

ARTICLE I
LEGAL PROVISIONS

Section 1. Authority and Enactment Clause

The Town Board of the Town of Cleveland, in pursuance of the authority granted by North Carolina General Statutes, Chapter 160A-381, Article 19, and the authority vested in the Town of Cleveland by its Chapter, does hereby ordain and enact into law the following ordinance. *(amended 12-14-09)*

Section 2. Short Title

This Ordinance shall be known and may be cited as the “Zoning Ordinance of the Town of Cleveland, North Carolina.”

Section 3. Jurisdiction

The provisions of this Ordinance shall apply within the corporate limits of the Town of Cleveland and its extraterritorial limits, as now hereafter fixed and shown on the official zoning map of the Town of Cleveland, North Carolina. All of the provisions are applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions. *(added as amended 04-09-07, amended 12-14-09)*

Section 4. Purpose

Zoning is the process by which an area is divided into various districts, each of which is specifically intended for different uses and intensity of uses within which the use of land and buildings, the height and dimension of buildings, the size of required yards, and the population density are regulated.

Section 5. Purpose of Zoning

The following are the purposes of zoning:

1. To provide for each type of community development;
2. To utilize land uses in the community in such a way as to be beneficial on both an individual and a community level;
3. To maintain or restrain the density of development in each area at a level which can be satisfactorily serviced by such public facilities as the street, school, recreation and utilities systems;
4. To protect and stabilize property values;

5. To achieve the proposals outlined in the Land Development Plan; and
6. To preserve the natural environment and beauty of the community.

Section 6. Bona Fide Farms Exempt

This Ordinance shall in no way regulate, restrict, prohibit, or otherwise deter any bona fide farm and its related uses, except that any use of such property for non farm purposes shall be subject to such regulations.

Section 7. Forestry Exemption

This ordinance shall in no way regulate, restrict, prohibit, or otherwise deter any;

1. Forestry activity on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes.
2. Forestry activity that is conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the General Statutes. *(added as amended 04-09-07)*

ARTICLE II
DEFINITIONS OF TERMS USED
IN THIS ORDINANCE

For the purpose of interpreting this Zoning Ordinance, certain words or terms are defined, all other words used in this ordinance shall have their customary dictionary definitions.
(amended 12-14-09)

Section 1. Interpretation of Certain Words and Terms

1. Words used in the present tense include the future tense.
2. Words used in the singular number include the plural and words used in the plural number include the singular.
3. The word “person” includes a firm, association, organization, partnership, corporation, trust and company as well as an individual.
4. The word “lot” includes the word “plot” or “parcel.”
5. The word “structure” includes the word “build.”
6. The word “shall” is always mandatory and not merely directory.
7. The word “may” is permissive.
8. The word or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged or designed to be used or occupied.”
9. The word “map”, “zoning map” or “Cleveland Zoning Map” shall mean the “Official Zoning Map of the Town of Cleveland.”
10. The phrase “Town Board” shall mean the “Board of Commissioners of the Town of Cleveland.” *(amended 12-14-09)*
11. The word “Ordinance” shall mean the “Zoning Ordinance of the Town of Cleveland, North Carolina.”

Section 2. Definitions

AGRIBUSINESS

An enterprise that manufactures and distributes farm equipment and supplies, or processes, stores and distributes farm commodities. *(added as amended 04-01-13)*

AGRICULTURAL TOURISM

An enterprise or activity operated on a bona fide farm and offered to the public or to invited groups for the purpose of recreation, education, active involvement or the sale of value-added products and services that are grown, produced, manufactured or harvested on such farm or an adjoining piece of property. These activities must be related to agriculture or natural resources and be incidental to the primary operation of the site. *(added as amended 04-01-13)*

ANIMAL GROOMING/BOARDING ESTABLISHMENT

A place where more than six (6) dogs or other domesticated animals are groomed bred, boarded, trained, or kept either as a principal use or as an accessory use to a residential use. *(added as amended 04-01-13)*

ANIMAL HOSPITAL

A place where animals or pets are given medical or surgical treatment and are cared for during the time of such treatment. Use as a kennel shall be limited to short-time boarding and shall be only incidental to such hospital care. *(added as amended 04-01-13)*

ADULT ESTABLISHMENT

Any structure or use of land that is defined in NC General Statute 14-202.10 and/or including the following:

- (a) Adult arcades
- (b) Adult bookstores
- (c) Adult cabarets (such as “topless dancing)
- (d) Adult live entertainment
- (e) Adult live entertainment business
- (f) Adult motels or hotels
- (g) Adult motion picture theaters
- (h) Adult mini-motion pictures shows
- (i) Adult theaters
- (j) Adult video stores
- (k) Escort agencies
- (l) Massage businesses
- (m) Nude model studios
- (n) Sexual encounter centers
- (o) Sexually oriented activities

- (p) Specified sexual activities
- (q) Specified sexual activities

ADULT ARCADE

Any place to which the public is permitted or invited wherein coin operated, or slug-operated or electronically, electrically, or mechanically controlled still or motion pictures machines, or other image-producing devices are maintained to show images to person in booths or viewing rooms where the images so displayed depict or describe specified sexual activities or specified anatomical areas. *(amended 12-14-09)*

ADULT BOOKSTORE

A bookstore that receives a majority of its gross income during any calendar month from the sale of printed and/or video materials/publications (including but not limited to videocassettes, books, and magazines) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, or having as a preponderance of its printed and/or video materials/publications that are distinguished or characterized by their emphasis on matters depicting, describing, or related to specified sexual activities or specified anatomical areas. *(amended 12-14-09)*

ADULT CABARET/CLUB

A nightclub, bar, restaurant, or other commercial established that regularly features, exhibits, or displays as one of its principle purposes:

- (a) persons who appear nude or semi-nude, or
- (b) live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities, or
- (c) films, motion pictures, slides, or other photographic reproduction which depicts or describes specified sexual activities or specified anatomical areas.

(amended 12-14-09)

ADULT LIVE ENTERTAINMENT

Any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas.

ADULT LIVE ENTERTAINMENT BUSINESS

Any establishment or business wherein adult live entertainment is shown for observation by patrons.

ADULT MOTEL OR HOTEL

A motel, hotel, or similar commercial establishment that:

- (a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe the specified sexual activities or specified anatomical areas as one of its principle business purposes, or
- (b) offers a sleeping room for rent for a period of less than ten (10) hours; or
- (c) allows a tenant or occupant of a sleeping room for a period that is less than ten (10) hours. *(amended 12-14-09)*

ADULT MOTION PICTURE THEATER

An enclosed building or premises used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

(Adult motion picture theater does not include any adult mini-motion picture theater as defined in this section.)

ADULT MINI-MOTION PICTURE THEATER

An enclosed building with viewing booths designed to hold patrons which is used for presenting motion picture, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

ADULT THEATER

A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits, or displays, as on its principle business purposes, persons who appear in a state of nudity or semi-nude or live performance that expose or depict specified anatomical areas or specified sexual activities. *(amended 12-14-09)*

ADULT VIDEO STORE

A commercial establishment which as one of its principle business purposes offers for sale or rent any form of consideration any one or more of the following:

- (a) video reproductions, photographs, films, motion pictures, slides, or other visual representations that depict or describe specified sexual activities or specified anatomical areas;
- (b) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities. *(amended 12-14-09)*

ANTENNA

A communications device which transmits or receives electromagnetic signals. An antenna does not include the monopole or other supporting device to which it is attached.

BED AND BREAKFAST

A lodging facility located on a lot containing a single-family residence in which the operator resides and which is established for the purpose of providing temporary overnight accommodations for tourist, vacationers, and other similar transients. The facility may provide meals for registered guests of the facility only. Such facility may be a free-standing operation or may be conducted in conjunction with an agricultural tourism facility. The bed and breakfast may be operated within the principal or accessory residential structure on the lot. *(added as amended 04-01-13)*

BLOCK FACE

The part of a block fronting on one side of a street generally between two streets.

BONA FIDE FARM

A property or properties which qualifies for taxation by the County of Rowan at the “present use value” rate for special classes of properties, as provided in the North Carolina Constitution Article V, Section 2(2). Only activities which produce allowable income as determined by the Rowan County Tax Assessor for qualifying farmland under North Carolina General Statutes 105- 277.3 shall be exempt. Activities which are not exempt as bona fide farm activities include but are not limited to grinding, drying, curing, baling products not produced on land owned or leased by the owner of said property, storage of goods for which a fee is charged, dispensing of medication for a fee, sale of feeds and hays not produced on the land, showing or training of animals, renting machinery.

BUFFER STRIP

The required installation of landscaping and screening materials between adjacent properties along the periphery of the property. *(added as amended 12-14-09)*

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, ACCESSORY

A building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principle building and located on the same lot therewith. *(amended 12-14-09)*

BUILDING, PRINCIPLE

The primary building on a lot or a building that houses a principle use in the R-15 and R-20 districts, any dwelling is considered a primary structure. See ARTICLE VI for requirements and restrictions. *(amended 12-14-09)*

BUILDING, UTILITY

An accessory building used for storage for tools, supplies, and materials. See ARTICLE VI for requirements and restrictions.

CALIPER

The diameter measurement of the circumference of a tree or shrub. *(added as amended 12-14-09)*

CANOPY

The upper layer or habitat zone, formed by mature tree crowns. *(added as amended 12-14-09)*

CARPORT

An accessory building which provides unenclosed shelter for vehicles. They may be attached to a dwelling or a garage. See ARTICLE VI for requirements and restrictions. *(amended 12-14-09)*

CEMETERY

Property used for the interment of human remains, which use may include the commercial sale and location of burial lots, crypts, or vaults for use exclusively on subject property. A cemetery shall not be used for preparation or embalming of bodies or the cremation of bodies. *(added as amended 12-14-09)*

CERAMIC SHOP

A place where people go to take ceramic classes. Supplies can be provided by the customer, or sold on-site to the customer. *(added as amended 04-01-13)*

CHURCH

A building or structure, or group of buildings or structures, which by design and construction are primarily intended for conducting organized religious services. Certain customary accessory uses shall be allowed to take place on church premises. These include bookshops, recreation centers, outdoor playing fields, youth facilities, parsonage, cemetery, food pantry, and certain types of day care centers and schools. The overnight lodging of transient persons shall not be considered as a customary accessory use. Such accessory uses shall be subject to any applicable supplemental regulations located elsewhere in this Ordinance. *(added as amended 04-01-13)*

COMMUNITY CENTER

A building used for recreational, social, and cultural activities that is usually owned and operated by a public or non-profit agency. *(added as amended 04-01-13)*

CONFORMING USE

A particular building, structure or use of land which is in conformity with the standards and specifications as set forth in this chapter, and is in the appropriate zoning use district.

CONTINUING CARE FACILITY

A residential complex that contains a variety of living facilities that may include independent living units (i.e., apartments, condominiums, cottages), assisted living (domiciliary care) facilities and/or nursing home beds. Residents of such a facility may either pay rent or purchase their living quarters. If the unit is occupant-owned, the unit normally reverts to the development owner upon the death of the resident or to a surviving spouse. *(added as amended 04-01-13)*

COUNTRY CLUB

A private club, often with a closed membership, that offers a variety of recreational sports facilities including golf, tennis and swimming. A meeting facility that may include a restaurant, a shop that sells golf, tennis and/or swimming accessories may be provided along with a restaurant and bar (if allowed). *(added as amended 04-01-13)*

CRITICAL ROOT ZONE (CRZ)

A circular region measured outward from a tree trunk representing the essential area of the roots that must be maintained in order for the tree's survival. The critical root zone is one (1) foot of radial distance for every inch of tree DBH, with a minimum of eight (8) feet. *(added as amended 12-14-09)*

CROWN

The highest point of the tree. *(added as amended 12-14-09)*

DAYCARE FACILITY

A child daycare center or child daycare arrangement which provides daycare for six (6) or more children, unrelated by blood or marriage to, and not legal wards or foster children of the attendant adult. *(amended 12-14-09)*

DAYCARE HOME

A child daycare center or child daycare arrangement which provides daycare for five (5) or fewer children, unrelated by blood or marriage to, and not legal wards or foster children of the attendant adult within an occupied residence. *(amended 12-14-09)*

DECIDUOUS

Trees or shrubs that seasonally shed foliage. *(added as amended 12-14-09)*

DIAMETER-AT-BREAST HEIGHT (DBH)

The tree trunk diameter measured in inches at a height of four and one-half (4-1/2) feet above the ground. *(added as amended 12-14-09)*

DRIPLINE

An imaginary vertical line extending from the outermost edge of the tree canopy or shrub branch to the ground. *(added as amended 12-14-09)*

DWELLING

A building designed, arranged, or used for permanent living quarters for one or more persons (but not including a tent, cabin, trailer, trailer coach, mobile home, treehouse or a room in a hotel or motel).

DWELLING UNIT

A building, or portion thereof, providing complete living facilities for one family.

DWELLING, TWO FAMILY (DUPLEX)

A building designed or arranged to be occupied for permanent living quarters for two families living independent of each other.

DWELLING, MULTI-FAMILY (APTMTS)

A building designed or arranged to be occupied for permanent living quarters for three or more families living independent of each other.

ENTERTAINMENT USE, PUBLIC OR PRIVATE

A facility, open to the public which provides one or more entertainment or recreational activities. Such activities are usually conducted outdoors and/or are associated with the natural environment. *(added as amended 04-01-13)*

EQUESTRAIN FACILITY

A commercial establishment where facilities are provided for the boarding and riding of horses. Such establishment may also include facilities designed to accommodate spectators viewing horse shows. Such facility may be located on a bona fide farm (and, if so, shall be subject to the regulations of this Ordinance) or on a separate tract of land. *(added as amended 04-01-13)*

ESCORT AGENCIES

A person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its principle business purposes, for a fee, tip, or consideration. An escort means a person whom, for tips or any other form of consideration agrees or offers to act as a date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(amended 12-14-09)

EVENT CENTER WITH ACCOMMODATIONS

A use incorporating two or more guest rooms, other than a boarding house, hotel or motel, which may or may not include outdoor recreational facilities. Permitted uses may include, but are not limited to the following: weddings, reunions, corporate functions and/or educational events.

(added as amended 01-03-11)

EVERGREEN

Having foliage that remains green and functional through more than one growing season.

(added as amended 12-14-09)

EXTRATERRITORIAL LIMITS

The power to exercise zoning law in a defined area beyond the Town of Cleveland limits. The extent of that defined area is limited by state law according to the population of the Town of Cleveland exercising such power. The limits of this jurisdiction are shown on the official zoning map of the Town of Cleveland. *(amended 12-14-09)*

FAA

The Federal Aviation Administration.

FAMILY

An individual or two or more persons related by blood, marriage, or adoption, living together as a single housekeeping unit or no more than five unrelated persons in a dwelling unit living as a single household. *(amended 12-14-09)*

FAMILY CARE HOME

A home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident handicapped persons.

FARM MACHINERY SALES AND SERVICE

Establishments primarily engaged in the sale, rental or service of items used in farming. These items include, but are not limited to: tools, trucks, tractors, and agricultural implements. *(added as amended 04-01-13)*

FARMERS'S MARKET

An outdoor market at which fruits and vegetables are regularly sold to the general public by multiple vendors to the general public. Vehicles used to transport the products to be sold shall be limited to cars, vans and trucks. Other food items may also be sold at such establishments on an accessory basis. *(added as amended 04-01-13)*

FCC

The Federal Communications Commission.

FENCE

Any artificially constructed barrier erected to enclose or screen areas of land used as a boundary or means of protection or confinement. Fences are not considered structures.

FENCE, BARBED WIRE

One or more strands of wire or other material having intermittent sharp points of wire or metal that may puncture, cut, tear, or snag persons, clothing or animals.

FENCE, CONCERTINA WIRE

A coiled wire with razor-sharp barbs. The steel barbed wire is crimped around steel core wire and has steel clips that hold loops together. *(amended 12-14-09)*

GARAGE

An enclosed accessory building on a residential lot used for day-to-day shelter of vehicles. See Article VI for requirements and restrictions. *(amended 12-14-09)*

GREENHOUSE

A retail establishment where flowers, shrubbery, vegetables, trees, and other horticulture and floricultural products are grown for personal use or resale. *(added as amended 04-01-13)*

GROUP CARE FACILITY

A facility whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of any number of mentally ill persons or substance abusers as defined by NCGS 122C-3. This shall also include facilities which provide services for more than six (6) developmentally disabled persons. This shall not include Senior Housing, Nursing Homes, or Daycare Facilities or Daycare Centers. *(amended 12-14-09)*

HANDICAPPED PERSON

A person with a temporary or permanent physical, emotional, or mental retardation; cerebral palsy; epilepsy, autism, hearing and sight impairments; emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3 (11)b. *(amended 12-14-09)*

HEIGHT

The distance measured from ground level to the highest point on the tower and/or antenna. The vertical distance between the ground, either natural or filled, directly under the fence and highest point of the fence, excluding ornamental projections at no closer than five-foot intervals. *(amended 12-14-09)*

HOME OCCUPATION

An occupation conducted in a dwelling unit provided that:

- (a) No person other than members of the family residing on the premises shall be engaged in such occupation;
- (b) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants;
- (c) No more than 25% of the floor area of the dwelling unit shall be used in the conduct of the home occupation;
- (d) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding one square foot in area, nonilluminated, and mounted flat against the wall of the principle building;
- (e) No home occupation shall be conducted in any accessory building;
- (f) No traffic shall be generated by such home occupation in greater volume than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in the front yard; and
- (g) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable off the lot to the normal senses. No equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises or causes fluctuations in line voltage off the premises.
(added as amended 04-09-07, amended 12-14-09)

HORSE STABLE

An establishment where more than two horses are housed, bred, boarded, trained, where instruction in riding, jumping and showing is offered for financial remuneration. This also includes a location where the public may, for a fee, hire horses for riding.

HORTICULTURAL NURSERY

See “Greenhouse” (*added as amended 04-01-13*)

JUNK MOTOR VEHICLE

- (a) Is partially dismantled or wrecked: or
- (b) Cannot be self-propelled or moved in the manner in which it was originally intended to move; or
- (c) is more than five years old and worth less than \$100; or
- (d) Does not display a current license plate.
- (e) Does not display a current inspection sticker. (*added as amendment 09-13-04*)

JUNKYARD

Any establishment or place of business which is maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts. Any establishment or place of business upon which six (6) or more unlicensed, used motor vehicles which cannot be operated under their own power are kept or stored for a period of fifteen (15) days or more shall be deemed to a junkyard within the meaning of this ordinance. (*amended 12-14-09*)

LOT

A parcel of land fronting on a public street occupied or capable of being occupied by a building or a group of buildings devoted to the common use, together with the customary accessories and open spaces belonging to the same.

LOT, CORNER

A lot located at the intersection of two or more streets.

LOT, INTERIOR

A lot other than a corner lot with only one frontage on a street.

LOT LINE

The line bounding a “lot” as defined in this section.

LOT DEPTH

The average horizontal distance between front and rear lot lines.

LOT, THROUGH

An interior lot having frontage on two streets.

LOT, WIDTH

The distance between side lot lines measured at the required building line.

LOT OF RECORD

A lot which is part of a subdivision, a plat of which has been recorded in the office of the Register of Deeds of Rowan County or a lot of metes and bounds, the description of which has been so recorded.

MANUFACTURED HOME

A factory-built single family dwelling which is manufactured or constructed under authority of 42 U.S.C. Sect. 5403. Federal Manufactured Home Construction Standards, which is not constructed with a permanent hitch or other device allowing it to be moved other than for the purpose of moving to a permanent site, and which does not have permanently attached to its body or frame any wheels or axles. The structure in its traveling mode shall not be more than eight body feet in width, more than 40 body feet in length, or, when erected on site, is more than 320 square feet. In addition it shall mean any structure which meets all the requirements of this section for which the manufacturer voluntarily files a certification as required with the secretary of Housing and Urban development and complies with 42 U.S.C. Sect. 5403 Federal Manufactured Home Construction Standards. For structures built prior to June 15, 1976, A Manufactured Home shall mean any portable unit designed for transportation on its own chassis and placement on a permanent or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. *(amended 12-14-09)*

MANUFACTURED HOME PARK

Land used or intended to be used, leased or rented for occupancy by two or more manufactured homes. This definition does not include manufactured home sales lots on which unoccupied manufactured homes are parked for purposes of inspection and sale.

MARQUEE SIGN

A single sign with multiple listings. *(amended 4-11-05)*

MASSAGE BUSINESSES

Any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors. In this context “massage” means the manipulation of body muscle or tissue by rubbing, stroking, kneading, or tapping by hand or mechanical device. NOTE: Health massage and body therapists shall not be deemed employees in a licensed “massage business” as defined here.

MINI WAREHOUSE

A structure containing separate storage spaces of varying sizes which are leased or rented on an individual basis. *(added as amended 04-01-13)*

MODULAR HOME

Any single-family dwelling unit which is manufactured in whole or in components at a place other than the location where it is to be placed, which is assembled in whole or in components at the location where it is to be permanently located, which rests on a permanent foundation or slab, which does not have wheels or axles affixed as a part of its normal construction, and which does not require a license by any agency as a motor vehicle, special equipment, trailer, motor home or manufactured home. Such structures shall be labeled through the N.C. Building Code. *(amended 12-14-09)*

MONOCULTURE

The cultivation or growth of a single species of shrubs or trees. *(added as amended 12-14-09)*

MONOPOLE

A single pole structure, usually self-supporting, used to support one or more antenna.

NATURE PRESERVE/SANCTUARY

An area set aside for the protection of wildlife or natural resources and where access may be provided to the general public. *(added as amended 04-01-13)*

NONCONFORMING USE

A particular building, structure or use of land which does not meet the standards and specifications as set forth in this chapter either at the time of enactment of this chapter or through subsequent amendments. *(amended 12-14-09)*

NUDE MODEL STUDIO

Any place where a person who appears semi-nude, in a state of nudity, or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration. (Nude model studio shall not include a proprietary school licensed by the State of North Carolina or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and where in order to participate in a class a student must enroll at least three days in advance of the class; and where no more than one nude or semi-nude model is on the premises at any one time.

PARK

An outdoor recreation facility that is open to the public and is owned and operated by a unit of local government. *(added as amended 04-01-13)*

PARKING AISLE

The travel lane and the parking spaces located on each side. *(added as amended 12-14-09)*

PERIPHERY

The outer bounds of an area; the perimeter. *(added as amended 12-14-09)*

PLANTING BED

The area prepared for the purpose of accommodating the planting of trees, shrubs, and other plant material. *(added as amended 12-14-09)*

PUBLIC FACILITY BUILDING

A building where services are traditionally provided by a unit of local government or other public entity, including water and sewer, roads, parks, schools, emergency services and police and fire protection. *(added as amended 04-01-13)*

RESIDENTIAL CARE FACILITY

Any facility licensed by the State of North Carolina Department Human Services, public or private, which for gain or otherwise, regularly provides for one or more persons, not of the immediate family,
who are received, kept, or provided with food and shelter, or care for compensation, but not including hospitals, clinics, or similar institutions devoted primarily to the diagnosis and treatment of the sick. *(added as amended 04-01-13)*

RODEO

An outdoor location designed to accommodate spectators viewing bronco riding, calf roping, steer wrestling, bull riding and similar activities featuring animal. Such activities are held on a regular basis. This facility may be located on a bona fide farm (and, if such, is subject to the regulations of this Ordinance), or on a separate tract of land. *(added as amended 04-01-13)*

ROOMING HOUSE

Either a one or two family dwelling other than a hotel, motel or apartment house where lodging for three or more persons not of the immediate family is provided for compensation and prearrangement for definite time periods. *(amended 12-14-09)*

ROOT PRUNING

Cutting or removing any roots from an established tree or shrub. *(added as amended 12-14-09)*

SENIOR HOUSING

A dwelling especially for use and occupancy of persons who are aged.

SEVERALLY

More. *(added as amended 12-14-09)*

SEXUAL ENCOUNTER CENTER

A business or commercial enterprise that, as one of its principle business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, or activities between male and female persons and/or person of the same sex when one or more of the persons is in a state of nudity or semi-nude. *(amended 12-14-09)*

SEXUAL ORIENTED DEVICES

Any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principle for specified sexual activities but shall not mean any contraceptive device. *(amended 12-14-09)*

SHRUB

An ornamental plant that is at least three (3) feet tall above the highest root at the time of planting.

SIGHT DISTANCE TRIANGLE

The triangular area formed at the intersection of two streets by the intersection of a front or rear lot line on one street and a sideline on the other street and a straight line connecting points on said lot lines, each point of which is twenty-five (25) feet in distance from the point of intersection. See Article VII Section 12 Figure 3. *(amended 12-14-09)*

SIGN

Any form of publicity, visible from any public highway directing attention to an individual activity, business, service, commodity or product and conveyed by means of words, figures, numerals, lettering, emblems, devices, designs, trademarks, or trade names or other pictorial matter designed to convey such information and displayed by means of bills, panels, posters, paints, or other devices directed on an open framework or attached or otherwise applied to posts, stakes, poles, trees, buildings or other structures or supports.

- (a) Signs, business - A sign which directs attention to a business, profession, commodity, service or entertainment sold or offered upon the premises where such sign is located or to which it is attached.
- (b) Signs, advertising - A sign which directs attention to a business, commodity,

- activity, service or product not necessarily conducted, sold or offered upon the premises where such sign is located.
- (c) Other signs - See ARTICLE XI

SPECIFIED ANATOMICAL AREAS

Are areas

- (a) less than completely and opaquely covered: human genitals, pubic region, buttock, or female breasts below a point immediately above the top of the areola, or
- (b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITES

Includes

- (a) human genitals in a state of sexual stimulation or arousal, or
- (b) acts of human masturbation, sexual intercourse, or sodomy, or
- (c) fondling or other erotic touchings of human genitals, pubic regions, buttocks or female breasts. *(amended 12-14-09)*

SPORTS COMPLEX

Individual buildings, groups of structures and/or fields designed for exercising, sports training and practice, and competitions in various sports. *(amended 8-14-17)*

STABLES, COMMERCIAL

A lot that may be used for a commercial riding stable open to the general public for boarding of livestock not involved with current breeding. No feed lot shall be permitted. *(added as amended 04-01-13)*

STABLES, PRIVATE

The keeping of horses, not for profit, but for the enjoyment of the property owners or lessees. *(added as amended 04-01-13)*

STREETS

A dedicated and accepted public right-of-way for vehicular traffic which affords the principle means of access to abutting properties. *(amended 12-14-09)*

STREETSCAPE PLAN

A plan concerning the visual image of a street, including the combination of buildings, parking, signs, and landscaping. *(added as amended 12-14-09)*

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.

TAXIDERMIST

A commercial operation where animals are prepared, stuffed and mounted. *(added as amended 04-01-13)*

TELECOMMUNICATION FACILITY

A monopole and any buildings used primary for the support of one or more antennae. When monopoles are erected on rooftops of buildings used for other purposes, then only the monopole is considered the telecommunications facility.

TREE, LARGE

A tree either single or multi stemmed, (i.e., in clump form) which has a height of at least ten (10) feet and is a species which, at maturity, can be expected to reach a height of at least forty (40) feet under normal growing conditions in the local climate. If the tree is single stemmed, it shall have

a

caliper of at least one (1) inch at the time of planting measured twelve (12) inches from the crown of the tree. *(amended 12-14-09)*

TREE, SMALL

A tree either single or multi stemmed, (i.e., in clump form) which has a height of at least five (5) feet and is a species which, at maturity, can be expected to reach a height of at least twenty (20) feet under normal growing conditions in the local climate. If the tree is single stemmed, it shall have a caliper of at least three-quarters (3/4) of an inch at the time of planting measured twelve (12) inches from the crown of the tree. *(amended 12-14-09)*

TREE TOPPING

An unacceptable method of pruning which involves the cutting of limbs back to a stub, bud, or a lateral branch not large enough to assume the terminal role and causes decay and sprout production from the cut ends, resulting in a potentially hazardous situation. Tree topping is also referred to as heading, stubbing, tipping or rounding off. *(added as amended 12-14-09)*

VARIANCE

A modification of the strict application of the provisions of this chapter where owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship, as determined by the Board of Adjustment in accord with procedures specified in this chapter. (See ARTICLE XI Section 9.3) *(amended 12-14-09)*

WINE TASTING ROOM/FACILITY

A facility in which wine products grown or processed on the owner's property may be tasted and sold. This definition shall also include small-scale associated gift/retail sales, dining and catering facilities and a restaurant facility. The facility must be operated in association with an existing vineyard located on the same property or on an adjacent property under the same ownership. *(added as amended 04-01-13)*

YARD

An open space on the same lot with a principle building open, unoccupied and unobstructed from the ground upward, except where encroachments and accessory buildings are expressly permitted. *(amended 12-14-09)*

YARD, FRONT

An open, unoccupied space on the same lot with a principle building, extending the full width of the lot, and situated between the street and the front line of the building, projected to the side line of the lot. *(amended 12-14-09)*

YARD, REAR

An open, unoccupied space on the same lot with a principle building, extending the full width of the lot and situated between the rear line on the lot and the rear line of the building projected to the side lines of the lot. *(amended 12-14-09)*

YARD, SIDE

An open, unoccupied space on the same lot with a principle building, situated between the building and the side line of the lot and extending from the rear line of the rear yard. *(amended 12-14-09)*

ARTICLE III
ZONING DISTRICTS AND BOUNDARIES

Section 1. Establishment of Districts

In order to carry out the intent and purpose of this chapter, the Town of Cleveland, N.C. is hereby divided into the following districts to which shall be shown and depicted upon the official zoning map. *(amended 12-14-09)*

Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use permit and conditional zoning districts, in which site plans and individualized development conditions are imposed. *(added as amended 04-09-07)*

Agricultural districts

A-1 Agricultural District

Residential districts

R-20 Single-Family Residential District

R-15 General Residential District

Commercial districts

CBD Central Business District

GBD General Business District

Industrial districts

M-1 Light Industrial District

M-2 Heavy Industrial District

Overlay districts

TCO Thoroughfare Corridor Overlay District

Parallel Conditional Use Districts

For each conventional district a parallel conditional use district is established.

<u>General District</u>	<u>Parallel Conditional Use District</u>
A-1	A-1 (CUD)
R-15	R-15 (CUD)
R-20	R-20 (CUD)
CBD	CBD (CUD)
GBD	GBD (CUD)
M-1	M-1 (CUD)
M-2	M-2 (CUD)

Section 2. Description of Use Districts

R-20 Single-Family Residential District. This District shall be used inclusively with the R-15 district for single-family dwelling units. In addition, certain nonresidential uses of a public and semipublic nature which are so designated in ARTICLE VIII, Section 7, may be permitted in this district. All uses shall be subject to the minimum standards and specifications as set forth in ARTICLE VI, Section 1 and ARTICLE VII, Section 2 of this ordinance.

(amended 12-14-09)

R-15 General Residential District. This District shall be used inclusively with the R-20 district for dwelling units, single-family, two-family and multi-family units. In addition certain nonindustrial residential uses of a public and semipublic nature are so designated in ARTICLE VIII, Section 7 may be permitted in this District. All uses shall be subject to the minimum standards and specifications as set forth in ARTICLE VI, Section 2 of this ordinance.

(amended 12-14-09)

CBD Central Business District. This District shall be used inclusively with the GBD District for downtown commercial establishments and businesses such as retail sales stores, financial institutions, and professional offices. In addition, certain nonindustrial, noncommercial uses of a public and semipublic nature which are so designated in ARTICLE VIII, Section 7 may be permitted in this District. All uses shall be subject to the minimum standards and specifications as set forth in ARTICLE VI, Section 3 and ARTICLE VII, Section 2 of this ordinance.

(amended 12-14-09)

GBD General Business District. This district shall be used inclusively with the CBD District for highway business of a supporting nature to serve the Town of Cleveland's needs. In addition, certain uses of a public and semipublic nature which are designated in ARTICLE VIII, Section 7, may be permitted in this district. All uses shall be subject to the minimum standards and specifications as set forth in ARTICLE VI, Section 4 and ARTICLE VII, Section 2 of this ordinance. *(amended 12-14-09)*

M-1 Light Industrial District. This district shall be used exclusively for certain industrial manufacturing or exclusively for processing plants. In addition, certain non-industrial uses of a public and semi-public nature which are so designated in ARTICLE VIII, Section 7, may be permitted in this district. All uses shall be subject to the minimum standards and specifications as set forth in ARTICLE VI, Section 5 and ARTICLE VII, Section 2, of this ordinance. *(amended 12-14-09)*

M-2 Heavy Industrial District. This district shall be used exclusively for certain industrial, manufacturing, or processing plants which will not be dangerous or detrimental to the health, safety, welfare or general character of the area by reason of the emission of smoke, fumes, noise, odors or dust. In addition, certain non-industrial uses of a public and semi-public nature which are so designated in ARTICLE VIII, Section 7, may be permitted in this district. All uses shall be subject to the minimum standards and specifications as set forth in ARTICLE VI, Section 6 and ARTICLE VII, Section 2 of this ordinance. *(amended 12-14-09)*

A-1 Agricultural District. This district shall be used for agricultural and residential type uses. In addition, certain non-agricultural and non-residential uses of a public and semi-public nature which are so designated in ARTICLE VIII, Section 7, may be permitted in this district. All uses shall be subject to the minimum standards and specifications as set forth in ARTICLE VI, Section 7 and ARTICLE VII, Section 2 of this ordinance. *(amended 12-14-09)*

TCO Thoroughfare Corridor Overlay District. The purpose of this district is to establish regulations to provide for orderly development along US 70. The district shall be shown on the official zoning map of the Town of Cleveland. These guidelines shall encourage the most appropriate use of adjacent lands to promote the safe and efficient movement of traffic and to establish an image of the quality of life in the Town of Cleveland for visitors and residents alike. As such, these regulations are part of the Town of Cleveland's overall efforts to maintain and enhance the character and appearance of the Town of Cleveland and will encourage development which reduces or eliminates visual clutter and poor site layout.

As an overlay district the TCO does not restrict the range of uses allowed in the underlying general use districts or conditional use classifications for the property, but provides additional

development requirements and standards which must be met by any development on the property. All development within this overlay district shall comply with the regulations of this ordinance.

Parallel Conditional Use Districts

The purpose of this section is to provide a voluntary alternative procedure for the rezoning of a property for a specific use. A broad range of uses are permitted in the conventional district. However, there are instances where a general zoning district designation is clearly inappropriate

for a property, but a specific use permitted under this district and subject to development requirements would be consistent with the spirit and intent of this ordinance. Parallel conditional use districts, herein established, are intended to accommodate such situations. This voluntary procedure is intended for firm development proposals, and is neither intended nor suited for securing early zoning for tentative uses which may not be undertaken for a long period of time.

Section 3. Zoning Map

The boundaries of these districts are hereby established as shown on a map entitled: A Official Zoning Map, Town of Cleveland, North Carolina adopted January 13, 1997 by the Town Board and certified by the Town Clerk. Said map and all explanatory matter thereon accompanies and is hereby made a part of this ordinance. Said map shall be retained in the office of the Town Clerk. (*amended 12-14-09*)

Section 4. District Boundaries

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

1. Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines or 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.
2. Where district boundaries are so indicated where they approximately follow lot lines, such lot lines shall be construed to be said boundaries.
3. Where district boundaries are so indicated that they are approximately parallel to the center lines of streets, highways, or railroads, or right-of-ways of same, such district boundaries shall be construed as being parallel thereto and at such a distance therefrom as indicated on the zoning map. If no distance is given, such dimension shall be determined by the use of the scale shown on said zoning map. (*amended 12-14-09*)

4. Where a district boundary line divides a lot in a single ownership, the district requirements for the least restricted 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. *(amended 12-14-09)*

When the Zoning Administrator rules and there is disagreement, then an appeal to the Zoning Board of Adjustment is appropriate, such an appeal shall be conducted in accordance with the guidelines in ARTICLE XI, Section 6 of this ordinance. *(amended 12-14-09)*

ARTICLE IV
APPLICATION OF REGULATIONS

Section 1. Use

No building or land shall hereafter be used or occupied and no building or structure or part thereof shall be erected, moved or structurally altered except in conformity with the regulations of this article or amendments thereto for the district for which it is located.

Section 2. Height and Density

No building shall hereafter be erected or altered so as to exceed the height limit, or to exceed the density regulations of this ordinance for the district in which it is located. Density regulations of this ordinance may be exceeded when a portion of said lot is acquired for public use.

Section 3. Lot Size

No lot, even though it may consist of one or more adjacent lots of record, shall be reduced in size so that the lot width or depth, front, side or rear yards, lot area per family or other requirements of this ordinance are not maintained.

Section 4. Yard Use Limitations

No part of a yard or other open space required about any building for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard or other open space similarly required for another building.

Section 5. Principal Building on Any Lot

Only one principal building and its customary accessory building(s) may hereafter be erected on any lot, except as authorized in ARTICLE VI of this ordinance, nor shall any building be erected on any lot which does not abut at least twenty-five (25) feet on a publicly dedicated or maintained street. Future buildings shall border at least twenty-five (25) feet to publicly dedicated or maintained streets.

Section 6. Parcels With No Road Frontage

In cases of landlocked property, a conditional use permit can be issued upon review of the Board of Adjustments, thereby allowing for addition of fair and reasonable conditions. Applicant must produce proof of legal access to property. *(amended 4-09-01, 12-14-09)*

ARTICLE V
PARKING AND LOADING REQUIREMENTS

Section 1. Off-Street Automobile Parking and Storage

Off-street automobile parking and/or storage space shall be provided on every lot on which any of the following uses are hereafter established, except that the Central Business District as defined on the zoning map, shall be exempt from off-street parking regulations. Or, provided that if no parking space can be reasonably provided on the same lot, such space shall be provided on any lot a substantial portion of which is within 500 feet of such uses. No certificate of occupancy will be issued upon completion of any building or group of buildings unless and until all off-street parking and loading requirements as shown upon the plans or made part of the building permit shall be in place and ready for use. The required parking space for any number of separate uses may be combined in one lot, but the required space assigned to one use may not be assigned to another use at the same time, except that one half of the parking spaces required for churches, theaters, or assembly halls whose peak attendance will be at night or on Sundays may be assigned to a use which will be closed at night or on Sundays. Each automobile parking space shall not be less than nine (9) feet by eighteen (18) feet, exclusive of adequate access drives and maneuvering space. Except for the single-family residential districts, all off-street parking is to be accessible in such a manner that any vehicle shall be able to enter and leave in a forward motion (turn around space on property). Such parking space, access drives and maneuvering areas providing vehicular access to a street or alley shall not thereafter be encroached upon or altered, and the number of parking spaces shall be equal in number to at least the minimum requirements for the specific use set forth below.

USE
CLASSIFICATIONS

PARKING SPACE REQUIREMENTS

Automobile sales and service

One (1) space for each two (2) employees at maximum employment on a single shift, plus two (2) spaces for each three hundred (300) square feet of repair or maintenance space.

Bowling alley

Two (2) spaces for each lane, plus one additional space for each two employees.

Churches

One (1) space for each five seats in the main auditorium.

Elementary schools, and junior high schools, both public and private

One (1) space for each classroom and administrative office.

Filling Stations

Two (2) spaces for each gas pump plus three spaces for each grease rack or similar facility.

Hospitals

One (1) space for each four (4) patient beds, plus (1) space for each staff or visiting doctor, plus one (1) space for each four (4) employees.

Mortuaries or funeral

One (1) space for each four (4) seats in the assembly homes room or chapel.

Library

One (1) space for each four (4) seats provided for patron use.

Motels and tourist homes or courts

One (1) space for each accommodation, plus two (2) additional spaces for employees and one (1) space for the owner if resident on the premises.
(added as amended 10-11-04)

Medical offices and clinics

Four (4) spaces for each doctor practicing at the clinic, plus one (1) space for each employee.

Offices, professional, business or public, including banks

One (1) space for each two hundred (200) square feet of Gross floor area.

USE

CLASSIFICATIONS

Places of public assembly, including private clubs and lodges, auditoriums, dance halls, pool rooms, theaters, stadiums, parks, community centers and all similar places of public assembly.

Residential dwellings:

Single Family

Two(2) Family

Multi-Family

Restaurants, drive-in

Restaurants

Retail business, and consumer service outlets and convenience stores

Rooming and boarding houses

Sanitariums, rest and convalescent homes, homes for the aged and similar institutions

Shopping centers

Wholesale and industrial users

PARKING SPACE REQUIREMENTS

One (1) space for each four (4) seats provided for patron use, plus one (1) space for each one hundred (100) square feet of floor or ground area used for amusement or assembly but containing fixed seats.

One (1) space for each dwelling unit.

One (1) space for each dwelling unit.

One and one-half (1 1/2) spaces for each dwelling unit.

One (1) space for each three (3) seating accommodations, plus a minimum of fifteen (15) spaces for drive-in services, plus one (1) space for each two (2) employees on the shift of largest employment.

One (1) space for each three (3) seating accommodations, plus one (1) space for each two (2) employees on the shift of largest employment.

One (1) space for each two hundred (200) square feet of gross floor area.

One (1) space for each three (3) guest rooms, plus one additional space for the owners.

One (1) space for each six (6) patient beds, plus one (1) space for each staff or visiting doctor, plus one (1) space for each four (4) employees.

Two (2) square feet of parking space for each square foot of gross floor area.

One (1) space for each two (2) employees on the shift of largest employment.

Section 2. Off-street Loading and Unloading Space

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. Such space shall have access to an alley, or if there is no alley, to a street. For the purposes of this section, an off-street loading space shall have minimum dimensions fourteen (14) feet in height above the alley or street grade and thirty-five (35) feet in depth from the alley or street line.

1. Retail business: One (1) space of 300 square feet for each 5000 square feet of floor area.
2. Wholesale and industry: One (1) space of 500 feet for each 10,000 square feet of floor space.

ARTICLE VI
USE REQUIREMENTS BY DISTRICT

Section 1. Single Family Residential Districts

The regulations set forth in this article, or set forth elsewhere in these zoning regulations when referred to this section, are the regulations in the R-20 Single-Family Residential District.

1. Permitted Uses

Accessory buildings or structures and uses provided that such uses shall be permitted only in the rear yard and shall be not less than ten (10) feet from any property line, and further provided that in the case of corner lots such buildings or structures shall be set back at least twenty (20) feet from any side street right-of-way line.

Cemeteries (*added as amended 12-14-09*)

Churches and related uses

Colleges, universities, public, elementary and secondary schools, and private schools. (*amended 12-14-09*)

Day Care Home

Family care homes provided they are not located within a one half (1/2) mile radius of an existing family care home. (*amended 12-14-09*)

Fences are permitted on any residential lot, providing they meet the following guidelines. A zoning permit is required.

- (a) Fences must not obstruct traffic field of view. (See Article VII, Section 4.)
- (b) Fences erected in the front yard shall not exceed five (5) feet in height. Fences in the side and rear yards shall not exceed eight (8) feet in height.
- (c) The following types of fences shall not be allowed: electrical, barbed wire, and concertina wire. {added as amendment 04-09-01}
- (d) Agricultural type fencing (chicken wire, hog wire and the like), shall be permitted only in the rear yard and shall be limited to enclosures for domestic animals and gardens. (*added as amended 12-14-09*)

Golf courses, parks, playgrounds, and communication centers operated on a noncommercial or nonprofit basis for recreation purposes only.

Greenhouses and gardens which are incidental to the residential use and are conducted on a noncommercial basis. *(amended 12-14-09)*

Home occupations such as home cooking and professional offices as defined in ARTICLE II, Section 2 of this ordinance.

Modular homes and Single-family dwelling units. All dwellings shall require a foundation consisting of brick or finished masonry. Regular unfinished block may not be used for this requirement. However, split-faced block may be used. *(amended 3-8-99)*

One unattached carport and/or garage per residence shall be permitted in the side yard. All such structures, regardless of placement on the site, shall be permanently supported by concrete footings, collars, or foundations. There shall be no structure in the front yard unless approved by the Zoning Board of Adjustment. *(added as amendment 6-12-00)*

Residential lots must have at least fifty (50) per cent of the lot dedicated to grass or landscaping (that is, open space). The lot size is diminished by (a) the exterior dimensions of the dwelling, (b) the dimensions of the driveway, and (c) the dimensions of any accessory buildings. *(added as amendment 10-11-99)*

Swimming pools, provided that such are located within or on an area designated as a public park or playground or upon a community or privately-owned park or playground located within such community and that such uses are owned, operated and maintained on a non-profit basis. Provided further, that swimming pools and accessory building shall be located at least twenty (20) feet from the boundary lines of such parks or playgrounds. Nothing in this provision shall prevent the construction and maintenance of a private swimming pool as permitted under the accessory buildings and structures provision of this section on a lot upon which a residence is located if such accessory use is for the use and benefit of those residing on the lot, and provided such swimming pool is fenced in.
(amended 10-11-04)

2. Conditional Uses

The following uses shall be allowed subject to the issuance of a conditional use permit in accordance with ARTICLE XI, Section 9.

Accessory buildings on lots with no dwelling

Senior housing

Child Day Care Facility not to serve over one hundred (100) children

Section 2. General Residential District (R-15)

The regulations set forth in this article or set forth elsewhere in this ordinance, when referred to in this article, are the regulations in the R-15 General Residential District.

1. Permitted Uses

All uses permitted in the R-20 Single-Family Residential District.

Boarding and rooming houses.

Manufactured homes as a principle building on a lot (see ARTICLE VIII, Section 8).

Public utility facilities.

Two-family units.

2. Conditional Uses

The following uses shall be allowed subject to the issuance of a conditional use permit in accordance with ARTICLE XI, Section 9.

Accessory buildings on lots with no dwelling.

Senior housing.

Multi-family dwelling units (*amended 10-11-04*)

Section 3. Central Business District (CBD)

The regulations set forth in this article, or set forth elsewhere in this ordinance, when referred to in this article are the regulations in the CBD Central Business District.

1. Permitted Uses (*deletions amended 12-14-09*)

Accessory uses and structures on the same lot as the structure, excluding open storage.

Animal hospitals (no open kennels).

Assembly halls.

Auto parking structures.

Banks, financial institutions.

Bakeries and other establishments manufacturing prepared foods.

Barber, beauty shops, business colleges.

Bus terminals.

Clubs, lodges, fraternities, nonprofit basis.

Dance studios.

Electrical appliances, sales and repair, excluding open storage.

Emergency Medical Services Station. *(added as amended 10-01-12).*

Fast Food Restaurant *(added as amended 04-01-13).*

Fire and police stations.

Food stores, retail only, killing or dressing excluded.

Greenhouses or horticultural nurseries (commercial).

Jewelry sales and repair.

Libraries, museums, art galleries.

Medical and dental clinics.

Newspaper offices and printing plants.

Offices; general, business, professional and public.

Pet shops.

Pharmacies.

Post offices.

Public utilities.

Repair and servicing of household equipment.

Restaurants except fast food restaurants. *(amended 12-14-09)*.

Retail establishments.

Sports Complex *(amended 8-14-17)*

Union halls, fraternal and civic organization meeting facilities.
(added as amended 12-14-09)

Requests for fencing permits must be submitted to the Planning Board for review and recommendation. Construction of fences is subject to approval by the Town Board.
(added as amendment 04-09-01)

2. Conditional Uses

The following uses shall be allowed subject to the issuance of a conditional use permit in accordance with ARTICLE XI, Section 9.

Multiple use of structure which allows for the operation of a permitted retail business and for residence by owner or operator of said business. *(added as amended 12-14-09)*

Section 4. General Business District (GBD)

The regulations set forth in this article or set forth elsewhere in these zoning regulations when referred to in this article, are the regulations in the GBD General Business District.

1. Permitted Uses *(deletions amended 12-14-09)*

All uses permitted in the CBD Central Business District.

Alcoholic beverages, packaged, off premises only.

Automobile repair and paint shops.

Automobile washing establishments.

Billiard and pool halls.

Bowling alleys.

Cold storage or freezer lockers.

Dry cleaning, laundry plants and pickup stations.

Funeral homes.

Hotels, motels.

Laundromats.

Milk distribution establishments.

Passenger vehicle sales. *(amended 12-14-09)*

Radio and televisions stations.

Rest and convalescent homes.

Service station.

Taxicab offices and stands.

Wholesale and warehouse establishments.

2. Conditional Uses

The following uses shall be allowed subject to the issuance of a conditional use permit in accordance with ARTICLE XI, Section 9.

Outdoor storage of trucks (which are not for retail sale) as a principal use where such trucks are not owned by the owner of the lot upon which they are located and such trucks are in operating condition and are intended to be operated. *(added as amendment 5-8-00)*

Any application for an Electronic Gaming Operation shall, at a minimum, comply with the requirements below.

No Electronic Gaming Operation, at any time, shall be operated or supervised by a person less than eighteen (18) years of age or a convicted of a felony.

No person under the age of eighteen (18) years shall be permitted to play, use, or otherwise operate electronic machine, terminal, computer or other electronic device permitted under this section.

Alcoholic beverages will not be allowed or consumed on the gaming operation property, including the parking lot.

Hours of operation are: Monday – Saturday 10:00 am to 10:00 pm

Sunday 12:00 pm to 10:00 pm

No electronic gaming operation shall be located within 1500 feet of another electronic gaming operation, school, religious institution, residential zoned districts of R-20 & R-15, recreation center or park. Measurements of separation shall be made as a straight-line measurement from the nearest point of the property line of the uses listed in this section.

Windows shall not be tinted, nor shall there be any interior obstructions, such as curtains, screens, blinds, partitions, or signs, placed to prevent a clear and unobstructed view of the interior from the street.

No interior or exterior lighting shall be used to frame windows, doors, or along the building itself, whether in part or in whole.

No more than twenty (20) seats for play per 500 feet designated to electronic gaming. *(added as amendment 12-10-18)*

3. Requests for fencing permits must be submitted to the Planning Board for review and recommendation. Construction of fences is subject to approval by the Town Board. *(added as amendment 04-09-01)*

Section 5. Light Industrial District (M-1)

The purpose of this District is to allow for a wide variety of uses involved with the manufacturing, refining, processing, storage and assembly of goods. In addition, a number of nonindustrial uses which are determined to be appropriate in an industrial setting and serve in a support capacity to the industrial uses are also allowed as conditional uses as provided in Article XI, Section 9 of this ordinance. Given the nature of this district and the intent of this ordinance that most industrial-related uses be located in an industrial zone, a large variety of industrial uses are allowed on a permitted basis. *(added as amendment 10-11-04)*

1. Permitted Uses *(deletions amended 12-14-09)*

All uses permitted in the GBD General Business District *(added as amended 12-14-09)*

Agricultural equipment, sales and service.

Automobile parking lots.

Automobile painting, upholstery, repairs, reconditioning and body work.

Automobile sales.

Automobile service stations.

Bookbinding shops.

Building materials and lumber sales.

Cabinet, woodworking and upholstery shops.

Churches.

Commercial schools and schools providing training in any of the arts, sciences, trades and professions.

Contractors storage and equipment yards.

Dry cleaning and laundry plants.

Electric, plumbing, heating ventilating and air conditioning and construction supply houses.

Florists, wholesale.

Food catering services and food vending supplies.

Freezer lockers.

Funeral homes (*amended 04-09-01*)

Laboratories: dental, medical, optical and research. Machinery repair.

Manufactured home and recreational vehicle sales and service.

Moving and storage facilities.

Office, business, medical, optical, and professional suppliers and fabricators.
(*amended 12-14-09*)

Photo processing laboratories.

Postal and parcel service processing facilities.

Post offices.

Product distribution plants.

Railroad terminals and yards.

Recycling deposit stations.

Recycling sorting, shredding, cutting and compacting facilities.

Roofing manufacturing, repair and installation facilities.

Sign painting and manufacturing shops.

Tin and sheet metal shops.

Tire capping and retreading. *(amended 12-14-09)*

Towers and antennae one-hundred (100) feet or less in height.

Truck sales and repairs.

Warehouses (including mini-warehouses).

2. Conditional Uses

The following uses shall be allowed subject to the issuance of a conditional use permit by the Board of Adjustment in accordance with ARTICLE XI Section 9.

Airports and air strips/airplane sales, services and fuel and rentals.

Animal kennels.

Animal shelters, operated by a public agency or on a not-for-profit basis.

Auctions, outdoors and/or livestock.

Day care facilities (as a principal use).

Farmers' markets.

Flea markets.

Fuel oil distribution facilities.

Military reserve center/national guard armory

Outdoor storage of motor vehicles, not including junked vehicles. *(added as amendment 09-13-04)*

3. Requests for fencing permits must be submitted to the Planning Board for review and recommendation. Construction of fences is subject to approval by the Town Board. *(added as amendment 04-09-01)*

Section 6. Heavy Industrial District (M-2)

All uses listed as permitted uses in the M-1 district shall be permitted uses in the M-2 District. In addition, the following uses shall be allowed upon the issuance of a conditional use permit by the Board of Adjustment:

The purpose of this District is to allow for a wide variety of uses involved with the manufacturing, refining, processing, storage and assembly of goods. In addition, a number of non-industrial uses which are determined to be appropriate in an industrial setting and serve in a support capacity to the industrial uses are also allowed. Given the nature of this District and the intent of this ordinance that most industrial-related uses be located in an industrial zone, a large variety of industrial uses are allowed on a permitted basis. Those uses which may be perceived as having a significant impact on the environment, the provision of emergency management services, the provision of public utilities or impacts on adjacent properties which may not be located in an M-1 District are shown as conditional uses in the M-2 District. Any conditional use allowed in this district shall be properly cited and accommodated in such a manner so as to preserve the public's health, safety and welfare.

The term "SIC" as used herein shall refer to the Standard Industrial Classification system as set forth in the SIC Manual published by the United States of America, Executive Office of the President, Office of Management and Budget and unless a use is defined in this ordinance, the SIC Manual shall be used to define, clarify or more specifically identify the uses and groups of uses which may be listed under the M-1 District. While the SIC Manual uses the term "establishments primarily engaged in" in defining types of manufacturing operations, this ordinance shall be construed to mean that if the activity is conducted at all within the use and that activity is listed as conditional, then the entire use shall be deemed a "conditional use" as opposed to a "permitted use."

The following manufacturing industries (as identified by their SIC Group Number or Industry Number (s)) shall be allowed subject to the issuance of a conditional use permit by the Board of Adjustment:

Meat packing plants and poultry dressing plants (SIC #2011, 2015).

Pickled fruits and vegetables (SIC #2035).

Flour and other grain mill products, sugar refining (SIC #2041, 2061, 2062, 2063).

Fats and oils (SIC Group #207)

Beer/malt beverages, wines, brandy, distilled and blended liquors, roasted coffee (SIC #2082, 2083, 2084, 2085, 2095).

Processing and packing of canned, cured, fresh, or frozen fish and seafood (SIC #2091, 2092).

The following manufacturing industries listed under (SIC #2099):

(a) Yeast.

(b) Molasses and sweetening syrups.

(c) Vinegar.

Tobacco products (SIC Major Group #21)

Dyeing and finishing textiles, except wool fabrics and knit goods (SIC Group #226) and under SIC #2231, 2253, 2252, 2251, the dyeing and finishing of wool and similar animal fibers.

Coated fabrics, rubberized and not rubberized; canvas and related products (SIC #2295, 2394, 3069).

Sawmills and planing mills, general (SIC #2421). *(amended 12-14-09)*

Wood buildings and manufactured homes (SIC Group #245). *(amended 12-14-09)*

Wood preserving; reconstituted wood products; pulp mills; paper mills; paperboard mills (SIC #2492, 2493; SIC Group #261; SIC Group #262; SIC Group #263).

Industrial inorganic chemicals; plastic materials, synthetic resins and rubber, cellulosic and other manmade fibers, except glass (SIC Group #281; SIC #282).

Soaps, detergents and cleaning preparations; perfumes, cosmetics, and other toilet preparations (SIC Group #284).

Paints, varnishes, lacquers, enamels and allied products (SIC Group #285).

Industrial organic chemicals; agricultural chemicals (fertilizers, pesticides, etc.) (SIC Group #281; SIC Group #287).

Miscellaneous chemical products (all products listed under SIC Group #289) (e.g., adhesives, sealants, explosives, printing ink, carbon black and other chemical and chemical preparations listed in SIC #2899). (*amended 12-14-09*)

Asphalt paving and roofing materials (SIC Group #295)

Lubricating oils and greases (SIC #2992).

Products of petroleum and coal classified under SIC #2999.

Tires and inner tubes (SIC Group #301)

Plastic products found under SIC Group #308 when resins are made at the same facility.

Leather tanning and finishing (SIC Group #311).

Flat glass; glass and glassware; (SIC Group #321; SIC Group #322)

Cement, hydraulic (SIC Group #324).

Structural clay products (SIC Group #325)

Pottery and related products (SIC Group #326) except handmade pottery arts and crafts involving no more than one thousand (1,000) cubic feet of kiln space.

Concrete gypsum and plastic products; cut stone and stone products (SIC Group #327; SIC Group #328).

Abrasive products; asbestos products; mineral wool; (SIC #3291; SIC #3292; SIC #3296).

Minerals and earths, ground or otherwise treated (SIC #3295)

Non-clay refractories (SIC #3297)

Miscellaneous nonmetallic mineral products listed under SIC Code #3299.

Steel works, blast furnaces, and rolling and finishing mills; iron and steel foundries; primary and secondary smelting and refining of nonferrous metals; rolling, drawing and extruding of nonferrous metals; nonferrous foundries; (SIC Group #331; SIC Group #332; SIC Group #333 and #334; SIC Group #335; SIC Group #336).

Metal heat treating; metal forging - iron, steel and nonferrous; coating and engraving of metals and allied services (SIC #3398, SIC #3462 and #3463; SIC Group #347).

Manufacture of other primary metal products listed under SIC #3399.

Manufacture of ordnance (arms, ammunition, etc.) and accessories except vehicles and guided missiles (SIC Group #348).

Power, distribution and specialty transformers (SIC #3612).

Electrical industrial carbon and graphic products (SIC #3624)

Storage batteries; primary batteries, dry and wet (SIC #3691, SIC #3692)

Motor vehicles; truck, bus and passenger car bodies; truck trailers; motor homes; (SIC #3711; 3713; SIC #3715; SIC #3716).

Railroad equipment (SIC #3743).

Motorcycles (SIC #3751) except bicycles and bicycle parts.

Under SIC #3792 - camping trailers.

(Military) tanks (and related armored vehicles) (SIC #3795) but not tank components.

Under SIC #3861 - all photographic supplies but not photographic equipment.

Under SIC #3952 all inks, paints, oils, enamels and crayons.

Carbon paper and inked ribbons (SIC #3955).

Linoleum, asphalt - felt-base and other hard surface floor covering listed under SIC #3996

Airports and airstrips/airplane sales, services and fuel and rentals.

Animal kennels.

Animal shelters, operated by a public agency or on a not-for-profit basis.

Auctions, outdoors and/or livestock.

Day care facilities (as a principal use).

Farmers' markets.

Flea Markets.

Fuel oil distribution facilities.

Military reserve center/national guard armory.

Auto Salvage Yards

New auto salvage yards and expansions of existing salvage yards shall be allowed upon the issuance of a conditional use permit and:

- A. Be subject to any conditions of approval placed on the application by the Board of Commissioners; and
- B. Shall be located a minimum of 80 feet of any center line or 50 feet from the edge of the right of way of any public or private road, whichever is greater; and
- C. Shall be located a minimum of 1,000 feet from a schools, residence, church or place of public assembly existing at the date of submittal of a complete application. The 1,000- foot required separation shall be measured from the closest point of the operational area of the automobile salvage yard. This prohibition shall not apply to the residence of the owner of the auto salvage yard; and

- D. Shall be entirely surrounded by an opaque screening at least 6 feet high. Said screening shall surround the minimum area necessary for the automobile salvage yard to be maintained at its proposed size and that will also allow for a reasonable amount of maneuverability within; and
- E. All operations, equipment, junk, and/or inoperable motor vehicles shall be kept within the confines of said fence at all times unless in motion by transportation to and from the site; and
- F. A setback shall be provided so that all equipment, junk, and/or inoperable motor vehicles shall not be stored or located within fifty (50) feet of any adjoining property lot line; and
- G. A six (6) feet high fence designed to reasonably secure the area from unauthorized entry shall surround the entire operational area; and
- H. Cars shall not be stacked higher than the fence; and
- I. Must comply with existing screening and landscaping requirements as stated in Article VII. *(added 8-11-03)*

Air Curtain Burner

A. Setback

- 1. Three hundred (300) foot distance from any residential zoned areas.
- 2. Three hundred (300) foot distance from all property lines.
- 3. All burning shall have a five hundred (500) foot minimum distance from any residence.

B. Ash

An ash management plan shall be required by the applicant to prevent ash as part of any application. If approved this plan will become part of the approval. The ash management plan at a minimum shall include the following:

- 1. A list of each best management practice that will be implemented for each ash generating activity or source.
- 2. A list of additional best management practices that will be implemented if initial controls are ineffective.

C. Must follow all State and Federal regulations.

D. Hours of Operation

- 1. Active burning is allowed Monday through Friday between the hours of 9:00 a.m. and 3:00 p.m.
- 2. No burning on Holidays. *(added as amendment 06-08-20)*

Outdoor storage of motor vehicles, not including junked vehicles.
(added as amendment 09-13-04)

Requests for fencing permits must be submitted to the Planning Board for review and recommendation. Construction of fences is subject to approval by the Town Board.
(added as amended 04-09-01)

Section 7. Agricultural District (A-1)

The regulations set forth in this article or set forth elsewhere in these zoning regulations when referred to in this article are the regulations in the A-1 Agricultural District.

1. Permitted Uses

All uses permitted in an R-20 Single-Family Residential District with the exception that no fence regulations apply. *(amended 4-14-03)*

Greenhouses or horticultural nurseries.

Horse stables.

Roadside stands not exceeding one per farm.

Manufactured homes - double-wide or larger (subject to regulations in ARTICLE VIII, Section 8). *(amended 4-12-99)*

2. Conditional Uses

The following uses shall be subject to the issuance of a conditional use permit in accordance with Article XI, Section 10:

Accessory farm support business, including the following:

Blacksmith industry

Farm equipment repair

Livestock grooming, shearing and/or trimming

Farm machinery or implement sharpening service *(added as amended 04-01-13)*

Agribusiness *(added as amended 04-01-13)*

Agricultural Tourism *(added as amended 04-01-13)*

- A. The facility or activity must be operated in association with an existing bona fide farm located on the same property, or an adjoining property under the same ownership. In cases where the agricultural use ends or the farm loses its bona fide status, the agricultural tourism use will be discontinued.

- B. The facility must be located in such a manner that visual impacts to adjoining residential properties are minimal as determined by the Zoning Board of Adjustment.
- C. Existing cropland that is not part of the agricultural tourism activity shall be factored into the buffer requirement.
- D. Uses that may be part of the agricultural tourism facility include:
 - Sale of farm products grown, harvested, produced or manufactured on the farm or adjoining property:
 - Farm tours;
 - Bed and breakfast;
 - Wine-tasting room; and
 - Restaurant.
 - Corn maize
 - Petting zoo

Animal Grooming/Boarding Establishment *(added as amended 04-01-13)*

1. Minimum Lot Area:

- 6 – 10 Animals: Five (5) acres
- 11 – 20 Animals: Seven (7) acres
- 21 + Animals: Ten (10) acres

2. Minimum Distance between Outdoor Animal Run or Animal Holding Areas and any Principal Residential Structure on Another Lot:

- 6 – 10 Animals: Five hundred (500) feet
- 11 – 20 Animals: Seven-hundred fifty (750) feet
- 21 + Animals: One thousand (1,000) feet

Animal hospital *(added as amended 04-01-13)*

Bed and Breakfast *(added as amended 04-01-13)*

- 1. The maximum number of bedrooms shall be four (4).
- 2. The use of the facility shall be limited to no more than fifteen (15) days per a thirty (30) day time cycle.
- 3. The facility may or may not contain a kitchen for meals.
- 4. Each guest bedroom must have a least one (1) parking space.

Ceramic shop *(added as amended 04-01-13)*

Church *(added as amended 04-01-13)*

Community center *(added as amended 04-01-13)*

Continuing care facility *(added as amended 04-01-13)*

Country club *(added as amended 04-01-13)*

Day care center *(added as amended 04-01-13)*

Entertainment Uses, Public or Private *(added as amended 04-01-13)*

Uses which may be allowed shall be limited to the following:

- Horse and pony rides and instruction, on or off trails;
- Animal exhibits and petting zoos;
- Indoor and outdoor nature exhibits;
- Golf courses, miniature or full scale, or golf driving ranges;
- Museums or farming history displays and demonstrations;

Fishing ponds.

Equestrian facility *(added as amended 04-01-13)*

Event Centers with Accommodations *(added as amended 01-03-11)*

Farm machinery sales and service *(added as amended 04-01-13)*

Farmers market *(added as amended 04-01-13)*

Fraternal and civic organization meeting facilities *(added as amended 04-01-13)*

Nature preserve/sanctuary *(added as amended 04-01-13)*

Park *(added as amended 04-01-13)*

Post office *(added as amended 04-01-13)*

Public facility building *(added as amended 04-01-13)*

Residential care facility *(added as amended 04-01-13)*

Rodeo *(added as amended 04-01-13)*

School, Elementary or Secondary *(added as amended 04-01-13)*

Stables, commercial *(added as amended 04-01-13)*

Stables, private *(added as amended 04-01-13)*

Taxidermist *(added as amended 04-01-13)*

Temporary Seasonal Farm Products Stands *(added as amended 04-01-13)*

The display and sale of locally grown farm products shall be permitted provided that:

1. At least 50% of such products shall be owner or operator produced farm products.
2. Sales stands shall be located at least 50 (fifty) feet from any property line or right-of-way line.
3. Seasonal stands shall be removed at the end of the selling season.
4. All farm sales or display sites shall be maintained to ensure a neat appearance, and be free of trash or garbage.
5. Sufficient parking outside of the street right-of-way shall be made available.
6. All sites shall be free of safety hazards for pedestrians.
7. Temporary Seasonal Farm Products Stands are prohibited on vacant lots without written permission from the property owners.

Section 8. Certain Uses Not Allowed

Certain uses, however, which the Town of Cleveland has determined could have such great impacts upon the Town of Cleveland and its environs so that no conditions placed upon a conditional use permit could adequately mitigate their negative impacts generated, are not allowed in the Town of Cleveland, North Carolina. These uses are: *(amended 12-14-09)*

1. Nuclear waste storage facilities or depositories.
2. Hazardous waste depositories or storage facilities.
3. Petroleum Refining (SIC Group #291).
4. Mining (all of SIC Division B).
5. Animal feed and pet foods (SIC #2047, #2048)
6. Group care facilities.

Section 9. Area, Yard and Height Requirements

In determining front, side and rear yard requirements for the districts below, yard requirements shall be measured from the edge of the right-of-way. *(amended 02-12-18)*

AREA, YARD AND HEIGHT REQUIREMENTS

	<u>Minimum Lot size</u>			<u>Minimum Yard Requirements</u>			
	<u>Area In square Feet</u>	<u>Square feet per Dwelling Unit</u>	<u>Lot Width In feet</u>	<u>Front Yard in feet</u>	<u>Side yard in feet</u>	<u>Rear yard in feet</u>	<u>Maximum height in feet</u>
Agricultural, A-1	40,000	40,000	100	40	10 (a)	40	40
Residential, R-20	20,000	20,000	90	35	10 (a)	40(f)	40
Residential, R-15	15,000	15,000	80	25	10 (a)	30	40
Two Family	9,000	4,500	70	30	10 (a)	25	40
Multi-Family	10,000	(b)	80	30	12 (a)	25	50
Central Business	NA*	NA	NA	NA	(c) (d)	(d)	50
General Business	NA	NA	NA	NA	(c) (d)	(d)	50
Light Industrial	NA	NA	NA	NA	(c) (d) (e)	(c) (d) (e)	50
Heavy Industrial	NA	NA	NA	NA	(c) (d) (e)	(c) (d) (e)	NA

- (a) Corner lots must have an additional side yard width of ten (10) feet along the side street line.
- (b) 10,000 square feet for the first three (3) dwelling units and 2,000 square feet for each additional dwelling unit.
- (c) None required, but if provided each side yard shall be at least four (4) feet in width.
- (d) Where a lot abuts any residential district, there shall be a side or rear yard clearance of at least ten (10) feet on the side and rear yard abutting the residential district.
- (e) Upon any side or rear lot line which abuts a residential district, there shall be a Grade 4 buffer strip (see ARTICLE VII, Section 11) along the rear and/or side lot line abutting residential properties. No such buffer shall however, extend nearer to a street right-of-way line than the established building line of the abutting residential lot.
- (f) Where a lot abuts Light Industrial (M1), there may be a rear yard setback of ten (10) feet.

*Not Applicable

Section 10. Thoroughfare Corridor Overlay District Plan

All development within the TCO District shall require submittal of a site plan. The site plan shall contain information as provided in ARTICLE XI (10.1) *(amended 12-14-09)*

Buffer Strip Required

1. One-hundred (100) foot wide buffer strip from and parallel to the right-of-way boundary of US 70, shall be maintained on all property in the TCO developed or expanded after January 13, 1997. The Board of Commissioners may reduce the required width of this buffer strip as part of its approval of the site plan, taking into consideration the topography of the area, traffic volumes for the designated thoroughfare, surrounding land uses, existing land uses, the size of the parcels affected by the buffer, and whether the buffer requirement would render the property unusable. In reducing the buffer requirement, the Board shall ensure that the applicant will provide appropriate landscaping meeting the requirements. In no event however shall the Board reduce the required width of the buffer strip to less than thirty (30) feet. *(amended 12-14-09)*

2. Within the required buffer strip, maintenance of the existing trees and shrubs shall be required at a minimum a Grade 1, buffer or equivalent natural vegetation shall be required. *(amended 12-14-09)*

Variances

The Board of Adjustment shall not grant a variance which modifies the width of the buffer required or modifies the amount or type of vegetation required by the Board under this Section.

Public Hearing Required

Prior to Town Board action on a site plan required by this article a public hearing shall be required. Notice of said public hearing shall be as follows. *(amended 12-14-09)*

1. At least one (1) notice shall be conspicuously posted on the subject property at least ten (10) days prior to the public hearing. Such notice shall state the nature of the public hearing and the date, time and location at which it is to be held. The notice shall be removed only after the public hearing has been held.

2. A notice of the public hearing shall be sent by first class mail by the Zoning Administrator to the applicant and to all contiguous property owners at least ten (10) days prior to the public hearing.

Planning Board Review and Recommendation

The Planning Board shall have 35 days to review the required site plan. The recommendation from the planning Board shall be one of the following:

- A. Approve the plan as submitted
- B. Approve the plan with fair and reasonable conditions
- C. Disapprove the plan (*amended 12-14-09*)

Board of Commissioners Action (*amended 12-14-09*)

The Board of Commissioners shall render a decision on the site plan within 45 days of receiving a complete application. The Board in rendering a final decision may

- A. Approve the plan as submitted
- B. Approve the plan with fair and reasonable conditions
- C. Disapprove the plan

If the site plan is approved with conditions, such conditions shall relate to the relationship of the proposed use with the surrounding property, proposed support facilities such as parking areas, driveways, pedestrian and vehicular circulation systems, screening, landscaping, and other matters deemed appropriate by the Board. Conditions for approval may include dedication of right of ways or easements for water and sewer, streets or any other public utilities deemed necessary to serve the proposed development. The applicant shall be provided an opportunity to respond to proposed conditions. In no case shall the conditions be less restrictive than those that would otherwise pertain to that particular development found elsewhere in the ordinance.

Notice of Decision

If disapproved the applicant shall be notified of the disapproval within seven (7) days via first class mail. Reasons for the disapproval shall be listed in the letter.

Section 11. Parallel Conditional Use Districts

Purpose

Parallel Conditional Use (CU) Districts are established to consider situations where a particular use may be acceptable on a lot or tract of land but other uses permitted in a General Zoning District would not be acceptable. Zoning to a CU District shall be a voluntary procedure on the part of the property owners of all the property to be included and is intended for firm development proposals. Specific conditions may be proposed by the petitioner or the Town of Cleveland or its agencies, but only those conditions mutually approved by the Town of Cleveland and the petitioner may be incorporated into the Conditional Use Permit. No land

owned by the State of North Carolina may be included within a conditional use district without approval of the Council of State or its designate. The review process established herein provides for the accommodation of such uses by a reclassification of property into a CU “parallel conditional use” district. *(added as amended 04-09-07, amended 12-14-09)*

The following Parallel Conditional Use (CU) Districts are hereby established:

CU-R15	CU-M1
CU-CBD	CU-M2
CU-GBD	CU-A1

Reclassification and Conditional Use Permit Required Prior to Development

In order for a property owner to secure privileges for developing property under the parallel conditional use process, the property must first be rezoned by the Town Board to a parallel conditional use district, and secondly the owner must secure a conditional use permit in accordance with Article XI, Section 9 of this Ordinance. That notwithstanding, only the Cleveland Town Board shall have the authority to issue a conditional use permit in association with a request for a reclassification to a CU zoning district. The Conditional Use Permit approved by the Town Board shall contain conditions and site-specific standards limited to those that assure conformance of the development and the use of the site to this Ordinance and other plans adopted by the Town Board and to obtain sufficient compatibility with surrounding properties. Any use permitted under this process must also conform, at a minimum, to the development regulations for the corresponding general zoning district. *(added as amended 04-09-07)*

Thus, if a property were rezoned to a CU-M1 District and conditional use permit issued that authorized the development of a particular use, that use must, at a minimum, (i) be a use allowed (either on a use by right or conditional basis) in the M-1 District; (ii) meet all dimensional, screening and related requirements of the M-1 District, and, (iii) meet all conditions placed on that property as contained in the conditional use district. Rezoning of property to a parallel conditional use district is a voluntary procedure on the part of the property owner and is intended for firm development proposals. It is not intended or suited for securing early zoning for tentative proposals that may not be undertaken for some time. No parallel conditional use district shall be established until (1) the owner(s) of the property(ies) in question (or his authorized agent) proposing the district has submitted an application for the rezoning of the property and issuance of a conditional use permit and (2) the Town Board has approved both the rezoning of the property to a CU district and the issuance of a conditional use permit. Following the approval of a parallel conditional use district and conditional use permit, the

property for which approval was granted shall be identified on the Official Zoning Map by the appropriate parallel conditional use (CU) district designation (i.e., CU-M1)

Plans and Other Information to Accompany Petition

Every application for the rezoning of property to a parallel conditional use district and issuance of a conditional use permit shall be accompanied by a site plan, drawn to scale, and any necessary supporting information together which conform to all the requirements set forth in Article XI, Section 10.1, and, when requested, such additional information that may be required pursuant to Article XI, Section 10.2. (*amended 12-14-09*)

Effect of Approval

If an application is approved, the parallel conditional use district thereby established and all conditions attached thereto shall be binding. Conditions attached to it shall be binding upon the property and all subsequent development and use of the property. All subsequent development and use of the property shall be in accordance with the approved rezoning and conditional use permit. The intent of this type of rezoning is to provide for a procedure for specific development proposals and as such it is intended that all such property be rezoned with firm plans to develop. Therefore, two (2) years from the date of the rezoning and conditional use permit approval, the Planning Board shall examine progress made to develop in accordance with approved plans. If it is determined that active efforts to develop are neither proceeding nor have been completed, it shall be the responsibility of the property owner or a designated representative to justify to the Planning Board any delay in development. If the Planning Board finds that such delay is unjustified, then the Planning Board may recommend that proceedings to rezone the property to a general zoning district be initiated and that the conditional use permit be revoked.

Submittal to the Zoning Administrator

Submittal to the Zoning Administrator of an application for a parallel conditional use rezoning and conditional use permit shall be in accordance with the schedule set forth in Article XIV of this ordinance.

Town Board Decision

A rezoning, under the parallel conditional use rezoning process, does not confer upon the applicant any privileges for development under the zoning district unless and until the Town Board approves a conditional use permit for the property in question. Prior to issuance of a conditional use permit the application shall be subject to all of the procedures, hearing, and findings as set forth in Article XI, Section 9 of this Ordinance (except that the decision regarding the conditional use permit shall be rendered by the Town Board; furthermore, the public hearing notice requirements for both the rezoning and conditional use permit hearing shall be as provided for in Article XIV of this Ordinance.)

No vote greater than a majority vote shall be required for the town board to issue such permits. For the purposed of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered ‘members of the board’ for calculation of the requisite majority. *(added as amended 04-09-07, 12-14-09)*

Change in Parallel Conditional Use Zoning

Once a petition for rezoning to a parallel conditional use district and issuance of a conditional use permit has been approved by the Town Board, any request to materially change the parallel conditional use district or conditional use permit for a property may only be made by the property owner or authorized agent only after a public hearing has been duly advertised and held in accordance with this Ordinance. Any amendment to the conditional use permit shall also be subject to the same considerations as set forth in Article XI, Section 10 of this Ordinance. *(entire Section 11 replaced/amended 04-11-05, amended 12-14-09)*

ARTICLE VII
SCREENING AND LANDSCAPING

Section 1. Purpose of Screening

The intent of these screening requirements shall be to separate certain zoning districts from other zoning districts or to screen certain uses in order to minimize potential nuisances such as the transmission of noise, dust, odor, litter, and glare of lights; to reduce the visual impact of unsightly aspects of adjacent development; to provide for the separation of spaces; and to establish a sense of privacy. Trees and shrubs used for screening and buffering must adhere to the requirements set forth in Article VII Section 12. *(amended 12-14-09)*

Section 2. Screening Required

Screening and buffering shall be required under the following situations:

1. When (A) a lot in an Industrial (M) District abuts a lot in a residential (R) or Agricultural (A) District, screening must be provided on the Industrial (M) lot in the form of a Grade 4 Screen/Buffer; or
- (B) when a lot in a Business (B) District abuts a lot in a Residential (R) or Agricultural (A) District, screening must be provided on the Business (B) lot in the form of a Grade 3 Screen/Buffer; or
- (C) when a lot in a Residential District Zoning District abuts another lot which contains a multi-family development, screening must be provided on the lot containing said multi-family development in the form of a Grade 2 Screen/Buffer. *(amended 12-14-09, 04-01-13)*
- (D) The Board of Adjustment, in issuing a conditional use permit, may, at its discretion, include in said permit a form of screening which meets or exceeds the standards contained in the screen grades herein listed in order to satisfy one (1) or more of the findings of fact listed in Article XI Section 10.5 of this ordinance. *(added as amended 04-01-13)*

Grade 1 Buffer: 20 feet deep and for every 100 linear feet nine (9) small trees and 20 shrubs.

Grade 2 Buffer: 25 feet deep and for every 100 linear feet five (5) large trees, and five (5) small trees and twenty (20) shrubs or fifteen (15) feet deep with five large trees and a berm.

Grade 3 Buffer: 30 feet deep and for every 100 linear feet eight (8) large trees, four (4) small trees, and twenty-eight (28) shrubs or 20 feet deep with six (6) large trees, three (3) small trees, and a berm/wall or fence in compliance with this ordinance.

Grade 4 Buffer: 35 feet deep and for every 100 linear feet twelve (12) large trees, six (6) small trees, and thirty-six (36) shrubs or 20 feet deep with eight (8) large trees, six (6) small trees, and a berm/wall or fence in compliance with this ordinance.

See Figure 1 in Section 12 of this article. *(added as amended 12-14-09)*

2. When the front yard of a lot developed in an Industrial (M) District is located directly across a public street from a Residential (R) District; screening, at a minimum, must be provided on the Industrial (M) lot at a minimum in the form of a Grade 2 Screen/Buffer. In lieu of said screen, all principal and accessory structures and off-street parking facilities must be set back in the front yard at least two hundred (200) feet from the edge of the road right-of-way. The requirements of a Grade 2 Buffer are shown as Figure 3. *(added as amendment 10-11-04)*
3. For open-air storage, refuse containers (dumpsters) or an unenclosed structure consisting of a roof, but no walls used for storage of materials, products, wastes or equipment associated with business or industrial uses located in any zoning district within one hundred (100) feet of the street right-of-way, screening must be provided on the subject property so as to materially screen said storage from view from the street right-of-way in the form of a berm, wall or fence or an appropriate amount of natural plantings so as to provide the necessary amount of screening to effectively screen the storage from view from any street right-of-way. *(amended 12-14-09)*
4. Except as provided in Section 1, screening shall not be required between any two lots which contain principal residential uses. *(amended 12-14-09, 04-01-13)*
5. Screening and buffering shall be provided as otherwise called for in this ordinance.

Section 3. Screen and Buffer Strip Standards

1. Unless an exception is granted pursuant to Section 2 of this article, the required screening and buffer strip shall all, at a minimum, conform to the standards prescribed by any of the alternatives listed for the grade of screen and buffer required by Section 2 of this article or required by any other provision of this ordinance.
2. To the extent that existing natural vegetation located on the same parcel of land as the proposed development can meet the required screening levels of this Section, the use of such materials is encouraged. In such case the owner shall designate the land on which such materials are rooted, which shall contain at least the minimum width required for the alternative chosen as the designated buffer area.
3. To determine the total number of plants required for an alternative under each grade of screen/buffer, the length of each side of the property requiring a screen/buffer, minus the area covered by a sight distance triangle as defined in Article II, Section 2 shall be divided by 100 and multiplied by the number of plants shown for the required screen/buffer. *(added as amended 10-11-04)*

4. For the required screen/buffers, more than one (1) alternative may be shown. The owner of the lot which is required to provide screening and buffering may choose among these options. Unless an alternative prescribes a wall, fence or berm, such measures shall not be substituted for the required amount of plant materials nor shall such measures be substituted for any required buffer width, except as provided for in Section 7 of this article. Provided however, this requirement shall not prevent the owner from installing such measures as added screening above the minimum so long as required plant materials are installed on the side of any wall or fence opposite the new development (See Figure 2). *(amended 12-14-09)*
5. No structure other than a wall, fence, sidewalk, sign or driveway shall be permitted within a required screen area. No off-street parking may take place in any required screen area. Where plant materials are required the required amount of plant materials shall be installed on the side of any wall or fence opposite the new development (See Figure 2) unless a waiver of such requirement is granted pursuant to Section 7 of this article. *(amended 12-14-09, 04-01-13)*
6. The height of any screen material required by this ordinance in the vicinity of a point of ingress and egress may not exceed three (3) feet in height within the sight triangle. *(added as amendment 10-11-04, 04-01-13)*

Section 4. Standards for the Use of Walls, Fences or Berms

Whenever a screening alternative specified is selected which includes a wall, fence or berm, such wall, fence or berm shall meet the following requirements:

1. Any wall shall be constructed in a durable fashion of brick, stone or other masonry materials with no greater than twenty-five percent (25%) of the wall surface left open. All walls, except those constructed of stone, shall be of a consistent pattern. Gates constructed to the standards for fence materials as set forth in Article VII Section 4.2 immediately below may be included in the wall to allow passage to maintain the plant materials included in the screen/buffer. *(amended 12-14-09)*
2. Any fence shall be constructed in a durable fashion of wood, decorative iron or chain link. Wood posts and/or planks having a minimum diameter or width of three (3) inches and with no greater than twenty-five percent (25%) of the fence surface left open between post and/or planks are required. Wooden slats meeting such standards of opacity may also be included. Chain link fences must have privacy slats or other approved screening to block view. The finished side of the fence shall face the abutting property.

3. No wall or fence used as part of a screen shall be less than six (6) feet nor more than eight (8) feet in height above grade.
4. All berms shall be grassed and/or planted with other plant materials sufficient to prevent soil erosion. If grassed alone, any berm installed to meet the requirement of this section shall be no less than four (4) feet nor greater than nine (9) feet in height. No slope of a berm shall exceed a slope greater than one (1) foot of rise for every three (3) feet in plane.
No part of the berm shall be left as bare soil. Any required plant materials accompanying a berm may be planted on the berm and/or along either side of the berm.
It is recommended that, where feasible, at least seventy-five percent (75%) of any required shrubs be planted on the slope of the berm opposite the new development.
5. Where a fence or wall is used as part of a required screen area, any required plantings accompanying the fence or wall shall be located on the side of such fence or wall opposite the new development.

Section 5. Fences and Walls in Commercial Districts

A. The following shall be the classes of fences and walls for this ordinance:

1. Masonry walls
2. Ornamental iron (eighty (80) percent open)
- 3 Chain link
4. Wood or other materials (more than fifty (50) percent open)
5. Hedges in which individual plants mesh to form an impenetrable barrier

B. Fences and/or walls within all commercial and industrial zones, including those permitted with all conditionally permitted uses in this zone shall conform to the following requirements:

1. Fences of classes 1, 2, 3, 4 or 5 may be erected in side and rear yards of commercial zones, up to a maximum height of seventy-two (72) inches as long as there is no visual obstruction to traffic. In the case of corner lots, as governed by paragraph #3 regarding visual obstruction, fences of class 2 or 3 only, may be erected up to a maximum of seventy-two (72) inches. In minimum front yards, fences of classes 1, 2, 3, 4 or 5 may be erected up to a maximum height of forty-eight (48) inches (except as noted in paragraph #3).
2. Except as noted in paragraph #3, fences of classes 1, 2, 3, 4 or 5 may be erected up to a maximum height of eighty-four (84) inches in all industrial zones in side and rear yards and not more than forty-eight (48) inches in height

in the minimum front yard depth. Except general business districts, classes

2 or 3 fences may be erected up to a maximum height of seventy-two (72) inches in the minimum front yard depth in all industrial zones.

3. Visual Obstruction:

Except as herein provided, no fence, wall, hedge, or other obstruction, above a height of thirty-six (36) inches, as measured above the curb level, shall be erected, placed, maintained, or continued in any zone, within that triangular portion of a corner lot formed by measuring fifty (50) feet from the intersection of the right-of-way lines of two (2) streets or of the right-of-way line of a street intersection with a railroad right-of-way line and joining these points with a straight line. No type of tree, or planting, or other obstruction, shall be planted, placed, maintained, or continued in such a manner which would obstruct the vision clearance at corners and railroad crossings.

4. Barbed wire or sharp pointed fences, including concertina wire, are prohibited unless granted as a conditional use permit under extreme needs for security.

5. Walls and fences shall be erected and maintained in a safe manner. Walls and fences not erected or maintained in a safe manner through neglect, lack of repair, manner of construction method or placement, or otherwise deemed unsafe by the town shall be repaired, replaced or removed at the owner's expense.

6. Fences shall not contain advertising signs, logos, or other lettering unless expressly permitted by the zoning board. *(added as amended 12-14-09)*

Section 6. Plant Installation Standards

The following standards shall apply to all new plant material installed as part of a screen required under these regulations:

1. All plant material installed shall be free from disease.
2. Plant materials shall be planted in accordance with generally accepted and recommended planting and growing practices.
3. All plant material shall be installed in a fashion that ensures the availability of sufficient soil and water to sustain healthy growth.
4. All plant material shall be planted in a manner which is not intrusive to utilities or pavement.

5. All shrubs planted to meet the minimum screening requirements must be at least three (3) feet tall when planted and no further apart than five (5) feet. The shrubs must be of a variety that could be expected to grow to a height of five(5) feet within four (4) years of planting. *(amended 12-14-09)*

Section 7. Screen and Buffer Maintenance

The plantings, fences, walls or berms that constitute a required screen shall be properly maintained in order for the screen to fulfill the purpose for which it is established. The owner of the property and any tenant on the property where a screen is required shall be jointly and individually responsible for the maintenance of all screen materials. Such maintenance shall include all actions necessary to keep the screened area free of litter and debris, to keep plantings healthy, and plant growth from interfering with safe vehicular and pedestrian travel or use of parking areas or from creating nuisances to adjoining properties, and to keep walls, fences and berms in good repair and neat appearance. Any vegetation that constitutes part of a screen shall be replaced in the event that it dies. Replacement shall be made within six (6) months of death of the plant. All screen materials shall be protected from damage by erosion, motor vehicles or pedestrians which would reduce the effectiveness of the screen. *(amended 12-14-09)*

Section 8. Relief to Screening and Buffer Requirements

In the event that the unusual topography or elevation of a development site or the location or size of the parcel to be developed would make strict adherence to the requirements of this section serve no meaningful purpose or would make it physically impossible to install and maintain the screen and buffer, the Planning Board may alter the requirements of Section 2 provided the spirit and intent of this article are maintained. Such an alteration may occur only at the request of the developer, who shall submit a plan to the Planning Board showing existing site features that would screen the proposed use and any additional screen materials the developer may propose to have installed. The Planning Board shall have no authority to alter the screening and buffer requirements unless the developer demonstrates that existing site features and/or any additional screening materials will screen the proposed use as effectively as the required screen. *(amended 12-14-09)*

The vacancy or non-use of an adjoining parcel shall not constitute grounds for providing relief to the screening and buffer requirements contained in this ordinance. Neither shall the desire of an owner to make more intensive use or greater economic use of the property be grounds for reducing the screening/buffer requirements of Section 2 of this article. Where the effect of the screening and buffer requirements of Section 2 of this article is to deny the owner a reasonable use of the entire tract (or tracts) of property relief pursuant to this section may be granted to the extent that reasonable use of tract or tracts is available. This plan must be presented to the Planning Board for review and recommendation. *(amended 12-14-09)*

Section 9. Existing Screened Areas

In cases where an existing screened area is located on the same tract as the proposed development, further plantings and or improvements shall not be required so long as said screened area is of sufficient width and depth and contains adequate and sufficient materials to meet the requirements of this article. If the screened area is deficient, the developer shall make needed improvements and/or additions to satisfy the screening requirements and intent of this ordinance. *(amended 12-14-09)*

Section 10. Nonconforming Screening

In accordance with Section 1 of this article, certain uses are required to provide screening and/or landscaping on site. Except as herein provided, if an expansion or change of an existing use which is deficient in required screening and/or landscaping at the time the expansion or change of use is proposed and such expansion or change of use results in

- (A) an increase of gross floor area of greater than twenty-five (25%) percent of three thousand (3,000) square feet, whichever is smaller
- (B) an increase in lot size of twenty-five (25%) percent
- (C) improvements which enlarge the area of outdoor storage of twenty-five (25%) percent of existing area screening for the entire use shall be required in accordance with Section 2 of this article.

In cases where the nonconformity (in relation to screening) is a result of an adjoining lot having been rezoned to a Residential (R) or Agricultural (A) district from a Business (B) or Industrial (M) district, screening in the form of a Grade 2 Screen shall only be required along the adjoining lot line separating the two zoning districts. *(amended 12-14-09)*

Section 11. Implementation of Screening

The following standards shall be adhered for all screening installed pursuant to this ordinance:

1. Fences or walls used for screening shall be installed prior to issuance of a Certificate of Occupancy.
2. Screening in the form of natural plantings shall be planted prior to the issuance of a Certificate of Occupancy. However, such may be installed or planted up to six (6) months after the certificate of occupancy has been issued upon approval by the Zoning Administrator in order to accommodate the seasonal planting requirements of any such plantings. *(amended 12-14-09)*

Section 12. Specifications and Examples

Figure 1

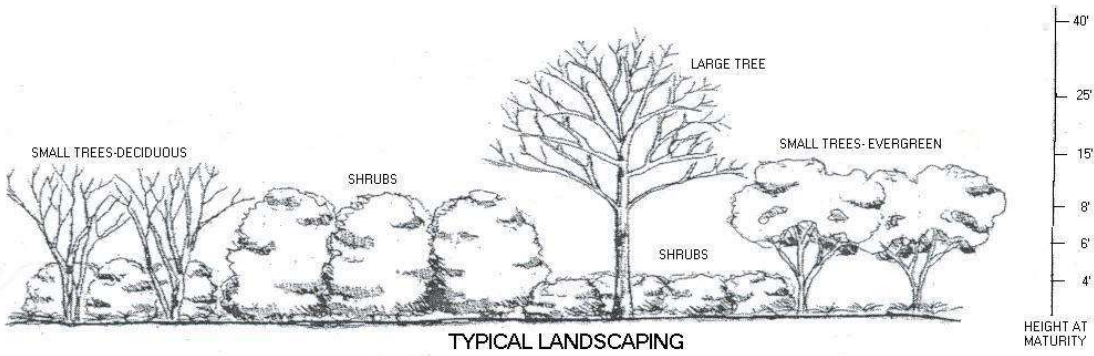


Figure 2

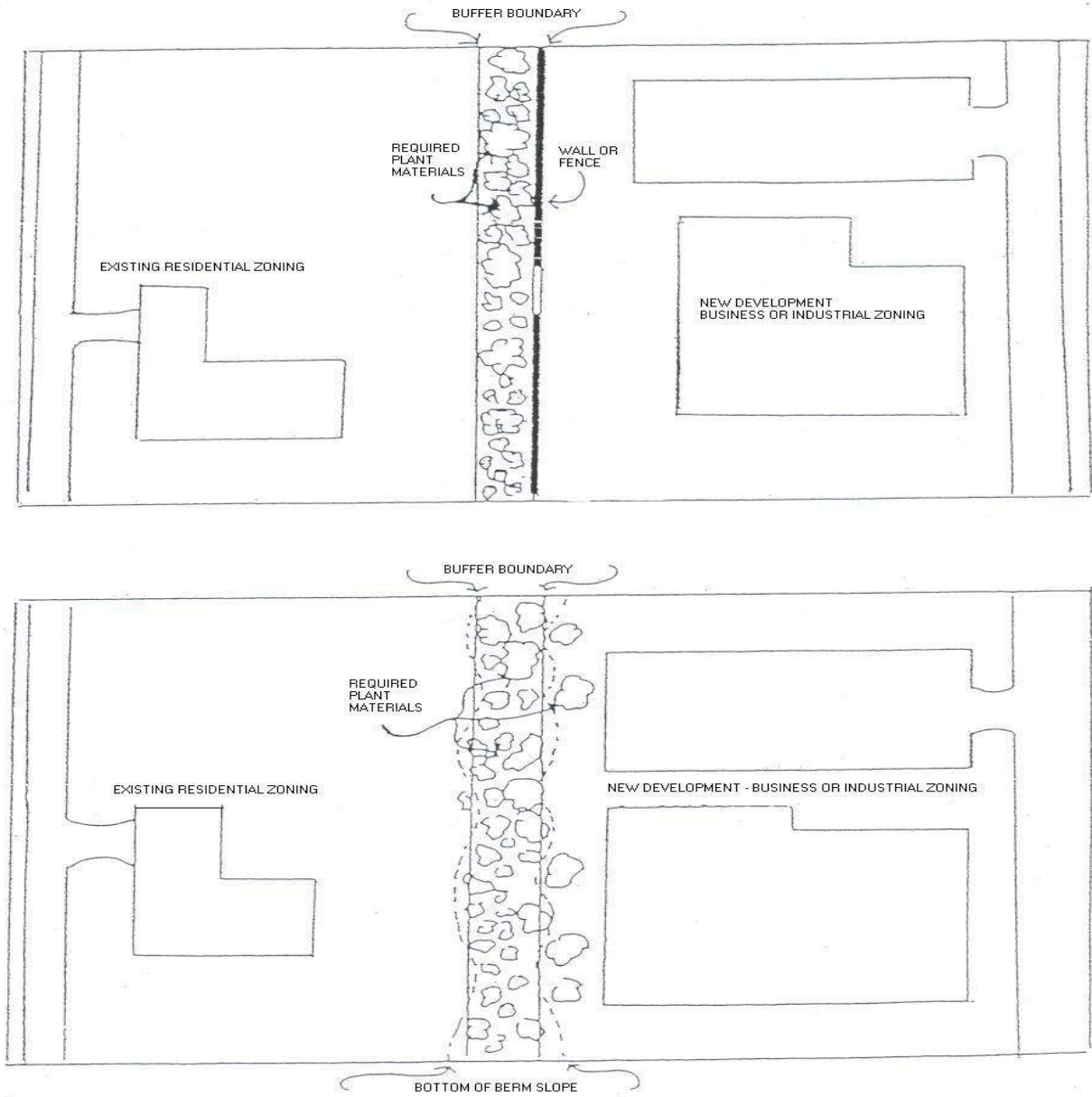


Figure 3

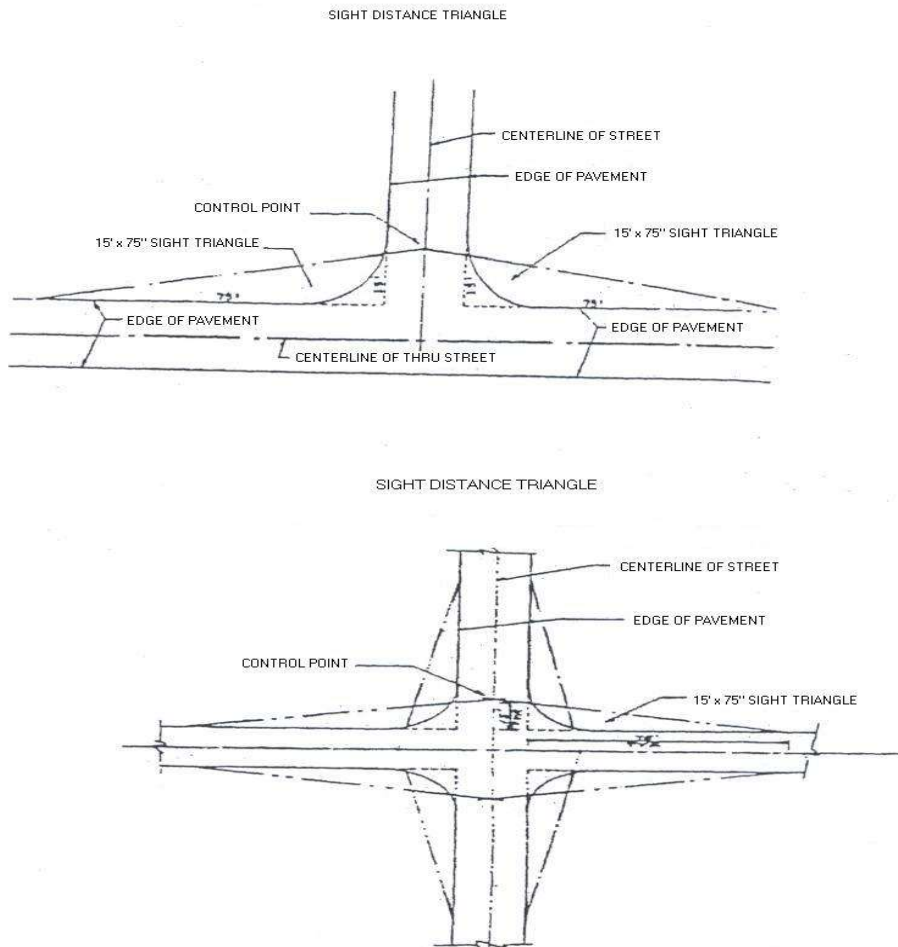
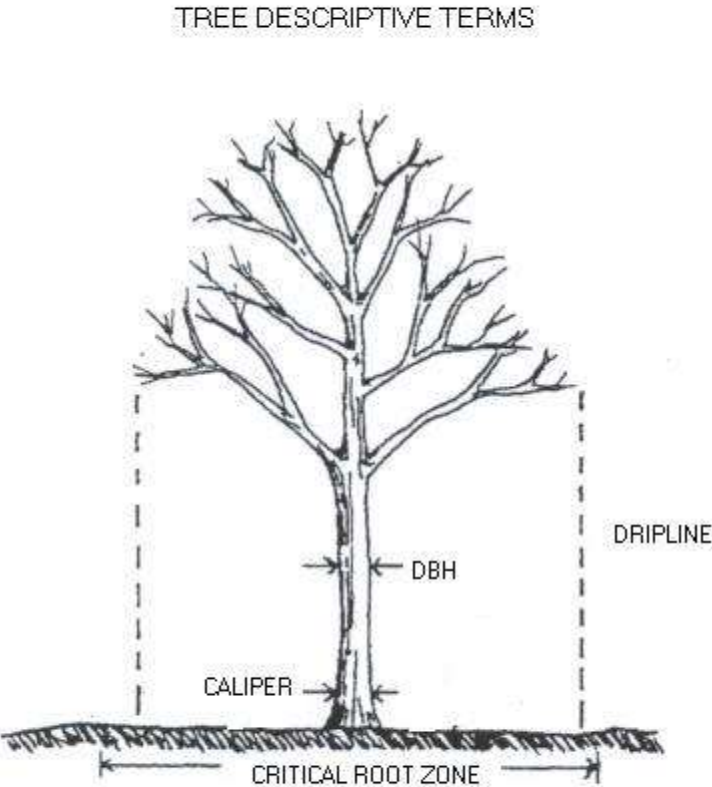


Figure 4



Section 13. Tree and Shrub Plantings, Care and Maintenance

A. General

In order to maintain and enhance Cleveland's existing tree coverage, to promote careful landscaping of outdoor areas, to soften and enhance the manmade environment, and to promote the design and construction of appropriate walls and fences as outlined in Article VII, the following standards shall apply to all new construction in the following districts, Central Business District (CBD), General Business District (GBD), Light Industrial (M-1), and Heavy Industrial District (M-2).

All required plantings installed shall be nursery grown stock that is free from disease or growth problems. Locally-adapted species shall be used for all required plantings and drought tolerant plants shall be used whenever practicable.

Native species of trees and shrubs and related cultivars shall be used whenever practicable.

Clustering and/or random spacing of plants and trees is encouraged to produce a natural appearance in the landscape, except where uniformity is required for opaque screening.

Landscaping, including berms, shall be installed and maintained so as not to interfere with the sight distance requirements of this ordinance or the sight distance needs of drivers in parking areas, at entrance and exit locations, and at street intersections. See Section 12 of this ordinance.

Monoculture and over planting shall be avoided except that a single species of tree may be planted in formal parks or in conjunction with a streetscape plan.

All landscaping shall be coordinated throughout a development site.

The Planning Board may approve revisions to a landscaping plan in order to accommodate seasonal planting problems or a lack of plant availability as long as:

- (A) There is no reduction in the quantity of plant material.
- (B) There is no significant change in the size or location of plant materials.
- (C) The new plants are of the same general category and have the same general design characteristics as the materials being replaced.

No more than thirty percent of scrubs planted per 100 linear feet shall be deciduous.

Whenever trees are required for screening and in buffers and parking lot landscaping a minimum of fifty percent shall be canopy trees, and a minimum of twenty percent shall be evergreen.

Trees and scrubs shall be selected from the list of suggested species as listed in the schedule of trees and shrubs.

B. Installation and maintenance

All required plantings shall be installed in a manner that ensures the availability of sufficient soil and water for healthy growth and that is not intrusive to above or below ground utilities.

All landscaping materials required or committed voluntarily by the developer shall be property maintained by the property owner. Maintenance includes all actions necessary to keep landscaping, material healthy, neat and orderly in appearance, and free of litter and debris. Any landscaping lost or diseased shall be removed and replaced unless, in the opinion of the Town, the maturity of the remaining vegetation sufficiently fulfills the intent of this ordinance.

To insure compliance with this ordinance and to encourage required vegetation to be installed during the appropriate season, a letter of compliance may be accepted by the Town in lieu of installation prior to the issuance of a certificate of occupancy for the site.

This letter shall be in the form of an affidavit signed by the property owner and shall:

- a) Acknowledge that such owner is aware of any landscaping and/or screening requirements which apply to the property;
and
- b) Stipulate that he/she will comply with those requirements by a specific date within the next appropriate planting season, but in no case more than nine (9) months after the date of the affidavit, unless otherwise approved by the Zoning Administrator;
and
- c) Acknowledge that failure to comply with the provisions of this section within the time frame specified in the letter shall constitute a violation of this ordinance which shall subject the property owner to any and all enforcement actions permitted by law.

Necessary pruning and trimming shall be accordance with the American National Standards for Tree Care Operations: Tree Shrub and Other Woody Plant Maintenance-Standard Practices (Pruning), and shall be interpreted to include topping of trees through removal of crown material or the central leader, or any other similarly severe procedures that cause irreparable harm to the natural form of the tree, except where such procedures are necessary to maintain public overhead utilities. Any such activity shall be a violation of this ordinance and additional plant material may be required by the Zoning Administrator to replace or supplement the damaged plant material.

C. Existing Vegetation

Except when necessary to provide access to a site or to insure the safety and security of people and property, any existing healthy trees that are eight inches or greater in diameter at four and one half feet, measured from the ground surface, and located within a public right-of-way or undeveloped setback area shall be retained and be included in the site plan unless approved for removal by the Town.

Existing trees and shrubs that are preserved may be used to satisfy the tree requirements of these standards as long as they are: a) free from disease or growth problems; b) clearly shown on the site plan; c) approved by the Zoning Administrator prior to grading and development; and d) are adequately protected during grading and development of the site.

Large, healthy specimen trees and significant tree stands on the site shall be identified prior to development and preserved whenever practicable.

Protective measures, as outlined below, shall be taken to minimize damage to existing trees and other vegetation to be retained.

- a) Site plans shall show the location of trees and shrubs to be retained and the locations of protection fencing.
- b) Prior construction, grading or other land disturbing activity, protective barriers shall be placed around the critical root zone area of all trees and shrubs to be saved. For trees, the root protection area shall not be less than the drip line.
- c) No soil disturbance or compaction, stock piling of soil or other construction materials, vehicular traffic, or storage of heavy equipment are allowed in the areas designated for protection.
- d) Root pruning shall be kept to an absolute minimum.
- e) Pruning of existing trees shall be done according to the National Arborists' Association Standards.
- f) No ropes, signs, wires, electrical device or other material shall be secured or fastened around or through a tree or shrub designated for protection.
- g) Should preserved trees or shrubs die at any time during or immediately after construction, the developer or owner must replace the trees or shrubs with plant material that is specified according to the ordinance requirements.

D. Parking lot landscaping.

The following standards shall apply to all new parking areas with twelve or more spaces and all expansion to existing parking areas which add twelve or more spaces, unless otherwise noted. In an expansion, only the area of expansion is required to be included in the calculation; however, the landscaping may be provided anywhere within the parking area.

Trees and shrubs shall be planted along the exterior property boundary outside of all right-of-ways and easements, all internal driveways and streets, and within the parking lots around parking aisles according to the following specification at the time of planting.

Diagram 1

Type	Minimum Number Per 100 Linear Feet*
Small Trees	5
Shrubs	32

*Fractions generated by applying the minimum number of plants required per 100 linear feet to the actual linear footage of an area shall be rounded up to the nearest whole number.

No more than two parking aisles shall abut. Otherwise, parking aisles shall be separated from each other by planted medians which may include pedestrian walkways. No more than thirty parking spaces shall be contained within one parking aisle.

All parking aisles, except where they are permitted to abut or they directly adjoin a building, shall be landscaped around their perimeter, excluding access points.

E. Schedule of recommended trees and shrubs.

The following are recommended trees and shrubs to be utilized in fulfilling the requirements of this article.

1. Large shade or canopy trees:

Common Name	Botanical Name
Ash, Green	Fraxinus, pennsylvanica
Birch, River	Betula nigra
Blackgum	Nyssa sylvatica
Cedar, Deodar	Cedrus deodara
Cedar, Eastern Red	Juniperus virginiana
Cypress, Bald	Taxodium distichum
Elm, Chinese	Ulmus Parvifolia
Gingko, male only	Gingko biloba
Holly, American	Ilex opaca
Honeylocust, Thornless	Gleditsia Triacanthos
Hornbeam, European	Carpinus Betulus
Linden, Littleleaf	Tilia cordata
Magnolia, Southern	Magnolia grandiflora
Maple, Norway	Acer platanoides
Maple, Red	Acer rubrum
Maple, Sugar	Acer saccharum
Oak, Eastern Red	Quercus rubra maxima
Oak, Laurel	Quercus laurifolia
Oak, Pin	Quercus palustris
Oak, Sawtooth	Quercus acutissima
Oak, Scarlett	Quercus coccinea
Oak, Southern Red	Quercus falcata
Oak, Water	Quercus nigra

Oak, White	Quercus alba
<u>Zoning Ordinance of the Town of Cleveland, N.C.</u> <u>Article VII</u>	

Oak, Willow	Quercus phellos
Pine, Loblolly	Pinus taeda
Pine, Shortleaf	Pinus echinata
Plane-tree, London	Platanus x acerifolia
Poplar, Tulip	Liriodendron tulipifera
Sweetgum	Liquidambar styraciflua
Sycamore	Platanus occidentalis
Zelkova, Japanese	Zelkova serrata

2. Small Ornamental trees:

Common Name	Botanical Name
Apricot, Flowering	Prunus mume
Buckeye, Ohio	Aesculus glabra
Carolina, Silverbell	Halesia carolina
Cherry, Japanese	Prunus serrulata
Cherry, Yoshino	Prunus yedoensis
Crabtree	Malus spp.
Crape Myrtle	Lagerstroemia indica
Dogwood, Kousa	Cornus kousa
Fringe Tree	Chionanthus virginicus
Golden-Rain-Tree	Koelreuteria paniculata
Hornbeam, American	Carpinus caroliniana
Laurel, Carolina Cherry	Prunus caroliniana
Magnolia, Saucer	Magnolia soulangeana

Maple, Japanese	<i>Acer palmatum</i>
<u>Zoning Ordinance of the Town of Cleveland, N.C.</u> <u>Article VII</u>	

Myrtle, Wax	<i>Myrica cerifera</i>
Photinia, Frazier's	<i>Photinia frazieri</i>
Pistachio	<i>Pistacia chinensis</i>
Redbud, Eastern	<i>Cercis canadensis</i>
Sourwood	<i>Oxydendrum arboreum</i>
Yellowwood	<i>Cladrastis lutea</i>

3. Shrubs

Common Name	Botanical Name
Abelia, Kaleidoscope	<i>Abelia x grandiflora</i> "kaleidoscope"
Arborvitae, Golden Globe	<i>Thuja occidentalis</i>
Holly, Dwarf Burford	<i>Ilex cornuta burfordi nana</i>
Holly, Red	<i>Ilex x "magland"</i>
Holly, Japanese	<i>Ilex crenata</i>
Hawthorne, Indian	<i>Rhaphiolepis indica white</i>
Hawthorne, Pink Lady Indian	<i>Rhaphiolepis indica "Pink Lady"</i>
Zhuzhou fuchsia Frunge Flower	Zhuzhou Fuchsia

ARTICLE VIII
EXCEPTIONS AND MODIFICATIONS

Section 1. Lot of Record

Where the owner of a lot consisting of one or more lots of official record in any district, at the time of the adoption of this Zoning Ordinance, or his successor in the title thereto, does not own sufficient contiguous land to enable him to conform to the minimum lot size requirements (see ARTICLE VI, Section 9), then such lots may be used as a building site provided, however that the other specifications (minimum yard requirements and maximum height limitations) of the district are complied with or a variance granted by the Board of Adjustment concerning minimum yard requirements.

Section 2. Front Yard Setback Requirements

The front yard setback requirements of this ordinance shall not apply to any such lot:

1. Where the average setback of the existing building (s) located within one hundred (100) feet on either side of the lot is less than the required front yard setback.
2. That the above mentioned buildings (s) must be on the same side of the same block in the same zoning district and fronting on the same street. In such case, the setbacks on such lots may be not less than the average of the existing setbacks, or a distance of ten (10) feet from the street right-of-way line whichever is greater.

Section 3. Height Limitations

The height limitations of this ordinance shall not apply to church spires, belfries, cupolas and domes not intended for human occupancy; monuments, water towers, chimneys, smokestacks, conveyors, flag poles, radio towers, masts, aerials and similar structures, except as otherwise provided in the vicinity of airports.

Section 4. Visibility at Intersections

On a corner lot in any residential district no planting, structure, fence, wall or obstruction to vision more than three (3) feet in height as measured from the street center line shall be placed or maintained within the triangular area formed by the intersecting street right-of-way lines and a line connecting points on the street right-of-way lines each of which is twenty-five (25) feet distance from the point of intersection. In instances where North Carolina Department of Transportation site triangles are applicable, such regulations shall prevail.

Section 5. Corner Lots

In any residential district the side yard requirements for corner lots along the side street right-of-way line shall have an extra width of ten (10) feet. *(amended 12-14-09)*

Section 6. Group Projects

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 so subdivided, the application of the terms of this Zoning Ordinance may be varied by the Board of Adjustment in a manner that will be in harmony with the character of the neighborhood provided:

1. Such uses are limited to those permitted within the zoning district in which the project is located. In no case shall the Board of Adjustment authorize a use prohibited in the district in which the project is to be located.
2. 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.
3. The distance of every building from the nearest property line shall meet the front yard setback and side yard requirements of the district in which the project is located.
4. The building heights do not exceed the height limits permitted in the district in which the project is located.
5. If the property lies within or abuts a residential district and is to be used for a nonresidential purpose, there shall be a Grade 3 buffer strip in accordance with ARTICLE VII, Section 11 along the rear and/or side lot lines abutting the residential properties. No such buffer shall, however, extend nearer to a street right-of-way line than the established building line of the adjoining lot.
6. A site development plan of the proposed project shall be submitted to the Planning Board for its consideration and recommendation to the Town Board. The plan shall show clearly at an appropriate scale the location and arrangement of all proposed construction and its relation to neighborhood buildings and lot lines. Proposed phasing of construction shall be indicated on the plan. *(amended 12-14-09)*
7. The arrangement of each principal dwelling is in such a manner that if the lot or parcel of land is ever divided, substandard parcels will not be created. *(amended 12-14-09)*

8. Each principal dwelling on the lot has access to a public street by means of a passageway open to the sky of at least twenty-five (25) feet.

Section 7. Public Utility Facilities in Certain Districts

The Board of Adjustment may authorize the location of a public utility facility in any district in which such use is not a permitted use provided:

1. This section shall apply to only one of the following nonconforming uses:
 - A) transformer stations
 - (B) gas pressure regulating stations
 - (C) public utility distribution lines
 - (D) transmission lines and towers
 - (E) broadcasting stations and masts
 - (F) water tanks
 - (G) lift stations
2. There is no open storage on premises.
3. The location authorized under this section will not be detrimental to the general character of the neighborhood in which it is permitted.
4. Should the use create or contribute to any nuisance to the neighborhood the Board of Adjustment may withdraw the authorization for the conditional use.
5. The Applicant shall advise the Board of Adjustment of any restrictive covenants relative to the proposed site concerning the Specific use of the site.

Section 8. Manufactured Homes

Manufactured homes are permitted in the R-15 and A-1 district for the Town of Cleveland when they meet the following conditions: *(amended 12-14-09, 12-9-14)*

1. The minimum size lot on which an individual manufactured home is located shall have an area no less than that required for a single family residential use for the district in which the manufactured home unit is located or meets the requirement for a lot of record. *(amended 12-14-09)*
2. The lot requirements for an individual lot shall be that as required for a single family unit for the district in which the manufactured home is located. *(amended 12-14-09)*

3. The height limitations for a manufactured home shall be one story only.
(amended 12-14-09)
4. A manufactured home shall not be placed closer than twenty (20) feet from any principal building already in place. *(amended 10-11-99)*
5. No individual manufactured home which has less than four-hundred (400) square feet of interior floor area or does not contain a built-in bathroom with a water closet, lavatory, shower or tub, kitchen sink and hot water heater in working condition shall be used as a residence.
6. All manufactured homes shall furthermore be in compliance with standards approved by the US Department of Housing and Urban Development.
(added as amended 10-9-00)
7. All other requirements of the ordinance of the Town of Cleveland are complied with.
8. The towing tongue and undercarriage of the chassis shall be removed upon final placement of the unit. This shall only apply to those manufactured homes with detachable tongues.
9. All manufactured homes shall have continuous cinder block, concrete block, stucco, brick or other masonry type underpinning unpierced except for required ventilation and an access door in compliance with applicable state and local regulations. *(amended 12-14-09)*
10. Manufactured homes shall be allowed as primary structures only.
11. Single-wide manufactured homes are allowed in the R-15 zoning district only.

Section 9. Fairs and Carnivals

The Zoning Board of Adjustment may, as conditional uses, authorize the location of fairs and carnivals to be located in all districts for a period not to exceed fourteen (14) consecutive calendar days, provided:

1. That flood lighting and display lighting shall be shielded so as to prevent direct view of the light source. *(added as amendment 10-11-04)*
2. That temporary signs or banners shall be permitted on the approved site during the fourteen day period authorized. *(added as amendment 10-11-04)*
3. That the Board of Adjustment shall determine and require adequate separations of uses including structures, authorized herein from existing structures;
4. That public toilet facilities are provided as required by Rowan County Health Department. *(amended 12-14-09)*
5. That all other requirements of the ordinances of the Town of Cleveland are complied with.

Section 10. Multi-Family Dwellings in the R-15 General Residential District

The location of a multi-family dwelling may be authorized by the Board of Adjustment as a conditional use in an R-15 General Residential District provided that:

1. The resulting traffic in the streets is in keeping with the intensity of the street development fronts;
2. The resulting population density along the block face is in keeping with that of the district;
3. Adequate transportation, water, sewer, schools and park facilities are available for the development proposed;
4. The resulting development is in keeping with the general characteristics of the district;
5. The resulting building (s) along the block face is in keeping with the buildings of the district;
6. The permitted unit shall be in keeping with the minimum standards. *(amended 10-11-04)*

7. The off-street parking shall be in keeping with the parking requirements as set out in Article V, Section 1; *(added as amended 10-11-04)*
8. That all other requirements of the ordinances of the Town of Cleveland are complied with.

Section 11. Non-Residential Uses in Residential Districts

The minimum lot size, yard requirements and maximum height for nonresidential uses as permitted in residential districts shall comply with the requirements of R-15 General Residential District (see Article VI, Section 9). *(added as amended 10-11-04)*

Section 12. Utility Buildings Used for Storage

All utility buildings shall be located in the rear yard, at least ten (10) feet from the side property line (twenty (20) feet from the side property line if a corner lot). Further, any such building larger than two-hundred (200) square feet in floor area must be set back at least thirty (30) feet from the rear property line. Buildings must meet the guideline as stated in Article VI Section 1.1 – Open space rule. See Article II Section 2 for definitions and Article VI for use requirements by district. *(amended 10-11-99, 12-14-09)*

Section 13. Repair of Automobiles or Motor Vehicles in Residential Districts

The repair of an automobile or motor vehicle in any residential zoning district is subject to the following regulations;

1. Only minor repairs and maintenance may be performed which for the purposes of this section are defined as changing and replenishment of fluid levels, such as hydraulic fluid, windshield washer fluid and lubricating oil, the replacement of spark plugs, ignition points, the rotation of tires and the checking of adequate pressure, and the replacement of drive belts and hydraulic lines. *(amended 12-14-09)*
2. Any other repairs on a motor vehicle or automobile shall be restricted to totally enclosed spaces. *(amended 12-14-09)*
3. The automobile or motor vehicles referred to in (a) and (b) above shall be registered showing the address at which the limited repairs and maintenance or other repairs are to be performed.

Section 14. Construction Trailers

Construction trailers may be used in conjunction with construction projects provided that:

1. Such trailers are located at a building site where there is a valid building permit for a project on that site.
2. The trailer (s) only remain on the site for the duration of the building project.

Guard houses may be allowed provided that in instances of overnight stay, adequate sanitary facilities are provided.

Section 15. Temporary Uses

Temporary uses are subject to the following requirements:

1. Certain uses of a temporary nature, defined as being less than forty-five (45) days in duration and held no more than three (3) times a year, which may not otherwise be permitted in a particular district, may be allowed upon issuance of a permit by the Zoning Administrator. Such uses are:
 - (A) Christmas tree sales
 - (B) Revivals
 - (C) Shows for civic organizations
2. Other temporary uses not listed may only be granted after a public hearing has been held by the Board of Adjustment and the Board of Adjustment has made the following determinations:
 - (A) The proposed use will not endanger the public health, welfare and safety.
 - (B) The proposed use will not have a substantial negative impact on the adjoining properties.

The Board of Adjustment may authorize conditions such as duration of use, hours of operation, signage, lighting, sanitary facilities, etc.

Section 16. Adult Businesses (added as amended 07-11-01)

A. Purpose and Intent

Adult establishments, because of their nature, are recognized as having characteristics which may be objectionable to nearby residential districts and certain other uses considered to be sensitive- namely, churches, schools, parks, libraries, day care centers, nursing homes, and medical centers. Studies have shown that properties tend to be devalued and crime rates tend to be increased by the concentration of adult establishments. The Town Board determines that regulation of these uses is necessary to ensure that these adverse effects do not contribute to the blighting or downgrading of nearby residential districts and to protect the integrity of those sensitive uses listed above. The purpose of having regulations for adult establishments is to identify the appropriate locations in which adult establishments or sexually oriented businesses may be established within the Town of Cleveland's zoning jurisdiction.

B. Regulations

1. Allowable zoning district(s): An adult establishment use shall be allowed in the M-2 district with a conditional use permit.
2. Spacing:
 - a. No two adult establishments may be located within 1,000 feet from each other.
 - b. No adult establishments may be located within 500 feet of any residential (R-15, R-20, AG) zoning district.
 - c. No adult establishment may be located within 1,000 feet of any church/ house of worship or any public or private daycare, elementary, middle, junior high, or high school.

NOTE: All measurements shall be made by drawing straight lines from existing property lines and/or edge of zoning district as appropriate.

3. Area, yard, and height requirements: The area, yard and height requirements shall be the same as for other uses in the M-2 district.
4. Parking space requirements: The parking space requirements shall be as indicated for retail uses in Article V. There shall be no enclosed parking.
5. Screening requirements: Screening requirements shall be determined upon review of the Conditional Use Permit.

6. Signage: Signs allowed shall be in compliance with Article IX, Section 1 sign regulations, except that any ground, wall, canopy, or projection sign shall contain only the name of the establishment and shall not contain any advertising nor identification of any project, service, etc.
7. Prohibition of certain materials visible from outside the building: No printed material, slide, video, photograph, written text, live show, or other visual presentation format shall be visible from outside the establishment.
8. Prohibition of certain sounds discernable from outside the building: No live or recorded voices, music, or sounds shall be heard from outside the establishment.
9. One adult establishment use per property or building: There shall not be more than one adult business use (either the same use or another use) located on the same property, building, or structure.
10. No sleeping quarters: No adult establishment may have sleeping quarters.
11. Gross floor area: The gross floor area of any adult establishment shall not exceed 2,000 square feet and all business-related activity shall be conducted in the principal building.
12. Lighting: Sufficient lighting shall be determined upon review of the Conditional Use Permit. *(amended 12-14-09)*
13. Other regulations: Other applicable regulations contained in this Zoning Ordinance shall be in effect.

Section 17. Telecommunication Facilities *(added as amended 06-11-01)*

A. Purpose and intent

This article provides the guidelines for the siting of wireless telecommunications facilities within the boundaries of the Town of Cleveland, North Carolina and its extraterritorial jurisdiction. Generally, telecommunications facilities shall be acceptable as a Conditional Use in the (AG) Agricultural, (GB) General Business, (M-1) Light Industrial, and (M-2) Heavy Industrial districts, and prohibited in (R-15) General Residential and (R-20) Single Family Residential districts. They shall require zoning permit(s), and proposals shall be submitted to the Zoning Board of Adjustments as described in Article XI of this ordinance. This article shall apply to facilities for

commercial, public-use telephone, television, and data transfer. Specially exempted are facilities for two-way radio equipment used by municipal emergency services (e.g. fire, police).

B. General Provisions

1. Principal Use: A telecommunications facility shall be considered the principal use of any lot or parcel which is not used for other purposes. Hence, it shall be constrained by other provisions of this ordinance regarding primary and accessory structures.
2. Accessory Use: A telecommunications facility shall be considered an accessory use of a lot or parcel only when it is used in support of the business or municipal use already located on the lot.
3. Commercial Advertising Prohibited: No commercial advertising shall be allowed on any antenna or monopole.
4. Lighting Prohibited: No lights shall be installed on the monopole or antenna, nor shall the monopole or antenna be illuminated from the ground unless specially required by the FAA or FCC.
5. Size Limitations: Dish, horn, or panel antennae may not exceed six (6) feet in their largest dimension. (*amended 12-14-09*)
6. Height Limitations: Antenna shall not exceed twenty (20) feet in height. Monopoles shall not exceed 199 feet in height above ground, even when erected on rooftops.
7. Minimum Parcel Size: To preclude damage to adjacent property should the monopole collapse, the nearest lot line shall be the height of the tower plus fifty (50) feet.
8. Landowner Responsibility: The recorded landowner is ultimately responsible for compliance with this ordinance. All requests shall be in the name of (and, if granted, then issued) to the owner of the lot or parcel on which the equipment is to be operated.

9. Operator Responsibility: When operators of telecommunications equipment lease, rather than purchase, the land on which these facilities are located, the operators shall be responsible for adherence to all governing laws and regulations regarding such equipment. The operators shall be responsible for application for all permits and waiver requests from the FAA and/or the FCC.
10. Monopole Towers Only: Only monopole towers shall be considered.

C. Special Provisions

1. An antenna may be located atop water tanks within the jurisdiction of the Town of Cleveland, provided the antennal does not require a separate building for support equipment. *(amended 12-14-09)*
2. An antenna shall not add more than twenty (20) feet in height to any structure and shall comply with all height requirements contained in this ordinance.
3. When attendant unoccupied buildings are required for support equipment, they shall not exceed 750 square feet of gross floor area nor more than twelve (12) feet in height. Further, they shall meet all setback requirements established in Article VI of this ordinance.
4. When an antenna or monopole is not operational for a continuous period of 90 days, it shall be considered abandoned, and the owner of such shall remove it within 90 days of notice; and such removal shall be at the owner's expense.
5. Monopoles must be enclosed by security fencing at least six (6) feet high and shall include appropriate anti-climbing devices.

D. Application Procedures

1. The application for a primary use telecommunication facility begins with a request for a conditional use permit, submitted in accordance with Article XI of this ordinance. Once that has been approved, applications can be made for permits or waivers from the FAA and/or FCC. Only after application for all federal permits can the Town of Cleveland issue a zoning permit.
2. The Town of Cleveland reserves the right to hold public hearings on all requests for telecommunications facilities within its jurisdiction. *(amended 12-14-09)*

ARTICLE IX
SIGN REGULATIONS

Section 1. Business Signs

Only flat wall signs on the face of walls and canopy-suspended signs shall be permitted. All signs must relate only to the name and use of the store and premises. No signs shall extend above or beyond building walls nor project more than one foot from the structure. The maximum size sign shall be limited to two square feet of area per linear foot of each building wall it occupies facing a public street or facing a private access way if a store has no frontage on a public street. The lowest part of any canopy-suspended sign must be at least nine (9) feet above sidewalk level. Use requirements by the commercial district only.

Section 2. Home Occupation Sign

One professional or announcement sign per lot is allowed for home occupations. Such signs shall not exceed three square feet in area exposed to view and must be mounted flat to the main wall of the principal building. No such sign shall be illuminated. Use requirement by district only.

Section 3. Real Estate Signs

Signs pertaining only to the lease, rent or sale of the property upon which displayed are allowed. Such signs shall not exceed four square feet in area exposed to view. No such sign shall be illuminated. Use requirements by all districts on temporary basis.

Section 4. Church Signs

Church bulletin board or sign not exceeding eight (8) feet high for the purpose of displaying the name of the institution and other related information may be displayed. Such signs shall be at least fifteen (15) feet from the street right-of-way line and on church property.

Section 5. Temporary Signs

Temporary signs are allowed if:

1. Such sign is for a special event of a public interest; and
2. Such sign shall not be displayed for more than sixty (60) days. Also;
3. Temporary signs are allowed in all directions.

Section 6. Freestanding Business Signs

Freestanding business signs shall be permitted under the following conditions:

1. No sign, nor part of any sign, shall protrude beyond the property line or into the public right-of-way.
2. There shall be no more than one such sign per lot.
3. The sign shall not consist of more than two sign faces and that any sign face shall not exceed a maximum size of 16 square feet.
4. Such sign shall not exceed a maximum of twenty-five (25) feet above the ground.
5. Freestanding business signs are allowed in the General Business District and Industrial Districts.

Section 7. Lighting

Lighting regulations shall be as follows:

1. a.) Lighted signs
Illuminated signs shall be limited to those lighted from behind to silhouette letters and figures, and which prevent a direct view of the light source except those giving public information such as time, temperature or date when such light does not produce a beam or rays of light of such intensity or brilliance as to cause distracting glare or impair vision at a distance of thirty (30) feet from the source.
- b.) Electronic Message Board
Electronic Message Boards (EMB) shall be limited to text displays and subject to the following requirements.
Electronic Message Boards are not allowed in areas zoned R-15 and R-20 unless a conditional use permit is issued pursuant to Article IX Section 8.
Electronic Message Boards may scroll.
Electronic Message Boards may display text with either occulting lights or fixed lights.
The transitions from one image to the next must be accomplished in one second or less.
Electronic Message Boards must be equipped with automatic dimming technology that automatically adjusts the display's brightness based in ambient light conditions.

Hours that Electronic Message Boards must be turned off or remain static are between 7:00 pm – 7:00 am, if located within 150 feet to a residential dwelling structure. This measurement shall be from the nearest base of the sign to the nearest point of the primary dwelling structure.

There can only be one (1) message at a time on the sign.

Advertising messages of information shall remain in a fixed, static position for a minimum of five (5) seconds. Message shall also be limited to a maximum of three (3) lines.

The sign shall not exceed a maximum illumination of 5,000 nits (candelas per square meter) during the day light hours and a maximum illumination of 500 nits as measured from the sign’s face at maximum brightness.

The Electronic Message Board must be physically attached to the primary sign and shall not be bigger than sixteen (16) square feet in size.

There will be only one (1) EMB per multiple entrances. *(amended 2-13-17)*

2. Flood and display lighting

Flood and display lighting shall be shielded so as to prevent a direct view of the light source and so as to prevent the beaming of light at an intensity or brilliance as to cause distracting glare or impair vision at a distance of thirty (30) feet from such light source.

No interior or exterior lighting shall be used to frame windows, doors, or along the building itself, whether in part or in whole, in general business district (GBD) and central business district (CBD). *(added as amendment 12-10-18)*

3. Parking Area Lighting

Parking area shall be illuminated in such a manner as to provide adequate light to protect health, safety, morals and the general welfare of the public, and so as to prevent the beaming of light at an intensity or brilliance as to cause distracting glare or impair vision at a distance of 30 feet from such light source.

Section 8. Exceptions

1. General Business District, M-1 District, M-2 District

One freestanding business sign shall be allowed, not to exceed fifty (50) square feet, except that one additional sign may be permitted on through lots having frontage on two (2) or more streets.

2. Group Projects
One freestanding business sign of thirty-six (36) square feet shall be allowed for each out parcel.

3. Conditional Uses for Signs
A conditional use permit may be issued pursuant to Article XI Section 9 for the following uses. *(added as amended 10-11-04)*
 - a. A freestanding business sign in the Central Business District up to 36 square feet.
 - b. A sign of up to 100 square feet in the General Business District.
 - c. Service station and convenience stores with gasoline pumps may erect canopy signs, not to exceed fifty (50) square feet of signage with primary gasoline distribution advertising only.
 - d. Neighborhood or subdivision signs.
 - e. Two (2) freestanding business signs shall be allowed, not to exceed fifty (50) square feet each, in Industrial districts to designate separate entrances for separate uses. *(amended 10-12-15)*
 - f. An electronic message board in R-15 or R-20 Zoning Districts. *(amended 2-13-17)*

Section 9. Signs Not Requiring a Permit

The following types of signs are exempt from the permitting requirements of this ordinance and may be placed in any zoning district.

1. Government signs.
2. Memorial signs or grave markers which are noncommercial in nature.
3. Public interest signs.

Section 10. Off-Premises Signs

Off-Premises signs are not allowed except by recommendation by the Town of Cleveland's Planning Board and approval by the Town Board. Requests must be made by businesses licensed and operating within the Town of Cleveland limits and/or the extra-territorial jurisdiction (ETJ). Requests received from home occupations will not be considered, nor will

requests from businesses that operate outside the Town of Cleveland limits and/or ETJ. There shall be only one sign per business considered, and any such sign will be limited to mounting on the ground (tower or pylon signs will not be approved), limited to thirty-six (36) square feet of message area, and cannot be closer than one hundred (100) feet from any other business sign, except at an intersection where a maximum of two (2) signs will be allowed on opposite corners or a marquee sign with multiple placards. The requesting business is responsible for obtaining permission from the owner of the property where the sign will be located. If the business ceases operation at its location when the sign is permitted, then the permit is void, and the business owner will remove the off-premises sign. Any new business coming into that location must repeat the process described above. *(added as amendment 11-08-99, amended 04-11-05, 12-14-09)*

Section 11. Flags

Official governmental flags are not prohibited as long as the flag is flown or displayed as follows: *(amended 12-14-09)*

1. In accordance with the patriotic customs set forth in 4 USC §§5-10, as amended: and
2. Upon private or public property with the consent of either owner of the property or of any person having lawful control of the property.

For the purpose of protecting the public health, safety, and welfare, reasonable restrictions on flag size, number of flags, location, and height of flagpoles are not prohibited, provided that such restrictions shall not discriminate against any official governmental flag in any manner.

For purposes of this section, an 'official governmental flag' shall mean any of the following:

1. The flag of the United States of America.
2. The flag of nations recognized by the United States of America.
3. The flag of the State of North Carolina.
4. The flag of any state or territory of the United States.
5. The flag of a political subdivision of any state or territory of the United States.
(added as amended 04-09-07)

ARTICLE X
NON-CONFORMING USES

Section 1. Requirements for Continuation of Non-conforming Uses

Any building, structure, or use of land existing at the time of the enactment of this ordinance, or any amendment thereto, may be continued subject to the following provisions. Normal repairs and maintenance shall be performed to allow continuation of the nonconforming use. Such non-conforming uses shall not be:

1. Changed to another non-conforming use;
2. Enlarged or extended except in conformity with this ordinance;
3. Re-established after discontinuance for a period of one-hundred eighty (180) days;
4. Rebuilt, altered or repaired after damage exceeding sixty percent (60%) of the fair market value immediately prior to the damage.

Once a nonconforming use is changed to a conforming use it shall be considered a conforming use.

No nonconforming use of an accessory structure shall continue after the principle use is terminated unless such accessory use is made to conform to the standards for the zoning district in which it is located.

ARTICLE XI
ZONING BOARD OF ADJUSTMENT

Section 1. Authority

A Board of Adjustment is hereby established pursuant to NCGS 160A-388.

Section 2. Establishment

This Board shall, upon receipt of a completed application, consist of five members, three from the corporate limits and two from the extraterritorial limits, and shall be appointed by the Town Board for staggered terms of three years. Initial appointments shall be as follows:

- One member for a term of three years;
- Two members for terms of two years each;
- Two members for terms of one year each. *(amended 12-14-09)*

Any vacancy in the membership shall be filled for the unexpired term in the same manner as the initial appointment. Members shall serve with pay as determined by the Cleveland Board of Commissioners and may be reimbursed. *(amended 06-14-99, 12-14-09)*

There shall be two (2) alternate members appointed to the Board by the Town Board, each for three (3) year terms. Each alternate member, while attending any meeting of the Board serving in the capacity of a regular member shall have and exercise all the powers and duties of a regular member. *(amended 04-09-07, 12-14-09)*

Section 3. Jurisdiction and Decisions

The concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the Board shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. *(amended 02-12-18)*

When voting on any matter two (2) extraterritorial representatives must be present as voting members of the Board.

Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such member. *(amended 04-09-07)*

All decisions of the Board of Adjustment shall be made within 30 days of the hearing or at the next regularly scheduled meeting of the Board of Adjustment following the hearing, whichever is later.

All decisions of the Board of Adjustment shall be filed with the Zoning Administrator and a written copy thereof shall be sent to the applicant by certified mail, return receipt requested, or hand delivered within five (5) working days of the hearing.

Section 4. Rules of Procedure

The Zoning Board of Adjustment shall elect a Chairperson and Vice Chairperson from its members who shall serve for one (1) year, until re-elected, or until their successors are elected. The Board shall appoint a secretary who may be a municipal officer, an employee of the Town of Cleveland, a member of the Planning Board, a member of the Zoning Board of Adjustment, or any local citizen. *(amended 12-14-09)*

The Board shall adopt rules and bylaws in accordance with the provisions of this chapter and of NCGS Article 19 Chapter 160-A. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine or desire. The Chairperson, or in his absence, the Vice Chairperson, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the Zoning Board of Adjustment shall be open to the public. *(amended 12-14-09)*

The board shall follow quasi-judicial procedures for all cases heard.
(added as amended 04-09-07)

Section 5. Conflicts of Interest

A member of the board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible 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 parte* 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 to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. *(added as amended 04-09-07, 12-14-09)*

Section 6. Application Procedure

Before a petition for an interpretation, appeal, or variance shall be considered, a completed application on a form provided by the Town of Cleveland accompanied by a fee to be established by the Town Board shall be submitted to the Zoning Administrator. Fees will not be required in actions instituted by the Zoning Administrator. The information shall be based on the

most current records of the Rowan County Tax Assessor and shall be accompanied by a map clearly showing the subject property and all contiguous property, including all property across any street or public right of way.

The Board of Adjustment shall hold a hearing on all applications no later than forty (40) days after the application has been filed with the Zoning Administrator.

In order for the Board of Adjustment to consider approval of a permit for a variance, a public hearing must first be held. Any complete application shall be submitted to the Zoning Administrator at least fifteen (15) days prior to the public hearing. Notice of said public hearing shall be as follows:

- A. At least one (1) notice shall be conspicuously posted on the subject property at least ten (10) days prior to the public hearing. Such notice shall state the nature of the public hearing and the date, time and location at which it is to be held. The notice shall be removed only after the public hearing has been held.
- B. A notice of the public hearing shall be sent by first class mail by the Zoning Administrator to the applicant and to all contiguous property owners at least ten (10) days prior to the public hearing.

A written application for a conditional use must also demonstrate in detail that each of the conditions listed in Section 10.5 of this article is fact. *(amended 12-14-09)*

A written application for a variance must also demonstrate in detail that each of the conditions listed in Section 9.3 of this article is fact. *(amended 12-14-09)*

In all matters before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application.

Section 7. Appeals, Hearings and Notices

Appeals to the Zoning Board of Adjustment may be taken by any person aggrieved by any officer, department, board or bureau of the Town of Cleveland affected by any decision of the Zoning Administrator or other Town of Cleveland officials based on this ordinance. Such appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the Zoning Administrator and with the Board of Adjustment a written notice of appeal specifying the grounds thereof. All papers constituting the record upon which the action appealed from was taken shall forthwith be transmitted to the Zoning Board of Adjustment.

The Zoning Board of Adjustment shall fix a reasonable time for the hearing of appeals or other matters referred to it and give due notice thereof to the parties in interest, and decide the same within a reasonable time. Upon a hearing, any party may appeal in person, by agent or by attorney. *(amended 12-14-09)*

Section 8. Stay of Proceedings

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Adjustment or by a court of record on application, on notice to the Zoning Administrator and on due cause shown.

Section 9. Powers and Duties

The Board of Adjustment shall hear and decide appeals and review any order, requirement, decision or determination made in accordance with this ordinance. A written application for a rehearing shall be made in the same manner as provided for an original hearing within a period of fifteen (15) days after the date of denial of the original application. In addition, specific information to enable the Board of Adjustment to determine whether or not there has been a substantial change in fact, evidence, or conditions in the case, shall be presented in writing or graphically. A rehearing shall be denied by the Board, if, in its judgement, such change in the facts, evidence or conditions has not been proven. In the event that the Board finds that a rehearing is warranted, it shall thereupon proceed in the same manner as prescribed for the original hearing. The Board of Adjustment shall have the following powers and duties. *(amended 12-14-09)*

1. 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 Administrator in the enforcement of this ordinance or where interpretations of Zoning maps, resolution of disputed questions of lot lines, or district boundary lines, and similar questions that may arise in the administration of this ordinance.

2. Special Exceptions (Conditional Uses)

To hear, decide and issue special exceptions or conditional use permits to the zoning regulations in classes of cases or situations and in accordance with the principles, conditions, safeguards and procedures specified within this chapter. Such conditional uses shall be granted only if all the conditions of Section 10 are met. *(amended 12-14-09)*

3. Variances

When practical difficulties or unnecessary hardships would result from carrying out the strict letter of the zoning ordinance, the Board shall have the power to vary or modify any of the regulations or provisions of this ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. No change in permitted uses may be authorized by a variance. Appropriate conditions, which must be reasonable related to the condition or circumstances, may be imposed. The existence of a nonconforming use of neighboring land, buildings, or structures in the same district or of permitted or nonconforming uses in other districts shall not constitute a reason for the requested variance. No consideration shall be given to monetary conditions in granting or denying a variance. Such variances may be granted in such individual cases of unnecessary hardship upon a finding by the Zoning Board of Adjustment that the following conditions exist: *(added as amended 04-09-07, 12-14-09, 02-12-18)*

- (A) 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; and
- (B) The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance; and
- (C) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and
- (D) 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.

Section 10. Conditional Uses

This ordinance provides for a number of uses to be located by right in each zoning district subject to the use meeting certain area, height, yard and off-street parking and loading requirements. In addition to these uses, the ordinance allows some uses to be allowed in these districts on a conditional basis subject to the issuance of a conditional use permit by the Board of Adjustment. The purpose of having such uses being “conditional” is to insure that they would be compatible with surrounding development and in keeping with the purposes of the zoning district in which they are located. *(amended 12-14-09)*

1. Procedures

A conditional use permit application shall be filed with the Zoning Administrator. The application shall be accompanied by a site plan, drawn to scale and necessary supporting text which shall include the following. *(amended 12-14-09)*

- A. Name, address and phone number of the property owner (or his agent) and the tax parcel number of the property. (Note: The property owner or his authorized agent are the only two parties who may initiate a request for a conditional use permit).
- B. A boundary survey and vicinity map, showing the property’s total acreage, zoning classifications (s), general location in relation to adjoining streets, railroads and/or waterways; date and north arrow.
- C. The owners’ names and addresses, tax parcel numbers and existing land use(s) of all adjoining properties.
- D. Proposed use of all land and structures including the number of residential units (if applicable).
- E. Proposed number and location of all structures, their approximate area and their approximate exterior dimensions.
- F. A description of all screening and landscaping required by these regulations and/or proposed by the applicant.
- G. All existing easements, reservations and rights-of-way.
- H. Proposed phasing, if any, and approximate completion time for the project.

- I. Delineation of area within the regulatory floodplain as shown on the official Federal Emergency Management Agency (FEMA) Flood Hazard Boundary Maps for Rowan County.
 - J. Traffic, parking and circulation plans showing the proposed location and arrangement of parking spaces and ingress and egress to adjacent streets. *(amended 12-14-09)*
2. Evaluation of Application
- In the course of evaluating the proposed use, the Board of Adjustment may request additional information from the applicant. A request for such additional information shall stay any further consideration of the application by the Board of Adjustment. This information may include (but shall not be limited to) the following:
- A. Stormwater drainage plan.
 - B. Existing and proposed topography at five-foot contour intervals or less.
 - C. The existing and proposed location of all water and sewer lines and fire hydrants intended to serve the proposed development.
 - D. Proposed number, type and location of signs.
 - E. A traffic impact study of the proposed development prepared by a qualified transportation or traffic engineer or planner. The traffic impact study shall include the following information:
 - a. Existing traffic conditions within the study area boundary.
 - b. Traffic volumes generated by the existing and proposed development on the parcel, including the morning peak.
 - c. The distribution of existing and proposed trips through the street network.
 - d. Analysis of the capacities of intersections located within the study area boundary.
 - e. Recommendations for improvements designed to mitigate traffic impacts and to enhance pedestrian access to the development from the public right-of-way. *(amended 12-14-09)*

- f. An environmental impact statement which contains the following information:
 - I. A cover sheet which provides, in summary form, a description of the proposed project; and
 - II. A statement of purpose and need of the project; and for projects proposed by public entities, a list of alternatives of the proposed project; and
 - III. For projects proposed by public entities, a list of alternatives of the proposed project; and
 - IV. A succinct description of the environment affected by the project; and
 - V. A discussion of short and long term consequences of the project on the environment including any adverse environmental impacts which cannot be avoided; and *(amended 12-14-09)*
 - VI. A list of means which could be employed to mitigate any negative effects on the environment caused by this project including but not limited to school enrollments, fire and police protection, and water and sewage loads. *(amended 12-14-09)*
- g. Other pertinent information, including but not limited to accidents, noise, light pollution, and impacts of air quality and other natural resources. *(amended 12-14-09)*

No application for a CUP shall be deemed complete unless it contains or is accompanied by all items listed in Sections 10.1 and as may be required in Section 10.2 and a fee, in accordance with a fee schedule approved by the Town Board for the submittal of conditional use permit applications. *(added as amended 10-11-04, 12-14-09)*

3. Public Hearing

In order for the Board of Adjustment to consider approval of a conditional use permit, a public hearing must first be held. Any complete application shall be submitted to the Zoning Administrator at least fifteen (15) days prior to the public hearing. Notice of said public hearing shall be as follows:

- A. At least one (1) notice shall be conspicuously posted on the subject property at least ten (10) days prior to the public hearing. Such notice shall state the nature of the public hearing and the date, time and location at which it is to be held. The notice shall be removed only after the public hearing has been held.
- B. A notice of the public hearing shall be sent by first class mail by the Zoning Administrator to the applicant and to all contiguous property owners at least ten (10) days prior to the public hearing.

Unless extenuating and unavailable circumstances dictate otherwise a public hearing shall be held by the Board of Adjustment at a regular or special meeting no later than forty-five (45) days after the original application has been submitted and accepted by the Zoning Administrator.

4. Board of Adjustment Action

Once the public hearing has been conducted, the Board of Adjustment shall render a decision on the application within forty-five (45) days thereafter. The Board of Adjustment may, in rendering a final decision:

- A. Approve the conditional use permit application; or
- B. Approve the conditional use permit application with fair and reasonable conditions; or
- C. Deny the conditional use permit application.

If the Board of Adjustment approves the conditional use permit application with conditions, such conditions shall relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and landscaping area, the timing of development and other matters that the Board of Adjustment may find appropriate or the petitioner may propose. Such conditions to approval may include dedication of any rights-of-way or easements for streets, water, sewer or other public utilities necessary to serve the proposed development. The petitioner will have a reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Board of Adjustment. In no instance shall any of these conditions be less restrictive than any requirements which would otherwise pertain to that particular development found elsewhere in this ordinance.

5. Findings of Fact

The Board of Adjustment shall issue a conditional use permit if it has evaluated an application and determined that:

- A. The use will not materially endanger the public health or safety if located where proposed and developed according to plan, and
- B. The use meets all required conditions and specifications, and
- C. The use will not substantially injure the value of adjoining or abutting property unless the use is a public necessity, and
- D. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with any plan for the physical development of the Cleveland area adopted by the Cleveland Town Board or the Rowan County Board of Commissioners.

The applicant has the burden of producing competent, material and substantial evidence tending to establish the facts and conditions which Sections 10.5 (B) and (D) of this ordinance require. *(amended 12-14-09)*

If any person submits evidence allegedly contrary to any of the facts or conditions listed in Section 10.5 (A) and (C) of this ordinance, the burden of proof for overcoming such evidence shall rest with the applicant. *(amended 12-14-09)*

6. Effect of Approval

If an application for a conditional use permit is approved by the Board of Adjustment, the owner of the property shall have the ability to:

- A. Develop the use in accordance with the stipulations contained in the conditional use permit or
- B. Develop any other use listed as a permitted use for the general zoning district in which it is located. *(amended 12-14-09)*

7. Binding Effect

Any conditional use permit so authorized shall be perpetually binding to the property included in such permit unless subsequently changed or amended by the Board of Adjustment.

8. Certificate of Occupancy

No certificate of occupancy for a use listed as a conditional use shall be issued for any building or land use on a piece of property which has received a conditional use permit for such particular use unless the building is constructed or used, or the land is developed or used, in conformity with the conditional use permit approved by the Board of Adjustment. In the event that only a segment of a proposed development has been approved, the certificate of occupancy shall be issued only for that portion of the development constructed or used as approved.

(amended 12-14-09)

9. Twelve-Month Limitation on Re-application

If a request for conditional use permit is denied by the Board of Adjustment, a similar application for the same property or any portion thereof shall not be filed until the expiration of a twelve (12) month period from the date of the most recent denial by the Board of Adjustment. This waiting period shall not be applicable where the application for a conditional use permit is substantially different from the original application.

The term “substantially different” as herein applied shall mean:

A. The proposed principle use is different than the use contained in the original application; or *(amended 12-14-09)*

B. The gross floor area of the proposed development is fifty (50%) percent or more smaller than contained in the original application.

10. Change in Conditional Use Permit

Any request to materially change the conditional use permit once it has been issued (except as provided in Section 10.7) must first be reviewed by the Board of Adjustment in accordance with Section 10.2 through 10.9 of this ordinance. The Board of Adjustment may thereafter change or amend any previously approved conditional use permit, only after having held a public hearing. Notice of public hearing shall be in accordance with Section 10.3 of this ordinance. Amendment of a conditional use permit by the Board of Adjustment of a previously issued conditional use permit shall be subject to the same procedural requirements (as provided herein) as for a new conditional use permit. *(amended 12-14-09)*

11. Implementation of Conditional Use Permit (CUP)

Unless the Board of Adjustment issues a conditional use permit which either is specifically exempt from any time constraints or has some other specified time period for implementation, the applicant must secure a valid building permit for said authorized development within a twelve (12) month period from date of issuance of the conditional use permit. Any project for which a CUP was issued must be completed within twenty-four (24) months from the date of initial approval unless otherwise specified in the original CUP. If it is determined that either of these findings are not met, the Zoning Administrator shall notify such to the Board of Adjustment. The Board of Adjustment shall forthwith conduct a public hearing and decide to:

- (A) extend the life of the conditional use permit or
- (B) rescind the conditional use permit. The Board of Adjustment shall give notice of said public hearing as provided in Section 10.3 of this ordinance.
(amended 12-14-09)

To vote to extend the life of the conditional use permit shall require a four-fifths (4/5) vote by the Board of Adjustment. The cost of conducting said public hearings shall be borne by the Town of Cleveland. *(amended 12-14-09)*

Section 11. Appeals of Decisions

Any person or persons, jointly or individually, aggrieved by any decision of the Zoning Board of Adjustment, or any taxpayer, officer, department, board or bureau of the Town of Cleveland may within 30 days after the filing of the decision in the office of the Board, but not thereafter, present to a court of competent jurisdiction a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the ground of illegality, whereupon such decision of the Board shall be subject to review by certiorari as provided by law.
(amended 12-14-09)

ARTICLE XII
ADMINISTRATION AND ENFORCEMENT

Section 1. Zoning Administrator

The Zoning Administrator is hereby authorized, and it shall be the duty of the Zoning Administrator to enforce and administer the provision of this ordinance. The Zoning Administrator may be provided with assistance in the administration and enforcement of this ordinance as the Town Board directs. It is the intent of this ordinance, unless otherwise specified, that all questions arising in connection with the enforcement of this ordinance be presented first to the Zoning Administrator and that presentation of such questions to the Board of Adjustment be only on appeal of the Zoning Administrator's decision. Appeals to the Board of Adjustment shall be made in accordance with Article XI Section 6. *(added as amendment 10-11-04, 12-14-09)*

Section 2. Duties of the Zoning Administrator

The duties of the Zoning Administrator shall be as follows:

1. to establish and publish application procedures for permits, appeals and actions pursuant to this ordinance;
2. to issue permits and certificates pursuant to this ordinance;
3. to review and approve all development plans and permits to assure that the requirements of this ordinance have been satisfied;
4. to interpret the applicability of the provisions of this ordinance in which the text does not clearly provide guidelines;
5. to maintain all records pertaining to the provisions of this ordinance in Town Hall and make said records available for public inspection;
6. inspect properties and activities for which permits have been issued to determine whether the use(s) is/are being conducted in accordance with the provisions of this ordinance;
7. investigate violations of the ordinance;
8. enforce provisions of the ordinance;
9. issue notice of corrective action as required;

10. to use the remedies provided in the ordinance to gain compliance;
11. to gather evidence in support of duties of the administrator;
12. perform other duties as assigned by the governing Board.

Section 3. Zoning Permit Required

No building or other structure shall be erected, moved, extended or enlarged or structurally altered until a zoning permit for such work has been authorized in writing by the Zoning Administrator.

Section 4. Application for Zoning Permit

Each application to the Zoning Administrator for a zoning permit shall be accompanied by plot plans in duplicate showing:

- (A) the actual dimensions of the lot to be built upon;
- (B) the size of the building to be erected;
- (C) the location of the building on the lot;
- (D) the location of the existing structures on the lot (if any);
- (E) the number of dwelling units the building is designed to accommodate; and
- (F) such other information as may be essential for determining whether the provisions of this zoning ordinance are being observed.

Applications for any permits issued pursuant to this ordinance will be accepted only from persons having legal authority to take such action. The administrator may require an applicant to submit evidence of his authority to submit said application whenever there appears to be a reasonable basis for questioning this authority. All applications must be complete before the Zoning Administrator is required to consider the application. The application is considered complete when it contains all the information that is necessary for the permit-issuing authority to decide whether or not the development, if completed as proposed, will comply with all the requirements of this ordinance.

The Zoning Administrator may require scaled dimensional plans drawn and certified as true and correct by a surveyor, engineer or architect registered with the state of North Carolina.

Any zoning permit issued shall become invalid unless the work authorized by it shall have commenced within six (6) months from its date of issuance, or if the work authorized by it is suspended or abandoned for a period of six (6) months.

Section 5. Certificate of Occupancy Required

A certificate of occupancy issued by the Zoning Administrator is required in advance of:

1. occupancy or use of a building hereafter erected, structurally altered or moved;
2. a change of use of any building or land;
3. upon request of existing building or land and reasonable time given for inspection allowing for compliance or noncompliance by the Zoning Administrator.

A record of all certificates shall be maintained by the Zoning Administrator. Copies shall be furnished, on request, to any person (s) having proprietary of tenancy interest in the building or land involved.

Section 6. Penalties for Violation

Any person violating any provision of this Zoning Ordinance shall be punished for each offense by a fine not exceeding fifty dollars (\$50.00) or by imprisonment not to exceed (30) days. Each day such violation continues shall be deemed a separate offense.

Violations of this ordinance shall include but not be limited to:

1. Development, use, construction, remodeling or other activity of any nature upon the land or improvements thereon subject to the jurisdiction of this ordinance without all required permits, authorization or certificates as required by the ordinance for said activity.
2. Development, use, construction, remodeling or other activity of any nature upon the land or improvements of any nature in any way inconsistent with any approved plan, permit, certificate, or any other form or authorization granted for such activity.
3. Violation, in act or omission, any term, variance or waiver, condition or qualification placed by any board of the Town of Cleveland upon any required permit, certificate of other form of authorization for the use, development or other activity upon land or improvements thereon.

4. Erection, construction, reconstruction, alteration, repair, conversion, maintenance or use of any building or structure, or use of any land in violation or contradiction to this ordinance, or any amendment thereto, or any other regulation made under authority of this ordinance.

Any violation of this ordinance or any condition order or requirement, or remedy adopted pursuant to this ordinance may be restrained, corrected, abated or mandated by injunction or other appropriate proceedings, pursuant to state law.

Whenever a building, sign, or structure, or part thereof is being constructed, reconstructed, altered or repaired in violation of this ordinance, the Zoning Administrator may order the work to be stopped. The stop work order shall be in writing and directed to the owner, occupant or person doing the work. The stop work order shall state the work to be stopped, specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with NCGS 160A-421.

The Zoning Administrator may revoke a permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans or specifications; refusal or failure to comply with the requirements of state or local laws, or for false statements or misrepresentations made in securing a permit.

Any permit mistakenly issued in violation of an applicable state law may be revoked.

No civil penalty shall be assessed until the person alleged to be in violation has been notified of the violation. If after receiving a notice of violation the owner or other violator fails to take corrective action, a civil penalty may be imposed in the form of a citation. The citation shall state the nature of the violation, the civil penalty to be imposed upon the violator and shall direct the violator to pay the civil penalty within fifteen (15) days of the date of notice.

The Zoning Administrator shall make written demand for payment upon the property owner or person in violation, and shall describe in detail a description of the violation for which the civil penalty has been imposed.

If equitable settlement or payment is not made within thirty (30) days after demand for payment is made, civil action may be instituted in the appropriate division of the General Courts of Justice for recovery of the civil penalty. The Zoning Administrator may, if deemed necessary to receive payment of civil penalty, have a criminal summons or warrant issued against the violator. Upon conviction, the violator shall be subject to any criminal penalty the court may impose pursuant to NCGS 14-4.

Section 7. Remedies and Enforcement Procedure

In case any building is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building or land is used in violation of this Zoning Ordinance, the Zoning Administrator, or any appropriate Town of Cleveland authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction or mandamus, or other appropriate action or proceeding to prevent such violation.

(amended 12-14-09)

When the Zoning Administrator finds a violation of this ordinance, it shall be his duty to notify the owners or occupants of the land, building, structure, sign or use of the violation.

If the owner or occupant of such violation fails to take prompt corrective action, the Zoning Administrator shall give the owner written notice, by certified or registered mail, by personal services or by conspicuously posting notice of the violation on the property.

1. That the land, building, sign, structure or use is in violation;
2. The nature of the violation and citation of the section of the ordinance violated;
3. The measures necessary to remedy the violation.

Any owner or occupant who has received notice of violation may appeal the decision in accordance with the provisions of ARTICLE XI Section 10. *(added as amendment 10-11-04)*

ARTICLE XIII
STATUTORY IMPLEMENTATION
OF VESTED RIGHTS

Section 1. Purpose and Authority

The purpose of this Article is to implement a statutory zoning vested right. Pursuant to 160A-385.1 a land owner may obtain a statutory vested right after approval by the Town Board of the Town of Cleveland of a site specific development plan for group projects as given in Article VIII Section 6. *(added as amendment 10-11-04, amended 12-14-09)*

Section 2. Definitions

For the purpose of this article the following terms will have the meaning indicated.

LANDOWNER

Any owner of legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes at submitting a proposed site specific development plan.

SITE SPECIFIC DEVELOPMENT PLAN

A plan of land development submitted to the Town of Cleveland for the purpose of obtaining a zoning permit for a group development project as provided in Article VIII, Section 6.

PROPERTY

All real property subject to zoning regulations and restrictions of the Town of Cleveland.

STATUTORY VESTED RIGHT

The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

Section 3. Establishment of a Statutory Vested Right (amended 12-14-09)

The following conditions shall constitute the establishment of a statutory vested right for the purposes of this article:

1. A vested right shall be deemed established with respect to any property upon the valid approval of a site specific development plan for Group Developments pursuant to Article VIII Section 6.6. *(added as amendment 10-11-04)*
2. Approval of a site specific development plan by the Town of Cleveland may be subject to such terms and conditions as may be reasonably necessary to protect the public health, safety and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms will result in a forfeiture of vested rights.
3. The Town of Cleveland shall not require a landowner to waive a vested right as a condition of the development approval. *(amended 12-14-09)*
4. A site specific development plan shall be deemed approved upon the effective date of the approval of the site specific development plan for group projects by the Town Board. *(amended 12-14-09)*
5. A vested right obtained under this article is not a personal right, but shall attach to and run with the property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such rights.

Section 4. Duration of Vested Right

The time period in which a statutory vested right remains effective shall be determined by the following conditions.

1. A right which has been vested as provided for in this article shall remain vested for a period of two (2) years. This vesting shall not be extended by any amendments or modifications to a site specific development plan.
2. Following approval of a site specific development plan, nothing shall exempt such a plan from subsequent reviews and approval by the Town of Cleveland to ensure compliance with the terms and conditions of the original approval. The Town of Cleveland may revoke the original approval for failure to comply with applicable terms and conditions of the approval or zoning ordinance. *(amended 12-14-09)*
3. A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which

no valid building permit applications have been filed.

Section 5. Exceptions

A vested right once established as provided in this article, precludes any zoning action by a city which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approval site specific development plan, except:

1. With the written consent of the affected land owner.
2. Upon findings, by ordinance and after notice and public hearings, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as contemplated in the site specific development plan.
3. To the extent that the affected landowner receives compensation for all costs, expenses and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, all other architectural, planning, marketing, legal and other consultants fees incurred after approval by the Town of Cleveland, together with interest there or at the legal rate paid. Compensation shall not include any diminution in the value of the property which is caused by such action. *(amended 12-14-09)*
4. Upon finding, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Town of Cleveland of the site specific development plan. *(amended 12-14-09)*

Section 6. Applicability of Additional Requirements

The establishment of a statutory vested right shall not prevent the application of additional requirements by the Town of Cleveland. These additional requirements are allowed in the following situations.

1. The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type of intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the Town of Cleveland, including but not limited to, building, fire, plumbing, electrical and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property which is subject to a site specific development plan upon

the termination or expiration of the vesting right period provided for in this article. *(amended 12-14-09)*

2. Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change or impair the authority of the Town of Cleveland to adopt and enforce Zoning Ordinance provisions governing nonconforming situations or uses.
3. Nothing in this article shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right existing in a particular case or that a compensable taking has occurred. Except as expressly provided in this article, nothing in this section shall be construed to alter the existing common law.

ARTICLE XIV
AMENDMENTS

Section 1. Requirements to Amend Ordinance

This ordinance, including the zoning map, may be amended, supplemented, changed, modified or repealed from time to time, but no amendment shall become effective unless it shall have been proposed by, or shall first have been submitted to the Planning Board for review and recommendations. The Planning Board shall have thirty (30) days within which to submit its report. If the Planning Board fails to submit a report within the thirty (30) day period, the Town Board may proceed with its consideration of the amendment without the Planning Board's report. The Town Board is not bound by the recommendations, if any, of the Planning Board. *(added as amended 04-09-07, 02-12-18)*

Section 2. Application Requirement

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a special or conditional use district, or a conditional district, or other small-scale rezoning. *(added as amended 04-09-07)*

Section 3. Consistency with other Plans and Policies

The Planning Board shall advise on whether the proposed amendment is consistent with the Town of Cleveland's adopted comprehensive plan and any other applicable adopted plans. The Planning Board shall provide a written recommendation to the governing board that addresses consistency with these documents and any other matters deemed appropriate by the Planning Board. A comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board. *(added as amended 04-09-07, amended 12-14-09)*

The Town Board, prior to adopting or rejecting any amendment, shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. *(added as amended 04-09-07)*

Section 4. Public Hearing Notification

A public hearing shall be held by the Town Board before adoption of any proposed amendment to this ordinance. A notice for such hearing shall be given once a week for two (2) successive calendar weeks in a newspaper of general circulation in the Town of Cleveland, the notice to be published for the first time not less than ten (10) days or more than twenty-five (25) days before the date fixed for the hearing. In computing such period, the day of the publication is not to be included but the day of the hearing shall be included. *(added as amended 04-09-07, amended 12-14-09)*

Section 5. Mailing of Notices

Whenever there is a zoning classification action involving a parcel of land, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing shall be mailed a notice of the proposed classification by first class mail at the last addresses listed for such owners on the county tax abstracts. The person or persons mailing such notices shall certify to the Town Board that fact, and such certificate shall be deemed conclusive in the absence of fraud. This provision shall apply only when tax maps are available for the area to be zoned.

The mailing notice shall not be required if the zoning map amendment directly affects more than fifty (50) properties, owned by a total of at least fifty (50) different property owners, and the Town of Cleveland elects to use the expanded publish notice. This notification must meet the requirements of the public hearing notification as stated above and provide that each advertisement shall not be less than one-half (1/2) of the newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail as listed above. *(amended 12-14-09)*

Section 6. Notice on the Property

When a zoning map amendment is proposed, the Town of Cleveland shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Town of Cleveland shall post sufficient notices to provide reasonable notice to interested persons. *(added as amended 04-09-07, amended 12-14-09)*

Section 7. Conflicts of Interest

Members of appointed boards providing advice to the Town Board shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. *(added as amended 04-09-07)*

Also, no Town Board member shall vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. *(added as amended 04-09-07)*

ARTICLE XV
LEGAL STATUS PROVISIONS

Section 1. Conflict with Other Regulations

Whenever the regulations of this ordinance require a greater width or size of yards, courts or other open space, or require a lower height of buildings or lesser number of stories or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under other statutes or ordinances, the regulations and requirements of this chapter shall govern.

Whenever the provisions of any other statute or ordinance require more restrictive standards than are required by this chapter, the provisions of such statute or ordinance shall govern. Town Ordinance Section 81.04 Livestock & Poultry prohibits livestock within the Town limits. *(amended 12-9-14)*

Section 2. Validity

Should any section or provision of this chapter 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 3. Effective Date

This ordinance shall take effect and be in force from and after its adoption by the Town Board of the Town of Cleveland this 8th day of February, 1982. *(added as amendment 10-11-04) (Ordinance Amended 12-14-92, 4-12-93, 5-10-93, 9-12-94, 11-14-97, 7-10-95, 11-13-95, 1-13-97, 7-13-98, 3-8-99, 4-12-99, 6-14-99, 10-11-99, 11-08-99, 12-13-99, 5-8-00, 6-12-00, 8-14-00, 10-9-00, 04-09-01, 06-11-01, 08-11-03, 09-13-04, 10-11-04, 04-11-05, 11-07-06, 04-09-07, 12-14-09, 05-03-10, 02-03-11, 10-01-12, 04-01-13, 12-9-14, 10-12-15, 2-13-17, 8-14-17, 02-12-18, 12-10-18, 06-08-20)*