Uses of Land.

1) Extensions of Use. Nonconforming uses or land shall not hereafter be enlarged or extended in any way.

2) Change of Use. Any nonconforming uses of land may be changed to a conforming use, or with the approval of the Board of Adjustment, to any use more in character with the uses permitted in the district in question.

3) Cessation of Use. When nonconforming uses of land are discontinued for a continuous period of one hundred eighty (180) days the property involved may thereafter be used only for conforming purposes. All nonconforming uses of land involving minor structures such as junkyards, signs, or any nonconforming uses similar to those enumerated, shall be eliminated within two years from the date of adoption of this Ordinance. A record of these nonconforming uses shall be compiled by the Planning Board and kept on permanent file in the Town Hall. Involved property owners shall be notified of this provision within six (6) months of the adoption of this Ordinance.

B. Continuing the Use of Nonconforming Buildings.

1) Extensions of Use. Nonconforming buildings and nonconforming uses of buildings shall not hereafter be enlarged. Additionally, no nonconforming structure or use may be enlarged or altered in any way which increases its dimensional deficiencies.

2) Change of Use. The lawful use of a building existing at the time of the adoption of this Ordinance may be continued although such use does not conform with the provisions of this Ordinance, and such building may be reconstructed or structurally altered and nonconforming use therein changed subject to the following regulations:

a) The order of classification of uses from highest to lowest for the purpose of this section shall be as follows: single family residential uses, multi-family residential uses, commercial uses and industrial uses as permitted by this Ordinance.

b) A nonconforming use may be changed to a use of higher classification but not to a use of lower classification, nor shall a nonconforming use be changed to another use of the same classification unless the new use shall be deemed by the Board of Adjustment, after public notice and hearing, to be less harmful to the surrounding neighborhood, from the standpoint of the purposes of this Ordinance, than the existing nonconforming use.

c) A nonconforming commercial or industrial use may not be extended, but the extension of a use to any portion of a building, which portion is at the time of the adoption of this Ordinance primarily or designed for such nonconforming use, shall not be deemed to be an extension of a nonconforming use.

d) Nor shall the building be enlarged, unless the use therein is changed to a conforming use, provided however, that a nonconforming building damaged by fire**,** explosion, tornado, earthquake, or similar uncontrollable cause to the extent of not more than sixty percent (60%) of its assessed value at the time of the damage may be repaired or rebuilt within one year of the date of such damage, but not thereafter. Such determination shall be made by the Board of Adjustment.

e) Existing single-family residential structures in business or industrial districts may be enlarged, extended or structurally altered, provided that no additional dwelling units result there from. However, any enlargements, extensions or alterations shall comply with the dimensional requirements set forth by this Ordinance.

3) Cessation of Use. If active operations are discontinued for a continuous period of one hundred eighty (180) days with respect to a nonconforming use of a building, such nonconforming use shall thereafter be occupied and used for a conforming use.

C. Continuing the Nonconforming Use of Manufactured Homes and Manufactured Home Parks.

1) Extension of Use. Nonconforming manufactured homes and manufactured home parks existing at the time of the adoption of this Ordinance shall be allowed to continue to their present existence. Existing mobile home parks shall not hereafter be enlarged or extended in any way, unless the park is rezoned as Manufactured Home Overlay (MHO) in which case all enlargements or extensions must comply with *Section 8.3* of this

Ordinance.

2) Replacement of Manufactured Homes in Existing Manufactured Home Parks. Manufactured home parks that are operating as existing parks as of the effective date of this Ordinance may continue to operate. The replacement of nonconforming manufactured homes in manufactured home parks is allowed and must meet the criteria of *Section 8.3* of this Ordinance.

Section 9.5 Interpretation of District Regulations.

A. Uses not designated as permitted by right or as a conditional use approved by the Board of Adjustment shall be prohibited. Additional uses in character with the district may be added to the Ordinance by amendment.

B. The regulations set forth by this Ordinance shall be minimum regulations. If the district requirements set forth in this Ordinance are at a variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the more restrictive or higher standard shall govern.

C. Unless the restrictions established by covenants for the land are prohibited by or are contrary to the provisions of this Ordinance, nothing herein contained shall be construed to render such covenants inoperative.

Section 9.6 Lot of Record.

Where the owner of a lot of official record in any residential district at the time of the adoption of this Ordinance or his successor in title does not own sufficient contiguous land to enable him to conform to the minimum lot size requirements of this Ordinance, such a lot may be used as a residential building site provided, however, that the requirements of the district are complied with or a variance is obtained from the Board of Adjustment.

Notwithstanding the foregoing, whenever two or more adjoining vacant lots of record are in single ownership at any time after the adoption of this Ordinance and such lots individually have less area or width than the minimum requirements of the district in which such lots are located, such lots shall be considered as a single lot or several lots which meet the minimum requirements of this Ordinance for district in which such lots are located.

A. Every lot to be built upon shall abut by at least 37.5 feet a public street or other public way and no dwelling shall be placed or built upon a lot which does not abut upon a public street or other public way by the same distance, with the exception of *Section 9.7* below.

Section 9.7 Provisions for landlocked lots.

Existing landlocked lots within the residential zoning districts, defined as a lot that does not abut a public street and therefore does not meet the requirements that the lot have a minimum frontage on a public street of thirty seven and one-half (37.5) feet, may be developed for one single family dwelling unit if the lot otherwise meets the zoning requirements of the zone in which the lot is located provided that the lot has a recorded easement of ingress and egress to and from a public street which is appurtenant to the lot and which meets the following requirements:

A. A private easement with a minimum continuous width of twenty (20) feet is acquired from intervening property owners;

B. The recorded documents creating the easement shall specify that the public service, utility and emergency personnel and vehicles shall have the freedom of ingress and egress from the landlocked property;

C. The recorded documents shall also specify that public utilities (water, sewer, electricity, telephone, cable, etc.) may be located within the easement;

D. The recorded documents shall include a maintenance agreement specifying the party responsible for maintaining the easement and its traveled surface;

E. The easement must have an all weather surface of gravel, concrete or asphalt with a minimum continuous width of ten (10) feet to ensure access of public service, utility, and emergency personnel and vehicles;

F. Easements existing prior to the adoption of this Ordinance with widths less than 20 feet may be used to access landlocked lots provided that such easements abut a public street or way.

G. Subdivision of landlocked parcels will require the provision of a publicly dedicated street constructed to the Town Standards and must meet all the requirements of the Town's Subdivision Regulations.

Section 9.8 Front Yard for Dwellings.

The front yard requirements of this Ordinance for dwellings shall not apply to any lot where the average setback of the neighboring lots is less than the minimum required front yard depth. Neighboring lots are those located wholly or in part within 100 feet, on the same side of the street, in the same block, and zoning district as the proposed dwelling. In such case, the setback on such lots may be less than the required setback but not less than the average of the existing setbacks on the aforementioned lots, or a distance of ten (10) feet from the street right-of-way, whichever is greater.

Section 9.9 Height Limitation.

The height limitations of this Ordinance shall not apply to church spires, belfries, cupolas, and domes not intended for human occupancy; monuments, water towers, observation towers, electrical transmission towers, chimneys, smokestacks, conveyors, flagpoles, telecommunication towers, masts, aerials and similar structures, except as otherwise noted in the vicinity of airports. See *Article XIV* for regulations on telecommunication towers.

Section 9.10 Visibility of Intersections.

On a corner lot in any residential district, no planting, structure, sign, fence, wall or obstruction to vision more than three (3) feet in height measured from the center line of the street or road shall be placed or maintained within the triangular area formed by the intersecting street or road right-of-way lines and a straight line connecting points on said street or road right-of-way line each of which is thirty-five (35) feet distance from the point of intersection.

ARTICLE X

SPECIAL REGULATIONS

Section 10.1 Home Occupations.

A home occupation is permitted accessory to any dwelling unit (except manufactured housing) in accordance with the following requirements:

A. The home occupation must be clearly incidental to the residential use of the dwelling and must not change the essential residential character of the dwelling.

B. A home occupation conducted in an accessory structure shall be housed only in a garage or other accessory structure typically associated with a dwelling.

C. The use shall employ no more than one person who is not a resident of the dwelling.

D. A home occupation housed within the dwelling shall occupy no more than twenty-five (25%) percent of the total floor area of the dwelling.

E. Signage shall be provided according to *Article XI*.

F. There shall be no outdoor storage or visible evidence of equipment or materials used in the home occupation, except equipment or materials of a type and quantity that could reasonably be associated with the principal residential use.

G. Operation of the home occupation shall not be visible from any dwelling on an adjacent lot, nor from a street.

H. The home occupation shall not utilize mechanical, electrical, or other equipment which produces noise, electrical or magnetic interference, vibration, heat, glare, or other nuisances outside the dwelling or accessory structure housing the home occupation.

I. Home occupations shall be limited to uses which provide a service and do not display or sale commodities.

J. All home occupations shall require a zoning permit. Permits are not transferable from person to person or from address to address.

K. Home occupations shall not be open to the public at times earlier than 8:00 a.m. nor later than 9:00 p.m., expect for Child Care Homes specified in *Section 10.3*

L. Home occupations shall comply with all local, state, and federal regulations pertinent to the activity pursued, and the requirements of or permission granted by this section shall not be construed as an exemption from such regulations.

M. The following uses are permitted in a home occupation:

- Architectural, drafting, and graphic services;
- Art restoration;

- Art/photography studio;
- Barbershops and salons;
- Child Care Home;
- Consulting offices;
- Contracting offices;
- Data processing;
- Dressmaking, sewing, and tailoring;
- Electronic assembly and repair;
- Engineering services;
- Financial planning and investment services;
- Flower arranging;
- Gardening and landscaping services;
- Home crafts;
- House cleaning services;
- Insurance sales broker;
- Interior design;
- Jewelry making and repair;
- Locksmith;
- Mail order (not including retail sales from the site);
- Pet grooming;
- Real estate sales broker;
- General sales representative;
- Tutoring;
- Furniture upholstering.

N. The following uses are prohibited in a home occupation:

- Appliance and small engine repair;
- Auto repair, major and minor;
- Auto painting;
- Carpentry/cabinet making;
- Dance studios;
- Furniture construction;
- Machine shops;
- Rental businesses;
- Tow truck services;
- Welding shops;
- Other uses not listed as a permitted use.

Section 10.2 Accessory Uses and Structures.

A. Swimming pools are considered an accessory structure.

B. The following structures are not permitted as an accessory structure in any district.

1) Manufactured homes

2) Tractor trailer containers, tractor trailer beds or similar structures that were originally designed for the transportation of goods.

C. Open metal (aluminum or steel) carports are permitted as an accessory structure in the R-20 and R-10 districts only and shall meet the requirements for accessory structures in the zoning district in which it is located.

D. Accessory structures in the R-20 and R-10 districts shall comply with the following requirements.

1) No accessory building shall be erected in any required front or side yard, with the exception of detached garages provided the following conditions are met:

a) The front wall of the garage does not extend beyond the primary front wall of the principal structure.

b) The garage is separated from the principal structure according fire code regulations.

c) The garage is constructed of similar materials to match the principal structure.

2) Accessory structures shall be at least five (5) feet from any other accessory building on the same lot.

3) In case of a corner lot, no accessory building shall extend beyond the front yard line of the lots in the rear.

4) Accessory structures shall be setback at least twenty (20) feet from any street line and shall be setback at least ten (10) feet from any lot line, not a street line.

5) No accessory building shall be constructed upon a lot until the construction of the principal structure is complete.

E. Accessory structures in CBD, N-B, H-B, and G-M districts shall comply with the following requirements.

1) Accessory structures shall be at least five (5) feet from any other accessory building on the same lot.

2) In case of a corner lot, no accessory building shall extend beyond the front yard line of the lots in the rear.

3) Accessory structures shall be setback at least twenty (20) feet from any street line and shall be setback at least ten (10) feet from any lot line, not a street line.

4) No accessory building shall be constructed upon a lot until the construction of the principal structure is complete.

5) Accessory structures are permitted only in the rear yard. Accessory structures may be permitted in the front yard in the G-M District only if the structure is being used for security purposes (i.e. guard shack). These structures can be no larger than 8’x10.’ Structures must also maintain a minimum setback of 100’ from the front property line and meet the setbacks for the side and rear yard listed in Section 10.2E.

F. Temporary Health Care Structures are considered Accessory Structures for single-family residences in R-20, R-10, NB, and CBD and shall comply with the following requirements.

1) Either the caregiver or the mentally or physically impaired person shall reside in the primary structure on the property.

2) The structure shall meet the setback requirements Section 10.2.D above.

3) Only one Temporary Health Care Structure is allowed per parcel.

4) No signage advertising or otherwise promoting the existence of the temporary health care structure shall be permitted either on the exterior of the building or elsewhere on the property.

5) A zoning permit is required prior to placement of the temporary health care structure. The Town may require that the applicant provide evidence of compliance with this section prior to issuance of permit and 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 city 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.

6) Any temporary health care structure placed pursuant to this Section, shall be removed within 60 days in which the mentally or physically impaired persons is not longer receiving or is no longer in need of the assistance provided for in this section. If the temporary heath care structure is needed for another mentally or physically impaired person, the temporary health care structure may continue to be used or may be reinstated on the property within 60 days of its removal, if applicable. (amended 4/27/15)

Section 10.3 Child Care Facilities and Homes.

A. Child Care Facility.

A non-residential facility, built to comply with the International Building Code and licensed by the State, where at any one time, there are three or more pre-school age children or nine or more school age children that receive child care. The term includes day care centers and day nurseries.

1) Play space must be provided in accordance with the regulations of North Carolina Department of Human Resources.

2) Outdoor play space must be enclosed on all sides by building, and/or walls or fences; it may not include driveways, parking areas, or land otherwise unsuited for children's play space; play space may not be in the established front yard.

3) All parking, landscaping, buffers, screening and sign requirements are subject to the applicable provisions of the respective zoning districts and other sections of this Ordinance.

B. Child Care Home.

A child care arrangement located in a residence, licensed by the state, where at any one time, more than two children, but less than nine children, who do not reside in the home, receive child care. The residence must be constructed to standards of the International Building Code and comply with all other State and local regulations regarding such use.

1) Play space must be provided in accordance with the regulations of the North Carolina Department of Human Resources.

2) Outdoor play space must be fenced or otherwise enclosed on all sides and may not include driveways, parking areas, or land otherwise unsuited for children's play space; it is prohibited in any established building setback from a street.

3) A Child Care Home must be clearly incidental to the residential use of the dwelling and must not change the essential residential character of the dwelling; all building and lot standards for residential dwellings shall be maintained.

4) There are no specific limitations on the hours of operation, but no outdoor play shall be permitted after sun down.

5) Parking shall be provided according to *Article XIII* of this Ordinance. Signs shall adhere to the requirements of home occupation signs in *Article XI* of this Ordinance.

Section 10.4 Planned Unit Developments.

The planned unit development concept offers developers the possibility of more efficient and flexible methods for developing property, and provides residents of the project with larger open spaces for recreation and other activities properly related to residential uses. The Town Council may approve this form of development in the districts that allow it as conditional use, provided:

A. Such project is an integrated plan designed for the primary purpose of residential or mixed use.

B. The site for the total project is at least 4 acres and at least two (2) principal buildings are included in the plans.

C. That the total parcel of land is under single ownership or control, and there is reasonable assurance that the project can be successfully completed and maintained, including care and maintenance of all common open space, recreation space, and other common land area.

D. The preliminary plan for the proposed planned unit development shall first be submitted to the Hildebran Planning Board for its review and recommendation to the Town Council. Such recommendations may include, but shall not be limited to, provisions for additional utilities, drainage, landscaping, lighting, and streets and access ways.

E. The applicant must resubmit the plan to the Planning Board if changes were recommended by the Town Council. If the plan is rejected by the Town Council, the applicant will not receive consideration of the same plan for a period of twelve (12) months. The applicant can, however, appeal to the Superior Court.

F. All principal buildings and accessory buildings or uses abutting the property lines of the project must meet the minimum yard requirement of the district where the project is located for all yards abutting said property lines. All height requirements shall be met for the district where the project is located.

G. The overall use of the area for building shall be no more than twenty-five (25%) percent of the total land area.

H. Impervious surface may be calculated over the entire development rather than on an individual lot-by-lot basis, and can be no higher than what is permitted in the district in which the development is located.

I. Housing density may be calculated over the entire development rather than on an individual lot-by-lot basis, and can be no higher than what is permitted in the district in which the development is located, except as provided below:

a. Housing density for planned unit developments in the N-B, CBD, H-B, and G-M districts may be no higher than 12 housing units per acre.
b. Where housing density of a proposed development is determined to be a fraction, that fraction shall be rounded up or down to the nearest whole number for the purpose of plan review and approval.
c. In mixed use developments, where only a percentage of the gross floor area is to be used for residential development, the maximum permitted housing density shall be calculated by taking the same percentage of the maximum housing density for that district.
d. In reviewing the density of a proposed development, the Board of Adjustment shall consider the capacity of Town services, including but not limited to fire and police protection, sewer service, and roads.

J. All parking, loading, landscaping, buffers, screening and sign requirements are subject to the applicable provisions of the respective zoning districts and other sections of this Ordinance.

K. All streets and parking shall be constructed and paved according to the standards of the Town of Hildebran Zoning and Subdivision Ordinances.

L. Projects shall include provisions for pedestrian scale amenities such as benches, picnic tables, courtyards, plazas, water attractions, trash receptacles, bicycle parking, and other such elements that promote an efficient and functional pedestrian environment and maintain a sense of place.

M. Linkages for pedestrian movement, such as sidewalks, bikeways, and walking paths, shall be provided between buildings or building clusters within a development and should connect adjacent uses when feasible.

N. Loading zones and maintenance areas shall be located and arranged to prevent the interference with pedestrian movement within the development.

O. Linkages for pedestrian movement, such as sidewalks, bikeways, and walking paths, shall connect buildings or building clusters in a development to existing sidewalk facilities and/or sidewalk and greenway facilities shown in the adopted Pedestrian Plan.

P. Pedestrian ways shall be located and designed in a manner that reduces congestion and hazards with vehicular traffic.

Q. Sidewalks shall be constructed according to the design standards in Section 10.6 when the property abuts a corridor where the adopted Pedestrian Plan shows a proposed sidewalk.

R. Greenways shall be constructed according to the design standards in Section 10.6 where the Pedestrian Plan shows a proposed greenway going through the property. In cases where the greenway is along property lines, then the property owner shall set aside a fifteen (15') foot dedicated public access easement along the proposed greenway corridor for the future construction of the greenway. The developer may choose to provide a thirty (30') foot dedicated public access easement entirely on the property along the property line for future greenway construction.

S. Where reasonably possible, all new planned unit developments shall connect to the local public water supply and the Town sewer system.

T. If the development is mixed use, permitted uses shall be the same as those uses permitted in the Neighborhood Business District, *Section 8.4*.

U. Proposed developments within or adjacent to existing single-family neighborhoods shall be designed so as to maintain the character of the existing neighborhood. Considerations may include open space, building height, and design criteria.

V. The procedure for approval of a planned unit development shall consist of the submission of a design plan to the Hildebran Planning Board showing how the requirement of *Section 10.4 A.* through *R.*. above will be met. Following study and recommendations by the Planning Board, the plan must be submitted to the Town Council for final approval. Failure of the Planning Board to act on the plan within sixty (60) days shall constitute a favorable recommendation to the Town Council. An approved project must be started within twelve (12) months after final approval and must be completed within a reasonable time.

Section 10.5 Provisions for Group Projects Commercial and Industrial.

In the case of two (2) or more buildings to be constructed on a plot of ground at least two (2) acres not subdivided into the customary streets and lots and which will not be subdivided, the application of the terms of this Ordinance may be permitted as a conditional use by the Board of Adjustment in a manner that will be in harmony with the character of the neighborhood provided:

A. Such uses are limited to those permitted within the zoning district in which the project is located. In no case shall the Board authorize a use prohibited in the district in which the project is to be located.

B. The overall intensity of land use is no higher and the standard of open space is no lower than that permitted in the district in which the project is located.

C. The distance of every building from the nearest property line shall meet the front, rear and side yard requirements of the district in which the project is located.

D. The building heights do not exceed the height limits permitted in the district in which the project is located.

E. All parking, loading, landscaping, buffers, screening and sign requirements are subject to the applicable provisions of the respective zoning districts and other sections of this Ordinance.

F. Projects shall include provisions for pedestrian scale amenities, such as benches, picnic tables, courtyards, plazas, water attractions, trash receptacles, bicycle parking and other such elements that promote an efficient and functional pedestrian environment and maintain a sense of place.

G. Linkages for pedestrian movement, such as sidewalks, bikeways and walking paths, shall be provided between buildings or building clusters within a development and should connect adjacent uses when feasible.

H. Loading zones and maintenance areas shall be located and arranged to prevent the interference with pedestrian movement within the development.

I. Linkages for pedestrian movement, such as sidewalks, bikeways and walking paths, shall connect buildings or building clusters in a development to existing sidewalk facilities and/or sidewalk and greenway facilities shown in the adopted Pedestrian Plan.

J. Pedestrian ways shall be located and designed in a manner that reduces congestion and hazards with vehicular traffic.

K. Sidewalks shall be constructed according to the design standards in Section 10.6 when the property abuts a corridor where the adopted Pedestrian Plan shows a proposed sidewalk.

L. Greenways shall be constructed according to the design standards in Section 10.6 where the Pedestrian Plan shows a proposed greenway going through the property. In cases where the greenway is along property lines, then the property owner shall set aside a fifteen (15') foot dedicated public access easement along the proposed greenway corridor for the future construction of the greenway. The developer may choose to provide a thirty (30') foot dedicated public access easement entirely on the property along the property line for future greenway construction.

M. The procedure for approval of a planned unit development shall consist of the submission of a design plan to the Hildebran Planning Board showing how the requirement of *Section 10.5 A.* through L. above will be met. Following study and recommendations by the Planning Board, the plan must be submitted to the Town Council for final approval. Failure of the Planning Board to act on the plan within sixty (60) days shall constitute a favorable recommendation to the Town Council. An approved project must be started within twelve (12) months after final approval and must be completed within a reasonable time.

Section 10.6 Sidewalk and Greenway Landscaping and Design.

Where developments provide sidewalks and/or greenways and where the construction of sidewalk and greenway facilities are required, the Facility Standards & Design Guidelines found in Chapter 5 on pages 34-63 of the adopted Pedestrian Plan must be followed.

Section 10.7 Mobile Food Vendors

A. Intent

(1) The Town of Hildebran finds that allowing Mobile Food Vendors to operate in the Town would promote diversification of the town's economy and employment opportunities and would support the incubation and growth of entrepreneurial/start-up businesses.

(2) North Carolina General Statute 160A-174 grants cities the power to define, prohibit, regulate, acts, omissions, or conditions, detrimental to the health, safety or welfare of its citizens and the peace and dignity of the city through the creation of ordinances.

(3) Mobile Food Vendors bring benefits to communities; however they also bring unique regulations and challenges.

B. Permit

(1) A Mobile Food Vendor permit shall be required prior to the operation of a vendor. A $25 fee will be assessed to cover the costs associated with regulation of Mobile Food Vendors for one time or $100 for the calendar year.

(2) A Mobile Food Vendor permit is valid through December 31 of the year upon which the permit was issued.

(3) A Mobile Food Vendor permit allows permittee to operate up to 3 different properties. Vendors may operate on private property with written permission from the property owner that the food vendor may operate on his/her private property.

(4) A Mobile Food Vendor permit does not include peddler, solicitor, or transient vendor as defined by Town Code.

(5) No permit issued shall authorize a Mobile Food Vendor to operate on or from a public street.

C. General Requirements

(1) Vendors shall provide documentation of approval from the Burke County Health Department and/or North Carolina Department of Health. A valid health permit must be maintained for the duration of the Mobile Food Vendor permit and shall be placed in a conspicuous location for public inspection.

(2) A mobile food vendor permit shall be placed in a conspicuous location for public inspection.

(3) Temporary connections to potable water are prohibited. All plumbing and electrical connections shall be in accordance with the State Building Code.

(4) No liquid, grease or solid wastes may be discharged from the Mobile Food Vendor. Absolutely no waste may be disposed of in tree pits, storm drains, the sanitary sewer system or public streets.

(5) All areas within 5 feet of the Mobile Food Vendor must be kept clean

(6) Dining accessories are permitted within a 10 foot radius of the unit.

(7) Trash receptacles shall be provided for customers to dispose of all waste associated with the Mobile Food Vendor. The Mobile Food Vendor shall be responsible for removing all trash, litter, and refuse from the site at the end of each 24 hour period. This includes all waste improperly discarded by customers. Public trash receptacles shall not be used for compliance with this section.

(8) The noise level from the Mobile Food Vendor shall comply with the municipality's noise ordinance.

(9) No signage shall be allowed other than signs permanently attached to the movable trailer or motorized vehicle and a portable menu sign no more than six (6) square feet in display area on the ground in the customer waiting area

(10) No vendor shall remain on site at one property for more than forty-eight consecutive hours, with exception of a holiday weekend if holiday falls on Friday or Monday.

(11) A Mobile Food Vendor shall not operate as a drive-through.

(12) Mobile Food Vendors shall not connect to electric receptacles that are owned by the Town of Hildebran.

(13) Vendors must be located 1000' from any approved events permitted by the Town of Hildebran except a qualified vendor at that event.

(14) The town manager reserves the right to temporarily suspend Mobile Food Vendor permits during times of special events in the downtown area.

D. Location Requirements

(1) Mobile Food Vendors may only conduct business in the following locations:

(a) On all privately owned property in the following zoning districts: N-B Neighborhood Business District; CBD Central Business District; H-B Highway Business District; and G-M General-Manufacturing subject to the approval of the property owner.

(b) On any zoning lot, when performing solely catering function for owner and not selling food to the general public.

(c) On any zoning lot, when authorized by the owner, and when participating in a special event or specialty market when such activity is authorized as an accessory use to property's current use.

(d) Location requirements shall not apply in any respect to food vending at any non-profit fundraising event, a market, festival, or activity, arts and crafts, exhibit or event sanctioned by the town.

(2) A Mobile Food Vendor may locate on a vacant lot or on a lot with another principal use.

(3) The Mobile Food Vendor shall not block drive aisles, other access to loading/services areas, or emergency access and fire lanes. Mobile Food Vendors shall be positioned at least three feet away from any fire hydrants, any fire department connection, utility box or vault. The Mobile Food Vendor shall not locate within any area of the lot that impedes, endangers, or interferes

with pedestrian or vehicular traffic. A Mobile Food Vendor shall not impede ingress and egress from driveway entrances, handicapped parking spaces & ramps, building entrances and exits.

E. Penalties and Enforcement

(1) Any violations of Section 10.7 shall be subject to penalties enumerated in Section 16.7

(2) A Mobile Food Vendor permit may be denied, suspended, or revoked for fraud or misrepresentation in the application for the permit or in the conduct of the business, or constitute a danger to the public health, safety, welfare, or morals, or for conduct which is contrary to the provision of this division. Notice of revocation shall be made in writing to the permit holder.

Section 10.8 Animal Keeping

A. Purpose

The purpose of this section is to regulate the keeping of a horse, mule, goat, cattle, fowl and other fowl that are not part of a bona fide farming operation. The ordinance applies to properties located within the corporate limits of the Town.

B. Prohibitions.

1. Horses, mules, goats, cattle, and all other types of livestock, fowl and other birds shall not be permitted within the Town limits, except as provided in Subsection C - Exceptions

C. Exceptions:

1. Fowl

(A) The keeping of fowl is permitted in the R-20, and R-10 Residential Districts, provided the following conditions are met:

(1a.) Maximum number of fowl on the property - 10

(2a.) No male fowl are allowed

(3a.) Placement of the pen shall be in the rear yard only

(4a.) No free range (fowl are penned all times)

(5a.) Pens shall be a minimum of 100 feet from all adjoining residences

(6a.) Pens shall be a minimum of 50 feet from all property lines

(7a.) Must comply with all applicable provisions of the Hildebran Animal Code (ex. cleanliness, odor).

(8b) After the effective date of this Ordinance, existing structures, or the uses of land or structures which would be permitted but shall be considered as nonconforming. These existing structures, or the uses of land or structures shall then comply with 9.4 Nonconforming Uses of the Town of Hildebran Zoning Ordinance

D. Keeping Domestic Pets

In all zones where dwelling units are allowed, domestic animals are allowed to be kept as household pets. Up to an aggregate of 6 domestic animals per dwelling unit is permitted subject to restrictions set forth in the Hildebran Code of Ordinance. Birds (canary, parakeet, etc.); amphibian /reptile (turtle, lizard, etc.); rodent (rat, hamster, gerbil, etc.); and tropical fish are excluded from the numerical limitations.

ARTICLE XI

SIGNS

Section 11.1 Purpose. The purpose of this section is:

A. To allow visually attractive signage that protects and enhances the appearance of the town.

B. To provide for the safety of vehicular traffic and the general public.

C. To protect property values and promote economic development through effective, non-distracting forms of advertisement and communication.

Section 11.2 Administration.

No sign shall be constructed, enlarged, moved, replaced or altered until a zoning permit has been issued by the zoning enforcement officer, except for those signs specifically permitted in zoning districts without a zoning permit. All signs shall be constructed and installed in accordance with the applicable provisions of the North Carolina State Building Code and North Carolina State Electrical Code and shall obtain applicable permits prior to construction. The building inspector or zoning enforcement officer shall order the immediate removal of any signs or supporting structures that are not constructed or maintained safely in good repair in accordance with the provisions of this section or in accordance with the applicable provisions of the North Carolina State Building Code. Unauthorized signs posted in the public right-of-way may be removed without notice by the zoning enforcement officer or his/her designee.

Section 11.3 Definition of Sign.

Any structure, object, device or part thereof which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images. Signs do not include the flag or emblem of any nation, state, city or any fraternal, religious or civic organizations, works of art which in no way identify an object, person, institution, organization, business, product, service, event or location by any means, or scoreboards located on athletic fields.

Section 11.4 Nonconforming signs.

Any sign existing on the effective date of this section which does not conform to the requirements set forth herein will be allowed to remain if in good repair but shall not be changed to another nonconforming sign. If a nonconforming sign is altered, removed, moved or changed in any way, the sign shall be brought into compliance with the regulations of this section.

Section 11.5 Measurement of sign area.

The area of a sign shall be measured to include the entire sign, including its display area, frame, border, incidental decoration and foundation of any kind except a pole. Where a sign consists of letters, figures or other devices individually mounted to a building wall, the sign area shall be the smallest circle or rectangle that can be inscribed around the sign. Only one (1) side of a double-faced sign shall be included in calculating the display area.

Section 11.6 Sign location.

No sign requiring a permit shall be placed closer than ten (10) feet from a street right-of-way line or five (5) feet from an interior lot line. Where no right-of-way exists signs shall be place at least fifteen (15) feet from the edge of the pavement. Signs shall not block visibility from three-to-eight (3-8) vertical feet within twenty (20) feet of any road intersection. Additional setbacks may be required by the Town of Hildebran or the North Carolina Department of Transportation so as not to obstruct visibility at a street or driveway. Signs that do not require a permit may be located closer than ten (10) feet from a street right-of-way line or five (5) feet from an interior lot line, provided they do not obstruct the visibility of the traveling public and are not located in the public right-of-way.

Section 11.7 Illumination.

Where permitted, illuminated signs may be either directly lit from inside the sign or may have an indirect light source that shines on to the surface of the sign. Any illuminated sign shall be so designed or placed so as to prevent direct or reflected light from being cast upon adjacent properties, the public right-of-way or the night sky. Flashing, blinking or pulsating signs shall not be permitted except as part of a digital or LED (Light Emitting Diode) sign.

Section 11.8 Sign types.

A. Ground sign. A sign attached directly to the ground by means of one (1) or more upright pillars, braces, posts, poles or foundations placed directly upon or in the ground and not attached to any part of the building. Ground signs must conform to the following provisions:

1) The maximum area for the sign is one (1) square foot per lineal foot of building frontage not exceeding one hundred (100) square feet, except as stated below.
   - Businesses located on parcels fronting on Interstate 40 are permitted one (1) square foot per lineal foot of lot frontage not exceeding one hundred (100) square feet.
   - Ground signs located in the CBD are permitted one (1) square foot per lineal foot of building frontage not exceeding fifty (50) square feet.
2) No ground sign shall be more than twenty (20) feet tall, measured from the natural ground line to the top of the sign frame. No ground sign located in the CBD shall be more than eight (8) feet tall.
3) The sign shall not be placed closer than ten (10) feet from the right-of-way line.
4) Only one (1) ground sign may be erected per building, regardless of the number of tenants, except as provided for in *Section 11.9 C.*
5) The sign may be illuminated.

B. Wall sign. A sign attached or painted directly on the building wall, generally on the façade, with the exposed display surface of the sign in a plane parallel to the wall. Wall signs must conform to the following provisions:

1) The maximum area for the sign is one (1) square foot per lineal foot of building frontage. The maximum area for a wall sign in the CBD zoning district is two (2) square feet per lineal foot of building frontage.
2) No wall sign shall be mounted more than twenty (20) feet above the natural ground line.
3) One or more wall signs may be used on a building, as long as the total area of the signs does not exceed the maximum permitted.

4) On multiple-occupancy buildings, each occupant with a separate outside entrance serving the public may have a separate wall sign.
5) No part of a wall sign shall extend more than eighteen (18) inches from the wall.
6) The sign may be illuminated.

C. Projection sign. A hanging, suspended, shingle, blade or any other type of sign that is mounted to and projects perpendicularly from a building wall. Projection signs must conform to the following provisions:

1) The maximum area for the sign is one (1) square foot per lineal foot of building frontage not exceeding forty (40) square feet.
2) The sign shall not project more than six (6) feet from the building.
3) The sign shall not extend higher than three (3) feet above the roof of the building.
4) The sign shall have nine (9) or more feet of vertical clearance from the ground or sidewalk level.
5) The sign may be illuminated.

D. Roof sign. A sign which is attached to or painted on the roof of a building. Roof signs must conform to the following provisions:

1) The maximum area for the sign is one (1) square foot per lineal foot of building frontage not exceeding forty (40) square feet.
2) The sign shall be placed a minimum of five (5) feet from the edge of the roof.
3) The sign shall not exceed six (6) feet in height.
4) Only one (1) roof sign shall be permitted per business.
5) The sign may be illuminated.

E. Canopy sign. A sign painted or otherwise affixed directly to a canopy or awning. The signage area shall not exceed twenty-five (25) square feet. The sign shall identify only the name of the business and logo and may be illuminated.

F. Window sign. A sign directly attached to windows or doors. A business may use one or more window signs but the total sign area shall not exceed fifty (50) percent of the glass area. The sign may be illuminated.

G. Temporary On-premise sign. A sign that is not permanently installed in the ground or affixed to any structure or building and designed to be mobile or movable. This includes, but is not limited to, portable signs, sandwich boards, banners, wire-frame signs or signs on parked vehicles. Temporary on-premise signs must conform to the following provisions:

1) The maximum area for the sign shall not exceed twenty-five (25) square feet.
2) The sign is allowed without a permit but must be located in compliance with the provisions of *Section 11.6*.
3) The sign must remain in good repair at all times.
4) Obsolete temporary on-premise signs advertising special events must be removed within forty-eight (48) hours after the termination of the advertised events. Property owners are responsible for the removal of the obsolete signs.
5) No sign exceeding four (4) square feet shall be placed closer than ten (10) feet to the right-of-way line. A sandwich board sign may be placed in on the sidewalk; however, any person

erecting such a sign shall indemnify and hold harmless the Town of Hildebran and its employees from any claims arising from the presence of the sign in the right-of-way.

6) The sign may be illuminated.

H. Temporary Off-premise sign. A sign or banner that meets all of the following:

1) Must be for special community events, open to the general public and the event must be within the Town of Hildebran.
2) Events must be sponsored by non-commercial civic, charitable, community, or similar organizations.
3) Signs or banners shall be located in accordance with *Section 11.6*.
4) Signs or banners may be posted up to thirty (30) days prior to the event and must be removed within seven (7) days following the event.
5) Nothing in this provision shall be construed to authorize the posting of such signs or banners upon trees, utility poles, traffic control signs, lights or devices in any place or manner prohibited by the provisions herein.

I. Off-premises sign. A sign, billboard or other permanent outdoor advertising structure that directs attention to a business, commodity or service sold, conducted or offered at a location other than the premises on which the sign is erected. Off-premises signs shall not be permitted in the Town of Hildebran, except signs identifying the location of a church or house of worship. Such signs shall not exceed four (4) square feet and may not be illuminated. The continued use of existing off-site outdoor advertising signs shall be allowed consistent with the provisions of *Section 11.4.*

J. Subdivision/group development sign. A sign used to identify the entrance to a subdivision, planned unit development, apartment or townhouse complex, manufactured home park or other group development. The area of the face of the sign shall not exceed thirty-six (36) square feet but may be mounted on a larger masonry wall. The sign may be illuminated.

K. Home occupation sign. A sign used to identify the location of a home occupation, day care or other business permitted in a residential zoning district. Home occupation signs must conform to the following provisions:

1) The maximum area for the sign shall not exceed ten (10) square feet in area.
2) The maximum height for the sign shall not exceed three (3) feet.
3) The sign may be ground- or wall-mounted.
4) The sign may not be illuminated.

Section 11.9 Number and type of permitted signs in non-residential zoning districts.

A. A single-occupancy building in the N-B, CBD, H-B or G-M zoning district outside the Interstate Overlay District is permitted to choose three (3) signs from the following list: ground, wall, projection, canopy, window, roof or temporary. The selection of more than one (1) sign of each type is not permitted except as stated in *Sections 11.8 B. 3), 11.8 B. 4)* and *11.8 F*.

B. Each business or entity in a multiple-occupancy building in the N-B, CBD, H-B or M-I zoning district outside the Interstate Overlay District is permitted to choose three (3) signs from the following list: ground (1 per building), wall, projection, canopy, window, roof or temporary. The selection of more than one (1) sign of each type is not permitted except as stated in *Sections 11.8 B. 3), 11.8 B. 4)* and *11.8 F*.

C. In addition to the number of signs permitted in *Section 11.9 A.* and *C.* above, a building in the N-B, CBD, H-B or G-M outside the Interstate Overlay District zoning district situated on a corner lot or a lot bounded by more than one street shall be permitted to choose one (1) additional sign per building front from the following list: ground, wall, projection, canopy, window, roof or temporary, provided that the additional sign area does not exceed the sign area permitted for the building front. Additional sign area shall be used specifically for the side or rear of the building and may be illuminated.

Section 11.10 Number and type of permitted signs in residential zoning districts.

A. Any church, school, long term care facility, or day care facility located in a residential zoning district is permitted to choose three (3) signs from the following list: ground, wall, projection, canopy, window, roof or temporary. The selection of more than one (1) sign of each type is not permitted.

B. In addition to the number of signs permitted in *Section 11.10 A.* above, a church, school, long term care facility, or day care facility situated on a corner lot or a lot bounded by more than one street shall be permitted to choose one (1) additional sign per building front from the following list: ground, wall, projection, canopy, window, roof or temporary, provided that the additional sign area does not exceed the sign area permitted for the building front. Additional sign area shall be used specifically for the side or rear of the building and may be illuminated.

C. Any business located in a residential zoning district is permitted to have one (1) home occupation sign.

D. A subdivision or group development is permitted one (1) subdivision/group development sign per entrance. Subdivision or group development signs shall not be less than eight hundred (800) feet apart if located on the same street.

Section 11.11 Number and type of permitted signs in the Interstate Overlay District.

A. A single-occupancy building in the Interstate Overlay District is permitted to choose three (3) signs from the following list: ground, wall, projection, canopy, window or temporary (sandwich board or banner only). The selection of more than one (1) sign of each type is not permitted except as stated in *Sections 11.8 B. 3), 11.8 B. 4)* and *11.8 F*.

B. Each business or entity in a multiple-occupancy building within the Interstate Overlay District is permitted to choose three (3) signs from the following list: ground (1 per building), wall, projection, canopy, window, roof or temporary (sandwich board or banner only). The selection of more than one (1) sign of each type is not permitted except as stated in *Sections 11.8 B. 3), 11.8 B. 4)* and *11.8 F*.

C. In addition to the number of signs permitted in *Section 11.11 A.* and *B.* above, a building in the Interstate Overlay District situated on a corner lot or a lot bounded by more than one street shall be permitted to choose one (1) additional sign per building front from the following list: ground (total of 1 per building), wall, projection, canopy, window, or temporary (sandwich board or banner only), provided that the additional sign area does not exceed the sign area permitted for the building front. Additional sign area shall be used specifically for the side or rear of the building and may be illuminated.

D. The use of logo signage is encouraged for the promotion of travel and tourism-based businesses within the Interstate Overlay District.

Section 11.12 Signs permitted in all zoning districts.

The following signs are permitted in all zoning districts without a zoning permit, provided they are kept in good condition, do not obstruct the visibility of the traveling public, are not located in the public right-of-way and comply with the provisions below:

A. Any sign erected by a government agency to convey information about a public facility or service or to regulate, control or direct vehicular or pedestrian traffic. Such signs may be illuminated, flashing or moving as necessary for public safety.

B. Signs which warn of safety hazards. Such signs may be illuminated.

C. One (1) real estate sign per street frontage on property for sale, lease or rent. The sign(s) shall be a maximum of four (4) square feet in size in residential zoning districts and thirty-two (32) square feet in non-residential zoning districts. The sign(s) shall not be illuminated.

D. Signs not exceeding four (4) square feet in area. Such signs shall not be illuminated.

E. Construction site identification signs on active construction sites. The sign(s) shall be a maximum of four (4) square feet in size in residential zoning districts and thirty-two (32) square feet in non-residential zoning districts. The sign(s) shall not be illuminated and shall be removed within thirty (30) days of the completion of the project.

F. Incidental signs not exceeding four (4) square feet in size or three (3) feet in height if located closer than five (5) feet from the right-of-way line. An incidental sign is defined as one which carries no advertising message, directs traffic flow, indicates the location of ingress and egress points, directs certain activities to certain areas (e.g. parking or waiting) or provides other incidental information. The sign(s) may be illuminated.

G. Streamers, pennants, balloons and similar devices. Such devices shall not be illuminated.

H. Temporary Off-premise Signs which comply with *Section 11.8 H.*

I. Political and election signs displayed on private property provided such signs shall not exceed sixteen (16) square feet in area and may not be illuminated. Such signs shall be removed within forty-eight (48) hours after the election or time which the purpose of the sign ceases to exist. Political signs shall not be located on public property, except at polling places on the day of the election, or in any right-of-way. Signs that do not conform to the terms of this section may be removed and discarded by the zoning enforcement officer without notice.

Section 11.13 Signs prohibited in all districts.

The following signs shall be prohibited in all districts:

A. Signs or other devices that resembles traffic signals, traffic signs, emergency vehicle flashing lights, or which are likely to be misconstrued by the traveling public as being an official governmental sign or emergency warning.

B. Animated, rotating or other moving or apparently moving signs.

All other signs not expressly permitted

ARTICLE XII

BUFFERS AND SCREENING

The purpose of this Article is to preserve and protect the health, safety, and general welfare of the residents of Hildebran by promoting the environmental and public benefits of buffers. It is intended to improve compatibility and provide transition between different zoning districts and preserve the character and aesthetics of an area.

Section 12.1

Buffer strips shall be provided upon any side or rear lot line where non-residential use and/or non-residential zoning districts abut residential zones, where multi-family use abuts single-family use and between manufactured homes parks and adjacent properties. No such buffer strip shall, however, extend nearer to a street right-of-way line than the established building line of the adjoining lot and no such buffer shall be required upon any yard which abuts a public street.

Section 12.2

A buffer strip shall be equal to one the following:

A. A planting strip at least ten (10) feet in width, composed of deciduous or evergreen trees or a mixture of each, spaced not more than ten (10) feet apart and not less than one (1) row of dense shrubs, spaced not more than five (5) feet apart and five (5) feet in height after one (1) growing season;

B. A six-foot high solid picket type fence with the pickets being placed facing the adjoining property;

C. A six-foot high, open type fence with dense evergreen shrubs planted facing the adjoining property, spaced not more the five (5) feet apart and five (5) feet or more in height after two (2) growing seasons;

D. A six-foot high chain link type fence with panel inserts;

E. A six-foot high masonry, brick, or stucco wall;

F. A earthen berm and planting combination, at least fifteen (15) feet in width, with the berm an average of three feet in height and dense plantings, which will, when combined with the berm, achieve a minimum height of eight (8) feet within two growing seasons;

G. In lieu of compliance with the above buffer requirements, an applicant may submit to the Zoning Enforcement Officer, a detailed plan showing the retention of existing vegetation and natural forest growth that will satisfy one of the above requirements.

Section 12.3

Manufacturing and Industrial use and/or zoning shall maintain a twenty (20) feet buffer strip and within the buffer strip there shall be planted a continuous screen of evergreen plants with an initial height of at least six (6) feet by natural growth within no later than a two (2) year period.

Section 12.4 Interstate 40 (I-40) Buffer.

Applies to non-residential, multi-family, and mixed-use developments which are proposed adjacent to Interstate 40 right-of-way. A vegetative buffer, whether natural or a grass and selected plantings, of sixty (60) feet shall be maintained where property lines of a development are adjacent to the Interstate 40 right-of-way.

Section 12.5

Each site plan and application for zoning permit shall include information as to the location and type of buffer to be erected, where required.

Section 12.6

No structures, buildings, or parking may be located within buffer areas, with the exception of permitted signage, pedestrian amenities, and decorative elements.

Section 12.7

The buffer shall be maintained, and dead and diseased plants replaced by the owner or occupant of the premises. The outside storage of materials shall be prohibited in the area between the planted buffer and the residential district. The owner or occupant of the premises shall properly and continuously maintain this area.

Section 12.8 Screening.

A. Uses which provide dumpsters or similar trash containers shall provide screening according the following requirements, with the exception of single family residential uses and temporary construction dumpsters. However, upon completion of construction all construction dumpsters shall be removed.

    1) Dumpsters and similar trash containers shall be hidden by an opaque fence or wall of sufficient height to screen the container, but not less than six (6) feet in height.

    2) The wall or fence shall enclose the dumpster on all four sides. Gates or doors for access on one side are permitted.

    3) The fence or wall shall match the color and be constructed of materials similar to the main building.

B. Non-residential uses with outdoor storage of materials, equipment, vehicles, etc shall provide screening according the following requirements. Areas for retail sales display are exempt from this requirement.

    1) A six-foot high, opaque fence with dense evergreen shrubs planted facing the adjoining property, spaced not more the five (5) feet apart and five (5) feet or more in height after two (2) growing seasons.

ARTICLE XIII

OFF-STREET PARKING, LOADING AND LANDSCAPING

Section 13.1 Off-Street Parking Requirements.

There shall be provided at the time of the erection of any building, or at the time any principal building is enlarged or increased in capacity by adding dwelling units, guest rooms, seats, or floor area; or before conversion from one type of use or occupancy to another, permanent off-street paved parking spaces in the amount specified by this section. Such parking spaces may be provided in a parking garage or properly graded open space.

Section 13.2 Certification of Minimum Parking Requirements.

Each application for a zoning permit submitted to the zoning enforcement officer as provided for in this Ordinance shall include information as to the means of entrance and exit to such space. This information shall be in sufficient detail to enable the zoning enforcement officer to determine whether or not the requirements of this section are met.

Section 13.3 Minimum Off-Street Parking Requirements.

Parking shall be provided a rate indicated in the following *Table of Parking Ratios*

Table of Parking Ratios	
Use	**Parking Requirement**
Single family, two family, multi-family dwellings	2 per dwelling unit
Home Occupations	2 per dwelling unit, plus 1 per home occupation
Mixed Use Building	see *Section 13.6*
Animal hospitals, veterinary offices & clinics	1 per 250 sqft gross floor area (gfa)
Animal pound or shelter	1 per 350 sqft gfa
Appliance & Electronics repair	1 per 300 sqft gfa
Auto, boat, recreation vehicle & motorcycle sales	1 per 7,000 sqft of outdoor display, plus 1 per 250 sqft of indoor sales area, plus service & repair requirement if applicable
Automobile service, repair & body shops	3 per bay or similar facility
Bakery (production & distribution)	1 per 500 sqft gfa
Banks & other financial establishments	1 per 300 sqft gfa or 5 spaces, whichever is great
Barbershops & salons	2 per chair or station
Spas	1 per 250 sqft gfa
Bed & breakfast establishments	1 per guest room, plus single family requirement
Boat service & repair	1 per service stall or similar facility
Bus station	1 per 200 sqft of waiting area
Car wash	2 per stall, plus 3 stacking spaces in front of stall
Cemeteries	1 per 250 sqft gfa of office
Churches & other places of worship	1 per 30 sqft of seating area, including balconies
Clubs & lodges	1 per 150 sqft gfa

Use	Parking Requirement
Commercial indoor recreation establishments	1 per 300 sqft gross floor area (gfa)
Commercial outdoor recreation establishments	1 per 200 sqft gfa, plus 1 per 550 sqft of site area open to public (excluding parking area)
Community centers	1 per 200 sqft gfa
Public community swimming pools	1 per 100 sqft of water surface area, plus 1 per 80 sqft of patio area
Convenience store or gas station	1 per 150 sqft gfa
Child Care Facility	1 per 375 sqft gfa
Child care home	1 per 4 children, plus single family requirement
Dry cleaning	1 per 300 sqft gfa
Emergency response facilities	1 per vehicle involved in operation, plus 1 per 300 sqft (excluding bays or service area)
Family care & group homes	2 per dwelling unit
Funeral homes & mortuaries	1 per 200 sqft gross floor area gfa
Golf courses	4 spaces per hole
Heavy equipment service & repair	3 per service bay or similar facility
Heavy equipment sales & rental	1 per 500 sqft gfa plus 1 per 2,000 sqft of outdoor display
Hospitals	3 per bed
Hotels, inns & motels	1.25 per guestroom, plus 1 per 100 sqft of meeting, dining or banquet facilities
Institutional facilities, such as libraries & other nonprofits	1 per 300 sqft gfa
Kennels (commercial)	1 per 300 sqft gfa
Laundromat	1 per 200 sqft gfa
Manufacturing & Industrial uses	1 per 2 employees during the maximum work shift
Mini-storage	1 per 25 storage units, plus office requirement
Movie theaters & performing theaters	1 per 3 seats
Museums & art galleries	1 per 700 sqft gfa
Offices, government, medical, business, professional & public	1 per 250 sqft gfa
Pet grooming	2 per chair or station
Photography services	1 per 250 sqft gfa
Photography, dance, art & music studios	1 per 250 sqft gfa
Printing & copy services	1 per 250 sqft gfa
Radio & TV broadcasting	1 per 400 sqft gfa
Railroad station	1 per 200 sqft of waiting area
Recycling establishment	2 per collection container, plus office requirement for office area
Restaurants (all types)	1 per 80 sqft gfa, inlcuding outdoor seating area
Retail sales	1 per 200 sqft gfa – if less than 3,000 sqft or 1 per 300 sqft gfa – if 3,000-10,000 sqft or 1 per 400 if greater than 10,000 sqft
Elementary & secondary schools	2.5 per room used for classroom or administration
High schools & colleges	7 per classroom
Shopping centers	see *Section 13.6*
Long term care facilities	1 per 3 beds
Towing service	1 per 350 sqft gfa, plus 1 per 4,000 sqft of outdoor storage area

Use	Parking Requirement
Winery	Manufacturing and warehousing area – 1 per 1000 sqft gfa Sales and tasting area – 1 per 250 sgft gfa
Warehousing & distribution	1 per 4000 sqft gfa
Wholesale establishments	1 per 2000 sqft gfa

Section 13.4 Off-Street Loading and Unloading Spaces.

Every building or structure used for business, trade or industry hereafter erected shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley.

A. Off-street loading and unloading spaces shall have access to an alley, or if there is no alley available, then to a street.
B. Off-street loading and unloading spaces shall have a minimum dimension of 12 feet by 40 feet and overhead clearance of 14 feet in height above the alley or street grade.
C. Loading and service areas shall be designed to ensure the safety of pedestrians and private property.
D. Such areas shall have sufficient space to be properly accessed and the use of these areas shall not block public road rights-of-way nor hinder access or traffic flow.
E. Loading and service areas should be designed out of view from public roads.

Retail Operations: One loading space for each 5,000 square feet of gross floor area (gfa) or fraction thereof.

Wholesale and industrial: One loading space for each 10,000 square feet of operations gross floor area (gfa) or fraction thereof.

Section 13.5 Shopping Center Parking Requirements.

Commercial developments with a mixture of tenants and uses shall provide parking according to the following standards.

Shopping Centers with less than 20,000 square feet: 1 per 180 square feet of gfa.
Shopping Centers with 20,000 to 50,000 square feet: 1 per 200 square feet of gfa.
Shopping Centers with greater than 50,000 square feet: 1 per 225 square feet of gfa.

Section 13.6 Mixed Use Building Parking Requirements.

Buildings with a mixture of uses shall provide parking according to the following standards. The portion of the building used for residential purposes shall provide parking at the rate of two (2) spaces per dwelling unit. The portion of the building used for non-residential purposes shall provide parking according to the rates for the non-residential use, as listed in the "*Table of Parking Ratios*" above.

Section 13.7 Stacking/ Drive-Thru Reservoir Requirements.

For uses utilizing drive-thrus stacking/ reservoir space shall be provided for a minimum of five (5) vehicles. For automatic teller machines stacking/ reservoir space shall be provided for a minimum of three (3) vehicles.

Section 13.8 Landscaping Requirements.

The following landscaping requirements shall apply:

A. Within parking areas, tree planting areas shall be provided for every 10 parking spaces. Tree planting areas shall be at least eight (8) feet wide, a minimum of 200 square feet in area, include at least one (1) shade tree, and be designed to minimize damage to trees by parking or moving vehicles. The remaining area shall be landscaped with plantings (bushes, shrubs, flower beds, rain gardens). Pedestrian ways are permitted within parking landscaped areas but do not count towards the landscaping area requirement.

B. A vegetative strip shall be provided between public right-of-ways and interior parking areas and where two parking areas abut. The vegetative strip shall be at least ten (10) feet wide and shall include a minimum of one (1) large canopy tree per fifty (50) feet. Grass, shrubs, bushes, flower beds, pedestrian amenities, decorative walls and fences, stormwater retention areas, and sidewalks may be placed in this area. Only where existing overhead utility lines prevent use of large maturing trees may small maturing trees be substituted. Landscaping may be provided within the required parking setback but shall not impede visibility at corners and intersections.

C. Where new development provides sidewalks, see Section 10.6 for design standards.

Section 13.9 General Parking Requirements.

The following general parking requirements shall apply:

A. In the CBD parking is only permitted in the side or rear yards. In all other districts, parking is permitted within the required yards.

B. No parking space shall be more than three hundred (300) feet from a building entrance.

C. Parking areas shall provide spaces in sufficient number and design that are accessible for persons with disabilities in a manner compliant with the Americans with Disabilities Act (ADA) requirements or other federal, state and local laws.

D. Parking shall not be closer than ten (10) feet from the front property line, any dedicated street or railroad right-of-way line. When no right of way exists, then a 50-foot distance will be used to determine the setback (25-feet on each side from the center of the road). This distance is measured from the middle of the existing road or street.

E. Parking shall not be closer than five (5) feet from any side or rear property line, not a street line.

F. Parking spaces shall be striped to designate stalls.

G. Angle parking stall dimensions: 30-90 degree shall be a minimum eight (8) feet by eighteen (18)

feet.
Parallel parking stall dimensions: shall be a minimum eight (8) feet by twenty-two (22) feet.

H. Parking shall be accessed by adequate egress and ingress, drives, and maneuvering space.

I. Parking egress and ingress, drives, and maneuvering space shall be paved with asphalt or concrete. Pervious paving, such as porous asphalt, porous concrete, or grass pave is permitted where appropriate as determined by a certified engineer.

J. Parking areas shall be designed and constructed to dispose of all surface water accumulated within the area in a manner that will not contribute to the subsidence, erosion, or sedimentation of the development site or offsite

K. To insure safe sight distances where streets intersect and where driveways intersect streets, a minimum clear vision area shall be provided at the corners of the intersections according to NC DOT standards. No structure, planting, sign, fence, wall or obstruction to vision that would impede visibility shall be established in the clear vision area. Grading of land may be required where topography impedes the required clear vision area.

L. Vehicular access points to the development shall be designed according to NC DOT standards to encourage smooth traffic flow with minimum hazards to pedestrians, bicycles and vehicular traffic. Accommodations for controlled turning movements into and out of the development and improvement of the approach street shall be provided according to NC DOT requirements.

M. Lighting shall be provided for the safety of individuals within the parking area. In order to reduce the impact of lighting on neighboring residential uses, potential safety hazards to the traveling public, and effect on viewsheds and nightscapes, lighting shall meet the following requirements:

1) Exterior lighting shall be fully shielded and directed to avoid illuminating the night sky.

2) Lighting shall not illuminate neighboring residential properties.

3) Lighting shall not be directed towards or illuminate the I-40 Interstate right-of-way or be directed in a manner as to distract or harm the traveling public on road rights-of-way.

4) On-site lighting may be used to accent architectural elements and provide safety and security on pedestrian walkways, at building entrances, and public areas between buildings, but shall not be used to illuminate entire portions of building(s).

5) In order to promote safety and security in developments, lighting should be used at intersections, development entrances, and in parking areas.

ARTICLE XIV

TELECOMMUNICATION TOWERS

Section 14.1 Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed the Town of Hildebran's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. North Carolina General Statutes governing the regulation of Wireless Telecommunication Facilities, §160A, Article 19, Part 3E., provide for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.

State Statute SB 831 established certain requirements and limitations regarding applications for Cellular towers and Wireless Facilities and established certain procedures that are currently in effect and require that the Town change its regulations to comport with the new state law. The Town of Hildebran thus finds it necessary to revise its regulations regarding the permitting of towers and Wireless Telecommunication Facilities to comply with SB 831 and to reflect changes in wireless technology, the use of wireless communications, the trend and need to locate wireless facilities in residential neighborhoods and to strike a balance between the industry's technical needs and desires and the public welfare, safety, interest and benefit.

The Town of Hildebran finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the Town and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. In order to assure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the Town's land use policies, the Town is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permitting process. The intent of this ordinance is to minimize the physical impact of Wireless Telecommunications Facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, address the economic development needs of the Town and its residents and protect the health, safety and welfare of the residents of the Town of Hildebran.

Section 14.2 Severability.

A. If any word, phrase, sentence, part, section, subsection, or other portion of this ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

B. Any Conditional Use issued with Town Council approval issued pursuant to this Ordinance shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect by a competent authority or is overturned by a competent authority, the permit shall be void in total upon determination by the Town.

Section 14.3 Definitions.

For purposes of this ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

"**Accessory Facility** or **Structure**" means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including, but not limited to, utility or transmission equipment storage sheds or cabinets.

"Applicant" means any Wireless service provider submitting an application for a Conditional Use Permit for Wireless Telecommunications Facilities.

"Application" means all necessary and required documentation that an applicant submits in order to receive a Conditional Use Permit from the Town, a Zoning Permit from the Town, and a Building Permit from Burke County for Wireless Telecommunications Facilities.

"Antenna" means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

"Board" means the Town Council.

"Co-location" means the use of an approved telecommunications structure to support Antenna for the provision of wireless services.

"Commercial Impracticability" or **"Commercially Impracticable"** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not deem a situation to be "commercially impracticable" and shall not render an act or the terms of an agreement "commercially impracticable."

"Completed application" means an application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an application.

"DAS" or **"Distributive Access System"** means a technology using antenna combining technology allowing for multiple carriers or Wireless Service Providers to use the same set of antennas, cabling or fiber optics.

"FAA" means the Federal Aviation Administration or its duly designated and authorized successor agency.

"FCC" means the Federal Communications Commission or its duly designated and authorized successor agency.

“Height” means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna or lightening protection device.

“Maintenance” means plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the Wireless Telecommunication Tower**.**

“Modification” or **“Modify”** means the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications tower or Telecommunications Site as a co-location is a modification.

“Necessary” means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting or acting in a manner that prohibits the provision of service as intended and described in the narrative of the application. **Necessary does not mean what may be desired or preferred technically.**

“NIER” means Non-Ionizing Electromagnetic Radiation.

“Person” means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.

“Personal Wireless Facility” See definition for ‘Wireless Telecommunications Facilities.’

“Personal Wireless Services” or **“PWS”** or **“Personal Telecommunications Service”** or **“PTS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.

"Repairs and Maintenance" means the replacement or repair of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility, as originally permitted.

“Conditional Use Permit” (CUP) means the official document or permit by which an applicant is allowed to file for a Zoning Permit to construct and use Wireless Telecommunications Facilities as granted or issued by the Town.

“**Stealth”** or **“Stealth Technology”** means a design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean building the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances. Stealth technology includes such technology as DAS or its functional equivalent or camouflage where the tower is disguised to make it less visually obtrusive and not recognizable to the average person as a Wireless Telecommunication Facility.

“State” means the State of North Carolina.

"Telecommunications" means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

"Telecommunications Site" See definition for Wireless Telecommunications Facilities.

"Telecommunications Structure" means a structure used in the provision of services described in the definition of 'Wireless Telecommunications Facilities.'

"Temporary" means temporary in relation to all aspects and components of this Ordinance, something intended to, or that does, exist for fewer than ninety (90) days.

"Tower" means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.

"**Wireless Telecommunications Facility"** or **"Facilities <u>(WTF or WTFs)</u>"** means and includes a **"Telecommunications Site"** and **"Personal Wireless Facility."** It means a structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices. This includes without limit towers of all types, kinds and structures, including but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the facility. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

Section 14.4 <u>Overall Procedure and Desired Outcomes for Approving and Issuing Permits for WTFs.</u>

In order to ensure that the placement, construction, and modification of WTFs protects the Town's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this ordinance, the Town hereby adopts an overall procedure with respect to the review, approval and issuance of permits for WTFs for the express purpose of achieving the following outcomes:

A. Requiring a CUP for any new, co-location or modification of a WTF as required or otherwise specified in this ordinance;

B. Implementing an application process for person(s) seeking approval of WTFs;

C. Establishing a procedure for examining an application and issuing a CUP Zoning Permit and Building Permit for WTFs that is both fair and consistent;

D. Promoting, and requiring, wherever possible, the sharing and/or co-location of WTFs among service providers;

E. Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of WTFs in such a manner as to minimize the physical and visual impact on the community, including but not limited to the use of stealth technology.

Section 14.5 Exceptions from a Conditional Use Permit for WTFs.

A. No Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of a WTF as of the effective date of this Section without having first obtained a CUP, Zoning Permit and Building Permit for a WTF as defined in Section 14.4 of this Ordinance or an administratively granted authorization (Zoning Permit) as defined in Section 14.8, whichever is applicable. Notwithstanding anything to the contrary in this section, no CUP shall be required for those non-commercial exceptions noted in Section 14.6, unless deemed in the public interest by the Town Council.

B. If constructed as required by permit, all legally permitted WTFs that existed on or before the effective date of this Section shall be allowed to continue as they presently exist, provided, however, that they are operating as originally permitted and that any modification of an existing WTF not permitted under this ordinance will require the complete facility and any new installation to comply with this ordinance, as will anything changing the structural load. This Ordinance shall not affect the running of any amortization provisions or enforcement actions or otherwise cure and existing land use violations.

C. Any repair and maintenance of a WTF that does not increase the height of the structure, alter the profile, increase the footprint or otherwise exceed the conditions of the CUP does not require an application for a CUP, but may require a Zoning and/or Building Permit. However, no additional construction or site modification shall be considered to be repair or maintenance**.**

Section 14.6 Exclusions.

The following shall be exempt from this ordinance:

A. Any facilities expressly exempt from the Town's siting, building and permitting authority.

B. Any reception or transmission devises expressly exempted under the Telecommunications Act of 1996.

C. Facilities used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications.

D. Facilities used exclusively for providing unlicensed spread spectrum technologies, such as IEEE 802.11a, b, g services (e.g. Wi-Fi and Bluetooth) where the facility does not require a new tower or increase the height of the structure being attached to.

Section 14.7 Conditional Use Permit application and Other Requirements for a New WTF or for Increasing the Footprint, Height, Profile or Number of Co-locations of the Structure to Be Attached To.

All applicants for a CUP for new WTFs**,** including new towers or support structures or that otherwise increases the footprint, height, profile or number of co-locations or any modification of such facility beyond the conditions of an approved CUP, shall comply with the requirements set forth in this ordinance. The Zoning Administrator is the officially designated agency or body of the Town to whom applications for a CUP for WTFs must be made and who is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting or revoking CUPs for WTFs. The Board may at its discretion designate outside consultants to accept, review, analyze, evaluate and make

recommendations to the Town Council with respect to the granting or not granting or revoking CUPs for WTFs. However, outside consultants shall have no authority to make or change policy for the Town.

A. All applicants shall closely follow the instructions for preparing an application for a WTF prior to the submittal of an application for a CUP. Not closely following the instructions without permission to deviate from such shall result in a tolling of the otherwise required 45-day notification period until the receipt of a properly completed application. The applicant shall be notified in writing within 45 days of submission of an application as to the completeness of the WTF application and any deficiencies. An amended application shall be required to correct any deficiencies.

B. When placing wireless facilities on government-owned property or facilities, only non-commercial wireless carriers and users are exempt from the permitting requirements of this ordinance.

C. The Town may deny applications not meeting the requirements stated herein or which are otherwise not complete. In the event the application is denied, the portion of the WTF application Fee remaining from the retainer shall be refunded, but the CUP application Fee is not refundable.

D. No WTFs shall be installed, constructed or modified until the application is reviewed and approved by the Town Council, the CUP has been approved and a Zoning and Building Permit has been issued.

E. Any and all representations made by the applicant to the Town on the record during the application process, whether written or verbal, shall be deemed to have been relied upon in good faith by the Town. Any verbal representation shall be treated as if it were made in writing.

F. An application for a CUP for a WTF shall be signed on behalf of the applicant by the person vested with the authority to bind and commit the applicant to the conditions of the CUP and the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.

G. The applicant must provide documentation to verify it has the right to proceed as proposed on the Site. This requires an executed copy of the lease with the landowner or landlord or a signed letter of agency acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.

H. The applicant shall include a statement in writing:

1) That the applicant's proposed WTF shall be maintained in a safe manner, and in compliance with all conditions of the CUP, without exception, unless specifically granted relief by the Zoning Administrator in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, state and federal laws, rules, and regulations; and

2) That the construction of the WTF is legally permissible, including, but not limited to, the fact that the applicant is authorized to do business in the state.

I. Where a certification is called for in this ordinance, such certification shall bear the signature and seal of a professional engineer licensed in the State.

J. In addition to all other required information as stated in this ordinance, all applications for the construction or installation of new WTFs or modification of an existing facility shall contain the information hereinafter set forth prior to the issuance of a Zoning and Building Permit.

1) *Ownership and Management*

- The name, address and phone number of the person preparing the application;
- The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
- The postal address and tax map parcel number of the property;
- A copy of the FCC license applicable for the intended use of the WTFs;
- Written acknowledgement that any new Telecommunications tower shall be structurally designed to accommodate a minimum of six antenna arrays and shall be managed so as not to restrict, prevent or prohibit competition among carriers;
- The applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new Telecommunication tower that it constructs.

2) *Planning*

- The Property Pin Number and Zoning designation in which the property is situated;
- The size of the property footprint on which the structure to be built or attached is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- The location, size and height of all existing and proposed structures on the property on which the structure is located and which is the subject of the application;
- A site plan showing the footprint and the type, location and dimensions of access drives, landscaping and buffers, fencing and any other requirements of site plans;
- Elevations showing the profile or the vertical rendition of the WTF identifying proposed attachments and all related fixtures, structures, appurtenances and apparatus, including the height above the pre-existing grade, materials, colors and lighting;
- When considering a modification to an existing WTF, provide all users and attachments to the facility, including all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
- Azimuth, size and center line height location of all proposed and existing antennas on the supporting structure;
- The type and design of the WTF, the number of antenna arrays proposed and the basis for the calculations of the WTF's capacity to accommodate the required number of antenna arrays for which the structure must be designed;
- The applicant shall disclose in writing any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new WTF tower that it constructs;

3) *Safety*

(a) If modifying an existing WTF:

- the age of the facility in years, including the date of the grant of the original permit;
- a description of the type of tower, e.g., guyed, self-supporting lattice or monopole;
- the make, model, type and manufacturer of the facility and the structural design calculations, certified by a professional engineer licensed in the State, proving the facility's capability to safely accommodate the facilities of the applicant without change or modification or if any change or modification of the facility is needed, a detailed narrative explaining what changes are needed, why they are needed and who will be responsible to assure that the changes are made;
- a copy of the installed foundation design, as well as a geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for the tower site or other structure;
- for a tower that is five (5) years old or older or for a guyed tower that is three (3) years old or older, a copy of the latest ANSI Report done pursuant to the latest edition of ANSI-EIA/TIA 222F – Annex E for any self-supporting tower. If an ANSI report has not been done pursuant to the preceding schedule, an ANSI report shall be done and submitted as part of the application. No Zoning and/or Building Permit shall be issued for any Wireless Facility where the structure being attached to is in need of remediation, unless and until all remediation work needed has been completed or a schedule for the remediation work has been approved by the Zoning Administrator;

(b) A Structural Report signed by a professional engineer licensed to do business in the State and bearing that engineer's currently valid stamp, showing the structural adequacy of the proposed structure to accommodate the proposed WTF, including any equipment shelter, unless the equipment shelter is located on the lowest floor of a building;

(c) If attaching to a structure other than a tower or where the proposed attachment is within 30 feet of areas to which the public has or could reasonably have or gain access to, documentation shall be provided, including all calculations, proving that the potential exposure to RF radiation (i.e. NIER or Non-Ion Emitting Radiation) will be in compliance with the most recent Federal Communications Commission regulations governing RF radiation and exposure thereto and further denoting the minimum distance from any antennas an individual may safely stand without being exposed to RF radiation in excess of the FCC's permitted standards and any portion(s) of the structure that would be exposed to RF radiation in excess of the FCC's permitted standards. In compliance with the FCC's regulations, in such an instance the RF radiation from all wireless facilities at that location shall be included in the calculations to show the cumulative effect on any area of the building or structure deemed accessible by the public or workers. Such report or analysis shall be signed and sealed by a professional engineer licensed in the state; or

(d) In an instance involving a tower where the new Wireless Facilities will be ten (10) meters or more above ground level and not within 30 feet of areas to which the public has or could reasonably have or gain access to, signed documentation such as the FCC's "Checklist to Determine whether a Facility may be Categorically Excluded" shall be provided to verify that the WTF with the proposed installation will be in full compliance with the current FCC's RF Emissions regulations. If not

categorically excluded, a complete RF Emissions study is required to enable verification of compliance, including providing all calculations so that such may be verified prior to issuance of a Zoning and Building Permit;

(e) In certain instances, the Town may deem it appropriate to have an RF survey of the facility done after the construction or modification and activation of the facility, such to be done under the direction of the Town or its designee, and an un-redacted copy of the survey results provided, along with all calculations prior to issuance of a Certificate of Compliance;

(f) If any section or portion of the structure to be attached to is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations and be marked off with yellow and black plastic chain and striped warning tape, as well as placing RF radiation signs as needed and appropriate to warn individuals of the potential danger;

(g) A signed statement that the applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.

K. The applicant will provide a written copy of an analysis, completed by a legally qualified individual or organization, to determine if the proposed WTF is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any where the application increases the height of the WTF. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

L. Application for New WTF versus Co-location.

1) The applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing WTFs or the use of alternative buildings or other structures within the Town that are at or above the surrounding tree height or the tallest obstruction and are within one (1) mile of the proposed tower. Copies of written requests and responses for shared use shall be provided to the Town in the application, along with any letters of rejection stating the reason for rejection.

2) Telecommunications towers and WTF sites shall be prohibited: 1) from being built on any ridgeline or extending above any and all ridgelines other than as set forth hereafter. No portion of any tower or Wireless Telecommunications Facility shall extend above the top of any ridgeline by more than twenty (20) feet above the ambient tree height in the vicinity of the facility; 2) in any residential district , and 3) in any Historic District, unless the applicant provides documentation in the form of clear and convincing evidence to demonstrate that the Telecommunications Tower or WTF is necessary, that the area cannot be served from outside the district, that no existing or previously approved WTF can reasonably be used for the antenna placement instead of the construction of a new WTF or instead of increasing the height of an existing WTF and that no alternative WTF or alternative type of WTF can be used to provide Wireless Telecommunications Service to the District.

3) In order to better inform the public, in the case of a new Telecommunication tower, the applicant shall hold a "balloon test" prior to the public hearing on the application. The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a ten (10) foot in length brightly colored balloon at the maximum height of the proposed new tower.

4) At least fourteen (14) days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest the proposed site and shall be removed no later than fourteen (14) days after the conduct of the balloon test. The sign shall be at least four feet (4') by eight feet (8') in size and shall be readable from the road by a person with 20/20 vision.

5) Such sign shall be placed off, but as near to, the public right-of-way as is possible.

6) Such sign shall contain the times and date(s) of the balloon test and contact information.

7) The dates, (including a second date in case of poor visibility or wind in excess of 15 mph on the initial date), times and location of this balloon test shall be advertised by the applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the Town and as agreed to by the Town. The applicant shall inform the Town in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four (4) consecutive hours between 10:00 am and 2:00 p.m. on the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with pictures from various locations of the balloon shall be provided with the application.

8) The applicant shall notify all property owners and residents located within one-thousand five hundred feet (1,500) of the nearest property line of the subject property of the proposed construction of the tower and wireless facility and of the date(s) and time(s) of the balloon test. Such notice shall be provided at least fourteen (14) days prior to the conduct of the balloon test and shall be delivered by first-class mail.

9) The WTF shall be structurally designed to accommodate at least six (6) antenna arrays as regards the load and stress created on the structure, with each array to be sited in such a manner as to provide for flush attachments to the greatest extent possible with the minimum separation required-without causing interference. An Intermodulation Study shall be submitted to justify design claims as related to interference. A claim of interference because of a need to have greater than six feet (6') of vertical clearance between facilities, measured from the vertical centerline of one array to the vertical centerline of another, must be proven by technical data showing that there is no technological alternative that would enable the service to be provided that would require less vertical space and not merely verbal or written assertions. This requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the WTF is not reasonably feasible if co-location is technically or commercially impractical or impracticable. The applicant shall provide information necessary to determine whether co-location is reasonably feasible-based upon:
The kind of WTF site and structure proposed;
Available space on existing and approved WTFs;

10) The owner of a proposed new WTF, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed WTF by other Wireless service providers in the future and shall:
   (a) Respond within 60 days to a request for information from a potential shared-use applicant;
   (b) Negotiate in good faith concerning future requests for shared use of the new WTF by other telecommunications providers;

(c) Allow shared use of the new WTF if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a Pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the WTF or equipment to accommodate a shared user without causing electromagnetic interference;

(d) Failure to abide by the conditions outlined above may be grounds for revocation of the CUP.

M. The applicant shall provide certification with documentation (i.e. structural analysis) including calculations that the Telecommunications Facility and foundation and attachments, rooftop support structure, water tank structure, or any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to, all applicable ANSI (American National Standards Institute) guidelines.

N. All applications for proposed WTFs shall contain a demonstration that the Facility is sited and designed so as to create the least visual intrusiveness reasonably possible given the facts and circumstances involved, and thereby will have the least adverse visual effect on the environment and its character, on existing vegetation, and on the community in the area of the WTF. The Town expressly reserves the right to require the use of stealth or camouflage technology or techniques such as DAS (Distributive Antenna System technology) or its functional equivalent to achieve this goal and such shall be subject to approval by the Zoning Administrator.

O. The applicant shall furnish a Visual Impact Assessment, which shall include:

- A computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage;
- Pictorial representations (photo simulations) of "before and after" views from key viewpoints inside of the Town as may be appropriate and required, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall provide a map showing the locations of where the pictures were taken and the distance(s)of each location from the proposed structure;
- A written description of the visual impact of the proposed facility, including, as applicable, the tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need for or appropriateness of screening.

P. The applicant shall demonstrate and provide a description in writing and by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed WTF.

Q. The WTF and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of stealth or camouflage or concealment technology as may be required by the Town.

R. All utilities at a WTF site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

S. At a WTF site an access road, turn-around space for an emergency vehicle and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

T. All WTF shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety related codes adopted by the Town, state, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

U. A holder of a CUP granted under this ordinance shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same in full force and effect for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.

V. There shall be a pre-application meeting for all intended applications. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process and certain issues or concerns the Town may have. A pre-application meeting shall also include a site visit, if there has not been a prior site visit for the requested facility. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a retainer based on the fixed hourly rate to be set in the Town's fee schedule applied to the anticipated time customarily required for the review of similar applications.

W. An applicant shall submit to the Town the number of completed applications determined to be needed at the pre-application meeting.

X. If the proposed site is within two (2) miles of another jurisdiction, written notification of the application shall be provided to the legislative body of all such adjacent counties and municipalities as applicable and/or requested.

Y. The holder of a CUP shall notify the Town of any intended modification of a WTF and shall apply to the Town to modify, relocate or rebuild a WTF.

Z. A Zoning and Building Permit shall not be issued for construction of the WTF until there is an application for a specific carrier which documents that the facility is necessary for that carrier to serve the community and that co-location on an existing telecommunications structure is not feasible within the applicant's search ring. Co-location on an existing structure is not reasonably feasible if co-location is technically or commercially impractical or impracticable or the owner of the WTF is unwilling to enter into a contract for such use at fair market value. Sufficient

documentation in the form of clear and convincing evidence to support such claims shall be submitted with a WTF application for the first carrier to determine whether co-location on existing structures is reasonably feasible and to document the need for a specific height and that less height will serve to prohibit or have the effect of prohibiting the provision of service.

AA. In determining whether or not to grant a CUP or other applicable authorization, the following standards shall be considered at a minimum. Where warranted in special situations other standards may be applied, so long as they are not in conflict or violate applicable state and federal law, rules and regulations:

1) The proposed WTF is located and sited so as to create the least visual impact on any view or vista and the general area surrounding the site that is reasonably possible under the facts and circumstances;
2) The proposed WTF is sited, located and designed so as to protect, maintain and promote the public health, safety and general welfare;
3) The proposed WTF is designed and operated so as to be compatible with the nature and character of the particular neighborhood in which it is to be located;
4) The proposed WTF and the applicant are, and will design, construct and operate the WTF, in compliance with all applicable state and federal laws, rules and regulations.
5) The Town Council shall not approve an application for a CUP for a WTF, unless it first finds that the site proposed is the most appropriate in light of the intents, goals, purposes and standards contained in this Ordinance and is determined as the best in highest use for the property.

Section 14.8 Requirements for an application for the First Antenna to be Attached to an Approved Wireless Telecommunications Structure Within the Parameters of an Approved Conditional Use Permit.

A. The fixed application fee for review of WTFs applications for locating an antenna array on an approved WTF within the parameters of an approved CUP shall be as set forth in the Town's schedule of fees.

B. An application to increase the parameters or size of an approved WTF as relates to conditioned height, profile, number of co-locations or footprint shall not qualify for treatment as an attachment to an approved WTF within the parameters of a CUP under this Section.

C. There shall be no CUP required for an application to attach the first antenna array on an approved WTF within the parameters of an approved CUP, unless for good cause such shall be required by the Zoning Administrator. Instead, approval shall result in issuance of a Zoning Permit by the Zoning Administrator.

D. Documentation shall be provided to demonstrate that the applicant has the legal right to proceed as proposed on the Site, including an executed copy of the lease with the owner of the facility proposed to be attached to, or a letter of agency, showing the right of the applicant to attach to the structure.

E. A pre-application meeting shall be held. Before the pre-application meeting, the applicant shall be provided instructions for completing an application. Said instructions are to be controlling as regards the form and substance of the issues addressed in the instructions and must be followed. Prior to the pre-application meeting, the applicant shall prepare and submit a Project Information

Form provided by the Town and submit the retainer fee, but shall not prepare or submit the application at that time.

F. The applicant shall include a written statement that:

1) The applicant's proposed WTF shall be maintained in a safe manner, and in compliance with all conditions of all applicable permits and authorizations, without exception, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, state and federal laws, rules, and regulations; and

2) The construction of the WTFs is legally permissible, including, but not limited, to the fact that the applicant is authorized to do business in the state.

G. An application for the first antenna to be attached to an approved WTF subsequent to the issuance of the CUP and prior to issuance of a Zoning and Building Permit for construction of the WTF shall contain the requirements of the Streamlined Process for Review of Co-locations in Section 14.9 and the following information:

1) ***Facility Description and Documentation of the Facility as necessary***

- A detailed narrative description and explanation of the specific objective(s) for the new WTF, expressly including and explaining the purpose for the facility, such as coverage and/or capacity, technical requirements, and the identified boundaries of the specific geographic area of intended coverage;
- Technical documentation that proves the design of the WTF is what is necessary to provide type and coverage of the service primarily and essentially within the Town. Such documentation shall include a propagation study of the proposed site and all adjoining planned, proposed or existing sites, that demonstrates a significant gap in coverage and/or, if a capacity issue is involved, to include an analysis of the current and projected usage (traffic studies) using generally accepted industry methods and standards so as to conclusively prove the need for what is proposed. To enable the Town to make its decision as regards to the design of the WTF, the Town may require the provision of all technical or engineering data and information used by the applicant that is necessary to enable an informed decision to be made to assure compliance with the intent of this ordinance and that is based upon a written record, not to include information that by applicable law or regulation is deemed to be confidential or proprietary;
- All of the modeling information (i.e., data) input into the software used to produce the propagation studies including, but not limited to, any assumptions made, such as ambient tree height, which shall include the completion of the town's Propagation Study Data Form;
- A copy of the FCC license applicable for the intended use of the WTF, as well as a copy of the five (5) and ten (10) year build-out plan required by the FCC;
- The frequency, modulation and class of service of radio or other transmitting equipment;
- The maximum transmission power capability of all radios, as designed, if the applicant is a cellular or functional equivalent carrier or the maximum transmission power capability, as designed, of all transmission facilities if the applicant is not a cellular or functional equivalent carrier;
- The actual intended transmission power stated as the maximum effective radiated power (ERP), both in dBm's and watts;

- A statement certifying that the WTF and all attachments thereto are in compliance with the conditions of the approved CUP.

2) ***Ownership and Management***

- The name, address and phone number of the person preparing the application;
- The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
- The postal address and tax map parcel number of the property;
- A copy of the FCC license applicable for the intended use of the WTFs.

Section 14.9 Streamlined Requirements for an application to Co-locate on an Existing Telecommunications Facility within the Parameters of an Approved Conditional Use Permit.

A. The fixed application fee for review of WTFs applications for co-locating an antenna array on an existing WTF shall be as set forth in the Town's Schedule of Fees.

B. An application to increase the parameters of an approved WTF as relates to conditioned height, profile, number of co-locations or footprint shall not qualify for treatment as an attachment to an existing tower or other structure under this Section.

C. There shall be no CUP required for an application to modify or to co-locate an antenna array on an existing and properly permitted WTF so long as the co-location or modification does not exceed the parameters of the conditions of the approved CUP, unless for good cause such shall be required by the Zoning Administrator. Instead, approval shall result in issuance of a Zoning Permit by the Zoning Administrator.

D. Documentation shall be provided to demonstrate that the applicant has the legal right to proceed as proposed on the Site, including an executed copy of the lease with the owner of the facility proposed to be attached to, or a letter of agency, showing the right of the applicant to attach to the structure.

E. A pre-application meeting shall be held**.** Before the pre-application meeting, the applicant shall be provided instructions for completing an application. Said instructions are to be controlling as regards the form and substance of the issues addressed in the instructions and must be followed. Prior to the pre-application meeting, the applicant shall prepare and submit the Project Information Form and submit the retainer fee, but shall not prepare or submit the application.

F. The applicant shall include a written statement that:

1) The applicant's proposed WTF shall be maintained in a safe manner and in compliance with all conditions of all applicable permits and authorizations, without exception, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, state and federal laws, rules, and regulations; and
2) The construction of the WTFs is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the State.

G. An application for attaching an antenna array under this section shall contain the following information:

1) ***Facility Description***

- A detailed narrative description and explanation of the specific objective(s) for the new facility, or the modification of an existing wireless facility, expressly including and explaining the purpose for the facility, such as lack of coverage, and/or capacity, -requirements, and the identified boundaries of the specific geographic area of intended coverage;
- Documentation that the design of the facility is what is necessary for the design service to serve the community (i.e., that the placement on the Wireless Telecommunications Structure is the lowest available height necessary and that the design produces the least visual and is designed to operate within the conditions of the approved CUP as regards to height, profile, type and number of co-locations and footprint);
- A copy of the FCC license applicable for the intended use of the WTF, as well as a copy of the five (5) and ten (10) year build-out plan required by the FCC;
- The frequency, modulation and class of service of radio or other transmitting equipment;
- The maximum transmission power capability of all radios, as designed, if the applicant is a cellular or functional equivalent carrier, or the maximum transmission power capability, as designed, of all transmission facilities if the applicant is not a cellular or functional equivalent carrier;
- The actual intended transmission power stated as the maximum effective radiated power (ERP), both in dBm's and watts;
- A statement certifying that the WTF and all attachments thereto are in compliance with the conditions of the approved CUP;

2) ***Ownership and Management***

- The name, address and phone number of the person preparing the application;
- The name, address, and phone number of the property owner and the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name and all necessary contact information shall be provided;
- The postal address and tax map parcel number of the property;
- A copy of the FCC license applicable for the intended use of the WTFs.

3) ***Planning***

- The Property Identification Number and designation in which the property is situated;
- The size of the property on which the structure to be attached to is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
- The location, size and height of all existing and proposed structures on the property on which the structure is located and that is the subject of the application;
- A site plan showing the footprint, location and dimensions of access drives, landscaping and buffers, fencing and any other requirements of site plans.
- Elevations showing the vertical rendition of the WTF identifying all users**,** attachments**,** and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
- The azimuth, size and center line height location of all proposed and existing antennae on the supporting structure;
- The number, type and model of the antenna(s) proposed, along with a copy of the specification sheet(s) for the antennas;

4) ***Safety***

- The age of the tower in years, including the date of the grant of the original permit or authorization for the tower;
- A description of the type of tower, i.e. guyed, self-supporting lattice or monopole;
- The make, model, type and manufacturer of the *Telecommunications Structure* and the structural design calculations, certified by a professional engineer licensed in the state, proving the structure's capability to safely accommodate the facilities of the applicant without change or modification, or if any change or modification of the structure is needed, a detailed narrative explaining what changes are needed, why they are needed and who will be responsible to assure that the changes are made;
- A copy of the installed foundation design, as well as a geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for the tower site or other structure;
- For a tower that is five (5) years old or older, or for a guyed tower that is three (3) years old or older, a copy of the latest ANSI Report done pursuant to the latest edition of ANSI-EIA/TIA 222F – Annex E for any self-supporting tower. If an ANSI report has not been done pursuant to the preceding schedule, an ANSI report shall be done and submitted as part of the application. No Zoning and Building Permit shall be issued for any Wireless Facility where the structure being attached to is in need of remediation, unless and until all remediation work needed has been completed or a schedule for the remediation work has been approved in writing by the Zoning Administrator;
- A structural report signed by a professional engineer licensed to do business in the State and bearing that engineer's currently valid stamp, showing the structural adequacy of the WTF to accommodate the proposed modification or antenna array co-location, including any equipment shelter, unless the equipment shelter is located on the lowest floor of a building;
- If attaching to a structure other than a tower or where the proposed attachment is within 30 feet of areas to which the public has or could reasonably have or gain access to, documentation shall be provided, including all calculations, proving that the potential exposure to RF radiation (i.e., NIER or Non-Ion Emitting Radiation), will be in compliance with the most recent Federal Communications Commission regulations governing RF radiation and exposure thereto and further denoting the minimum distance from any antennas an individual may safely stand without being exposed to RF radiation in excess of the FCC's permitted standards and any portion(s) of the structure that would be exposed to RF radiation in excess of the FCC's permitted standards . In compliance with the FCC's regulations, in such an instance the RF radiation from all wireless facilities at that location shall be included in the calculations to show the cumulative effect on any area of the building or structure deemed accessible by the public or workers. Such report or analysis shall be signed and sealed by a professional engineer licensed in the State; or
- In an instance involving a tower where the new WTF will be ten (10) meters or more above ground level, signed documentation such as the FCC's "Checklist to Determine whether a Facility may be Categorically Excluded" shall be provided to verify that the WTF with the proposed installation will be in full compliance with the current FCC's RF Emissions regulations. If not categorically excluded, a complete RF Emissions study is required to enable verification of compliance,

including providing all calculations so that such may be verified prior to issuance of a Zoning and Building Permit;

- If any section or portion of the structure to be attached to is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with yellow and black striped warning tape or a suitable warning barrier, as well as placing RF radiation signs as needed and appropriate to warn individuals of the potential danger;
- A signed statement that the applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.

H. To protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facie, the antennas shall be mounted on the facie, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling shall use camouflage or stealth techniques to match as closely as possible the color and texture of the structure.

I. If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the applicant can prove that to locate elsewhere will prohibit or have the effect of prohibiting the provision of service. The provisions of the preceding subsection (9) of this section shall also apply to any attachment to a water tank.

J. The applicant shall provide a certification by a professional engineer licensed in the State, along with documentation (a structural analysis), including calculations that prove that the WTF and its foundation as proposed to be utilized are designed and were constructed to meet all local, Town, State, Federal and ANSI structural requirements for loads, including wind and ice loads and the placement of any equipment on the roof a building after the addition of the proposed new facilities.

K. So as to be the least visually intrusive WTF reasonably possible, given the facts and circumstances involved, and thereby have the least adverse visual effect and create the least intrusive or lowest profile or visual silhouette reasonably possible, unless it can be proven that such would be technologically impracticable, all antennas attached to a tower or other structure shall be flush mounted or as near to flush mounted as is possible without prohibiting or having the effect of prohibiting the provision of service so as minimize the visual profile of the antennas, or prove technically, with hard data and a detailed narrative, that flush mounting cannot be used and would serve to prohibit or have the effect of prohibiting the provision of service.

L. Unless it is deemed inappropriate or unnecessary by the Town, given the facts and circumstances, the applicant shall demonstrate and provide in writing and by drawing how it shall effectively buffer and screen from view the base and all related equipment and structures of the proposed WTF up to a height of ten (10) feet; at a minimum the buffer must be ten (10) feet wide containing a continuous screen of a fence at least six (6) feet in height and dense ever green shrubs planted on the outside of the fence, spaced not more than five (5) feet apart and five (5) feet or more in height after two (2) growing seasons.

M. The WTF and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of stealth, camouflage or concealment technology as may be required by the Town and as is not impracticable under the facts and circumstances.

N. All utilities installed for a new WTF shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.

O. If deemed necessary or appropriate, an access road, turn around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion and shall comply with any local or state regulations for the construction of roads. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations.

Section 14.10 Location of WTFs.

A. Applicants for telecommunications towers shall locate, site and erect said Wireless Telecommunications Tower in accordance with the following priorities, in the following order:
   1) On existing Town-owned WTFs without increasing the height of the tower or structure;
   2) On existing WTFs without increasing the height of the tower or structure.
   3) On Town-owned properties or facilities;
   4) On properties in areas zoned G-M or H-B; or
   5) On properties in areas zoned N-B.

B. Applicants for all other WTFs (e.g., Distributed Antenna Systems or buildings) shall locate, site and construct said WTFs in accordance with the following priorities, in order:
   1) On existing Town-owned WTFs without increasing the height of the structure;
   2) On existing WTFs without increasing the height of the structure;
   3) On Town-owned properties or facilities;
   4) On properties in areas zoned G-M or H-B;
   5) On properties in areas zoned N-B or CBD; or
   6) On properties in areas zoned R-10 or R-20.

C. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation and justification must be provided as to why a site of all higher priority designations was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the WTF as proposed.

D. An applicant may not bypass sites of higher priority by stating the site proposed is the only site leased or selected or because there is an existing lease with a landowner. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Town why co-location is technically or commercially

impracticable. Agreements between WTF owners limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.

E. Notwithstanding the above, the Town may approve any site located within an area in the above list of priorities, provided that the Town finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Conversely, the Town may direct that the proposed location be changed to another location that is more in keeping with the goals of this Section and the public interest as determined by the Town.

F. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Town may disapprove an application for any of the following reasons:
1) Conflict with safety and safety-related codes and requirements;
2) Conflict with the historic nature or character of a neighborhood or district;
3) The use or construction of WTFs which is contrary to an already stated purpose of a specific zoning or land use designation;
4) The placement and location of WTFs which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers;
5) The placement and location of a WTF would result in a conflict with or compromise in or change the nature or character of the surrounding area;
6) Conflicts with the provisions of this Section; and/or
7) Failure to submit a complete application as required under this Section.

G. Notwithstanding anything to the contrary in this section, for good cause shown, such as the ability to utilize a shorter or less intrusive facility elsewhere and still accomplish the primary service objective, the Town may require the relocation of a proposed site, including allowing for the fact that relocating the site chosen by the applicant may require the use of more than one (1) site to provide substantially the same service if the relocation could result in a less intrusive facility or facilities, singly or in combination. The existence of a lease entered into prior to the approval of an application shall not be deemed justification for the requested location.

Section 14.11 Shared Use of WTFs Structures.

A. The Town requires the co-location of antenna arrays on existing WTFs, as opposed to the construction of a new WTF or increasing the height, footprint or profile beyond the conditions of the approved CUP for an existing WTF, unless such is proven to be technologically impracticable. The applicant shall submit a comprehensive report inventorying all existing WTFs and other suitable structures within one (1) mile of the location of any proposed new WTF, unless the applicant can show that some other distance is more appropriate and reasonable and demonstrate conclusively why an existing WTF or other suitable structure cannot be used.

B. An applicant intending to locate on an existing WTF shall be required to document the intent of the existing owner to permit its use by the applicant.

C. Such shared use shall consist only of the minimum Antenna array technologically required to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.

Section 14.12 Type and Height of WTFs.

A. All new towers shall be of the monopole type, unless such is able to be proven to be technologically impracticable. No new towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly granted.

B. The applicant shall submit documentation justifying the total height of any WTF or Antenna requested and the basis therefore. Documentation in the form of propagation studies must include all backup data used to produce the studies at the requested height and a minimum of ten feet (10') lower height to enable verification of the need for the requested height.

C. For a new WTF a reduction in the identified size of the identified service area of 10% or less of the predicted service area shall not be deemed justification for exceeding the otherwise maximum allowable height of a WTF.

D. The maximum permitted total height of a new WTF shall be one hundred twenty feet (120') above pre-construction ground level, unless it can be proven that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the community. The maximum permitted height is not an as-of-right height, but rather the maximum permitted height, absent proof of the technological need for a greater height.

E. For a wireless facility to be located on an existing WTF, such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown. A reduction in the size of the identified service area of 10% or less of the predicted service area shall not be deemed justification for increasing the height of a facility.

F. Notwithstanding the preceding subsection (4) of this section, WTFs shall be no taller than the minimum height technologically necessary to enable the provision of wireless service coverage or capacity as needed within the community (i.e., the Town and its jurisdiction).

G. Documentation substantiating the height necessary to provide for the placement of an antennal array to provide wireless service to the community shall be submitted by the applicant prior to issuance of a Zoning and Building Permit for a new WTF, i.e., tower, but shall not be required prior to the issuance of the CUP, unless the requested height exceeds the 120 foot maximum height. Such documentation shall be provided with an application for the first attachment of an antenna array and for any proposed increase in the previously permitted height.

H. Relief from the maximum height for new WTFs shall only be considered where evidence substantiates a taller height is necessary for the provision of wireless service to the community, to the exclusion of any alternative option that is not technologically or commercially impracticable, and where denial of a taller height would have the effect of prohibiting the provision of wireless service to the community. Such documentation shall be provided prior to consideration of a CUP when the requested height exceeds the 120 foot maximum height.

I. Prior to issuance a Zoning Permit for the co-location of an antenna array on an existing WTF, an applicant shall demonstrate that the co-location is located appropriately on the WTF with the overall goal being to preserve the carrying capacity of the WTF for future co-locations and to minimize the visual intrusiveness and impact, including the profile of the WTF.

J. In determining the necessary height for a WTF, or the height or placement of a co-location on a WTF, the signal strengths analyzed shall be the threshold or lowest signal strength at which the customer equipment is designed to function, which may be required to be determined by the manufacturer's published specifications for the customer equipment.

K. As the Town has made the policy decision that more towers of a shorter height is in the public interest, as opposed to fewer taller towers, spacing, or the distance between towers, shall be such that the service may be provided without exceeding the maximum permitted height.

Section 14.13 Visibility of WTFs.

A. WTFs shall not be artificially lighted or marked, except as required by federal regulations.

B. Stealth: All new WTFs, including but not limited to towers, shall utilize Stealth or Camouflage techniques and technology, unless such can be shown to be either commercially or technologically impracticable.

C. Dual Mode: In order to minimize the number of antenna arrays and thus the visual impact, the Town may require the use of dual mode antennas to be used, including by two different carriers, unless it can be proven that such will not work technologically and that such would have the effect of prohibiting the provision of service in the Town.

D. WTFs Finish/Color: Structures shall be galvanized and/or painted with a rust preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this ordinance.

E. Lighting: If lighting is legally required or proposed, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. For any WTF for which lighting is required under the FAA's regulations or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it not able to be seen from the ground to a height of at least 12 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device must be compliant with or not in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.

F. In the event a WTF that is lighted is modified, at the time of the modification, the Town may require that the tower be retrofitted with the technology set forth in the preceding subsection (5).

G. Flush Mounting: All new or replacement antennas, except omni-directional whip antennas, shall be flush-mounted or as close to flush-mounted as is technologically possible on any WTF, so long as such does not have the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), unless the applicant can prove that it is technologically impracticable.

H. Placement on Building Facie: If attached to a building, all antennas shall be mounted on the facie of the building and camouflaged so as to match the color and, if possible, texture of the building or in a manner so as to make the antennas as visually innocuous and undetectable as is possible given the facts and circumstances involved.

Section 14.14 Security of WTFs.

All WTFs shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

A. All WTFs, including Antennas, towers and other supporting structures, such as guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and

B. Transmitters and Telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

Section 14.15 Signage.

WTFs shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. On tower sites, an FCC registration site, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

Section 14.16 Setbacks.

A. All proposed Telecommunications towers and any other proposed WTF attachment structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed tower or other WTF structure plus ten percent (10%) of the height of the Telecommunications Structure, otherwise known as the Fall Zone, or the existing setback requirement of the underlying zoning district, whichever is greater. Any Accessory structure shall be located within the footprint as approved in the CUP and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The Fall Zone shall be measured from the nearest portion of the right-of-way of any public road or thoroughfare and any building intended for occupation or residence. Further, the nearest portion of any access road leading to a WTF shall be no less than fifteen (15) feet from the nearest property line.

B. There shall be no development of habitable buildings within the Fall Zone set forth in the preceding subsection (1).

Section 14.17 Retention of Expert Assistance Cost to Be Borne by Applicant.

A. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any site inspections.

B. To prevent the taxpayers from having to bear the cost related to the issue of the regulation of WTFs, an applicant shall pay to the Town a retainer fee based on the fixed hourly rate to be set in the Town's Fee Schedule applied to the anticipated time customarily required for the review of similar applications to cover all reasonable costs of consultant and expert evaluation and

consultation with the Town in connection with the review of any application, and where applicable, any lease negotiation, the pre-approval evaluation, and including the construction and modification of the site, once permitted. The placement of the initial retainer with the Town shall precede the pre-application meeting or any work being done as regards to processing an application. The Town will maintain accounting for the expenditure of all such funds. The Town's consultants/experts shall invoice the Town for all time expended for its services in reviewing the application, including the construction and modification of the site, once permitted. If at any time during the process this retainer fee has a balance of less than one-fourth (1/4) of the initial retainer**,** the applicant shall immediately, upon notification by the Town, provide a retainer equivalent to one-half (1/2) of the initial retainer. Such additional funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount paid to the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant subsequent to the issuance of a Certificate of Completion.

C. The fixed fee is the hourly rate of consultants and experts retained to review WTFs applications, but the total amount of the funds needed as set forth in subsection (2) of this section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

D. Records of all outside costs associated with the review and permitting process shall be maintained and available for public inspection, in compliance with applicable North Carolina law.

Section 14.18 Procedural Requirements for a Conditional Use Permit.

A. The procedures established for Conditional Uses in Section 14.7 A. through K. of this Ordinance shall apply where WTFs require a CUP as required or otherwise specified in this Section.

B. The Town Council shall schedule the required public hearing once it finds the application is complete and is not required to set a date if the application is not complete. The Town Council, at any stage prior to issuing a CUP, may require such additional information as it deems necessary as such relates to the issue of the siting, construction or modification of a WTF.

C. A CUP shall be issued for a Wireless Telecommunications Structure upon review and approval, but the Zoning and Building Permit for said Telecommunications Structure shall not be issued until an applicant has provided substantiating documentation under Section 14.8 governing the placement of the first antenna array prior to construction of a new WTF.

Section 14.19 Action on an Application for a Conditional Use Permit for WTFs.

A. The Town will undertake a review of an application pursuant to this Section in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution.

B. The Town may refer any application or part thereof to any advisory or other committee for a non-binding recommendation.

C. After the public hearing and after formally considering the application, the Town may approve, approve with conditions, or deny a CUP. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the applicant.

D. If the Town Council approves the CUP for the WTF, then the applicant shall be notified of such approval in writing within thirty (30) calendar days of the Town's action, and the CUP shall be issued within thirty (30) days after such approval. Except for necessary construction plan documents, zoning permits, building permits, and subsequent Certificates of Compliance, once a CUP has been granted hereunder, no additional site plan or zoning approvals shall be required by the Town for the WTFs covered by the CUP. Each modification or co-location of an antenna array shall require the submission of a WTF application and Zoning Permit application.

E. If the Town denies the CUP for the WTFs, then the applicant shall be notified of such denial in writing within thirty (30) calendar days of the action and shall set forth in writing the reason or reasons for the denial.

F. Following an opportunity to cure, and if not cured within the time frame set forth in the notice of violation, a hearing upon due prior notice to the applicant, such CUP may be revoked, canceled, or terminated for a violation of the conditions and provisions of the CUP, or for a material violation of this Section or other applicable law, rule or regulation. Notice of a violation and of the date, time and place of a hearing shall be provided by registered mail to the last known address of the holder of the CUP.

Section 14.20 Extent and Parameters of Conditional Use Permit for WTFs.

The extent and parameters of a CUP for WTFs shall be as follows:

A. Such CUP shall not be assigned, transferred or conveyed without the express prior written notification to the Zoning Administrator.

B. Any change in ownership and/or management of the permit or WTFs shall require written notice to the Zoning Administrator of the contact information for the new owner or manager sixty (60) days prior to the change.

Section 14.21 Application Fee.

At the time that a person submits an application for a CUP for a new WTF, such person shall pay a non-refundable application fee set forth in the Town's Fee Schedule, as may be amended or changed from time to time.

Section 14.22 Removal and Performance Security.

The applicant and the owner of record of any proposed WTFs property site shall, at its cost and expense, be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town, as to type of security and the form and manner of execution, in an amount of at least $75,000.00 for a tower and with such sureties as are deemed sufficient by the Town to assure the faithful performance of the terms and conditions of this Section and conditions of any CUP issued pursuant to this Section. The full amount of the bond or security shall remain in full force and effect throughout the

term of the CUP and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original CUP.

Section 14.23 Reservation of Authority to Inspect WTFs.

In order to verify that the holder of a CUP for WTFs and any and all lessees, renters, and/or licensees of WTFs, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

Section 14.24 Liability Insurance.

A. A holder of a CUP for Wireless Telecommunications Structures shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the CUP in amounts as set forth below:
   1) Commercial General Liability covering personal injuries, death and property damage: $1,000,000 per occurrence/$2,000,000 aggregate; and
   2) Automobile Coverage: $1,000,000.00 per occurrence/ $2,000,000 aggregate; and
   3) A $3,000,000 Umbrella coverage; and
   4) Workers Compensation and Disability: Statutory amounts.

B. For a WTF on Town property, the Commercial General Liability insurance policy shall specifically name the Town and its officers, employees, committee members, attorneys, agents and consultants as additional insureds.

C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with an A. M. Best's rating of at least A.

D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.

E. Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.

F. Before construction of a permitted WTF is initiated, but in no case later than fifteen (15) days prior to the grant of the Zoning Permit, the holder of the CUP shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

G. A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the Town shall not be deemed to comply with this Section.

Section 14.25 Indemnification.

A. Any application for WTFs that is proposed for Town property, pursuant to this Section, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Section, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, and its officers, employees, committee members, attorneys,

agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

B. Notwithstanding the requirements noted in Subsection 14.25 A. of this section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a CUP for WTFs.

Section 14.26 Fines.

A. If the Town finds that any person has violated the provisions of the Wireless Telecommunications Ordinance, it may, in addition to all other remedies available either in law or in equity, institute a civil penalty as permitted under State and local law; act or proceed to restrain, correct, or abate the violation; prevent use of buildings, structures or land; or, prevent any illegal act, conduct, or business on the premises. Each day that the violation continues shall constitute a separate offense.

B. Notwithstanding anything in this section, the holder of the CUP for WTFs may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this section or any section of this Ordinance. An attempt to do so shall subject the holder of the CUP to termination and revocation of the CUP. The Town may also seek injunctive relief to prevent the continued violation of this section, without limiting other remedies available to the Town.

Section 14.27 Default and/or Revocation.

If a Wireless Telecommunications Structure or Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Section or of the CUP, then the Town shall notify the holder of the CUP in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as in Section 14.26 and if a violation is not corrected to the satisfaction of the Town in a reasonable period of time the CUP shall be subject to revocation.

Section 14.28 Removal of Wireless Telecommunications Structures and Facilities.

A. The owner of any WTF or wireless facility shall be required to provide a minimum of thirty (30) days written notice to the Zoning Administrator prior to abandoning any WTF or wireless facility.

B. Under the following circumstances, the Town may determine that the health, safety, and welfare interests of the Town warrant and require the removal of WTFs:

1) WTFs that have been abandoned (i.e. not used as WTFs) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days of abandonment;
2) Permitted Wireless Telecommunications Structures or Facilities fall into such a state of disrepair that it creates a health or safety hazard;
3) Wireless Telecommunications Structures or Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required CUP or any other necessary authorization and the CUP may be revoked.

C. If the Town makes such a determination as noted in Subsection 14.28 B. of this section, then the Town shall notify the holder of the CUP for the WTFs within forty-eight (48) hours that said WTFs are to be removed. The Town may approve an interim temporary use agreement/permit, such as to enable the sale of the WTFs.

D. The holder of the CUP, or its successors or assigns, shall dismantle and remove such WTFs, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the Town. However, if the owner of the property upon which the WTFs are located wishes to retain any access roadway to the WTFs, the owner may do so with the approval of the Town.

E. If WTFs are not removed or substantial progress has not been made to remove the WTFs within ninety (90) days after the permit holder has received notice, then the Town may order officials or representatives of the Town to remove the WTFs at the sole expense of the owner or CUP holder.

F. If the Town removes, or causes to be removed, WTFs, and the owner of the WTFs does not claim and remove it from the site to a lawful location within ten (10) days, then the Town may take steps to declare the WTFs abandoned, and sell them and their components.

G. Notwithstanding anything in this Section to the contrary, the Town may approve a temporary use permit/agreement for the WTFs for no more than ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected WTFs shall be developed by the holder of the CUP, subject to the approval of the Town and an agreement to such plan shall be executed by the holder of the CUP and the Town. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Town may take possession of and dispose of the affected WTFs in the manner provided in this Section and utilize the bond in Section (28).

Section 14.29 Relief.

Any applicant desiring relief, waiver or exemption from any aspect or requirement of this Section may request such at the pre-application meeting, provided that the relief or exemption is contained in the submitted application for either a CUP, or in the case of an existing or previously granted CUP, a request for modification of its WTF and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the applicant to prove. The applicant shall bear all costs of the Town in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief waiver or exemption will have

no significant effect on the health, safety and welfare of the Town, its residents and other service providers.

Section 14.30 Periodic Regulatory Review by the Town.

A. The Town may at any time conduct a review and examination of this entire ordinance.

B. If after such a periodic review and examination of this Section, the Town determines that one or more provisions of this ordinance should be amended, repealed, revised, clarified, or deleted, the Town may take whatever measures are necessary in accordance with applicable Ordinance in order to accomplish the same. It is noted that where warranted, and in the best interests of the Town, the Town may repeal this entire Section at any time.

C. Notwithstanding the provisions of Subsections 14.30 A. and 14.30 B. of this Section, the Town may at any time and in any manner (to the extent permitted by federal, state, or local law), amend, add, repeal, and/or delete one or more provisions of this Section.

Section 14.31 Adherence to State and/or Federal Rules and Regulations.

A. To the extent that the holder of a CUP for a WTF has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a CUP shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

B. To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to, the FAA and the FCC and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a CUP for WTFs, then the holder of such a CUP shall conform the permitted WTFs to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

Section 14.32 Conflict with Other Laws.

Where this ordinance differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the Town, state or federal government, this Section shall apply.

Section 14.33 Effective Date.

This ordinance shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

Section 14.34 Authority.

This ordinance is enacted pursuant to applicable authority granted by the State and federal government.

TELECOMMUNICATION TOWERS
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ARTICLE XV

WATERSHED PROTECTION

Section 15.1 Authority and Enactment.

The Legislature of the State of North Carolina has, in Chapter 160A, Article 19, Planning and Regulation of Development; and in Chapter 143, Article 21, Watershed Protection Rules (NCGS 143-214.5), delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Town of Hildebran, North Carolina ("the Town"), does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of Hildebran, North Carolina.

Section 15.2 Jurisdiction.

The provisions of this Ordinance shall apply within the overlay zones designated as a Public Water Supply Watershed as defined and established on the "Official Zoning Map of Hildebran, North Carolina" ("the Zoning Map", "the Watershed Map"), such overlay zones being adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this Ordinance.

Section 15.3 Exceptions to Applicability.

A. Development activities that do not require a Sedimentation/Erosion Control Plan according to State law are exempt from the requirements of this Section.

B. Existing development, as defined in this Ordinance, is not subject to the requirements of this Ordinance. Existing development is defined as those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this Ordinance based on at least one of the following criteria:

1) Having expended substantial resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;

2) Having an outstanding valid building permit as authorized by NCGS 153A-344.1 and NCGS 160A-385. 1; or

3) Having an approved site specific or phased development plan as authorized by NCGS 153A-344.1 and NCGS 160A-385.1.

C. Expansions to structures classified as existing development must meet the requirements of this Ordinance; however, the built-upon area of the existing development is not required to be included in the density calculations.

D. Reconstruction of Buildings or Built-Upon Areas. Any existing building or built-upon area not in conformance with the restrictions of this Ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single-family residential redevelopment, provided:

1) Repair or reconstruction is initiated within twelve (12) months and completed within two

years of such damage.

2) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

E. A pre-existing vacant lot owned by an individual prior to the effective date of this Ordinance, regardless of whether or not a vested right has been established, may be developed for single family residential purposes without being subject to the restrictions of this Section, provided the property is zoned for this use. However, this exemption is not applicable to multiple contiguous lots under single ownership.

Section 15.4 Cluster or Planned Unit Development.

Cluster or Planned Unit Development is allowed in all Watershed Areas under the following conditions:

A. Development activities shall comply with the requirements of *Section 10.4* of this Ordinance.

B. All built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.

C. The remainder of the tract shall remain in a vegetated or natural state. Where the development has an incorporated property owners association, the title of the open space area shall be conveyed to the association for management. Where a property association is not incorporated, a maintenance agreement shall be filed with the deeds.

Section 15.5 Buffer Areas Required.

A. A minimum one hundred (100) foot vegetative buffer is required for all new development activities that exceed the low density option; otherwise, a minimum thirty (30) foot vegetative buffer for development activities is required along all perennial waters indicated in the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Artificial stream bank or shoreline stabilization is permitted.

B. No new development is allowed in the buffer except for water dependent structures and public projects such as road crossings and greenways and their appurtenances where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of storm water Best Management Practices, defined as a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs receiving waters in order to achieve water quality goals.

Section 15.6 Rules Governing the Interpretation of Watershed Area Boundaries.

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Map, the following rules shall apply:

A. Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or center lines thereof, such lines shall be construed to be said boundaries.

B. Where area boundaries are indicated as approximately following lot lines, such lot lines shall be

construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the Watershed Administrator as evidence that one or more properties along these boundaries do not lie within the watershed area.

C. Where the watershed area boundaries lie at a scaled distance more than twenty-five (25) feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the Watershed Map.

D. Where the watershed area boundaries lie at a scaled distance of twenty-five (25) feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.

E. Where other uncertainty exists, the Watershed Administrator shall interpret the Watershed Map as to location of such boundaries. This decision may be appealed to the Watershed Review Board.

Section 15.7 Watershed Administrator and Duties Thereof.

The Hildebran Town Council shall appoint a Watershed Administrator. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this Ordinance as follows:

A. The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.

B. The Watershed Administrator shall serve as staff to the Watershed Review Board.

C. The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Ordinance and shall provide copies of all amendments upon adoption to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management.

D. The Watershed Administrator is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of his responsibility the full zoning and police power of the Town of Hildebran. The Watershed Administrator, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this Ordinance.

E. The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management annually and shall provide a description of each project receiving a variance and the reasons for granting the variance. The Watershed Administrator shall submit a record of all variances granted by the Town during the previous calendar year to the Division of Environmental Management on or before January 1st of the following year.

Section 15.8 Appeal from the Watershed Administrator.

A. Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Board of Adjustment.

B. An appeal from a decision of the Watershed Administrator must be submitted to the Board of

Adjustment within thirty (30) days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

C. An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

D. The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

Section 15.9 Establishment of Watershed Review Board.

There shall be and hereby is created the Watershed Review Board consisting of the same membership as the Hildebran Board of Adjustment. Terms for members of the Watershed Review Board shall coincide with the membership terms for Board of Adjustment.

Section 15.10 Powers and Duties of the Watershed Review Board and Board of Adjustment.

A. The Board of Adjustment shall be responsible for reviewing and hearing all minor watershed variance cases, and shall proceed as provided in *Article XVII* of the Zoning Ordinance for zoning variances.

B. If the application calls for the granting of a **major watershed variance**, and if the Board of Adjustment decides in favor of granting the major watershed variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

1) The variance applications;

2) The hearing notices;

3) The evidence presented;

4) Motions, offers of proof, objections to evidence, and rulings on them;

5) Proposed findings and exceptions;

6) The proposed decision, including all conditions proposed to be added to the permit.

C. The preliminary record shall be sent to the Environmental Management Commission for its review as follows:

1) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor

make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Board of Adjustment. If the commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

2) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a commission decision and send it to the Board of Adjustment. The Board shall prepare a final decision denying the variance as proposed.

3) Approval of all development greater than the low density option shall be the authority of the Watershed Review Board.

4) As part of a proposed variance, the Watershed Review Board shall notify and allow a reasonable comment period for all other governments having jurisdiction within the watershed area and the entity using the water supply for consumption.

Section 15.11 Appeals from the Watershed Review Board or Board of Adjustment.

Appeals from the Watershed Review Board must be filed with the Superior Court within thirty (30) days from the date of the decision. The decisions by the Superior Court will be in the manner of certiorari.

Section 15.12 Watershed Areas Described.

WS-IV-PA Watershed Areas– Only new development activities that require a sedimentation/erosion control plan under State law or approved local government program are required to meet the provisions of these rules when located in the WS-IV Watershed. Single family residential uses shall develop at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area. A maximum of three (3) dwelling units per acre or thirty-six percent (36%) built-upon area is allowed for projects without curb and gutter street system. In order to address a moderate to high land use intensity pattern, **engineered stormwater controls** shall be used to control runoff from the first inch of rainfall with an approved High Density Development Permit (*Section 15.13*). In this case, development shall not exceed seventy percent (70%) built-upon area.

Section 15.13 High Density Development Standards.

The Watershed Review Board may approve high density development proposals consistent with the following standards:

Section 15.14 High Density Development Permit Application.

A. A High Density Development Permit shall be required for new development exceeding the

requirements of the low density option.

B. Application for a High Density Development Permit shall be addressed and submitted to the Watershed Review Board through the Watershed Administrator. Application for a High Density Development Permit shall be made on the proper form and shall include the following information:

1) A completed High Density Development Permit Application signed by the owner of the property. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization;

2) Ten (10) reproducible copies of the development plan including detailed information concerning built-upon area;

3) Ten (10) reproducible copies of the plans and specifications of the stormwater control structure consistent with *Section 15.15*;

4) When required by law, written verification that a soil erosion and sedimentation control plan has been approved by the appropriate State or local agency;

5) Permit Application Fees consistent with *Section 15.18*;

C. Prior to taking final action on any application, the Board or the Watershed Administrator may provide an opportunity to public agencies affected by the development proposal to review and make recommendations on the application. However, failure of the agencies to submit their comments and recommendations shall not delay the Board's action within the prescribed time limit.

D. Public Hearing. Upon receipt of a completed application, the Watershed Review Board shall hold a public hearing. Notice of the hearing shall be published in a newspaper of general circulation at least seven days prior to the date of the hearing. The notice shall state the location of the building, lot or tract in question, the intended use of the property, the need for engineered stormwater controls and the time and place of the hearing. At the hearing, the applicant or designated representative thereof shall appear for the purposes of offering testimony and recommendations concerning the application. The Board shall also allot reasonable time for the expression of views by any member of the public attending the meeting in person or represented by an attorney provided the testimony bears on the findings the Board must make.

E. The Watershed Review Board shall issue a High Density Development Permit within sixty-five (65) days of its first consideration upon finding that the proposal is consistent with the applicable standards set forth in the Watershed Protection Ordinance and the following conditions are met:

1) The use will not endanger the public health, safety and general welfare if located where proposed and developed according to the plan as submitted and approved;

2) The use minimizes impacts to water quality through the Best Management Practices, cluster development, and/or maximum setbacks from perennial waters;

3) The use is vital to the continued growth and economic development of the Town of Hildebran.

4) The use is consistent with the officially adopted land development plans for the Town of

Hildebran.

If the Watershed Review Board finds that any one of the above conditions is not met, the Board shall deny the application.

F. In addition to any other requirements provided by this Ordinance, the Board may designate additional permit conditions and requirements to assure that the use will be harmonious with the area in which it is proposed to be located and with the spirit of this Ordinance. All additional conditions shall be entered in the minutes of the meeting at which the permit is granted, on all plans and on the permit certificate. All conditions so imposed shall run with the land and shall be binding upon the applicant and the applicant's heirs, successors or assigns during the continuation of the permitted use.

G. The Board shall issue a written ruling and make copies available at the Office of the Watershed Administrator and the Town Clerk. If the Board approves the application based on its findings, such approval shall be indicated on the permit and all copies of the site plan and all copies of the plans and specifications of the stormwater control structure(s). A High Density Development Permit shall be issued after the applicant posts a performance bond or other acceptable security as required in *Section 15.16 B. 1)* and executes an Operation and Maintenance Agreement as required in *Section 15.15 C.* A copy of the permit and one copy of each set of plans shall be kept on file at the Watershed Administrator's office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or registered mail, return receipt requested.

Section 15.15 Stormwater Control Structures.

A. All stormwater control structures shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required. These registered professionals are defined as professional engineers, landscape architects, to the extent that the General Statutes, Chapter 89A , or land surveyors, to the extent that the design represents incidental drainage within a subdivision, as provided in General Statutes 89(C)-3(7).

B. All stormwater control structures shall be designed, constructed, and maintained according to the standards of the current NC DWQ Stormwater BMP Manual. If conflicts with the requirements in Section 15.15 C. and D. exist then the more stringent requirements apply.

C. The design criteria for approval shall be 85 percent average annual removal of Total Suspended Solids. Also the discharge rate shall meet one of the following criteria:

1) The discharge rate following the 1-inch design storm shall be such that the runoff draws down to the pre-storm design stage within five days, but not less than two days; or

2) The post development peak discharge rate shall equal the predevelopment rate for the 1-year, 24 hour storm

D. All stormwater wetlands, wet detention and dry detention ponds shall be enclosed by a fence with a minimum height of six (6) feet.

E. All land areas outside of the stormwater control structure shall be provided with a ground cover

sufficient to restrain erosion within thirty (30) days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the maintenance agreement described in *Section 15.16 C.*

F. A description of the area containing the stormwater control structure shall be prepared and filed consistent with *Section 15.19 A.* and *B.*, as a separate deed with the Burke County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include the detention pond, vegetative filters, all pipes and water control structures, berms, dikes, other similar structures related to the stormwater control structures, and sufficient area to perform inspections, maintenance, repairs and reconstruction.

G. Qualifying areas of the stormwater control structure may be considered pervious when computing total built-upon area. However, if the structure is used to compute the percentage built upon area for one site, it shall not be used to compute the built upon area for any other site or area.

Section 15.16 Posting of Financial Security Required.

A. All new stormwater control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, reconstruction, or repairs necessary for adequate performance of the stormwater control structures.

B. Financial assurance shall be in the form of the following:

1) Security Performance Bond or other security. The permit applicant shall obtain either a performance bond from a surety bonding company authorized to do business in North Carolina, an irrevocable letter of credit or other instrument readily convertible into cash at face value payable to the Town of Hildebran or placed in escrow with a financial institution designated as an official depository of the Town of Hildebran. The bond or other instrument shall be in an amount equal to 1.25 times the total cost of the stormwater control structure, as estimated by the applicant and approved by the Town. The total cost of the stormwater control structure shall include the value of all materials such as piping and other structures; seeding and soil stabilization; design and engineering; and, grading, excavation, fill, etc. The costs shall not be prorated as part of a larger project, but rather under the assumption of an independent mobilization.

2) Cash or Equivalent Security Deposited After the Release of the Performance Bond. Consistent with *Section 15.19 C. 1)*, the permit applicant shall deposit with the Town of Hildebran either cash or other instrument approved by the Town Attorney that is readily convertible into cash at face value. The cash or security shall be in an amount equal to fifteen percent (15%) of the total cost of the stormwater control structure or the estimated cost of maintaining the stormwater control structure over a ten (10) year period, whichever is greater. The estimated cost of maintaining the stormwater control structure shall be consistent with the approved operation and maintenance plan or manual provided by the developer under *Section 15.17 A.* The amount shall be computed by estimating the maintenance cost for twenty-five (25) years and multiplying this amount by two fifths or 0.4.

C. Consistent with *Section 15.14 G.*, the permit applicant shall enter into a binding Operation and Maintenance Agreement between the Town of Hildebran and all interests in the development. Said Agreement shall require the owning entity to maintain, repair and, if necessary, reconstruct the

stormwater control structure in accordance with the operation and management plan or manual provided by the developer. The Operation and Maintenance Agreement shall be filed with the Burke County Register of Deeds by the Watershed Administrator.

D. Default under the performance bond or other security. Upon default of the permit applicant to complete and/or maintain the stormwater control structure as specifically provided in the performance bond or other security, the Town of Hildebran may obtain and use all or any portion of the funds necessary to complete the improvements based on an engineering estimate. The Town of Hildebran shall return any funds not spent in completing the improvements to the owning entity.

E. Default under the cash security. Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the Operation and Maintenance Agreement, the Town of Hildebran shall obtain and use all or any portion of the cash security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the Operation and Maintenance Agreement. The Town of Hildebran shall not return any of the deposited cash funds.

Section 15.17 Maintenance and Upkeep.

A. An operation and maintenance plan or manual shall be provided by the developer for each stormwater control structure, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken and, consistent with the Operation and Maintenance Agreement, who is responsible for those actions. The plan shall clearly indicate the steps that will be taken for restoring a stormwater control structure to design specifications if a failure occurs.

B. Landscaping and grounds management shall be the responsibility of the owning entity. However, vegetation shall not be established or allowed to mature to the extent that the integrity of the control structure is diminished or threatened, or to the extent of interfering with any easement to the stormwater control structure.

C. Except for general landscaping and grounds management, the owning entity shall notify the Watershed Administrator prior to any repair or reconstruction of the stormwater control structure. All improvements shall be made consistent with the approved plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Town Engineer shall inspect the completed improvements and shall inform the owning entity of any required additions, changes or modifications and of the time period to complete said improvements.

D. Amendments to the plans and specifications of the stormwater control structure and/or the operation and maintenance plan or manual shall be approved by the Watershed Review Board. Proposed changes shall be prepared by a North Carolina registered professional engineer and submitted to and reviewed by the Watershed Administrator prior to consideration by the Watershed Review Board.

1) If the Watershed Review Board approves the proposed changes, the owning entity of the stormwater control structure shall file sealed copies of the revisions with the Office of the Watershed Administrator.

2) If the Watershed Review Board disapproves the changes, the proposal may be revised and resubmitted to the Watershed Review Board as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.

E. If the Watershed Review Board finds that the operation and maintenance plan or manual is inadequate for any reason the Board shall notify the owning entity of any required changes and shall prepare and file copies of the revised agreement with the Burke County Register of Deeds, the Office of the Watershed Administrator and the owning entity.

Section 15.18 Application and Inspection Fees.

A. Processing and inspection fees shall be submitted in the form of a check or money order made payable to the Town of Hildebran. Applications shall be returned if not accompanied by the required fee.

B. A permit and inspection fee schedule, as approved by the Town of Hildebran, shall be posted in the Office of the Watershed Administrator.

C. Inspection fees shall be valid for sixty (60) days. An inspection fee shall be required when improvements are made to the stormwater control structure consistent with *Section 15.17 C.*, except in the case when a similar fee has been paid within the last sixty (60) days.

Section 15.19 Inspections and Release of the Performance Bond.

A. The stormwater control structure shall be inspected by the Town, after the owning entity notifies the Watershed Administrator that all work has been completed. At this inspection, the owning entity shall provide:

1) The signed deed, related easements and survey plat for the stormwater control structure ready for filing with the Register of Deeds;

2) A certification sealed by an engineer or landscape architect (to the extent that General Statutes allow) stating that the stormwater control structure is complete and consistent with the approved plans and specifications.

B. The Watershed Administrator shall present the materials submitted by the developer and the inspection report and recommendations to the Watershed Review Board at its next regularly scheduled meeting.

1) If the Board approves the inspection report and accepts the certification, deed and easements, the Town shall file the deed and easements with the Burke County Register of Deeds, release up to seventy-five percent (75%) of the value of the performance bond or other security and issue a Certificate of Occupancy for the stormwater control structure.

2) If deficiencies are found, the Board shall direct that improvements and inspections be made and documents corrected and submitted to the Town.

C. No sooner than one year after the filing date of the deed, easements, and maintenance agreement, the developer may petition the Town to release the remaining value of the performance bond or

other security. Upon receipt of said petition, the Town shall inspect the stormwater control structure to determine whether the controls are performing as designed and intended. The Watershed Administrator shall present the petition and findings to the Watershed Review Board.

1) If the Board approves the report and accepts the petition, the developer shall deposit with the Town of Hildebran a cash amount equal to that described in *Section 15.16 B. 2)*, after which the Board shall release the performance bond or other security.

2) If the Board does not accept the report and rejects the petition, the Town shall provide the developer with instructions to correct any deficiencies and all steps necessary for the release of the performance bond or other security.

D. A Certificate of Occupancy shall not be issued for any building within the permitted development until the Watershed Review Board has approved the stormwater control structure, as provided in *Section 15.19 B.*

E. All stormwater control structures shall be inspected at least on an annual basis to determine whether the controls are performing as designed and intended. Records of inspection shall be maintained on forms approved or supplied by the North Carolina Division of Environmental Management. Annual inspections shall begin within one year of filing date of the deed for the stormwater control structure.

F. In the event the Watershed Administrator discovers the need for corrective action or improvements, the Watershed Administrator shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements shall be made consistent with the plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Watershed Administrator shall inspect and approve the completed improvements.

Section 15.20 Remedies.

A. If any subdivision, development and/or land use is found to be in violation of this Ordinance, the Town may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of $50, institute actions or proceedings to restrain, correct, or abate the violations; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the North Carolina Environmental Management Commission may assess civil penalties in accordance with G.S. 143 -215.6(a). Each day the violation continues shall constitute a separate offense.

B. If the Watershed Administrator finds that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the 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 action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment.

Section 15.21 Sanctions.

In addition to the remedies described in *Section 15.20* of this Ordinance and consistent with G.S. 160A-175, the Hildebran Town Council may seek enforcement of this Ordinance by assessing a civil penalty to be recovered by the Town in a civil action in the nature of debt if the offender does not pay the penalty in a prescribed period of time after being cited for violation of the Ordinance. Such violation may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. The court may issue an injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the rules of Civil Procedure in general and Rule 65 in particular. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt and the Town may execute the order of abatement. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith. Enforcement of this Ordinance may be by any one, all or a combination of the remedies authorized in this Ordinance. Each day's continuing violation shall be a separate and distinct offense.

Section 15.22 Effective Date.

This Ordinance shall take effect and be in force on October 1, 1993.

ARTICLE XVI

ADMINISTRATION AND ENFORCEMENT

Section 16.1 Zoning Enforcement Officer (Zoning Administrator).

It shall be the duty of the Zoning Enforcement Officer to enforce and administer the provisions of this Ordinance.

If the Zoning Enforcement Officer finds that any of the provisions of this Ordinance are being violated, he or she 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 the illegal use of land, buildings or structures; removal of illegal buildings or structures or 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 violation of its provisions.

If a ruling of the Zoning Enforcement Officer is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment.

Section 16.2 Zoning Permit Required.

No building, sign or other structure shall be erected, moved, extended or enlarged, or structurally altered, nor shall any excavation or filling of any lot of record for the construction of any building be commenced until the Zoning Enforcement Officer has issued a zoning permit for such work. Every person obtaining a zoning permit hereunder shall pay a fee as provided in a schedule of zoning permit fees to be adopted by the governing body.

Section 16.3 Application for Zoning Permit.

Applications to the Zoning Enforcement Officer for residential zoning permits for single-family dwellings, duplexes and manufactured homes shall be accompanied by the requirements listed on the zoning permit. Applications to the Zoning Enforcement Officer for a zoning permit for multi-family and non-residential uses and buildings shall be accompanied by to scale site plans showing:

A. The actual dimensions of the lot to be built upon,

B. The size of the building(s) to be erected,

C. The location of the building(s) on the lot,

D. The location of existing structures on the lot, if any,

E. The number of dwelling units the building is designed to accommodate,

F. The approximate setback lines of buildings on adjoining lots,

G. Density and coverage calculations,

H. Parking, landscaping, buffers and screening,

I. Signs, showing all dimensions and locations,

J. If located in the IOD, a description of materials and a plan of the building facades,

K. The intended use of the property,

L. The Burke County Tax Map identification number of the property and a copy of the metes and bounds description of the lot of record,

M. Such other information as may be essential for determining whether the provisions of this Ordinance are being observed.

Any zoning permit issued shall expire and be canceled unless the work authorized by it shall have begun within six (6) months of its date of issue, or if the work authorized by it is suspended or abandoned for a period of one (1) year. Written notice thereof shall be given to the persons affected, including notice that further work as described in the canceled permit shall not proceed unless and until another zoning permit has been obtained.

Section 16.4 Zoning Certificate of Occupancy for New and Altered Structures.

It shall be unlawful to use or permit the use, except for agriculture purposes, of any land, building or structure or part thereof, hereafter created erected, changed, converted, altered or enlarged, wholly or partly, in its use or structure, until a Zoning Certificate of Occupancy shall have been issued by Burke County stating that the building or structure and the proposed use complies with the provisions of this Ordinance and all other codes. A Zoning Certificate of Occupancy shall be applied for co-incident with the application for a zoning permit and shall be issued within five (5) days after the erection or alteration of such building or structure or part thereof has been completed in conformity with the provisions of this Ordinance and the North Carolina Building Code.

A temporary Zoning Certificate of Occupancy may be issued by the Zoning Enforcement Officer for a period not to exceed six (6) months during alterations or partial occupancy of a building pending completion, provided that such temporary permit may require such conditions and safeguards as will protect the safety of the occupants and the general public.

The Zoning Enforcement Officer shall maintain a record of all Zoning Certificates of Occupancy and a copy shall be furnished upon request to any person. Failure to obtain a Zoning Certificate of Occupancy shall be a violation of this Ordinance and punishable under *Section 16.7* of this Ordinance. Utilities will not be connected to any property that does not satisfy the requirements for the Certificate of Occupancy.

Section 16.5 Complaints Regarding Violation.

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the Town Clerk. The Zoning Enforcement Officer shall record properly such complaint, immediately investigate, and take action thereon as provided by this Ordinance.

Section 16.6 Remedies.

In any case in which a building or structure is proposed to be or is erected, constructed, reconstructed, altered, maintained or used; or any land is proposed to be or is used in violation of this Ordinance; the Mayor, Town Council, Town Attorney, or any other person aggrieved may, in addition to other remedies provided by law, institute injunction mandamus, or any other appropriate action or proceeding to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, maintenance or use.

Section 16.7 Penalties for Violation.

Any person, firm, or corporation who violated the provisions of this Ordinance, shall upon conviction, be guilty of a misdemeanor and shall be fined not exceeding fifty dollars ($50.00) or imprisoned not exceeding thirty (30) days. Each day that a violation of this Ordinance is not corrected within thirty (30) days after the notice of said violation has been given shall constitute a separate and distinct violation.

ARTICLE XVII

BOARD OF ADJUSTMENT

Section 17.1 Establishment of Board of Adjustment.

A Board of Adjustment is hereby created as provided in Section 160A-388 of the General Statutes of North Carolina. Said Board shall consist of five (5) members to be appointed by the Town Council for the overlapping terms of three (3) years. Initial appointment shall be as follows: One (1) member for a term of three (3) years, two (2) members for a term of two (2) years, and two (2) members for a term of (1) year. Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board of Adjustment. The Planning Board shall perform the duties of the Board of Adjustment.

The Town Council of the Town of Hildebran may, in its discretion, appoint not more than two alternate members to serve on the Board of Adjustment in the absence, for any cause, of any regular member or to fill a vacancy pending appointment of a member. Such alternate member or members shall be appointed in the same manner as regular members and at the regular times for appointment. Such alternate member, while attending any regular or special meeting of the Board and serving in the absence of any regular member, shall have and exercise all the powers and duties of such regular member so absent. Vacant positions on the Board of Adjustment and members who are disqualified from voting on a quasi-judicial matter shall not be considered for calculation of the required supermajority if no qualified alternatives are available.

A member of the Board of Adjustment shall not participate in or vote on any quasi-judicial matter where he or she cannot act as an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex pare communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised regarding a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Section 17.2 Proceedings of the Board of Adjustment.

The Board of Adjustment shall elect a chairman and vice-chairman from its members, each of whom shall serve for one year or until re-elected or until their successors are elected and qualify. This year shall run from July 1 to June 30. The Board shall adopt rules and bylaws in accordance with the provisions of this Ordinance and of Article 19, Chapter 160A of the General Statutes of North Carolina. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the vice-chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the Board shall be open to the public. The secretary shall keep a record of all proceedings of meetings. The secretary shall not have a vote unless he is also a regular or alternate member of the Board.

Section 17.3 Hearings.

All hearings of the board shall be open to the public. A notice of the hearing 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; and to any other persons entitled to receive notice as provided by the zoning ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine the owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city 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. 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 such fact. The final disposition of appeals shall be made by recorded resolution indicating the reason of the board therefor, all which shall be a public record. No final action shall be taken on any matter unless a quorum is present. A quorum shall consist of a majority of the total members of the board.

Section 17.4 Appeals.
The board of adjustment shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.

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.

The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action 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.

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the board of adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a 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 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of adjustment 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.

Section 17.5 Powers and duties of board.
The board shall have the powers enumerated below.

1) Oaths. – The chair of the board or any member acting as chair and the city clerk 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 of adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor.

2) Subpoenas. – The board of adjustment through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board of adjustment. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment 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 proper parties.

3) Decisions. - The board shall determine contested facts and make its decision within a reasonable time. 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. The written decision shall be signed by the chair 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 the ordinance specifies. The decision of the board shall be delivered by personal deliver, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior ot the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

Section 17.5 Variances.

Any application for a variance shall be filed with the Town Clerk or Town Planner at least thirty (30) days prior to the date on which it is to be introduced to the Board of Adjustment. The Town Clerk or

designated staff member shall be responsible for presenting the application to the Board of Adjustment. Each variance application shall be accompanied by a fee set annually by the Town Council to help defray the costs of advertising the public hearing required by Article 19, Chapter 160A-364 of the North Carolina General Statutes.

To vary any of the provisions of this ordinance. The concurring vote of four-fifths of the members of the board shall be necessary to grant a variance.

When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall vary any of the provisions of the ordinance upon a showing of all the following:

Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

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.

The hardship did not result from the actions taken by the applicant or the property owner. The act of purchasing the property with knowledge that the circumstances exist that may justify the granting of a variance shall not be regarded as self-created hardship.

The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved
No change in permitted uses may be authorized by variance.

Appropriate conditions may be imposed on any variance provided that the conditions are reasonable related to the variance.

Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

Section 17.6 Administrative Review. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the zoning enforcement officer in the enforcement of this Ordinance. . A majority vote of the Board of Adjustment members is required to decide any appeal.

Section 17.7 Conditional Uses; Conditions Governing Application. To grant in particular cases and subject to appropriate conditions and safeguards, permits for conditional uses under the various use districts. A majority vote of the Board of Adjustment members is required to issue a conditional use permit.

The Board shall not grant a conditional use permit unless and until:

1) A written application for a conditional use permit is submitted indicating the section of this Ordinance under which the conditional use permit is sought.

2) A public hearing is held. Notice of this hearing shall be advertised in all local newspapers of general circulation in the area a reasonable amount of time prior to the public hearing. This legal notice shall describe the request and appear at least once weekly for two consecutive weeks. All property owners within 100 feet of the property in question shall be notified of this hearing by first class mail.

3) The Board of Adjustment finds that in the particular case in adjustment the use for which the conditional use permit is sought will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. In granting such a permit, the Board of Adjustment may designate such conditions in connection therewith as will conform to the requirements and spirit of this Ordinance.

    (a) Compliance with Other Codes. Granting a conditional use permit does not exempt the applicant from complying with all of the requirements of building codes or other ordinances.

    (b) Revocation. If at any time after a conditional use permit has been issued, the Board of Adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a conditional use permit, the permit shall be terminated and the operation of such use discontinued. If a conditional use permit is terminated for any reason, it may be reinstated only after a public hearing is held.

    (c) Expiration. In any case where a conditional use permit has not been exercised within the time limit set by the Board of Adjustment, or within one year if no specific time limit has been set, then without further action the permit shall be null and void.

    "Exercised" as set forth in this subsection shall mean that binding contracts for the construction of the main building shall have been let; or in the absence of contracts, that the main building is under construction to a substantial degree; or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewerage, drainage, etc.). When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions set forth in the permit.

    (d) Careful record. A careful record of such application and plat, together with a record of the action taken thereon, shall be kept in the office of the zoning enforcement officer.

Section 17.8 Decision of the Board of Adjustment.

All decisions of the board are subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court no later than 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

Exercising the above-mentioned powers, the Board of Adjustment may reverse or affirm, wholly or in part, or may modify any order, decision or determination and to that end shall have the power of the official from whom the appeal is taken.

Section 17.9 Duties of the Zoning Enforcement Officer, Board of Adjustment, Courts and Town Council on Matters of Appeal.

It is the intention of this Ordinance that all questions arising in connection with the enforcement of this Ordinance shall be presented to the Zoning Enforcement Officer and that such question shall be presented to the Board of Adjustment only on appeal from the Zoning Enforcement Officer and that from the decision of the Board of Adjustment recourse shall be had to courts as prescribed by law. It is further the intention of this Ordinance that the duties of the Hildebran Town Council in connection with the Ordinance shall not include the hearing and passing upon disputed question that may arise in connection with the enforcement thereof. The duties of the Town Council in connection with this Ordinance shall be only the duty of considering and passing upon any proposed amendments or repeal of this Ordinance.

ARTICLE XVIII

AMENDMENTS AND CHANGES

Section 18.1 Procedure for Amendments.

A petition for an amendment to this Ordinance and to the Official Zoning Map may be initiated by the Town of Hildebran, the Planning Board, any department or agency of the Town of Hildebran, the owner of any property within the Town, or any interested citizen who can show just cause for an amendment. Applications submitted by individual property owners or interested citizens who are not acting in an official capacity for the Town of Hildebran shall comply with the following procedural requirements. Under no circumstances shall the Town Council adopt such amendments that would cause this Ordinance to violate the Watershed Protection rules as adopted by the North Carolina Environmental Management Commission. Amendments affecting the Watershed Protection portions of this Ordinance shall be filed with the North Carolina Division of Environmental Management, the North Carolina Division of Environmental Health and the North Carolina Division of Community Assistance.

Section 18.2 Application Submission.

Any request for an amendment to the Zoning Ordinance shall be filed with the Town Clerk at least twenty (20) days prior to the date on which it is to be introduced to the Planning Board. Each petition for an amendment shall be accompanied by a fee set annually by the Council to help defray the costs of advertising the public hearing required by Article 19, Chapter 160A-364 of the North Carolina General Statutes. If a public hearing is not held, said fee shall be refunded to the petitioner. Each application involving a change to the Official Zoning Map shall be signed, be in duplicate, and shall contain at least the following information;

A. The applicant's name in full, applicant's address, address or description of the property to be rezoned, including the tax map number;

B. The applicant's interest in the property and the type of rezoning requested.

C. If the proposed change would require a change in the Zoning Map, an accurate diagram of the property proposed for rezoning, showing:

1. All property lines with dimensions, including north arrow;
2. Adjoining streets with rights-of-way and paving widths;
3 The location of all structures, existing and proposed, and the use of the land;
4. Zoning classification of all abutting property owners;
5. Names and addresses of all adjoining property owners.

D. A statement regarding the changing conditions, if any, in the area or in the Town that generally makes the proposed amendment reasonably necessary to the promotion of the public health, safety, and general welfare.

Section 18.3 Planning Board Consideration.

All proposed amendments to the Zoning Ordinance shall be submitted to the Hildebran Planning Board for review and recommendation. At the discretion of the Planning Board, a public hearing may be conducted to consider the proposed amendment. The Planning Board shall have thirty (30) days from the time the proposed amendment was first considered to submit a written report to the Town Council addressing the consistency of the proposed amendment with the adopted Comprehensive Plan and other factors as deemed appropriate by the Planning Board. A report 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 the Planning Board fails to submit a report within the above period, the Town Council may proceed with its consideration of the amendment without the Planning Board report.

Section 18.4 Town Council Consideration.

Before adopting or amending the Zoning Ordinance or Map, the Hildebran Town Council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two consecutive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for this hearing (G.S. 160A-364). Any petition for an amendment to this Ordinance may be withdrawn at any time by written notice to the Town Clerk. Notice of public hearings concerning proposed Zoning Map amendments shall also be advertised as follows:

A. Written notice of the public hearing shall be prominently posed on the site proposed for rezoning or in an adjacent right-of-way. When multiple parcels are included in a Zoning Map Amendment, a sufficient number of written notices shall be posted to provide reasonable notice to interested persons.

B. Owners of all parcels within the proposed rezoning or within one hundred (100) feet exclusive of right-of-ways shall be mailed a notice of the public hearing on the proposed amendment by first class mail. The notice must be deposited at least ten (10) but not more than twenty-five (25) days prior to the date of the hearing. In the event that proposed Zoning Map Amendment directly affects more than fifty (50) properties owned by a total of at least fifty (50) property owners, the Town may elect to publish notice of the hearing as allowed by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newspaper page in size. 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 by first class mail.

Section 18.5 Town Council Decision.

Prior to adopting or rejecting any zoning amendment, the Town Council shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the Town Council considers the action taken to be reasonable and in the public interest.

Section 18.6 Conflicts of Interest.

No Planning Board or Town Council member shall vote on a proposed amendment to the Zoning Ordinance or Zoning Map where the outcome of the matter being considered is reasonably likely to have direct, substantial and readily identifiable financial impact on the member.

Section 18.7 Protest Petition.

A. General. A protest petition of a Zoning Map Amendment may be presented against any proposed amendment signed by the owners of either twenty percent (20%) or more of the area included in the proposed change, or five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way-shall not be considered in computing the 100-foot buffer as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed Zoning Map Amendment, the 100-foot buffer shall be measured from the property line of that parcel. In this case the amendment shall not become effective except by favorable vote of three-fourths of all members of the Hildebran Town Council. For purposes of this subsection, vacant positions on the Town Council and members who are excused from voting shall not be considered for calculation of the required three-fourths majority. Protest petitions shall not be applicable to any amendment which initially zones property added as a result of annexation or increased extra-territorial jurisdiction or to an amendment to an adopted conditional use district if the amendment does not change the types of uses permitted within the district, increase the approved density for residential development, increase the total approved size of nonresidential development or reduce the size of any buffers or screening approved for the conditional use district.

B. Petition Requirements. No protest against any change in or amendment to the Zoning Map shall be valid or effective unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, unless it shall have been received by the Town Clerk in sufficient time to allow the Town at least two normal working days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition (G.S. 160A-387). A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed amendment.

ARTICLE XIX
LEGAL PROVISIONS

Section 19.1 Interpretation. Purpose and Conflict.

In interpreting and applying the provisions of this Ordinance, they shall be held to be the 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, provided, however, that where this Ordinance imposes a greater restriction upon the use of buildings 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, provided that nothing in the Ordinance shall be construed to amend or repeal other existing Ordinances of the Town.

Section 19.2 Town Attorney May Prevent Violation.

If any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any structure or land is used in violation of this Ordinance, the Zoning Enforcement Officer shall inform the Town Attorney. In addition to other remedies, the Town Attorney may institute any appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, or restrain, correct or abate such violation, to prevent the occupancy of such structure or land or to prevent any illegal act, conduct, business or use in about the premises.

Section 19.3 Validity

Should any section or provisions of this Ordinance be declared by the courts to be unconstitutional or invalid, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be unconstitutional or invalid.

Section 19.4 Penalties.

Any person, firm or corporation which violates, disobeys, omits, neglects or refuses to comply with, or who resists the enforcement of any of the provisions of this Ordinance, shall upon conviction be subject to a fine of fifty dollars ($50.00) or imprisonment for thirty (30) days. Each day that a violation continues to exist shall constitute a separate offense.

Section 19.5 Adoption Date.

Adopted this _____day of _____, 20 ____.

_____
Mayor

ATTEST: _____
Town Clerk

SEAL