

TOWN OF LINDEN

ZONING ORDINANCE



Adopted by the Linden Board of Commissioners:

November 16, 2021

ARTICLE I ADMINISTRATIVE PROVISIONS

SECTION 1-101. INTENT AND PURPOSE.

An ordinance establishing zoning regulations in the Town of Linden, North Carolina and providing for the administration, amendment and enforcement of this ordinance and defining the duties and powers of a Board of Adjustment in accordance with the provisions of the North Carolina General Statutes.

The zoning regulations and districts as set forth in this ordinance have been made in accordance with a comprehensive land use plan and are designed to protect the public health, safety, and general welfare; to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to provide adequate light and air, to prevent the overcrowding of land; to avoid undue concentration of population; protect the quality of the environment, and to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements.

These regulations have been made with reasonable consideration, among other things, as to the character of each district and its peculiar suitability for particular uses and with a view to conserving the value of building and encouraging the most appropriate uses of land throughout the Town of Linden.

State Statute Reference: N.C. GEN. STAT., Chapter 160D

SECTION 1-102. TITLE.

This ordinance shall be known and may be cited as the “Linden Zoning Ordinance.”

SECTION 1-103. AUTHORITY.

The Linden Board of Commissioners, pursuant to the authority conferred by N.C. GEN. STAT. §160D-702 *et seq.*, does hereby adopt, approve, ordain, and enact into law this ordinance.

SECTION 1-104. JURISDICTION.

On and after November 16, 2021, this ordinance shall govern the use of all lands lying within the town including development, as well as floating homes over estuarine waters, and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12.

SECTION 1-105. APPLICATION.

The provisions of this ordinance shall be interpreted and applied as minimum requirements adopted for the promotion of the public health, safety, morals, convenience, order, prosperity, general welfare and protection of the property rights of the owners of land within the Town of Linden.

SECTION 1-106. ORDINANCE ADMINISTRATOR.

This ordinance shall be administered and enforced by the Linden Board of Commissioners with the day-to-day enforcement being the responsibility of the County Planning & Inspections Director (hereinafter "Director") or the Director's designee. This official or their representative shall have the right to enter upon the premises in any manner authorized by law as required to carry out the necessary duties for the fair and impartial enforcement of this ordinance. All questions arising in connection with enforcement and interpretation of this ordinance shall be presented first to the Code Enforcement Manager (hereinafter "Manager"). The Manager or Director shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination if different. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail the last address listed for the owner of the affected property on the county tax records and to the address provided in the request for a determination if different from the owner. If the Manager, after consultation with and the agreement of the Director, finds that they are not authorized to make a determination or judgement or that the question automatically falls within the jurisdiction of the Board of Adjustment, then the matter shall be referred to the board for review and decision in accordance with the provisions of Article XV.

SECTION 1-107. STAFF CONFLICT-OF-INTEREST.

No staff member of the Planning and Inspections Department shall make a final decision on an administrative decision required by this ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member of the Planning and Inspections Department shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this ordinance unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

SECTION 1-108. ZONING PERMIT.

A. Zoning Permit Required. It shall be unlawful to commence the excavation for or the construction of any building or other structure, including accessory structures, or to commence the moving, alteration or repair of any structure, or the use of any land or building, including accessory structures, until the Manager has issued a zoning permit for such work or use. Such permit shall include a statement that the plans, specifications for, and intended use of such land or structure, in all respects, conform to the provisions of this ordinance and the Linden Subdivision Ordinance. Application for a zoning permit shall be made in writing to the Manager on forms provided for that purpose. Zoning permits shall be void after six months from date of issue unless substantial progress on the project has been made.

B. Approval of Plans. The Manager shall review all applications for a zoning permit for any purpose regulated by this ordinance and the Linden Subdivision Ordinance for conformity with this ordinance and the Linden Subdivision Ordinance. To this end, every application for a zoning permit shall be accompanied by a plan or plat drawn to scale and showing the following in sufficient detail to enable the Manager to ascertain whether the proposed activity conforms to this ordinance and the Linden Subdivision Ordinance:

1. The actual shape, location and dimensions of the lot.
2. The shape, size and location of all buildings or other structures to be erected, altered or moved and of any building or other structures already on the lot.
3. The existing and intended use of all such buildings or other structures.
4. Such other information concerning the lot or adjoining lots as may be essential for determining whether the provisions of this ordinance and the Linden Subdivision Ordinance are being observed.

C. Issuance of Zoning Permit. If the proposed activity as set forth in the application conforms with the provisions of this ordinance and the Linden Subdivision Ordinance, the Code Enforcement Manager shall issue a zoning permit for such purpose. If any application for a zoning permit is not approved, the Manager shall state in writing on the application the cause for such disapproval. Issuance of a permit shall in no case be construed as waiving any provision of this ordinance or of the Linden Subdivision Ordinance and the Director reserves the right to rescind any zoning permit mistakenly issued in contravention of the provisions of this ordinance or of the Linden Subdivision Ordinance.

SECTION 1-109. CERTIFICATE OF OCCUPANCY REQUIRED.

No land or structure (except for signs) or part thereof hereafter erected, moved or altered in its use shall be used until the Code Enforcement Manager has issued a "Certificate of Occupancy" stating that such land, structure or part thereof conforms with the provisions of this ordinance and the Linden Subdivision Ordinance. Within three days after notification that a structure or premises or part thereof is ready for occupancy or use, it shall be the duty of the Manager to

make a final inspection thereof, and to issue a "Certificate of Occupancy" if the building or premises or part thereof conforms with the provisions of this ordinance and the Linden Subdivision Ordinance; or if such certificate is refused, to state the reason for the refusal in writing.

SECTION 1-110. BONA FIDE FARM EXEMPTION.

The provisions of this ordinance do not apply to bona fide farms or bona fide farming purposes as described and defined in N.C. Gen. Stat. §160D-903. This ordinance does not regulate croplands, timberlands, pasturelands, orchards, or other farmlands, or any farmhouse, barn, poultry house or other farm buildings, including tenant or other dwelling units for persons working on said farms, so long as such dwellings shall be in the same ownership as the farm and located on the farm. Residences for non-farm use or occupancy and all other non-farm uses are subject to the provisions of this ordinance.

SECTION 1-111. FEES.

Each applicant for a zoning amendment, text amendment, appeal of decisions of administrative officials, variance or special use permit shall pay a nonrefundable fee in accordance with a schedule adopted by the Cumberland County Board of Commissioners.

ARTICLE II

INTERPRETATIONS, CALCULATIONS AND DEFINITIONS

The interpretation of terms, methods of measurement, and definitions contained in this article shall be observed and applied when construing this ordinance, except when the context clearly indicates otherwise. Words not otherwise defined shall be construed and given their customary and ordinary meaning.

SECTION 2-201. INTERPRETATION OF COMMON TERMS AND WORDS.

For the purpose of interpreting certain words or terms contained within this ordinance, the following shall apply:

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

B. The word “shall” is always mandatory and not discretionary.

C. The word “may” is permissive.

D. The word “person” includes any firm, association, organization, partnership, corporation, trust or company, or any other legal entity, as well as an individual.

E. The word “lot” shall include the words “piece,” “parcel,” “tract” or “plot.”

F. The phrase “used for” shall include the phrases “arranged for,” “designed for,” “intended for” and “occupied for.”

G. Any reference to an “article” or “section” shall mean an article or section of this ordinance, unless otherwise specified.

H. The word “County” means County of Cumberland.

I. The word “town” means Town of Linden.

J. The word “County Planning Board” means Cumberland County Joint Planning Board.

K. Where any provision of this ordinance conflicts with any other provision of this ordinance, any other town regulation, or any local, State, or Federal law, the most restrictive provision will apply.

SECTION 2-202. METHODS OF CALCULATION.

The rules set out herein shall be used to enforce and apply this ordinance, unless such rules are inconsistent with specific criteria contained within an individual article or section. If a discrepancy

arises between the following methods and any specific section elsewhere in this ordinance, the standards of the section shall prevail.

A. Fractional Requirements. When any requirement of this ordinance results in a fraction of a unit, a fraction of one-half or more shall be considered a whole unit, and a fraction of less than one-half shall be disregarded. This provision shall not apply to district dimensional requirements.

B. Computation of Time. The time within which an act is to be completed shall be computed by excluding the first day and including the last day; if the last day is a Saturday, Sunday or legal holiday recognized by the town, that day shall also be excluded.

C. Calculations of Measurement. The spatial separations required by this ordinance shall be calculated as follows:

1. Distance. By drawing a straight line from the closest point on the perimeter of the exterior wall of the site being measured to the closest point of the property line in question.

2. Separation from a Use/Structure. By drawing a straight line from the closest point on the perimeter of the exterior wall, structure or bay to another structure, the property line, or a well or septic, as applicable.

3. Area. Multiplying the length times the width and then further calculate to provide total acreage or square footage.

SECTION 2-203. DEFINITIONS OF SPECIFIC TERMS AND WORDS.

All terms that are defined in N.C. Gen. Stat. Chapter 160D which are not defined in this ordinance shall have the meaning set out in N.C. Gen. Stat. Chapter 160D. In further amplification and for clarity of interpretation of the context, the following definitions of word usage shall apply:

Abutting/Contiguous: Having property or district lines in common, i.e., two lots are abutting if they have any portion of any property line in common. Lots are also considered to be abutting if they are directly opposite each other and separated by a street, alley, railroad right-of-way or stream.

Access: A way of approaching or entering a property. Access also includes ingress, the right to enter and egress, and the right to leave

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

A. Conducted or located on the same zoning lot as the principal building or use, or off-street parking, as specifically provided for in this ordinance.

B. Clearly incidental to, subordinate in area and purpose to, and serving the principal use; and

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

Administrative decision: Decisions made in the implementation, administration, or enforcement of development regulations that involves the determination of facts and the application of objective standards set forth in local government development regulations.

Agriculture: The production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in N.C. Gen. Stat. §106-581.1. The operation of any accessory uses shall be secondary to that of the normal agriculture activities.

Alley: A public or private right-of-way primarily designed to serve as a secondary access to the side or rear of those properties whose principal frontage is on a street and is not intended for general traffic.

Alter: To make any change, addition or modification in construction, occupancy or use.

Alternative Structure (regarding Telecommunication Facilities): A structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. Alternative structures include, but are not limited to, flagpoles, buildings, silos, water tanks, pole signs, lighting equipment, steeples, billboards and electric transmission towers. (Section 8-829)

Amusement Center: An establishment offering five or more amusement devices, including, but not limited to, coin-operated electronic games, shooting galleries, table games and similar recreational diversions within an enclosed building. (Section 8-822)

Ancillary Use: That which is commonly subordinate to or incidental to a principal or primary use – also see *Accessory Structure or Use*.

Antenna: Any exterior transmitting or receiving device that radiates or captures electromagnetic waves (excluding radar signals).

Apartment: A room or suite of rooms intended for use as a residence by a single household or family. Such a dwelling unit may be located in an apartment house, duplex, non-residential building or as an accessory use in a single home.

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

Bars & Nightclubs: Establishments including private clubs, a sports bars/clubs etc., that may be licensed to sell alcoholic beverages to be consumed on the premises and do not meet the criteria to be a restaurant.

Bed and Breakfast: A form of temporary/transient housing located within a residential structure and meals provided to overnight guests only. (Section 8-803)

Berm: Any elongated earthen mound designed or constructed to separate, screen or buffer adjacent land uses.

Billboard: See Section 12-1207, for all sign-related definitions.

Board of Adjustment: A quasi-judicial body whose establishment, powers, authority, and responsibility are described in detail in Article XV.

Board of Commissioners: The governing body of the Town of Linden.

Boarding House: A building other than a bed and breakfast, hotel, inn or motel where, for compensation, meals are served, and lodging is provided.

Bona Fide Farm: Any tract of land used for agricultural purposes as described and defined in N.C. Gen. Stat. §160D-903. (Section 1-109)

Buffer: An opaque fence, wall, hedge or other natural planting, or a combination thereof, which will restrict the view from adjoining streets and/or abutting properties.

Buildable Area (Buildable Envelope): The space remaining on a lot after the minimum open space requirements (yards, setbacks, etc.) have been met.

Building: Any structure used or intended for supporting or sheltering any use or occupancy.

Building, Principal (Main building and/or structure): A building in which the principal use is conducted for the lot on which it is situated.

Building, Temporary: A building used temporarily for the storage of construction materials and equipment incidental and necessary to on-site permitted construction of utilities, or other community facilities, or used temporarily in conjunction with the sale of property within a subdivision under construction.

Building Footprint: The portion of a lot's area that is enclosed by the foundation of buildings, plus any cantilevered upper floor, stoops, porches, chimneys, decks, etc.

Building Frontage: The linear foot of a building that runs approximately parallel to and faces public or private street(s).

Building Height: The vertical distance measured from the average elevation of the finished grade at the front of the building to the highest point of the building. Spires, cupolas, chimneys, antennae attached to a building, and/or projections from buildings or radio, TV, communications, telecommunication and water towers are not to be included in the calculations of building height.

Building Lot Coverage: The amount of net lot area or land surface area, expressed in terms of a percentage that is covered by all principal buildings.

Building Setbacks: The minimum distance from all property and/or right-of-way lines to the closest projection of the exterior face of buildings, walls or other forms of construction (i.e. decks, landings, terraces, and porches, etc.).

Cabin: A building used for occupancy containing sleeping units where the occupants are primarily transient in nature and meet the State Building Codes for a residential building.

Cabin, Open air: A building that has three walls consisting of at least twenty percent screened openings with a maximum height of 44 inches (1120 mm) above the finished floor to the bottom of the openings and has no heating or cooling system.

Call Center: A central building or office place where agents or operators man banks of telephones to either make outgoing, or field incoming telephone calls for a specific company or organization.

Camouflage: To disguise with paint or other aesthetic means so as to blend with the surrounding area.

Campground/RV Parks: Land upon which shelters (such as tents, cabins/open air cabins, travel trailers and recreational vehicles) are erected or located for temporary occupation by transients and/or vacationers. They may include such permanent structures and facilities as are normally associated with the operation of a campground. (Section 8-823)

Canopy, Marquee or Awning: A roof-like cover extending over a sidewalk, walkway, driveway or other outdoor improvement for the purpose of sheltering individuals or equipment from the weather. An awning is made of fabric or some flexible fabric-like substance. Canopies and marquees are rigid structures of a permanent nature.

Cemetery: As defined in Chapter 65, Article 9, of the General Statutes of North Carolina, any one or a combination of more than one of the following in a place used or to be used and dedicated or designed for cemetery purposes:

- A. Burial Park for earth internment.
- B. Mausoleum; or
- C. Columbarium.

Certificate of Occupancy: Official certification that a premise conforms to the provisions of this ordinance (and State Building Code) and may be used or occupied. Such a certificate is granted for new construction or for alterations or additions to existing structures or a change in use upon completion of the building or site final inspection. Unless such a certificate is issued, a structure cannot be occupied, but a certificate may be issued for a portion of a structure ready for occupancy, such as separate dwelling or commercial units in a structure with multiple units.

Change of Use: Changing the original purpose of the building to a different use or changing the lot configuration due to changed requirements (e.g., adding display or storage areas).

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

Club or Lodge (Private, Nonprofit, Civic or Fraternal): Non-profit associations of persons, who are bona fide, dues-paying members, which own, hire or lease a building, or portion thereof, the use of such premises being restricted to members and their guests. The affairs and management of such “private club or lodge” are conducted by a board of directors, executive committee or similar body chosen by the members. It shall be permissible to serve food and meals on such premises provided that adequate dining room space and kitchen facilities are available. The sale of alcoholic beverages to members and their guests shall be allowed provided it is secondary and incidental to the promotion of some other common objective of the organization, and further provided that such sale of alcoholic beverages is in compliance with applicable Federal, State and local laws. (Section 8-805)

Code Enforcement Manager: The County Planning & Inspections Department’s Code Enforcement Manager is the County employee assigned to this position that is charged with the day-to-day interpretation and enforcement of this ordinance.

Conditional Zoning: A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment. (Article V)

Conservancy Organization: Any legally established incorporated entity, whether for profit or non-profit, whose primary mission is dedicated to the protection of the environment and natural resources.

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

medical supervision. A major factor that distinguishes convalescent homes is that the residents will require the individualization of medical care. (Section 8-819)

Convenience Container and Recycling Facility: A County-owned, -leased or -operated site, generally two acres or less in size, serving the surrounding community for the temporary collection, storage and transference of solid waste, yard waste and recyclables. (Section 8-806)

Day Care Facility: A building or dwelling regularly used for recreational or supervisory care of nine or more persons (adults or children), not including the operator's own family members, during any 24-hour period. It does not matter where it is located, whether the same or different persons attend and whether or not it is operated for profit. The following are not included: public schools; nonpublic schools, as described in N. C. GEN. STAT. §110-86(2); summer camps having children in full-time residence; summer day camps; specialized activities or instruction such as athletics, clubs, the arts, etc.; and bible schools normally conducted during vacation periods. (Section 8-807)

Density: The average number of families, person, housing units or buildings per unit of land. For purposes of this definition, public utility easements for sub-stations shall not count toward density.

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

Director: See *Planning and Inspections Director*.

Driveway: A private access way, the use of which is limited to persons residing, employed or otherwise using or visiting the parcel in which it is located.

Dwelling: A building that contains one or more dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

Dwelling, Multiple Family: A residence designed for or occupied by two or more families consisting of two or more dwelling units.

Dwelling, Single Family: A detached residence designed for or occupied by one family one and consisting of one dwelling unit.

Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Easement: A right given or reserved by the owner of land for specific limited use of that land.

Façade: The exterior walls of a building which is adjacent to or fronting on a public right-of-way or other public area; typically the front of a building, but also includes any side or rear of a building facing a public right-of-way or other public area.

Family: One or more persons occupying a single housekeeping unit and using common cooking facilities, provided that, unless all members are related by blood, marriage or adoption, no such family shall contain over five persons. The presence of household employees or children in foster care shall not disqualify any premises otherwise satisfying the above rules.

Fences or Walls: A tangible barrier constructed of any allowable material erected for the purpose of providing a boundary or as a means of protection, or to prevent uncontrolled access, or for decorative purposes (such as ornamental gate or ornamental gates), or to screen from viewers in or on adjoining properties and streets, materials stored and operations conducted behind it.

Fences or Walls, Solid: A solid fence or wall is defined as one in which the openings through which clear vision and the free passage of air from one side to the other does not exceed 25 percent of the fence or wall. All others are open fences or walls.

Flea Market: Sales area (indoors or outdoors) in which space is set aside or rented, and which is intended for use by one or more individuals to sell a variety of articles. (Section 8-825)

Floor Area, Gross: The total area of a building measured by taking the outside dimensions of the building at each floor level.

Floor Area, Net: The horizontal area of each floor of a building or structure; excluding those areas not directly devoted to the principal, incidental, or accessory use, such as: storage areas, stairwells, elevators, closets, restrooms, maintenance rooms, hallways, and similar areas.

Food Sales/Grocery Stores: Stores specializing in the sale of foodstuffs as its principal business with incidental sales of household supplies.

Garage, Commercial: Any building or premises, except those described as a private or parking garage, used for the storage or care of motor vehicles, or where any such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

Garage, Private: An accessory building or portion of a building permitted in any district allowing residential uses, providing for the storage of private motor vehicles used by the occupants of the principal building, and in which no business, occupation or service for profit is in any way conducted, except in an approved home occupation.

Governmental Use: A building, structure or facility owned and operated or occupied by a unit of local government of the State, including but not limited to a municipality, any agency of the State, the United States or any State thereof, or any Indian tribe recognized as such by the federal

government. This definition does not include any utility, whether owned and/or operated by any public or private agency.

Group Development: A group of two or more principal uses, structures, or dwelling units occupying, built on, or intended to occur on a single lot, tract, or parcel of land. (Linden Subdivision Ordinance)

Group Home: A home with support and supervisory personnel, some or all of whom are nonresident, that provides room and board, personal care and habilitation services in a residential environment to not more than six resident handicapped persons 24 hours a day, seven days a week. (Section 8-810)

Group Quarters: A building or group of buildings, which houses more than two persons in other than a traditional family setting. Housing may be in individual rooms or communal rooms with bathroom facilities and other common use areas. Housing may be free of charge or with a fee (monetary or service). This definition shall not include foster care homes, therapeutic foster care homes or other uses specifically listed in Section 4-403, Use Matrix, i.e., group homes and residential habilitation support facilities. It does include, but is not limited to, rooming/boardng houses, dormitories, children's homes, religious quarters, membership lodgings, halfway houses, alcohol and drug abuse centers, homeless shelters and hospice facilities. (Section 8-811)

Halfway House: An establishment whose primary purpose is the rehabilitation of persons. Such services include drug and alcohol rehabilitation and rehabilitation for prison parolees and juveniles. This shall not include facilities defined and licensed as "group homes." Halfway houses will be regulated as "group quarters." (Section 8-811)

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

Highway Plan: A plan formally known as "Fayetteville Area Metropolitan Planning Organization Highway Plan" that provides and defines a functional system of streets permitting travel from origins to destinations with directness, ease and safety. Different streets in this system are designed and called on to perform specific functions, thus minimizing the traffic and land service conflict.

Home Occupation: Any occupation or profession carried on entirely within a dwelling or accessory building on the same lot by one or more occupants thereof. (Section 9-902.A)

Hotel/Motel: A building or other structure kept, maintained, advertised as or held out to the public to be a place where sleeping accommodations are supplied for pay to transient or permanent guests or tenants and where rooms are furnished for the accommodation of such

guests. Entry to sleeping rooms may be from the interior or exterior of the building. Food may be served in dining rooms, restaurants or cafes, which may be located in the same building as the sleeping rooms or may be in one or more separate buildings.

Junk Yard: Any area in whole or in part, where waste or scrap materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including but not limited to, scrap iron and other metals, paper, rags, vehicles, rubber tires and bottles. A “junk yard” includes a motor vehicle wrecking yard but does not include uses established entirely within enclosed buildings. It also includes residential outside storage of the above items. (Section 8-817)

Kennel: Any premises where four or more dogs which are five months old or older are kept permanently commercially or as pets, excluding pet grooming shops, veterinary clinics and veterinary hospitals. (Section 912)

Land, Gross Area: The square footage of all the area included within the external boundary of the property to be developed excluding existing public streets and railroad rights-of-way.

Land, Net Area: The land area required to meet the minimum dimensional zoning district standards as required by this ordinance.

Lateral Access: The provision of ingress and egress between adjoining or abutting current or future non-residential uses to facilitate the circulation of vehicular traffic between those uses and designed to relieve traffic congestion, provide protection from through traffic, and limit individual driveway access along public rights-of-way.

Linden Subdivision Ordinance: The Linden Subdivision Ordinance is a technical ordinance which governs the division and development of property located within the jurisdictional boundary of the Town of Linden.

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

Lot: A parcel of land occupied or intended for occupancy, by a main building or group of main buildings together with any accessory buildings, including such yards, open spaces, width, and area as are required by this ordinance, either shown on a plat of record or described by metes and bounds and recorded with the Register of Deeds.

Lot, Corner: A lot abutting the intersection of two or more streets in which access has not been denied, or a lot abutting on a curved street or streets, which streets have an angle of intersection of not more than 135 degrees.

Lot, Depth: The depth of a lot is the average distance between the front and back lot lines excluding street rights-of-way.

Lot, Flag: A lot where the main body of the lot is separated from the street giving access to the property, but which has an included strip of land at least 20 feet in width connecting the lot to the street, thus providing lot access.

Lot, Frontage: The linear feet of property measured along the property line that abuts a public street. On a private street the distance is measured along the right-of-way line adjoining the street.

Lot, Interior: A lot other than a corner lot.

Lot, Through: A lot, other than a corner lot, having frontage on at least two parallel or approximately parallel streets.

Lot Lines: The lines bounding a lot. Where a lot of record includes a public street right-of-way, the lot lines are presumed not to extend into the right-of-way.

Lot of Record: A lot which is a part of a subdivision, a plat of which has been recorded in the office of the Cumberland County Register of Deeds, or a lot described by metes and bounds, the description of which has been recorded in the office of the Cumberland County Register of Deeds and, if applicable, meets all requirements of the Linden Subdivision Ordinance.

Lot Width: The straight-line distance between the points where the building setback line intersects the two side lot lines.

Manager: See *Code Enforcement Manager*.

Manufactured Home: A manufactured building designed to be used as a single-family dwelling unit, which has been constructed and labeled indicating compliance with the HUD administered National Manufactured Housing Construction and Safety Standards Act of 1974, as amended. (Section 8-814)

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

A. The manufactured home has a length not exceeding four times its width, with length measured along the longest axis and width measured at the narrowest part of the other axis.

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

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

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

E. The manufactured home is set up in accordance with the standards set by the North Carolina Department of Insurance and a continuous permanent masonry foundation, or permanent masonry curtain wall, un-pierced except for required ventilation and access, is installed under the manufactured home.

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

G. The moving hitch, wheels and axles, and transporting lights have been removed.

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

Manufactured Home, Class C: Any manufactured home that does not meet the definitional criteria of a Class A or Class B manufactured home. (Section 8-814)

Manufactured Home Park: A multi-family development on any site or tract of land with more than two spaces intended to be occupied by manufactured homes, regardless of whether a charge is made for such services. Manufactured home parks may include recreational facilities and other incidental structures necessary to support the residents of the park. (Linden Subdivision Ordinance)

Manufactured Home Space: A plot of land within a manufactured home park designed for the accommodation of one manufactured home. (Linden Subdivision Ordinance)

Mini-Warehouse/Storage Facilities: A building, or group of buildings, in a controlled access and/or fenced compound that contains varying sizes of individual, compartmentalized and controlled access stalls or lockers for the dead storage of a customer's personal property, goods or wares. No sales, service, or repair activities other than the rental of dead storage units are permitted on the premises.

Mixed Use: A single building containing more than one type of land use where the residential use occupies no more than 40 percent of the total building floor area and the non-residential use occupies a minimum of 60 percent of the total floor area or a single development of more than one building and use with the different types of land uses in close proximity, planned as a unified complementary whole, and functionally integrated to the use of shared vehicular and pedestrian access and parking areas. (Section 8-816)

Mobile Storage Units: Self-contained portable units designed to be temporarily placed on a lot for the purpose of loading and/or unloading the contents, with the unit being transported to and stored at a permanent storage facility. (Examples include: Pods, U-pack, Mini-Mobile, etc.)

Modular Structure: A manufactured structure designed for year-round residential or commercial use, with major components or modules pre-assembled and transported to a site for final assembly, foundation, construction, and utility connection. Such structures must meet all requirements of the North Carolina State Building Code and must have attached a North Carolina Validating Stamp.

Motor Vehicle: A machine designed or intended to travel over land or water by self-propulsion or while attached to a self-propelled vehicle, except that said definition shall not include a “manufactured home” or “mobile home” as defined in County Health Department regulations, the Linden Subdivision Ordinance, and this ordinance.

Motor Vehicle Parking Lot: An area or plot of land used for, or designated for, the short-term parking of serviceable motor vehicles, either as a principal use or as an accessory use.

Motor Vehicle Parking Lot, Commercial: A tract of land which is used for the storage of legally licensed, insured and registered motor vehicles, not accessory to any other use on the same or any other lot, and which contains parking spaces rented to the general public or reserved for individuals by the hour, day, week, or month.

Motor Vehicle Parking, Off-Street: A parking space located outside of a street right-of-way.

Motor Vehicle Parking Space: An area of not less than 20 feet in length and nine feet in width for one automobile, plus the necessary access space.

Motor Vehicle Storage Lot: A plot of land used for the open storage of vehicles, which does not meet the definition of a junkyard or motor vehicle parking lot.

Municipal Influence Area: Areas within the County that are assigned to a specific municipality where that municipality’s development standards shall be applicable. The official Municipal Influence Area Map is filed with the appropriate municipality’s Clerk and the Clerk to the County Commissioners and maintained by the Joint Planning Board.

Nonconforming Lot: A lot existing at the effective date of this ordinance or any amendment to it that was created in compliance with the Linden Subdivision Ordinance in effect at the time of lot creation and that does not meet the minimum area or lot width or depth requirements of the district in which the lot is located.

Nonconforming Structure: An existing structure that does not comply with the intended use or dimensional requirements of this ordinance for the district in which it is located either at the effective date of this ordinance or as a result of subsequent amendments thereto.

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

Nuisance: Anything that unreasonably interferes with the use or enjoyment of property, endangers personal health or safety, or is offensive to the senses.

Obscene Matter: Any item with a context of a sexual nature depicting, describing or related to anatomical areas and sexual activities.

Obstruction: Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in this ordinance.

Open Space: The land used for recreation, natural resource protection, amenities and/or buffer areas. Open space may include, but is not limited to, walkways, recreation areas, playgrounds, wooded areas, greenways and watercourses.

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

Personal Property: Property owned, utilized, and maintained by an individual or members of the common residence and acquired in the normal course of living in or maintaining a residence. It does not include merchandise that was purchased for resale or obtained on consignment.

Planning and Inspections Department/Planning and Inspections Staff (County Planning Staff): The County agency that is contracted with the town for planning services and is responsible for and tasked with planning and land use matters for the town and the surrounding area.

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

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

Plat/Plan: A map, usually of land which is to be or has been subdivided, showing the location, boundaries, and ownership of properties; the location, bearing and length of every street and alley line, lot line and easement boundary line; and such other information as may be necessary to determine whether a proposed subdivision or development meets all required standards of this ordinance, the Linden Subdivision Ordinance, and other applicable ordinances.

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

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

Public Utility Station: A structure or facility used by a public or quasi-public utility agency to store, distribute or generate electricity, gas, communications and related equipment or to pump or chemically treat water. This does not include storage or treatment of sewage, solid waste or hazardous waste.

Public Water and/or Sewer: Municipal, sanitary district, community, and privately-owned water and/or sewer systems as regulated and controlled by the North Carolina Utilities Commission, North Carolina State Board of Health, North Carolina Department of Environmental Quality and the County Health Department.

Public Way: Any street, alley or similar parcel of land, which is deeded, dedicated or otherwise permanently appropriated to the public for public use.

Quasi-Judicial: A hearing where the decision is involving the finding of facts regarding a specific application of this ordinance and the exercise of discretion when applying the standards of this ordinance. Quasi-judicial decisions include decisions involving variances, special use permits and appeals of administrative determinations.

Recreation, Indoor: An establishment providing completely enclosed recreation activities. Accessory uses shall be permitted to include the preparation and serving of food and/or the sale of equipment related to the enclosed uses. Included in this definition shall be bowling, roller-skating or ice-skating, billiards, pool, motion picture theatres and related amusements. (Section 8-822)

Recreation, Outdoor: An area free of buildings except for restrooms, dressing rooms, equipment storage, maintenance buildings, open-air pavilions and similar structures used primarily for recreational activities. (Section 8-822)

Recreation, Outdoor (with mechanized vehicle operations): An area or establishment, which requires the use of motors or engines for the operation of equipment or participation in the activity. This definition includes but is not limited to go-cart tracks, bicycle motor cross (BMX) courses and the like. This definition does not include golf courses (golf carts) or other low impact motorized activities or vehicles.

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

Recreational Vehicle Park: See “Campground/RV Park” above.

Religious Worship Activity: Any premises, the principal purpose of which is religious worship and in which the principal structure is the principal place of worship. Accessory uses may include without charge religious education classrooms, assembly rooms, kitchen, library room or reading room, recreation hall and a one-family dwelling unit (parsonage) but excluding day care facilities, food sales, second hand shops, festivals, bazaars and facilities for residence or training of religious orders, unless otherwise authorized by the ordinance.

Residential Habilitation Support Facility: A day care home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment to more than six resident handicapped persons. (Section 8-824)

Restaurant: An eating establishment, including cafeterias, cafes, grills, fast-food establishments, etc., that has gross receipts from food sales and non-alcoholic beverage sales of at least 30 percent of the total gross receipts including alcoholic beverage sales. This definition does not include those uses regulated by Section 8-826.

Right-of-Way: An area owned and maintained by the town, other municipality, the State of North Carolina, a public utility, a railroad or a private entity for the placement of such utilities and/or facilities for the passage of vehicles or pedestrians, including roads, pedestrian walkways, utilities or railroads.

Setback: The distance or separation between every structure with other structures, whether on the same or separate lots, and every structure and the lot lines of the lot on which it is located as required by this ordinance and/or the Linden Subdivision Ordinance.

Sexually Oriented Business: Any business or enterprise that has as one of its principal business purposes or as a predominant purpose of its business an emphasis on matter and conduct depicting, describing or related to anatomical areas and sexual activities specified in N.C. GEN. STAT. §14-202.10. (Section 8-826)

Shopping Center: A group of retail and other commercial establishments that is planned and designed for the site on which it is built, functioning as a unit, with common entrance ways, off-street parking, landscaped areas, and pedestrian paths provided on the property as an integral part of the unit.

Sign: See Section 12-1202 for all sign-related definitions.

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

Site-Specific Vesting Plan: A plan used to determine development vested rights. This plan can include, but is not limited to, a subdivision plat, a site plan, a preliminary or general development plan, a special use permit or any other development approval as recognized by the town.

Special Use: Those uses for which a permit is required for the proposed activities which are essentially compatible with other uses or activities permitted in a zoning district, but which present unique challenges or possess unique characteristics, or qualities that require comprehensive review at a public hearing by the Linden Board of Adjustment and which may be allowed only after the findings of fact and the imposition of reasonable conditions. (Section 15-1506)

Special Use Permit: A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgement and discretion be exercised as well as compliance with specific standards. (Section 15-1506)

Street: A public or private thoroughfare which affords the principal means of access to abutting property, including avenue, place, way, drive, lane, boulevard, highway, road and any other thoroughfare, except an alley.

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

Street, Private: Any road, street, or alley which is not publicly owned and maintained and is used for access by the occupants of the development, their guests, and the general public. (This does not include neighborhood public roads, cart paths and ingress/egress easements.) Requirements for private streets are in the Linden Subdivision Ordinance.

Street, Public: A dedicated, and accepted for maintenance purposes, public right-of-way for vehicular traffic that affords the principal means of access to abutting properties.

Structure: That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in a permanent manner.

Subdivision: All divisions of a less than ten acre tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development, whether immediate or future, with certain modifications as more particularly defined in the Linden Subdivision Ordinance.

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

Swimming Pool, Public: Any swimming pool that does not meet the definition of “Private, Swimming Pool” located above. The County Health Department also regulates public swimming pools.

Temporary: A permit or event for a limited period of time.

Tower: Any fabricated structure or device including, but not limited to, relay stations for commercial operations, such as cable television, telecommunication, radio, television stations and the operation of such uses. “Tower” shall not include structures that support antennae or similar devices that support or facilitate HAM radio or Citizen Band communication. (Section 8-829)

Townhouse: A single structure on its own separate lot containing one dwelling unit that occupies space from the ground to the roof and is attached to one or more other dwelling units by at least one common wall.

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

Unit: A use, group, structure, or other entity regarded as an elementary structural or functional constituent of a whole.

Variance: A variance is a relaxation of the terms of this ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. (Section 15-1505)

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

Yard, Front: An area of which the width is measured the entire length of the front property line between the side property lines; and the depth is measured as the distance between the street right-of-way or property line and the required front setback line.

Yard, Rear: An area of which the width is measured the entire length of the rear property line between the side property lines; and the depth is measured as the distance between the property line and the required rear setback line.

Yard, Side: An area extending from the required front setback to the required rear setback, or to the front or rear property lines where no front or rear setback is required by the provisions of this ordinance, the minimum and average dimensions of which are determined by the standards of property development of the zoning district in which such lot is located.

Yard Sale: All general sales open to the public, conducted from or in an area that is residentially zoned or residentially used for the purpose of disposing of personal property including, but not limited to, all sales entitled “garage,” “lawn,” “yard,” “attic,” “porch,” “room,” “backyard,” “patio,” or “rummage sale.”

Zero Lot Line Development: A single development including, but not limited to, patio houses, townhouses, condominiums, businesses, individual lots and including one or more structures comprising at least two individual lots, dwelling units, or businesses, whether attached or detached, intended for separate ownership and developed in accordance with the standards of the Linden Subdivision Ordinance.

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

Zoning District: Areas established by this ordinance where the individual properties are designed to serve compatible functions and are to be developed at compatible scales.

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ARTICLE III ZONING DISTRICTS

SECTION 3-301. ESTABLISHMENT OF DISTRICTS.

For the purpose of this ordinance, the areas shown on the town's zoning map are divided into the following general classes of districts.

SECTION 3-302. CONSERVANCY DISTRICT.

Conservancy District (CD). This district is designed to preserve and protect identifiable natural resources from urban encroachment. The general intent of the district is to provide open area uses for such resource areas that will continue to provide limited development potential while preserving existing conditions to the extent feasible. Areas to be zoned in this district shall be identifiable as swamp, marsh, flood land, poor or very severe soils areas or managed and unmanaged woodland on USGS (Geological Survey) maps, soil maps prepared by the USDA (Department of Agriculture) Soil Conservation Service or other appropriate sources and on file in or accessible by the County Planning and Inspections Department.

SECTION 3-303. *Reserved for future use.*

SECTION 3-304. RESIDENTIAL DISTRICTS.

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

A. R40 Residential District. A district designed primarily for single-family dwelling units with a lot area of 40,000 square feet or above.

B. R15 Residential District. A district designed primarily for single-family dwelling units with a lot area of 15,000 square feet or above.

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

SECTION 3-305. PROFESSIONAL DISTRICT.

Office and Institutional (O&I). This district is designed primarily for agencies and offices rendering specialized services in the professions, finance, real estate and brokerage, as well as both public and private institutional functions, public assembly, religious and certain cultural and recreational activities and group housing. The uses in this district classification may be characterized generally as having no retail or wholesale trade, except as incidental use. The district is often situated between business and residential areas and may also consist of a mix of limited business and residential uses. The regulations are designed for maintaining more compatibility with nearby residential districts than a commercial district would provide. To promote the essential design features with the O&I district, plan approval is a requirement.

SECTION 3-306. COMMERCIAL DISTRICT.

Commercial District (C). This district is established and intended to accommodate a diverse range of retail, service and office uses that provide goods and services serving the residents and businesses in the community at large. The district is typically located along major rights-of-way and along growth corridors. Residential uses are encouraged on the upper floors of nonresidential establishments. To promote the essential design features within the commercial district, plan approval is a requirement.

SECTION 3-307. INDUSTRIAL DISTRICT.

Industrial District (M). This district is designed for a wide variety of industrial operations involving manufacturing, processing and fabrication of materials, operations involving wholesaling and bulk storage, other non-retail uses and certain public assembly and recreational uses. The general intent of the district is to prohibit residential uses of the land. By their nature, the uses permitted in this district are generally not compatible with residential or shopping center uses. To promote the essential design features with the industrial district, site plan approval is a requirement.

SECTION 3-308. CONDITIONAL ZONING DISTRICTS.

Each district includes a companion Conditional Zoning District (e.g. C has C/CZ) where no uses are permitted by right. This district is designed for the development and use of the property subject to predetermined ordinance standards and rules imposed as part of the legislative decision creating the district and applying it to the particular property. (Article V)

SECTION 3-309. Reserved for future use.

SECTION 3-310. ZONING DISTRICTS MAP.

All the territory included in the town is classified into one or more zoning districts and the boundaries of each of these districts are hereby adopted as shown on a map in digital format, which is to be considered a part of this ordinance and entitled "Zoning Map, Linden, North Carolina." The zoning map and all the notations, references and all amendments thereto, and other information shown thereon are made a part of this ordinance, the same as if such information set forth on the map were all fully described and set out in this ordinance. The zoning map is a public record and shall be kept on file with the County Planning and Inspections Department, where it shall be available for inspection by the public.

Regardless of the existence of purported copies of the zoning map, which may from time to time be made or published, the zoning map on file with the County Planning and Inspections Department and amendments thereto, as entered in the minutes of the Linden Board of Commissioners, shall be the final authority as to the current zoning status of lands, buildings, and other structures in the zoning districts.

SECTION 3-311. INTERPRETATION OF DISTRICT BOUNDARIES.

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

A. Extension of Lines. Where such district boundaries are indicated as approximately following a street or railroad rights-of-way, alley lines and lot lines, or extensions of such lines, those shall be considered to be such boundaries. Where district boundaries are indicated as approximately following the centerline of streambeds or riverbeds, or such centerlines extended, such centerlines shall be considered to be such boundaries.

B. Un-Developed Property. For un-developed property or where a district boundary divides a lot, the location of such boundary, unless the same is indicated by dimensions shown on the map, shall be determined by the use of the scale of the map.

C. Jurisdiction After Annexation. When any portion of the territory subject to this ordinance as shown on the zoning map has been annexed into the corporate limits of the town, such area or areas shall remain subject to the provisions of the previous jurisdiction's regulations for a maximum period of 60 days thereafter, or until such time that the area or areas are subject to the town regulations (initial zoning), whichever occurs first.

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ARTICLE IV PERMITTED, CONDITIONAL AND SPECIAL USES

SECTION 4-401. GENERAL.

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

Permitted uses in the various districts are indicated in the appropriate column of the following matrix. Special Uses, with Board of Adjustment approval and issuance of the Special Use Permit are also indicated in the matrix. All proposed non-residential uses, including changes in an existing use, require site plan review and approval and shall be in compliance with the standards of this ordinance and the Linden Subdivision Ordinance.

SECTION 4-402. USES BY RIGHT.

All legal uses of property are allowed as a use by right except where this ordinance specifies otherwise or where this ordinance specifically prohibits the use. In the event, a use of property is proposed that is not addressed by the terms of this ordinance, the minimum ordinance standards for the use addressed by this ordinance that is more closely related to the land use impacts of the proposed use shall apply. In addition, the Mayor, the Linden Board of Commissioners, or the Ordinance Administrator may initiate a text amendment addressing such proposed use, provided that the drafting and adoption of said amendment will not cause delay in the permitting of the proposed use.

SECTION 4-403. USE MATRIX.

The matrix on the following pages indicates Permitted and Special uses.

Section 4-403. Use Matrix.

Linden Zoning Ordinance P = Permitted Use¹ S = Special Use (Board of Adjustment Approval Required)								
Land Uses		Zoning Classification						
		CD	R40	R15	R7.5	O&I	C	M
Accessory uses incidental to any permitted use		P	P	P	P	P	P	P
Agricultural or rural farm use		P	P	P	P			
Assemblies (including assembly hall, armory, stadium, coliseum, community center, fairground activities)			S	S	S	P	P	
Auction sales (excluding livestock auctioning & motor vehicles)							P	
Auction sales (including livestock auctioning & motor vehicles)								P
Bakery production with or without wholesale sales								P
Baking, on-premises, and retail only							P	
Bank, savings and loan company and other financial activities						P	P	
Barbering/Hairdressing							P	
Bars & night clubs, not regulated by Sec. 8-826							P	
Bed and breakfast (Sec. 8-803)			P	P	P			
Billboards								P
Bingo							P	
Borrow source operations			S					P
Bottled gas distributing, bulk storage								P
Bottling								P
Building supply							P	P
Bus station activities (terminal activities)							P	
Cabinet making and other woodworking							P	P
Call center							P	P
Cemetery, public			S				P	

	CD	R40	R15	R7.5	O&I	C	M
Club or lodge not regulated under Sec. 8-826					S	P	
Convenience container recycling facility (8-806)		S				P	P
Convenience store						P	
Crematorium							P
Day care facility (8-807)		S	S	S	P	P	
Dry cleaning/laundry, commercial						P	
Dwelling, multiple and/or single family		P	P	P	p ²	p ²	
Farm supplies & machinery, sales and servicing						P	P
Fire station operations/emergency services (8-818)		P	P	P	P	P	P
Fish hatchery	P						P
Food production, with on premises retail sales of product						P	
Food processing and/or production, including wholesale							P
Funeral home, including incidental crematorium						P	
Group homes, six or less clients (8-810)		P	P	P			
Group quarters		S	S	S			
Home occupation (incidental)		P	P	P	p ²	p ²	
Hotel/Motel						P	
Industrial operations not otherwise prohibited							P
Industrial sale of equipment or repair service							P
Kennel (8-813)		S				P	
Laboratory operations, research, medical or dental						P	P
Library (8-818)		P	P	P	P	P	
Locksmith, gunsmith						P	P
Machine tool manufacturing or welding							P
Manufactured home, Class A for residential occupancy		P	P	P			
Manufactured home, Class B for residential occupancy		P	P	P			

Manufactured home park including Class C manufactured homes approved under Sec. 8-814, but excluding any manufactured homes sales (Linden Sub Ordinance)				P			
	CD	R40	R15	R7.5	O&I	C	M
Manufactured home sales						P	
Mini-warehousing (self-storage facility) w/no outside commercial storage of motor vehicles						P	
Mini-warehousing (self-storage facility) including outside commercial storage of motor vehicles							P
Mixed use building (8-816)					P	P	P
Monument sales & works, manufacturing							P
Motor vehicle parking lot (commercial)						P	P
Motor vehicle rentals						P	
Motor vehicle repair and/or body work, excluding commercial wrecking/dismantling/storage of junk vehicles						P	P
Motor vehicle sales, new and used						P	P
Motor vehicle service station operations & washing						P	P
Motor vehicle storage yard (operational vehicles)							P
Motor vehicle wrecking yards, including sales of parts, and junkyards (8-817)							S
Municipal building and activities					P	P	
Nursery operations/plant husbandry/greenhouses (8-818)		S				P	P
Nursing home/convalescent home/hospital/retirement home, etc. (8-819)		S	S	S	P	P	
Office uses, no on-premises stock of goods for sale to the general public and the operations and services are customarily conducted inside and concluded by means of written, verbal or mechanically reproduced communications					P	P	
Office uses, of a doctor, dentist, osteopath, chiropractor, optometrist, physiotherapist, or other medically oriented profession or clinic		P			P	P	
Printing and reproduction						P	P
Public utility stations or substations (8-818)	P	P	P	P	P	P	P

Public utility works, shops or storage yards (8-820)							P
Publishing							P
Radio or television studio activities only					P	P	
	CD	R40	R15	R7.5	O&I	C	M
Railroad yard operations							P
Recreation/amusement indoor (conducted inside building for profit, not otherwise listed & not regulated) (8-822)						P	
Recreation/amusement outdoor (conducted outside Building for profit, not otherwise listed & not regulated) (8-822)		S			S	P	
Recreation/amusement outdoor, mechanized vehicle Operations (8-822)						P	
Recreation/amusement public/private (not operated as a Business for profit including playgrounds, neighborhood Center buildings, parks, museums, swimming pools, etc., & not otherwise listed) (8-822)		S	S	S	P	P	
Recreation vehicle park and/or campgrounds (8-823)		S				P	
Religious worship activities		P	P	P	P	P	P
Residential habilitation support facilities (8-824)		S			P	P	
Restaurants, except as regulated by Sec. 8-826						P	
Retailing or servicing with operations conducted and Merchandise stored entirely within a building and not Otherwise listed herein; and including the repair, rental or servicing of any product the retail sale of which is an allowed use in the same district						P	
Sanitarium					P	P	
Sawmill or planing activities							P
School, business and commercial for trades, vocational, fine arts and nurses or other medically oriented profession					P	P	P
Schools, public and/or private (elementary or secondary)		P	P	P	P	P	
Seasonal sales establishments	P					P	
Secondhand sales, pawn and flea markets (8-825)						P	
Sexually oriented businesses							S

Special informational signs	S	S	S	S	S	S	S
Storage: flammable, open and/or warehouse							P
Swimming pools, incidental to a principal use		P	P	P	P	P	P
	CD	R40	R15	R7.5	O&I	C	M
Theater productions, indoor or outdoor, which show only films previously submitted to & rated by the Motion Picture Association of America & not including theaters regulated by Sec. 8-826						P	
Tobacco processing & sales warehouse							P
Towers (8-829)	S	S	S	S	S	P	P
Trades contractor activities						P	P
Trailer rentals, including terminal activities, hauling and/or storage, incidental to same, but excluding mini warehousing as defined herein						P	P
Truck terminal activities, repair and hauling or storage						P	P
Vending machines operations (with outside storage), not including incidental individual vending machines						P	P
Veterinarian		P			P	P	
Warehousing, distribution and/or wholesale sales with operations conducted and merchandise stored entirely within a building and not otherwise listed, not including mini warehousing							P

¹All non-residential permitted uses require Board of Commissioners' site plan approval.

²Second floor and above only.

ARTICLE V

COMPANION DISTRICTS- CONDITIONAL ZONING DISTRICTS

SECTION 5-501. GENERAL

The Conditional Zoning districts set forth herein are authorized by N.C. Gen Stat. §160D-703 and are intended to modify the uses to which the parallel zoning district is restricted. Generally, an applicant, by seeking to rezone property to a Conditional Zoning district, will propose to restrict or eliminate Permitted or Special Uses. Request for Conditional Zoning district rezoning shall be processed administratively in the same manner as for amendments to this ordinance as established in Article XIV.

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

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

SECTION 5-502. RESTRICTIONS ON FILING OF APPLICATIONS.

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

SECTION 5-503. CONTENT OF APPLICATIONS AND CONDITIONS.

The Conditional Zoning district application shall provide the minimum information requirements set forth below; however, additional information may be required by the Planning and Inspections staff, Planning Board, or the Board of Commissioners when requested if any of the aforementioned deem it necessary in order to be able to make a recommendation on, or decision regarding, the application. Such requests may include a requirement for a more detailed site plan, or one modified in accordance with additional or modified conditions and other performance criteria.

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

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

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

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

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

F. Site Plan Requirement: The application shall include a site plan drawn to the specifications of Section 13-1302. If the proposed uses involve development subject to the Linden Subdivision Ordinance, the site plan required may be general in nature, showing a generalized street pattern, if applicable, and the location or proposed uses. If the proposed uses include development not subject to the Linden Subdivision Ordinance, the site plan shall be of sufficient detail to allow the Planning and Inspections Staff, the Planning Board, and the Board of Commissioners to analyze the proposed uses and arrangement of uses on site. It shall also include the footprints of all buildings to be place on the site, the proposed number of stories, and the location and number of off-street parking and loading spaces. The site plan shall show proposed points of access to existing streets and internal circulation patterns. In addition, the location of all proposed buffers and fences shall be included on the site plan.

SECTION 5-504. ACTION BY THE PLANNING BOARD.

The Planning Board may hold a public meeting during which the applicant may voluntarily make modifications to the request. The Planning Board shall review the request for a Conditional Zoning district rezoning and make a recommendation to the Board of Commissioners. When making this recommendation, the Planning Board shall issue a statement addressing the reasonableness of the proposed rezoning, in addition to addressing the request's consistency with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable.

SECTION 5-505. ACTION BY THE BOARD OF COMMISSIONERS.

The Board of Commissioners shall hold a legislative hearing to consider the Conditional Zoning district rezoning and shall review the application, recommendations from the Planning Board, suggested conditions, and other information presented at the legislative hearing. The Board of Commissioners shall adopt a statement analyzing the reasonableness of the proposed rezoning along with addressing the consistency of the request with any applicable officially adopted comprehensive plan for the area in which the subject property is located and this statement shall be made a part of the record.

In approving the application, the Board of Commissioners, with mutual agreement of the property owner(s) recording in writing, may attach such reasonable requirements or conditions in addition to those specified in the Planning Board's recommendation. The conditions may include, but shall not be limited to:

- A. The location of the proposed use on the property.
- B. The number and location of structures.
- C. The location and extent of accessory and support facilities, such as parking lots, driveways, fences and access streets.
- D. The location and extent of buffer areas and other special purpose areas on the property.
- E. The height of any structure.
- F. The phasing of development.
- G. Other restrictions on the use of the property that adhere to the purposes of this ordinance and maintain the public health, safety and welfare; and
- H. Such other matters as the applicant shall propose.

The record shall reflect that the property owner(s) voluntarily agree to all conditions proposed.

SECTION 5-506. MODIFICATION TO APPROVED CONDITIONAL ZONING DISTRICTS.

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

The following minor modifications to the [approval for the] Conditional Zoning district may be approved by the Planning and Inspections Staff without approval by the Board of Commissioners, provided no variance is required, the use does not change, the intent and layout of the approved plan is generally followed, density is not increased, conditions of approval are not violated, and such changes do not cause a significant adverse impact:

- A. Slight variations in the building dimensions that do not depart from the general approved layout and not exceeding ten percent of the original approved dimensions.
- B. Minor changes in parking lot or traffic lane dimensions.
- C. Minor dimensional changes to individual lots.
- D. Minor site modifications due to necessary engineering requirements.
- E. Change of location of elements included on the site plan that generally maintains relative alignment and orientation to the approved site plan; and
- F. Other similar insignificant changes.

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

SECTION 5-507. TIME LIMIT.

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

SECTION 5-508. FAILURE TO COMPLY.

If for any reason any condition imposed pursuant to this section is found to be illegal or invalid, or if the applicant should fail to accept any condition, the authorization of such Conditional Zoning district shall be null and void and of no effect, and the Planning and Inspections Director shall initiate a rezoning to revert the zoning of the property to its previous zoning classification.

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

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ARTICLE VI- ARTICLE VII
Reserved for future use.

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ARTICLE VIII INDIVIDUAL USES

SECTION 8-801. DEVELOPMENT STANDARDS FOR INDIVIDUAL USES.

The development standards of this article are additional to other requirements in this ordinance. If there is a conflict with another section of this ordinance or any other Federal, State or local regulation, the most restrictive requirement shall apply. These development standards are use-specific and apply as minimum development standards for the use regardless of the type of approval or permit otherwise required by this ordinance. All non-residential uses listed within this article require site plan review and approval in accordance with Article XIII unless this article specifically requires approval of a Special Use Permit. Those uses requiring approval as a Special Use Permit (Section 15-1506) shall also be subject to these standards and any additional standards or conditions required by the approval.

In addition to the specific criteria listed for each use, the following are to be considered as minimum criteria for every non-residential use:

- A. All parking and loading areas shall comply with the minimum provisions established in Article XI, Off-Street Parking and Loading.
- B. All lighting shall be directed internally and shall comply with Section 10-1002.K;
- C. Noise generated by any use shall not substantially or detrimentally affect the ability of surrounding property owners to reasonably enjoy the use of their properties.
- D. When any non-residential use is adjacent to property zoned for residential uses, a buffer shall be provided in accordance with Section 10-1002.G of this ordinance.
- E. Unless otherwise specified within these individual sections, all signage shall be in compliance with Article XII, Sign Regulations, for the specific district in which the subject property is located.
- F. All new non-residential development shall comply with the landscaping provisions of Section 10-1002.L; and
- G. Compliance with all Federal, State, and local regulations, including the Linden Subdivision Ordinance, is mandatory.

SECTION 8-802. Reserved for future use.

SECTION 8-803. BED AND BREAKFAST.

- A. The use must be located in a structure originally constructed for use as a residence.
- B. The operation may consist of a maximum of eight guestrooms.
- C. Each room must have access to a hall or exterior door.
- D. One non-illuminated sign shall be permitted, which shall have maximum dimensions of two feet high by three feet wide, and not be more than 3 ½ feet tall at its highest point above ground level.
- E. There shall be no less than one bathroom, consisting of a bath or shower and lavatory, for each two guestrooms.
- F. Guestrooms shall not be equipped with cooking facilities.
- G. There shall be no other bed and breakfast within 400 feet of the property.
- H. Off-street parking shall be provided at the rate of one space for each room to be rented and one space for each employee/owner. No off-street parking shall be permitted any closer to the right-of-way than the principal structure.
- I. A fire protection plan approved by the local fire department must be submitted at the time of permit application.
- J. The required site plan shall depict neighboring properties and buildings within 200 feet of all property lines.
- K. Meals served on premises shall be limited to the breakfast, lunch and dinner meal, or a combination of all or some of these three meals, only to overnight guests of the bed and breakfast home. Meals shall not be provided to the general public for pay.
- L. All State requirements shall be complied with, and all required State permits are to be acquired and maintained.

SECTION 8-804. BORROW SOURCE OPERATIONS.

- A. The applicant shall provide a list of all property owners within 1,000 feet of the exterior boundaries of the lot of record to the site of the borrow source operation. This information shall

be provided from the current Tax Administrator's property tax listing of property according to the tax administration office.

B. Applicants shall identify the size and location of operating, or permitted, borrow source operations within a 1 ½ mile radius as measured from the centroid of the parcel within which the borrow pit is located. The scope and density of these operation within a 1 ½ mile radius shall be considered in making the final determination.

C. While in transit, trucks are to use appropriate load covers, and water trucks or other means that may be necessary shall be utilized to prevent dust from leaving the borrow source operation.

D. Existing vegetation, or stabilized, vegetated earthen berms to serve as buffers and to prevent soil erosion, shall be maintained between the borrow source operation and adjacent residences and public thoroughfares to screen the operation from the public.

E. Hours of operation shall be sunrise to sunset, Monday through Saturday, unless otherwise stated in the permit.

F. The applicant shall provide to the Planning and Inspections Staff, at the time the application is submitted, documentation from the North Carolina Department of Transportation that the public thoroughfare to which the borrow source operation has access, has sufficient load carrying capacity to support the proposed traffic generated by the borrow source operation or that load limits are acceptable.

G. The applicant shall provide to the Planning and Inspections Staff, at the time the application is submitted, proof of legal access, for the County Attorney's approval, from the borrow source operation to a public thoroughfare if the subject property does not have direct access to a public thoroughfare.

SECTION 8-805. CLUB OR LODGE (NOT REGULATED BY SECTION 8-826).

A. The intensity of the use shall not have a significant adverse impact on adjacent properties due to traffic, parking, noise, refuse or similar factors.

B. Additional setbacks and buffering may be required in the case of facilities for outdoor functions, such as outdoor arenas, if reasonably necessary to protect adjacent properties from noise, light, and glare.

C. Off-street parking, loading and outdoor activity areas, such as outdoor exhibition areas, picnic areas, amphitheaters and outdoor stages and seating areas, must be buffered from view from adjacent properties. These buffers must be vegetative buffers located between any desired fencing and the common property line.

D. The site plan shall indicate the style and location of all outdoor lighting.

E. There shall be no outdoor loudspeakers or public address system other than in an outdoor arena.

SECTION 8-806. CONVENIENCE CONTAINER AND RECYCLING FACILITY.

A. Material shall not be stored outside of appropriate waste containers, and all such containers shall be located on a solid impervious surface such as concrete pads.

B. All structures on the site shall comply with the dimensional requirements for the zoning district in which the facility is to be located.

C. The site shall be maintained to prevent odors, rodents and any other nuisances.

D. The site shall have direct access to a paved public street.

E. Access roads leading to any part of the operation shall be constructed in such a manner as to not impede traffic on any public or private street and shall be paved or constructed with gravel or crushed stone surface and maintained in a dust-free manner.

F. All environmental health rules and regulations, including Federal and State laws, shall be complied with.

G. One identification sign, as defined in Section 12-1202, shall be permitted in accordance with Article XII.

H. Site obscuring buffers shall be provided in accordance with the provisions of Section 10-1002.G and are not included in the exemptions under Section 10-1002.G.2.

SECTION 8-807. DAY CARE FACILITIES.

A. For day care facilities located within any residential zoning district, the following provisions must be complied with:

1. Minimum lot size shall be 20,000 square feet.

2. The required minimum setbacks shall be as follows:

a. Front yard: 30 feet from any public or private street.

- b. Rear yard: 35 feet
- c. Side yard: 20 feet; and
- d. Corner lots: shall provide a minimum of 30 feet from both streets.

3. Subject property must abut and have direct access to a major or minor thoroughfare or higher street classification, as identified in the Highway Plan, for all day care facilities located in residential districts.

B. Day care facilities allowed in zoning districts other than residential districts shall comply with the district dimensional requirements of the zoning district.

C. Minimum of two off-street parking spaces, plus one off-street parking space for each employee shall be provided. Off-street parking shall be provided in accordance with the standards of Article XI.

D. There shall be sufficient paved driveway to accommodate at least two motor vehicles at one time for the purpose of loading and unloading passengers in addition to any off-street parking area.

E. All children outside play areas shall be enclosed with at least a four-foot high fence and located only within the side and/or rear yards, provided the yards are not adjacent to a street. The horizontal/vertical spacing in the fence shall be a maximum of four inches and at a minimum the fence must comply with the guard opening limitations for spacing established in the most currently adopted North Carolina State Building Code as required.

SECTION 8-808 – SECTION 8-809. Reserved for future use.

SECTION 8-810. GROUP HOMES.

No group home may be located within a one-half mile radius of an approved or existing group home or approved or existing residential habilitation support facility, regardless of the jurisdiction of the approved or existing home or facility. A group home for not more than six resident handicapped persons, any one of whom may be dangerous to others as defined in N.C. GEN. STAT. §122C-3(11)(b) is not a permitted use in any residential district.

SECTION 8-811. GROUP QUARTERS.

- A. Each room must have access to a hall or exterior door.

B. One non-illuminated sign shall be permitted, which shall have maximum dimensions of two feet high by three feet wide, and not be more than 3 ½ feet tall at its highest point above ground level.

C. There shall be no less than one bathroom, consisting of a bath or shower, and lavatory, for each two guestrooms.

D. Guestrooms shall not be equipped with cooking facilities.

E. Off-street parking shall be provided at the rate of one space for each room to be utilized and one space for each employee/owner. No parking shall be allowed in any front yard.

F. A fire protection plan approved by the local fire department must be submitted at the time of permit application.

G. The required site plan shall depict neighboring properties and buildings within 200 feet of property lines.

H. The site shall have direct vehicular access to a public street or an approved private street.

SECTION 8-811 – SECTION 8-812. *Reserved for future use.*

SECTION 8-813. KENNEL OPERATIONS.

A. The site plan for kennel operations shall include information as to any outside pen area, shelters, fencing, runs, etc. pertaining to the kennel operations.

B. Shelters, runs and pen areas shall not be located any closer than 15 feet to any property line for kennels located in residentially zoned districts.

C. The required shelter shall be fully enclosed on three sides, roofed and have a solid floor.

D. A vegetative buffer shall be required along the side and rear property lines. In addition, a privacy fence may be required if it is determined the fence would alleviate any detrimental effects on neighboring properties.

E. *Reserved for future use.*

F. Kennel operations including all pens, shelters, etc., are required to meet the setbacks as required by this ordinance.

SECTION 8-814. MANUFACTURED HOMES.

Manufactured homes placed, erected or located on any parcel or lot, shall comply with the standards of the County's Minimum Housing Ordinance and shall meet or exceed the construction standards promulgated by the U.S. Department of Housing and Urban Development in order to qualify for any permits under the terms of this ordinance and the Linden Subdivision Ordinance.

This section shall not apply to "properly set up", Class C manufactured homes requiring relocation when a manufactured home park owner or a government agency, such as the County Health Department, has mandated the closure of a previously approved or pre-existing nonconforming manufactured home park provided that the Class C manufactured home is owner-occupied and shall only be relocated to an approved manufactured home park or a pre-existing nonconforming manufactured home park.

For purposes of this section, "properly set up" means:

- A. In actual use for residential purposes.
- B. Lawfully connected to electricity, water and sewer or septic service.
- C. In compliance with the County's Minimum Housing Ordinance; and
- D. Listed for property taxes and having property taxes paid as of the most recent listing period and the previous five calendar years.

SECTION 8-815. *Reserved for future use.*

SECTION 8-816. MIXED USE BUILDING.

- A. Mixed use buildings are allowed uses in the O&I Office and Institutional, C Commercial and M Industrial districts.
- B. Residential uses within a mixed-use building shall not exceed 40% of the total floor area, with a minimum of 60% of the floor area of all structures devoted to the non-residential use(s) as within the specific zoning district of the property.
- C. All "for sale" residential units are subject to the provisions governing Unit Ownership developments in the Linden Subdivision Ordinance.
- D. The development must be served by public or community water.
- E. The subject property must have direct vehicular access to a paved public right-of-way.

F. Off-street parking shall be provided in accordance with Article XI for the non-residential use, and one and one-half space for each residential unit. Shared parking shall be encouraged and permitted when it can be substantiated that the hours of operation of the non-residential use are restricted to daylight hours and will not adversely affect the residential parking needs.

G. The minimum lot area per residential unit shall be 1,000 square feet not including the lot area utilized by the non-residential use. The site plan must provide the calculations indicating compliance with this provision.

H. A fee in lieu of dedication of on-site parks, recreation, and open space is mandatory. This fee is to be calculated in the same manner as established in the provisions governing parks, recreation and open space in the Linden Subdivision Ordinance.

I. The façade of the buildings approved for mixed use in a non-residential district shall be of a commercial design; and

J. There shall be no ancillary, accessory of incidental residential use of the property outside the mixed-use building.

SECTION 8-817. MOTOR VEHICLE WRECKING YARDS AND JUNKYARDS

A. All fluids from vehicles, transmission, brake fluid, gasoline, etc. shall be drained from any vehicle before the vehicle is stored. The fluids shall be drained into approved containers and be disposed of according to approved environmental procedures and Environmental Protection Agency (EPA) regulations.

B. A cement pad shall be installed for fluid drainage to prevent soil pollution or contamination.

C. If at any inspection, fluids are determined to have been placed or drained in the ground/soil, the permit shall be revoked immediately.

D. Unless specifically approved otherwise, vehicles shall not be stacked.

E. If stacking is specifically approved, the stacked vehicles are to be shielded in such a manner that they cannot be seen from any adjacent residentially zoned or residentially used properties.

F. The vehicle storage area shall be contained entirely within a six-foot high solid fence with a vegetative buffer planted along the outside of the fence along the entire perimeter of the property.

G. The maximum number of vehicles stored on the site at any one time may be restricted to a specific number.

H. The open storage area shall not exceed more than 50% of the property.

I. Appropriate insect and rodent control procedures shall be adopted that comply with County Health Department procedures.

SECTION 8-818. NON-RESIDENTIAL USE AS A PERMITTED USE IN A RESIDENTIAL DISTRICT (AND NOT OTHERWISE LISTED WITHIN THIS ARTICLE).

A. Site plan review and approval in accordance with Article XIII and providing for the specific information required by this section.

B. The minimum yard requirements shall meet or exceed those required in the commercial zoning district.

C. Required off-street parking shall be provided with all parking areas and internal drives being clearly marked. In addition, no parking shall be permitted in the required front yard.

D. Buffering and/or landscaping for the use shall be provided and maintained in such a manner as to comply with the standards and intent of this ordinance and is dependent upon the zoning and nature of the surrounding area. The site must provide ample area and adequate open space on all sides of the structure so that the character of the neighborhood is preserved.

E. The subject property shall have direct access to a public right-of-way or approved private street. In the event a private street is the means of access, consent by the common lot owners responsible for maintenance of the private street is required. Also, the plan shall include proposed points of access, ingress, and egress and the pattern of internal circulation. Points of ingress and egress shall be located so as to minimize traffic hazards, inconvenience and congestion. The existing access streets must be able to handle the anticipated increase in traffic volume, or the developer shall cover the costs of upgrading the streets, such as, but not limited to, the addition of a turning lane.

F. Signage for the development shall not exceed those allowed under Article XII.

G. Noise levels shall not become a nuisance to neighboring properties.

**SECTION 8-819. NURSING HOME/CONVALESCENT HOME/HOSPITAL/SANITARIUM/
RETIREMENT HOME.**

- A. The facility shall not cover more than 50% of the tract.
- B. Must meet all requirements for licensing by the State of North Carolina.
- C. In addition to basic requirements for site plans as required in Article XIII, the plan shall include proposed points of access, ingress and egress, the pattern of internal circulation, and the layout of parking spaces.
- D. All facilities shall be solely for the use of residents and their guests.
- E. Facilities for administrative services and limited medical services for the exclusive use of the residents may be located on the site.

SECTION 8-820. PUBLIC UTILITY WORKS, SHOPS OR STORAGE YARDS.

- A. All structures shall be designed and landscaped in a way as to blend in with the surrounding area.
- B. A chain link fence shall enclose all dangerous apparatuses and shall be at least eight feet in height.
- C. All motor vehicle parking shall be located within the area circumscribed by a buffered/screened area and as such area is to be shown on the site plan.
- D. Such facilities shall have direct access to a public street or an approved private street.

SECTION 8-821. *Reserved for future use.*

SECTION 8-822. RECREATION OR AMUSEMENT, PUBLIC/PRIVATE & INDOOR/OUTDOOR.

- A. One sign shall be permitted and shall not exceed the standards for those allowed in the commercial zoning district.
- B. The site shall have vehicular access to a paved public street.
- C. All outdoor lighting shall comply with the standards of Section 10-1002.K.

D. If the facility is of such a use that would be conducted on dirt (i.e., ball fields, go cart tracks, etc.) measures shall be taken to minimize the creation of dust.

E. Fencing, netting, or other control measures shall be provided around the perimeter of any areas used for hitting, flying, or throwing of objects to prevent the object from leaving the designated area.

F. A minimum of three acres of land is required for mechanized outdoor recreation areas and the detailed site plan and application shall provide adequate information to ensure the increase in motor vehicle traffic will not adversely impact any surrounding residential neighborhoods.

SECTION 8-823. RECREATION VEHICLE PARK AND/OR CAMPGROUND.

A. Recreation vehicle parks/campgrounds shall be used only by travel trailers, pickup, coaches, motor homes, camping trailers, other vehicular accommodations, cabins and tents suitable for temporary habitation and used for travel, vacation and recreation purposes.

B. The area of the park/campground shall be at least three acres. Each recreation vehicle/cabin/open air cabins camp site, excluding sites used solely for tents, shall be a minimum of 1,200 square feet in area with a maximum of 20 sites per acre. Each site shall contain a stabilized vehicular parking pad of packed gravel, paving or other suitable material. Cabin sites shall not exceed more than twenty percent of the total proposed sites within the recreation vehicle/campground site. The maximum size of the proposed cabins shall not exceed 400 square feet and shall be identified as being either a cabin or open-air cabin. Cabins shall not have bathrooms within the cabin and must be served by a bathhouse located within 500 feet from the entrance of the cabin to the entrance of the bathhouse.

C. All yard setback requirements shall be in accordance with the dimensional requirements of the zoning district in which the park or campground is located and no structure, recreation vehicle site or camping site shall be located within the required yard area.

D. Individual recreation vehicle spaces within a recreation vehicle park/campground shall not directly access a public road. Access to all recreation vehicle spaces and accessory structures within the park/campground shall be from internal streets with the entrance to the park directly accessing a public right-of-way. A driveway permit must be obtained from the NC Department of Transportation (NCDOT) for connection to the public street.

E. The recreation vehicle park/campground shall not allow for permanent occupancy on the same site by the same occupant for any continuous period of time exceeding 90 days.

F. Each Park shall have at least one telephone available for public use. Management headquarters, manager's residence, recreational facilities, bathhouses, toilets, dumping stations, showers, coin-operated laundry facilities, stores and the uses and structures customarily

incidental to operations of a recreation vehicle park/campground are permitted as accessory uses to the park, subject to the following restrictions:

1. Such establishments (excluding recreational facilities) and the parking areas primarily related to their operation shall not occupy more than 10% of the gross area of the park/campground.

2. The structures housing such facilities shall not be located closer than 100 feet to any public street and shall not be directly accessible from any public street but shall be accessible only from an internal drive within the park/campground.

3. Such structures containing toilets, bathhouses and other plumbing fixtures shall comply with the requirements of the North Carolina Building Code.

4. Each Park shall be limited to a maximum of one manager's/caretaker's residence.

G. Adequate off-street parking and maneuvering space shall be provided on site. No public street, sidewalk or right-of-way or any other private grounds not a part of the recreation vehicle parking area shall be used to park or maneuver vehicles.

H. Internal drives shall be constructed to a minimum of 18 feet in width if providing two-way streets and 12 feet in width for one way streets and contain a minimum depth of six inches of stone gravel base with proper ditching, drainage, and seeding of slopes. Permanent dead-end streets shall have a cul-de-sac constructed 40 feet in diameter.

I. Recreation vehicle parks and campgrounds shall be enclosed by a fence, wall, landscape screening, earthen mounds or by other measures from all contiguous residential areas in a manner that complements the landscape and assures compatibility with the adjacent environment and complies with the buffering requirements for non-residential uses adjacent to residential districts.

J. In addition to the requirements required to be shown on the site plan as required by the Article XIII, the site plan shall include the name and address of the applicant, the location and dimensions of each recreation vehicle/camping site, the location and use of all service and recreational facilities, all interior access ways, drives, and parking. All site plans subject to this Section shall also require approval from the County Health Department.

K. All Federal, State and other local regulations shall be complied with.

SECTION 8-824. RESIDENTIAL HABILITATION SUPPORT FACILITY.

- A. Minimum lot size: 20,000 square feet.
- B. The structure must pass all health and fire inspections.
- C. The property must be at least a one-half mile radius from an existing or approved residential habilitation support facility or an existing or approved group home, regardless of the jurisdiction of the existing or approved facility or home.
- D. The following setbacks shall be minimum yard requirements, except where the zoning district in which the facility is located has greater dimensional requirements, the zoning district setbacks apply:
 - 1. Front yard: 50 feet from any public or private street.
 - 2. Rear yard: 35 feet; and
 - 3. Side yard: 25 feet.
- E. Off-street parking shall be provided at the rate of two spaces plus one for each caregiver.
- F. The facility shall have direct access to a paved public street meeting NC Department of Transportation standards.
- G. The facility shall provide a minimum of 100 square feet of living area per person, not counting the caregivers.

SECTION 8-825. SECOND-HAND SALES, PAWN AND FLEA MARKET.

- A. Outside storage of goods, equipment and material shall be prohibited; however, outside display of merchandise in conducting the commercial operation is permitted during the hours when the commercial operation is open for business. No storage or display shall be permitted within a public right-of-way.
- B. Motor vehicle parking shall be provided entirely on site as required by this ordinance. Traffic generated by the business shall not impede the normal flow of traffic on any public right-of-way.

SECTION 8-826. SEXUALLY ORIENTED BUSINESSES.

Sexually oriented businesses are some of the uses which, because of their very nature, may have serious objectionable characteristics, particularly when several of them are concentrated in one area, thereby having a deleterious effect upon adjacent areas, or when the uses are proposed to be located in or near sensitive areas or land uses. Special regulation of sexually oriented businesses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations and applicable criteria are contained in this section.

Sexually oriented businesses shall be allowed only in the M Industrial district subject to the following:

A. Sexually oriented businesses shall not be located within 2,500 feet of another sexually oriented business. The measurement shall be taken from the exterior walls of the building(s) containing such regulated use.

B. No sexually oriented business shall be located within 100 feet of any area zoned for residential use or from the property line of residential unit(s), religious worship activity, nursery school, day care facility, any recreation and amusement, and any public or private school regardless of the zoning district and shall be measured from the property line(s) containing such regulated use.

C. Buffering shall be provided around the entire perimeter consisting of vegetative landscaping between a solid fence and the common property line with adjacent properties and 25 feet off of the road frontage along the entire front. This solid fencing shall be a minimum of seven feet in height and shall not be chain link fencing.

D. No nude or seminude service or entertainment of any kind shall be allowed outside the building of such use.

E. *Reserved for future use.*

SECTION 8-827. *Reserved for future use.*

SECTION 8-828. THEATER PRODUCTIONS, OUTDOOR.

A. One sign shall be permitted and shall not exceed the standards for those allowed in the C Commercial district.

B. The site shall have direct vehicular access to a collector or higher-level street.

C. Noise levels shall not pose a nuisance to neighboring properties.

D. All outdoor lighting shall be turned off between 11:00 p.m. and sunrise, except lighting used for walkways, roads, parking lots and security. In these cases, fully shielded lights must be used.

SECTION 8-829. TOWER.

A. A communication tower and associated equipment totally concealed within a building or structure so as to be architecturally indiscernible shall not be regulated as a tower under this section.

B. The applicant, owner, or developer of a tower that is to be at least 75 feet in height shall submit a site plan with the application for permits to authorize construction or erection of the tower. The site plan shall include:

1. Identity of the proposed or intended user(s) of the tower.

2. The certification of a registered engineer that the tower has the structural integrity and/or capacity to support or to accommodate more than one use or user.

3. The statement and supporting information and documentation by the applicant, owner, or developer that no structures or facilities suitable for collocation are available within the coverage area.

4. The statement of the owner indicating the intent and willingness to permit shared use of the tower and the potential for or limitations on the number of other users that the proposed tower can accommodate.

5. Elements and design that meet all requirements of this ordinance and the Linden Subdivision Ordinance.

C. Setbacks as prescribed below are intended for the assurance of public safety and protection of the property rights of adjacent property owners and shall not be less than the minimum required and shall not be varied by the Board of Adjustment:

1. *Conservancy and Residential Districts.* Towers in the Conservancy and Residential district shall be set back from all adjacent property lines and/or lease lines a distance not less than the height of the tower. The distance shall be measured from the base of the tower.

2. *Non-Residential Districts.* Any tower shall be set back from the property and/or lease lines a minimum of 50 feet or one foot of setback for each two feet of tower height, whichever is greater.

D. Structures located near towers shall not encroach upon the setbacks of the towers, unless such towers are of monopole design and construction, in which case buildings and structures may be located within the setback distances.

E. A chain link fence at least 10 feet in height and located at least 10 feet from the base of the tower shall enclose the tower base.

F. A buffer area at least 25 feet wide shall surround the tower compound. The buffer shall shield the compound area from the entire tract. No structures, including guyed wires or anchors, may be constructed or located within the buffer. The buffer area shall be planted with evergreen trees that will attain a minimum height of 25 feet within four years and be spaced no greater than 20 feet apart. The inner fringe of the buffer area shall be planted with an evergreen hedge that shall have an initial height of at least three feet and an expected attainment of six feet in height within four years of planting. The hedge shall constitute a complete shield or visual blockage. If the Code Enforcement Manager determines that a natural buffer already exists on site that substantially complies with the purpose and intent of this performance standard to an equal or greater degree, such an alternative natural buffer shall be considered adequate. If an alternative natural buffer is used, the user shall be responsible to ensure that the buffer remains compliant for as long as the tower remains. If a buffer is altered to an extent where it no longer serves to shield or obscure the compound from view, the applicant or tower user(s) shall install buffers as required by this section.

G. The applicant, owner or developer shall certify that the proposed tower will be constructed and operated in accordance with all applicable Federal, State and local laws and ordinances, including but not limited to all Federal Communication Commission (FCC) and Federal Aviation Administration (FAA) rules and guidelines.

H. Prior to the issuance of a building permit for a tower, the applicant, owner or developer shall submit drawings sealed by a licensed engineer and a certification letter from the licensed engineer who prepared the plans that the tower will meet all applicable Federal, State and local building codes and structural standards.

I. The tower's height shall not exceed 450 feet. When a tower is located on a building or structure, the combined height of the building or structure and the tower shall not exceed 450 feet.

J. The exterior appearance of any building or structure associated with a tower and located in a residential zone shall maintain a residential architectural quality including, without limitation, a pitched roof and frame or brick veneer construction.

K. No building or structure associated with a tower and located in a residential district may be used as a work site for any worker. However, periodic maintenance, inspection and renovation of the facility shall be permitted.

L. Each applicant, owner or developer shall demonstrate that the use will not be detrimental or injurious to the property values of the surrounding neighborhood. In zoning districts where the tower is a use by right, the applicant, owner or developer may satisfy the requirement by submitting a statement signed by a licensed appraiser or real estate broker which expresses an opinion that the use will not be detrimental or injurious to the property values of the surrounding neighborhood.

M. To protect the public from unnecessary exposure to electromagnetic radiation, the applicant, developer, owner, or operator of the tower shall document that the power density levels do not exceed federally approved levels or American National Standards Institute (ANSI) standards, whichever is stricter.

N. If lighting is required by FAA, it shall meet or exceed the FAA standards. To the extent allowed by FAA regulations and standards, strobes shall not be used for nighttime lighting. To the extent permitted by Federal statutes, regulations and standards, the lights shall be oriented so as not to project directly onto surrounding residential property. Prior to issuance of a building permit, the applicant, developer, or owner shall submit documentation from the FAA that the proposed lighting is the minimum lighting required by the FAA.

O. A tower not used for a period of at least six months shall be determined to be abandoned and shall be removed. The owner of the tower shall remove any abandoned, unused or structurally unsound tower within 90 days of receiving notice requiring removal. The Code Enforcement Manager may establish a shorter period of time for the removal of a tower that is structurally unsound.

P. The owner or operator of a tower shall submit a statement signed and sealed by a licensed engineer that the tower will be structurally sound.

Q. If the Code Enforcement Manager determines a tower is not structurally sound, the owner or operator of the tower shall, within 60 days or a shorter time period if required by the Code Enforcement Manager, complete repairs to restore the structural soundness of the tower.

R. The owner, applicant, or developer shall camouflage the tower so that it blends into the surrounding area. Methods of camouflage include paint, architectural design or structure, and other means.

S. No outside storage on the site of the tower shall be permitted.

T. All tower sites shall comply with the provisions of the Linden Subdivision Ordinance.

ARTICLE IX OTHER USES

SECTION 9-901. TEMPORARY USES.

The Code Enforcement Manager may issue a temporary Certificate of Occupancy for the following uses in accordance with the provisions of this section. In cases where the desirability of permitting the use is questionable and the application for the temporary Certificate of Occupancy is denied, the matter shall be referred to the Board of Adjustment for a decision in accordance with Article XV.

A. *Temporary Events.* A temporary occupancy permit may be issued for bazaars, carnivals, religious revivals, sports events, circuses, festivals and similar uses for a fixed period of time not to exceed 30 days in any one calendar year, and subject to limitations as the Manager may impose based on the character of the district affected.

B. *Temporary Construction Offices.* A temporary occupancy permit may be issued for construction offices in any district at any site where erection, addition, relocations, and/or structural alterations are taking place, provided that such construction office shall be removed immediately upon completion of the project.

C. *Temporary Office and Exhibition.* A temporary occupancy permit may be issued for mobile structures used solely as offices or for purposes of exhibition in any district for a fixed period of time not to exceed six months and only upon satisfactory evidence that the use of such mobile structure shall not violate any code or regulation or the intent of this ordinance. The temporary permit may be renewed upon similar evidence of use of such mobile structure.

D. *Yard Sales.* A permit is not required; however, a resident and/or family household is limited to no more than four separate yard sales, each of which may consist of a one or two-day period within any calendar year, within any residential district. The hours of operation are limited to daylight hours on the day(s) the sale occurs. The person conducting the yard sale (tenant or property owner) shall be responsible for the prevention of any negative effects on neighboring properties and prevention of impeding the normal flow of traffic on public rights-of-way. Also, the person conducting the sale shall ensure that all property being sold is personal property, as defined in Article II, and that any residual items at the conclusion of the sale are not stored outside the residential dwelling in a permanent or semi-permanent manner. Signage shall only be allowed on-site, and strict compliance with sign regulations enumerated in Article XII.

E. *Mobile Storage Units.* Temporary self-contained storage units shall be permitted to be located between a principal structure and the street for a period of time not to exceed 14 calendar days.

F. *Seasonal Sales*. Establishments that sell fireworks, pumpkins, firewood, Christmas trees and similar items may be permitted as a temporary use on a lot subject to the following requirements:

1. Operations and display shall not occur in any street right-of-way. All activities shall take place on the permitted lot.
2. Sufficient off-street parking shall be provided in order to accommodate the sales establishment.
3. One travel trailer, for temporary living and security purposes in association with the seasonal sales establishment, may be permitted provided the travel trailer satisfies any public service corporation, public utility and/or town requirements for proper connection to water, sewer, electrical and other utility service connections, if applicable.

SECTION 9-902. INCIDENTAL USES.

A. *Home occupations*. A home occupation shall be permitted as an accessory use to any dwelling unit and may be conducted in the principal structure or an accessory structure provided that:

1. The principal person or persons providing the business or service resides in the dwelling on the premises.
2. The area used for the business or service does not exceed 25% of the combined floor area of the structures or 500 square feet, whichever is less.
3. All work associated with the home occupation is conducted inside the designated building(s).
4. An attached sign not more than two square feet in area is allowed.
5. The property contains no outdoor display or storage of goods or services associated with the home occupation.
6. The home occupation causes no change in the external appearance of the existing building and structures on the property.
7. One additional parking space is allowed.
8. Wholesale sales of goods do not occur on the premises.

9. The home occupation employs no more than one person who does not reside on the premises.

10. The home occupation does not create any parking congestion, noise, vibration, odor, glare, fumes or electrical or communications interference which can be detected by the normal senses off the premises, including visual or audible interference with radio or television reception.

11. One motor vehicle, no heavier than $\frac{3}{4}$ ton, used in connection with the home occupation is permitted and shall be located on the premises in such a manner, so as not to disrupt the quiet nature and visual quality of the neighborhood and

12. A small home day care shall be permitted as accessory to any dwelling unit, provided that the following additional conditions are met, as well as the other conditions of this section:

a. If an outdoor play area is provided, it must be located in the side and/or rear yard of the property, provided that the yard area is not adjacent to any street, and the outdoor play area is fenced with a solid (opaque) fence; and

b. No more than eight children who are unrelated to the operator can be cared for during any 24-hour period.

13. All Federal, State, and local regulations, including the County Environmental Health regulations are complied with in the conduct of the home occupation.

B. Outside Storage and Display. Outside storage of goods, equipment and material shall be prohibited in the Office and Institutional District, and any outside storage in the Commercial and Industrial districts shall be buffered from view from any public street. Outside display of merchandise, which is normally required in conducting the commercial operation, is permitted in any of the above-named district except the Office and Institutional District.

C. Swimming Pools. Every swimming pool, public and private, as defined by this ordinance is permitted as an incidental use and shall be regulated as follows:

1. The setback for a swimming pool from any side and rear lot line shall be ten feet.

2. A fence shall be erected to a minimum height of four feet to completely enclose the portion of yard containing the pool and shall include a gate that can be securely fastened for below-ground pools. The horizontal/vertical spacing in the fence shall be a maximum of four inches and at a minimum the fence must comply with the guard opening limitations for spacing established in the most currently adopted North Carolina State Building Code as required.

3. All mechanical equipment shall be located a minimum of five feet from any property line.

4. All floodlights shall be shielded from adjacent properties to reduce offensive glare.

5. All electrical wiring shall be in conformance with the National Electrical Code.

6. A water discharge plan for the proposed use shall be submitted showing the location of buildings, yard dimensions and other pertinent data. This plan shall also stipulate the type of system used for disposal of waste from the site. No permit shall be issued until the Code Enforcement Manager determines that the water discharge plan is adequate by meeting one or more of the following criteria:

a. The discharge system shall drain directly into the street storm drainage system, other public storm drainage systems or natural stream; or

b. Enough hose is made available to discharge such water into the above public ways; or

c. That water discharge can be accomplished on the lot without threat of discharge onto adjacent lots.

7. In any zoning district, a swimming pool may not be located in a required front yard, including residential corner lots subject to Section 10-1001.G.

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

E. *Accessory Structures.* The following provisions apply to all accessory structures:

1. Accessory structures shall not be rented or inhabited by other than employees performing services on the premises of the owner, lessee, or tenant of the premises.

2. Accessory buildings not intended to be used for living quarters shall not be constructed upon a lot until the construction of the principal building has commenced.

3. Manufactured homes intended for residential occupancy shall not be classified as accessory or used as a storage structure.

4. Accessory structures shall not be erected in any required front yard or within 20 feet of any side street line, or within five feet of any lot line not a street line, or within five feet of any accessory building or other building. In no case, however, shall an accessory building be placed closer to a street than the minimum setback of the principal structure. Any accessory structure greater than 700 square feet in floor area must be located inside the building envelope.

SECTION 9-903. NONCONFORMING USES.

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

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

C. *Discontinuance/Buffering of Open-Air Outside Uses.* All nonconforming uses not carried on within a structure, except those which are incidental and necessary to activities occurring within the principal structure on the same lot, shall be discontinued in accordance with sub-sections D and/or E of this section. Where nonconforming use status applies to structure(s) and premises in combination, if the principal structure(s) are removed or destroyed, the nonconforming use of the land shall cease, and any subsequent use of the land and buildings placed thereon shall conform to the provisions of this ordinance.

D. *Continuance of Nonconforming Uses.* A nonconforming use may not be changed to any other nonconforming use, unless the Board of Commissioners find that such use is no more detrimental to the neighborhood than the initial nonconforming use of the property in question. No change of title or possession, or right to possession of property involved shall be construed to prevent the continuance of such nonconforming use.

E. *Continuance of Nonconforming Structures.* A structure that is nonconforming due to noncompliance with dimensional requirements, and which is a permitted use in the district, may continue, provided that its nonconformity is not increased. Structural changes which decrease or do not affect the degree of nonconformity, regardless of cost and/or increase in value, shall be permitted. Routine repairs, maintenance, rehabilitation, and renovations, regardless of value, shall be permitted.

F. *Reconstruction Prohibited.* Any nonconforming structure or any structure containing a nonconforming use, which has been damaged by fire or other causes, may be reconstructed and its use resumed if the reconstruction and the use is resumed within one calendar year of such damage, unless such structures have been determined by the Code Enforcement Manager to have been damaged to an extent exceeding 50% of its then reproducible value or its bulk,

exclusive of foundations, in which case any repair, reconstruction or use shall be in conformity with the provision of this ordinance.

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

SECTION 9-904. NONCONFORMING MANUFACTURED HOME LOTS AND PARKS.

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

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

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

2. A manufactured home that was located on a nonconforming individual manufactured home lot at the time the district in which the lot is located was zoned shall not be replaced except in accordance with the provisions of sub-section C below.

B. Continuance of Preexisting Nonconforming Manufactured Home Park Uses. Tracts or parcels of land in districts not zoned for manufactured home park use on which there is located a preexisting nonconforming manufactured home park may continue to be used as a manufactured home park, subject to the following conditions:

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

2. A manufactured home that was located in a preexisting nonconforming manufactured home park at the time the district in which the park is located was zoned shall not be replaced except in accordance with the provisions of sub-section D below.

C. Replacement of Preexisting Manufactured Homes on Individual Nonconforming Lots. A preexisting manufactured home on an individual nonconforming manufactured home lot may be replaced by another manufactured home during the period in which the preexisting nonconforming use of the lot is allowed to continue, provided that the replacement structure, as newly positioned on the lot, conforms to the following requirements:

1. The replacement structure in any residentially zoned district shall be a Class A manufactured home, and the replacement structure in any of the nonresidential districts shall be a Class A or Class B manufactured home as defined in this ordinance, provided that such replacement structures are used exclusively for residential purposes.

2. The replacement structure shall meet the structure dimensional requirements and other applicable provisions of this ordinance for the zoning district in which the lot is located.

3. The replacement structure shall meet the current County Health Department regulations pertaining to sewage and water systems; the current requirements of the County Fire Prevention Ordinance; and the current requirements of the County Minimum Housing Code.

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

D. Replacement of Preexisting Manufactured Homes in Nonconforming Manufactured Home Parks. A preexisting manufactured home in a nonconforming manufactured home park may be replaced by another manufactured home during the period in which the preexisting nonconforming use of the land on which the park is located is allowed to continue, provided that the replacement structure, as newly positioned in the park, conforms to the following requirements:

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

2. The replacement structure and the manufactured home lot on which it is placed shall meet the current internal dimensional requirements for a manufactured home park as defined and set forth in the Linden Subdivision Ordinance, to include without limitation: lot area, density and yard space requirements.

3. The replacement structure shall meet the current requirements of the County Health Department regulations pertaining to manufactured homes and manufactured home parks; current requirements of the County Fire Prevention Ordinance; and the current requirements of the County Minimum Housing Code.

4. The replacement structure shall be a Class A or Class B manufactured home and shall otherwise meet the current construction and other standards for manufactured homes established by applicable Federal, State and local regulations.

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

E. Map of Preexisting Nonconforming Manufactured Home Lot or Park. Every owner of land on which a preexisting nonconforming manufactured home lot or park is located shall file with the Planning and Inspections Department, a map or site plan of the land area of such lot or park showing the dimensions to scale of the area at the time of the zoning of the land on which the lot or park is located, showing the location and external dimensions to scale of each manufactured home existing therein at such time, and showing such other pertinent information as the Planning and Inspections Department and Code Enforcement Manager require.

F. Zoning Permit Require. Replacement of a preexisting nonconforming manufactured home hereunder shall not be permitted unless the owner of such replacement has made application to the coordinator for a zoning permit for such replacement, and the permit has been issued. The application shall describe the proposed replacement manufactured home by manufacturer's name, model and serial number, year of manufacture and dimensions and shall show the proposed manufactured home space for the replacement on a copy of the map of the manufactured home lot or park on file with the County Planning and Inspections Department. The Code Enforcement Manager shall issue a zoning permit for the replacement only upon a determination that the replacement and its location meet the requirements for replacing a preexisting nonconforming manufactured home set forth above. The Code Enforcement Manager may require any additional information reasonably necessary to make such determination and may deny a permit if such information is not submitted. No provision herein shall waive or release other requirements for a permit pertaining to the replacement or lot or park in which the manufactured home is to be located that may be set forth in this ordinance or other Federal, State, or local laws.

ARTICLE X LOT AND YARD REGULATIONS

SECTION 10-1001. LOT REGULATION.

Unless otherwise established in the Linden Subdivision Ordinance, the general lot regulations shall apply as herein set forth.

A. One Principal Structure Per Lot. Every principal structure hereafter erected shall be located on a lot as herein defined. In no case shall there be more than one main residential building and its accessory buildings on one lot of record unless otherwise provided for in this ordinance and the Linden Subdivision Ordinance.

B. Street Access. No structure shall be erected on a lot, subject to regulation under the Linden Subdivision Ordinance, which does not abut a public street or approved private street (see Linden Subdivision Ordinance for private street provisions) for at least 20 feet, such frontage (abutting) to be continuous from the property line to the front yard building setback line. Those lots or tracts, not regulated by the Linden Subdivision Ordinance shall provide, at a minimum, proof of a 20-foot deeded access easement, which has been properly and legally recorded with the County Register of Deeds, to serve the said lot or tract.

C. Reduction of Lot Size Prohibited. No lot shall be reduced in area so that lot and/or yard areas below the minimum required under this ordinance shall result. Lots 50 feet or more in width may be treated as recorded lots less than the minimum requirement (sub-section D below).

D. Recorded Lots Less Than Minimum Requirement. Where any lot of record on the effective date of this ordinance or amendment thereto for the zoning area in a district which allows residential uses does not contain sufficient land to permit conformance to the dimensional requirements of this ordinance, such lot may be used as a building site for a single-family residence, provided that the lot area and yard dimensions are not reduced below the minimums specified in this ordinance by more than 15 percent in the R40, R15 and R7.5 districts.

E. Lots Without Community Water and/or Sewer. Any lot that is not served by public or community water and/or sewer, in addition to the regulations of the zoning district in which said lot is located, must be certified by the County Health Department to be large enough to meet all applicable regulations regarding water supply and/or sewage disposal prior to application for a zoning permit.

F. Building Lines on Irregularly Shaped Lots. The Code Enforcement Manager shall determine locations of front, side and rear building lines on irregularly shaped lots. In no case, shall a setback line be measured from any part of any tract that does not meet the minimum width requirement for the individual district as listed in Section 10-1004. Such determinations shall be based on the

spirit and intent of the district regulations to achieve spacing and location of buildings or groups of buildings on individual lots.

G. Corner Lots. Principal structures on corner lots in residential districts on which dwelling units are to front on each of the intersecting streets shall observe the front yard requirements on each of the intersecting streets if they are constructed and located within developments recorded after the effective date of this ordinance, or any amendment to said ordinance. Principal structures on corner lots in residential districts that observe the front yard requirements of the two intersecting streets may reduce the required rear yard by 20 feet.

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

SECTION 10-1002. YARD REGULATION.

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

Open fire escapes, outside stairways, open wheelchair ramps, the ordinary projections of chimneys and flues, swimming pools, flag poles, decorative fountains and other similar items may be erected in required yards when placed so as not to obstruct light and ventilation necessary for the structure. To minimize encroachment of wheelchair ramps into the required yard, turning platforms are encouraged.

B. Determination of Front Yard Setback. The front yard requirements of this ordinance shall not apply on lots where the average depth of existing front yards on developed lots, located within 100 feet on each side of a lot, within the same block and zoning district as such lot, is greater or lesser than the minimum required front lot depth. In such cases, the depth of the front yard on such lot shall not be less than the average front yard depth on such developed lots. This provision shall not require a structure to be set back from the street or road a greater distance

than the distance set forth in this ordinance or the setback line observed by the closer of the two existing principal structures on immediately adjoining lots. In no case, however, shall any residential structure be placed closer than 50 feet from the centerline of a street on which it faces or within 40 feet from the centerline of a side street. The location of a residential structure with respect to the street line in the Commercial or Industrial district shall not be used as a factor in determining the required setback from the street line for any new structure to be erected in such districts.

C. Fences and Walls. Open fences and walls may be erected to any height. Solid fences and walls shall be limited to three feet in height when projected into or enclosing a minimum front yard and shall be limited to seven feet in height when projecting into or enclosing a minimum side and/or rear yard. When a corner lot follows two front yard setbacks, as determined by the Code Enforcement Manager, a solid fence or wall greater than three feet in height, but not exceeding seven feet in height, may not be erected within 20 feet of the right-of-way on the street deemed the secondary front yard by the Manager. The street on which the house is addressed is usually considered the primary street on which the house must follow the full front yard setback unless otherwise determined by the Manager. Exceptions to location criteria are as follows:

1. Fences or walls that are within or enclose the minimum side and/or rear yard of a subdivision lot which is situated on a peripheral boundary of a subdivision in which it is a part;

2. Rear yards on through lots may have a privacy fence erected up to the rear property line, as determined by a platter "no access easement" or up to 20 feet from that line in the absence of a "no access easement."

3. Fences erected in conjunction with a buffer, as required by sub-section G, "Screening Buffer Requirements" below, shall be set back a sufficient width from the property line to allow for the proper maintenance and upkeep of the vegetative buffer; and

4. When a principal structure is permitted closer than 25 feet to a public right-of-way line, the fence or wall will be permitted no closer to the road right-of-way than the permitted location of the principal structure.

D. Corner Visibility. In all zoning districts, no fence, wall, shrubbery, sign or other obstruction to vision between the heights of three feet and 15 feet shall be permitted within 20 feet of the intersection of two streets.

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

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

G. Screening Buffer Requirements.

1. A solid buffer shall be installed:

a. When a non-residential use abuts a residentially zoned property along the side and/or rear property lines.

b. When any commercial off-street parking or loading space abuts a residential district along the side or rear property lines.

c. When any use permitted in a residential district other than a single- or multi-family dwelling abuts a residential district along the side or rear property lines.

d. When any multi-family development of more than three residential units abuts a residential district or an existing single-family dwelling along the side or rear property lines; and

e. When any outside storage of materials, equipment or products is visible and/or abutting any residential district and/or public street.

2. "Governmental use" as defined herein and including public and private elementary, junior high/middle, and high schools, accredited by the State of North Carolina, and "religious worship activity" as defined herein shall be exempt from the buffer requirements of this ordinance.

3. For all uses classified under sub-section "e" above and regardless of whether or not the use was existing at the time of the adoption of this ordinance, the property owner shall provide and maintain a solid buffer within two calendar years of said use being subject to this ordinance in accordance with the standards of this sub-section.

4. When required by this ordinance and/or the Linden Subdivision Ordinance, the following standards shall apply:

a. A vegetative buffer shall be a minimum of three feet in height at time of planting to reach a height of six feet within three calendar years.

b. Solid non-vegetative fencing shall have a minimum height of six feet.

c. Buffer vegetation shall be located between any fence and the common property line.

d. Chain link fencing shall not be permitted as a screening alternative, regardless of type of modifications made to the chain link fence.

H. Reserved for future use.

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

J. Side Yard Exception. In the C Commercial District, where the lot has a width of 150 feet or less at the front yard setback line, the minimum side yard width requirements shall apply only to one side if the opposite side is also zoned for commercial or industrial uses.

K. Outdoor Lighting. The purpose of this section is to reduce glare, to reduce light trespass, to decrease the expense of lighting, to decrease light pollution, and to improve the aesthetics of the town while still providing adequate nighttime safety and security. The following standards are applicable to all properties:

1. All lights shall be shielded in such a way as to direct all light toward the Earth's surface and away from reflective surfaces.

2. Light fixtures or lamps shall be shielded/shaded in such a manner as to direct incident rays away from all adjacent property and any light on a pole, stand, or mounted on a building must have a shield, and adjustable reflector and non-protruding diffuser.

3. Any facilities, which may require floodlighting, may not arrange the light in such a way that it will shine toward roadways, onto adjacent residential property or residentially zoned property or into the night sky.

4. Any interior lighted signs may not be lit at night when any face of the sign is removed or damaged in such a way that the light may distract pedestrians or drivers or become a nuisance to homeowners.

5. Any light fixture must be placed in such a manner that no light-emitting surface is visible from any residential area or public/private roadway, walkway, trail or other public way when viewed at ground level.

L. Landscaping. The purpose and intent of this ordinance is to enhance the community appearance and improve air quality within the Town of Linden. All requirements as set forth

below shall be applied to non-residential use developments requiring site plan approval prior to zoning permit application. For existing non-residential developments, the landscaping provisions of this section shall apply only to the extent of any change in the building footprint. The detailed site plan, when submitted for site plan approval, shall include the following:

1. Streetscape. Landscaping shall be installed for all non-residential developments abutting a public street as follows:

a. Minimum of one large shade tree or two small ornamental trees per 50 linear feet of street frontage. Calculation for the required number of trees shall be the total length of street frontage divided by 50.

b. Trees shall be planted within the front yard, not within the right-of-way, and may be clustered.

c. The size of the trees to be planted shall be a minimum of two-inch caliper for large shade trees and a minimum of six feet in height for small ornamental trees as specified by the latest edition of *American Standard for Nursery Stock* published by the American Association of Nurserymen.

d. Healthy existing trees may be used to satisfy these requirements.

2. Yard Space. Landscaping shall be installed for all non-residential developments where the lot is adjacent to a public street, regardless of whether or not access to the public street is permitted, as follows:

a. Required plant materials: one ornamental tree for every 50 linear feet of building length and/or width and two shrubs for every 10 linear feet of building length and/or width.

b. The required plant materials must be located between the structure and the required setback line, excluding the parking areas addressed below.

c. The development must have a yard space sufficient in size to accommodate the required plantings and to allow room for flexibility in the landscape design.

3. Off-Street Parking Areas. Paved off-street parking areas consisting of 20 or more parking spaces shall be landscaped as follows:

a. Required plant materials: One large shade tree or two ornamental shade trees for every 20 spaces.

b. Trees shall be planted in such a manner to be protected from motor vehicles.

4. Maintenance. Required plant materials shall be maintained by the property owner, including replacing dead or unhealthy trees and shrubs. All yard and planting areas shall be maintained in a neat, orderly, and presentable manner and kept free of weeds and debris.

M. Retention/Detention Basins (Ponds). When retention/detention basins are required by the State or local ordinances for stormwater, watershed or other purposes, the basins shall be secured with a minimum four-foot-high fence with a lockable gate.

SECTION 10-1003. SPECIAL DEVELOPMENTS.

Special developments governed elsewhere in this ordinance and those governed by the Linden Subdivision Ordinance may be exempt from the lot and yard requirements of this ordinance, provided the development conforms to the special provisions of this ordinance and the Linden Subdivision Ordinance and the overall dwelling unit density is maintained for the district in which it is located except where specifically exempted elsewhere. This section shall include, but not be limited to Article V. Conditional Zoning Districts contained within this ordinance and Zero Lot Line Developments, Unit Ownership Developments, and Manufactured Home Parks, which are regulated by the Linden Subdivision Ordinance.

SECTION 10-1004. DISTRICT DIMENSIONAL PROVISIONS.

The provisions on the following pages shall be complied with except where specifically exempted by Section 10-1003. This section is in “chart” format and begins on the next page.

SECTION 10-1004. DISTRICT DIMENSIONAL PROVISIONS¹

Except for the special provisions as previously noted in this article and any special provisions provided for elsewhere within this ordinance, the following district dimensional requirements shall be complied with:

DISTRICT	MINIMUM LOT SIZE				MINIMUM YARD SETBACK REGULATIONS ²				
	Square Feet Dwelling Unit			Width (in feet)	Side Yard Setback				Rear Yard Setback (in feet)
	First Dwelling Unit	2 nd , 3 rd & 4 th Dwelling Units	5 or More Dwelling Units		Front Yard Setback (Measured from R/W line)	1 Story	2 Story	For each Additional Story Greater than 2, Add:	
CD	-	-	-	-	50	50	50	-	50
R40	40,000	40,000	40,000	100	30	15	15	10 ft story	35
R15	15,000	15,000	15,000	75	30	10	15	10 ft story	35
R7.5	7,500	7,500	7,500	75	30	10	15	8 ft story	35
O&I	-	-	-	-	35	15	15	-	20
C	-	-	-	-	45	15	15	-	20
M	-	-	-	-	75	30	30	-	30

¹ All signs are regulated by Article XII.

² Exceptions: See Section 10-1003 for special exceptions to this chart.

ARTICLE XI OFF-STREET PARKING AND LOADING

SECTION 11-1101. GENERAL PROVISIONS.

All uses of land, buildings or structures shall provide for adequate off-street parking and loading space to meet at least the minimum standards in accordance with the provisions of this article.

A. Plan Approval. Each application for a zoning permit, Conditional Zoning district, Special Use Permit or site plan approval shall include information as to the location and dimensions of proposed off-street parking and loading spaces and the means of ingress and egress to such spaces. It is the responsibility of the developer to ensure that the proposed plans provide adequate off-street parking to serve the needs of the proposed use.

B. Certificate of Occupancy. The Certificate of Occupancy for the use of any building, structure or land where off-street parking space or loading space is required shall be withheld by the Code Enforcement Manager if the off-street parking and loading spaces are not provided on-site as shown on the approved plans.

C. Permanency. The off-street parking and loading spaces required by this article shall be permanent spaces and shall not be used for any other purpose unless other spaces are provided which will fully meet the requirements of this ordinance.

D. *Reserved for future use.*

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

F. Change of Existing Use. Whenever the existing use of a structure shall hereafter be changed to a new use, off-street parking and loading facilities shall be provided as required for such new use. However, if the structure was erected prior to the effective date of this ordinance, additional parking or loading facilities are mandatory only in the amount by which the requirements for the new use shall exceed those for the existing use.

SECTION 11-1102. OFF-STREET PARKING.

A. Minimum Off-Street Parking Requirements. Off-street parking spaces shall be provided and permanently maintained by the owners or occupants of the following types of property uses on the basis indicated.

<i>Uses</i>	<i>Required Parking</i>
All dwelling units	Two spaces for each dwelling unit except one and one-half spaces for each dwelling unit in a multi-family complex located in R7.5
Art galleries, libraries, museums	One space for each 400 square feet of net floor area
Banks	One space for each 200 square feet of net floor area, plus one space for each two employees
Commercial amusement	One space for each four persons in design capacity
Funeral homes	One space for each four seats in chapel
General, professional, governmental offices	One space for each 300 square feet of net floor area
Lodges, fraternal and social organizations	One space for each four persons in design capacity
Manufacturing, processing, fabrication, assembly, construction, contracting, building trades	One space for each vehicle used directly in the conduct of the use, plus two additional spaces for each three employees on the largest shift
Manufactured home and travel trailer sales lot	One space for each employee and one space for each 3,000 square feet of display area
Medical clinics, doctors' and dentists' offices	Five spaces for each professional practicing on the premises
Motel/Hotel	One space for each room or unit to be rented; plus, one space for each three employees, plus one space for each 100 square feet of floor area utilized for meeting rooms
Motor vehicle gas stations	Ten parking spaces
Motor vehicle repair	One space for each 200 square feet of net floor area and/or sales garage area
Nursery, kindergarten, elementary & junior high/middle schools	One space for each employee, plus ten additional spaces
Nursing homes, convalescent and retirement homes	One space for each four beds intended for resident use, plus one parking space for each employee on the largest shift
Religious worship	One space for each five seats
Restaurants	One space for each four seats in design capacity
Retail stores, service shops, food & beverage establishments including planned shopping centers	One space for each 200 square feet of net floor area
Senior high schools	Four spaces for each classroom and administrative office
Veterinary clinics	Four spaces for each veterinarian
Vocational, business, post-secondary, avocational and trade schools	One space for each 300 square feet of gross floor area
Wholesale establishments	One space for each 900 square feet of gross floor area

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

C. Size. All required off-street parking spaces shall be at least nine feet in width and at least 20 feet in length measure at right angles to the axis of the vehicle exclusive of access drives, aisles or ramps. Such space shall have a vertical clearance of at least six feet, six inches. For parallel parking, the length of the parking space shall be increased to 23 feet. Compact parking spaces, measuring seven and one-half feet wide and 16 feet in length are permitted, provided that the compact spaces do not exceed more than 25 percent of the total required parking.

D. Design. Off-street parking spaces, drive areas and entrances to any structure shall be designed and constructed to the standards of the N.C. Building Code, or other applicable Federal, State or local regulation.

E. Access. Each required off-street parking space shall open directly upon an aisle or driveway of such width and design as to provide safe and efficient means of vehicular access to such parking space. All off-street parking facilities shall be designed with appropriate means of vehicular access to a street or alley in a manner that will least interfere with traffic movement.

F. Lighting. Any lighting used to illuminate off-street parking areas shall be subject to the same standards as listed in Section 10-1002. K.

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

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

I. Remote Parking Space. If the off-street parking space required by this ordinance for non-residential uses cannot be reasonably provided on the same lot on which the principal use is located, such space may be provided on any land within 400 feet of the main pedestrian entrance to such principal use, provided such land is in the same ownership, by deed or long term, recorded lease, and that such land is zoned to allow the non-residential use for which the remote parking is to serve.

In such cases, the applicant for a permit for the principal use shall submit with his application an instrument duly executed, acknowledged, and recorded with the County Register of Deeds that subjects said land to parking use in connection with the principal use.

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

K. Residential Parking Limitation. Where parking for more than five cars is permitted or required in residential districts, the lot may be used only for parking and not for any type of loading, sales, repair work, dismantling, servicing, or long-term storage, either of merchandise or vehicles.

L. Handicap Parking. Handicap parking shall be provided in accordance with the standards of the North Carolina Building Code and any other applicable Federal and/or State regulations.

SECTION 11-1103. OFF-STREET LOADING.

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

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

<i>Uses</i>	<i>Required Space(s)</i>
Commercial operations with a gross floor area of less than 20,000 square feet and all wholesale, manufacturing and light industrial operations with a gross floor area of less than 10,000 square feet	One loading space
Retail operations, (including restaurant and dining facilities within hotels and office buildings) with a total usable floor area of 20,000 square feet or more	One loading space for every 20,000 square feet of floor area requiring not more than seven spaces
Office buildings and hotels with a total usable floor area of 100,000 square feet or more devoted to such purposes	One loading space for every 100,000 square feet of floor area
Industrial and wholesale operations with a gross floor area of 10,000 square feet or over as follows:	Minimum number of loading spaces required:
10,000 to 40,00 square feet	One loading space

Above 40,000 to 100,000 square feet	Two loading spaces
Above 100,000 to 160,000 square feet	Three loading spaces
Above 160,000 to 240,000 square feet	Four loading spaces
Above 240,000 to 320,000 square feet	Five loading spaces
Above 320,000 to 400,000 square feet	Six loading spaces
Each 90,000 square feet above 400,000 square feet	One additional loading space

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

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

D. Size. A loading berth shall have minimum plan dimensions of 12 feet by 25 feet and 14 feet overhead clearance. A loading berth shall be sufficient to allow normal loading operations of a kind and magnitude appropriate to the use served.

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

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

ARTICLE XII SIGN REGULATIONS

SECTION 12-1201. PURPOSE.

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

SECTION 12-1202. SIGN DEFINITIONS.

For purposes of interpreting this article, the following words and terms are herein defined:

A. Attached sign. A sign connected to or painted on a wall and including signs connected to or otherwise displayed on or through a façade window. The following are not attached signs: wall identification signs and commemorative plaques not more than two square feet in area, memorial cornerstones or tablets providing information on building erection or commemorating a person or event, or unit identification signs.

B. Billboard (off-premises sign). A sign which directs attention to a business, commodity, service, entertainment, or other message not conducted, sold or offered on the premises where such sign is located.

C. Business Sign. A sign that directs attention to a business, industry, profession, commodity, service or entertainment sold, produced or offered upon the premises where such sign is located or to which it is attached.

D. Flashing Sign. Any illuminated sign on which the artificial light is not maintained stationary or constant in intensity and color at all times when such sign is in use. For the purpose of this ordinance, any moving, illuminated sign shall be considered a “flashing sign”; such signs shall not be deemed to include time and temperature signs, mechanical/digital signs or public message displays using electronic switching, provided the message remains displayed for a minimum of eight seconds.

E. Freestanding Sign. Any sign supported wholly or in part by some structure other than the building or buildings housing the business to which the sign pertains. For purposes of this article, this definition shall not include “billboard” which is defined above.

F. Governmental Sign. Any sign erected by or on behalf of a governmental body to post a legal notice, identify public property, convey public information, and direct or regulate pedestrian or vehicular traffic.

G. Ground Sign. A freestanding sign suspended or supported by one or more uprights or braces anchored in the ground with no more than 30 inches clearance from the bottom of the sign to the ground below.

H. Identification Sign (directory). A sign used to display only the name, address, crest or trademark of the business, individual, family, organization or enterprise occupying the premises, the profession of the occupant, the name of the building on which the sign is displayed, or the name of the owners or developers. A directory sign is an identification sign with information on multiple occupants.

I. Informational Sign. Any on-premises sign containing no other commercial message, copy, announcement, or decoration other than instruction or direction to the public. Such signs include, but are not limited to, the following: identifying restrooms, automated teller machines, for lease, for sale, self-service, walkways, entrances and exits, freight entrances, traffic direction and prices.

J. Mechanical/Digital Sign. Any sign with changeable copy and the message changes in increments of at least eight seconds shall be considered as a “sign” under this article.

K. Obscene Matter. Any item with a context of a sexual nature depicting, describing, or related to anatomical areas and sexual activities.

L. Pole Sign. A freestanding sign that is mounted on a pole or other support.

M. Portable Sign. Any sign not permanently attached to the ground or to a building or other structure and which, because of its relatively light weight, is meant to be moved from place to place. Such sign may or may not have changeable copy, may or may not be wired for lighting and may or may not have wheels. “Sandwich boards” are considered as portable signs.

N. Public Information Sign. A sign usually erected on public property or right-of-way and maintained by a public agency that provides the public with information and in no way relates to a commercial activity including, but not limited to, speed limit signs, city limit signs, street name signs and directional signs.

O. Roof sign. A sign displayed above the eaves of a building.

P. Sign. Any words, lettering, parts of letters, figures, numerals, phrases, sentences, devices, designs, trade names or trademarks by which anything is made known, such as the designation of any individual, business, commodity, product, service, or entertainment, which are visible and used to attract attention. The word “sign” does not include official notices posted by any public officer in performance of a public duty, or by any person in giving legal notice; nor does it include directional, warning, traffic or informational structures required by or authorized by law or by Federal, State, or local authority.

Q. Sign Area. The area of a sign mounted on a board or within a frame or box shall be the area of the board, frame, or box. The area of a sign mounted directly on the wall of a building shall be the area within the outline of the actual shape of the sign. For individual letters or logos mounted on the wall of a building, the sums of the areas of each letter, measured from the exterior edges of the letter, will be the sign area. Sign area does not include support structures unless the coloration, lighting, etc. are designed to attract attention.

R. Sign Height. The vertical distance measured from the mean curb level to the level of the highest point of the sign, unless defined differently within this ordinance. In the case of a sign not adjoining a street or highway, the “height of a sign” is the vertical distance of the average elevation of the ground immediately adjoining the sign to the level of the highest point of the sign.

SECTION 12-1203. SIGNS EXEMPT FROM REGULATION.

The following signs are exempt from regulation under this ordinance except that any lighted sign shall require an electrical permit:

- A. Governmental signs.
- B. Lights and decorations with no commercial message temporarily displayed on traditionally accepted civic, patriotic, or religious holidays.
- C. Signs located on the interior of buildings, courts, lobbies, or other structures which are not intended to be seen from the exterior of said buildings or structures.
- D. Signs affixed to vehicles and trailers used in the normal transport of goods or persons where the sign is incidental and accessory to the primary use of the vehicle or trailer.
- E. Signs affixed to windows of vehicles displaying information on the terms of sale for said vehicles.
- F. Signs not legible from a public or private street.
- G. Flags of the governmental jurisdictions of the United States of America or the State of North Carolina, local governmental jurisdictions, foreign nations, having diplomatic relations with the United States, and any other flags adopted or sanctioned by the Linden Board of Commissioners, subject to U.S. Congressional protocol.
- H. Public Information Signs.

SECTION 12-1204. GENERAL PROVISIONS.

A. Protection Under First Amendment Rights. Any sign, display or device allowed under this article may contain, in lieu of any other copy, any otherwise lawful noncommercial message which does not direct attention to a business operated for profit or to a commodity or service for sale, provided that such sign complies with the size, lighting, spacing, setback and other requirements of this article. This includes signs requiring and not requiring a permit.

B. Zoning Permit Required. No sign requiring a permit shall hereafter be erected or attached to, suspended from or supported on a structure nor shall any existing sign be enlarged, replaced or relocated until a zoning permit has been issued by the Code Enforcement Manager. Notwithstanding the above, changing or replacing the permanent copy of an existing lawful sign shall not require a permit, provided the copy change does not change the nature or size of the sign such as to render the sign in violation of this ordinance.

C. Measurement of Sign Area.

1. In measuring the copy area of a sign permitted under this article, the entire face of the sign shall be included.

2. Where both sides of a double-faced sign contain lettering or other allowable display, only one side (largest side) shall be used to compute the allowable copy area of the sign. However, any “V” type sign with a “V” angle of greater than 45 degrees shall be subject to measurement of sign area on both sides.

3. Where the sign consists of individual letters, numbers, characters, figures or displays attached in some manner to a building or a sign face of irregular shape, the sign copy area shall include the area of the smallest circle, square or rectangle that can encompass the total sign area composed of letter, number, characters, or figures or displays or the irregular shaped sign face.

4. Where signs have appendages or additions, such as “pop-ups” or “cutouts” that extend beyond the main sign copy area, the area of such appendages or additions, shall be measured separately, but included in the total sign copy area.

5. Any area designed for changeable copy shall be included in total sign copy area.

6. Sign area does not include support structures unless the coloration, lighting, etc. are designed to attract attention.

D. Freestanding Sign Location – All Districts (excluding Billboards). Freestanding signs shall be set back from the existing road right-of-way (normally the front property line) or proposed future road right-of-way, whichever is the greater distance, according to the below criteria.

Freestanding signs shall be set back from all other property lines a minimum distance of five feet, except that development signs may be located on a median of a public right-of-way provided that the NC Department of Transportation permits the sign and freestanding signs located on a median of a private street shall be located no closer than 20 feet of the street intersection. In no instance shall a sign between the heights of three and 15 feet be permitted within 20 feet of the right-of-way line at the intersection of two streets. Freestanding signs may be placed on the same or separate support structures.

1. *Ground Signs.* The following table establishes the minimum setback requirements for ground signs provided that all other requirements of this article are complied with.

Sign Height	Minimum Setback from R-O-W Line
0-10 feet	5 feet
11-20 feet	10 feet

2. *Pole Signs.* Pole signs, in addition to all other requirements of this article, shall be set back a minimum of five feet from the existing or proposed right-of-way line provided that no portion of the sign projects any closer than two feet, measured in horizontal distance, from the proposed or existing right-of-way line. Also, pole signs shall maintain a minimum clearance of nine feet over any pedestrian areas and 14 feet over any vehicular paths. Pole signs shall not exceed a maximum sign height of 20 feet unless specifically otherwise allowed within this article.

E. Maintenance and Appearance of Signs. Every sign and its support, braces, guys, anchors, and electrical equipment shall be maintained in safe condition at all times. All signs shall be kept in a state of good repair and aesthetic condition, free from defective, rusting, or missing parts, or broken sign facing, broken supports, loose appendages, or struts, or disfigured, cracked, ripped or peeling paint or poster paper, or missing letters or numbers.

F. Illuminated Signs. Signs, which are illuminated from within or from an external source, must be illuminated in a manner which avoids glare or reflection which interferes with traffic safety. Any external source of illumination such as spotlights or floodlights shall be placed so that the source is not directly visible from any adjacent residential zoning districts.

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

H. Unsafe and Unlawful Signs. If the Code Enforcement Manager finds that any sign is unsafe or is a menace to the public or has been constructed, erected or is being maintained in violation of this ordinance, the manager shall give written notice of such violation to the owner of the sign or the owner of the property where the sign is located, or both. If the owner of the sign, or the property owner, fails to remove or alter the structure so as to comply with the required standards within 30 days after receipt of said notice, such sign may be removed, or altered to comply, by

the manager at the expense of the owner of the sign or the property owner. The manager may cause any sign or other advertising structure that is an immediate peril to persons or property to be promptly removed by the sign owner or the property owner.

I. Cessation of Purpose and Removal. Any sign now or hereafter existing to which no longer advertises a bona fide business conducted or a product sold shall be taken down and removed by the owner, agent or person having the beneficial use of the building or land or structure upon which such sign may be found. Such sign shall be removed within 30 days after written notification from the Code Enforcement Manager except that temporary activities sign posting shall be removed by the permittee within seven days following the date of termination of such events. Upon failure to comply with any notice within the time specified, the manager is authorized to cause removal of such sign, and the owner of the sign shall pay expenses incurred.

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

SECTION 12-1205. SIGNS PERMITTED IN ANY DISTRICT.

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

A. Temporary Signs. For the purpose of advertising a specific property, individual or event, signs not exceeding eight square feet in area are permitted provided the temporary signs are setback a minimum of five feet from a property line, not located within any public right-of-way, do not constitute a hazard to public safety, do not contain obscene matter and are removed within seven calendar days of cessation of the temporary occasion the sign is purporting to advertise. This provision shall not be construed to authorize the posting of signs upon trees, utility poles, traffic control signs, lights, or devices, or in any place or manner prohibited by any other Federal, State or local regulation.

B. Traffic Control Signs. Signs that only regulate traffic on private property are permitted.

C. Special Information Signs. For the purpose of giving directions and information, on-site signs pertaining to special uses where not otherwise permitted, and off-premises signs may be approved by the Board of Adjustment subject to a Special Use Permit specifying the size, location, lighting, design and display in accordance with Section 15-1506. Such signs shall be limited to those which are necessary to inform the public as to location and information concerning facilities, institutions, business districts, fraternal orders and service clubs, or such other activity as the board may judge to be beneficial to the total community.

D. Special Entrance Signs (Development Entrance Signs). A permanent sign is permitted as an integral part of a gate or entrance structure which identifies a subdivision, group development or other special development approved under the provisions of this ordinance or the Linden Subdivision Ordinance, estate, farm, or other entity, provided there are not more than two signs for each main entrance, with a total sign area for each such entrance not to exceed 32 square feet. Under this provision, if such a special entrance sign is utilized no other main entrance identification sign is permitted.

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

F. Agricultural Product Signs. In the zoning districts that allow agriculture or rural farm use, signs advertising agricultural products produced on the premises are permitted, provided there are no more than two such signs, each of which shall not exceed 12 square feet in area. In any instance where the products sold are seasonal or temporary, such signs shall be removed within 30 days of cessation of the activity advertised.

SECTION 12-1206. SIGNS PERMITTED BY DISTRICT.

A. Attached Signage. Attached signage not exceeding two square feet in area for each front foot of structure the occupant occupies is allowed. Attached signs may be placed on any side of the building. On sites where a canopy exceeds the building size, the canopy size may be used to determine the permitted attached sign area. For buildings with multiple occupants, the frontage of each separate suite/occupant shall be used to calculate allowable attached signage for each occupant.

B. Freestanding Signage. This section uses road classification to set sign regulations. The classifications are the NC Department of Transportation's Functional Class system. For the purposes of this chart "Major Thoroughfare" includes the classifications of Interstate, Other Freeway, Other Principal Arterial, Minor Arterial and Major Collector. "Minor Thoroughfare" includes the classifications of Minor Collector and Local Road.

1. Permanent On-Premises Signs on a Single Parcel or Lot with a Single Occupant. Permanent on-premises signs are permitted in the respective zoning districts for single establishments on single parcels or lots, provided stated conditions and stipulations are met as follows.

One freestanding sign is allowed per parcel. Except, lots with frontage on two streets may have one freestanding sign per road, where each sign is allowed to have the maximum copy area as designated in the table below. Freestanding signage shall be located in accordance with Section 12-1204.D.

Zoning District	Road Classification	Max Sign Copy Area	Max Sign Height
O & I (Office & Institutional) or C (Commercial)	Major Thoroughfare	72	20
	Minor Thoroughfare	32	12
M (Industrial)	Major Thoroughfare	100	20
	Minor Thoroughfare	72	12
Non-residential use in residential district	Major Thoroughfare	32	10
	Minor Thoroughfare	32	10

2. Permanent On-Premises Signs on a Single Parcel or Lot with Multiple Occupants.

One combined or common permanent on-premises freestanding sign for multiple occupants on a single parcel or lot shall be allowed on each public road and may exceed the maximum copy area for freestanding signs in Section 12-1206.B.1. by the following percentages:

- a. 2-10 establishments: up to 25%
- b. 11-20 establishments: up to 50%
- c. 21-30 establishments: up to 75%
- d. 31 or more establishments: up to 100%

3. Permanent On-Premises Signs Permitted for Occupants at Interstate Interchanges.

Permanent on-premises freestanding pole signs located within four hundred (400) feet of the right-of-way of an interstate interchange may be increases in sign copy area up to a maximum of two hundred (200) square feet and up to a maximum height of eighty (80) feet and may be illuminated.

SECTION 12-1207. BILLBOARDS (OFF-PREMISES SIGNS).

In addition to other applicable standards contained within this article, the following provisions shall apply to all billboards.

A. General Provisions.

1. Billboards shall be allowed only along rights-of-way with full-control or limited control of access, such as freeways and major thoroughfares.

2. Billboards shall not face or be oriented toward any adjoining or abutting residentially zoned or residentially used property and shall not be located within 200 feet of a residential zoning district boundary line.

3. Billboards shall not exceed a sign height of 35 feet.

4. All billboards are considered as a principal use of property, not accessory, and shall be allowed in the M Industrial District, provided that the dimensional criteria outlined below is complied with and upon approval of a site plan.

5. All Federal, State, and other local regulations shall be complied with.

6. Billboards are exempt from the landscaping and buffering provisions of this ordinance.

B. Dimensional Criteria by District.

1. *Reserved for future use.*

2. *Industrial District.* Billboards constructed and located in this zoning district shall have a maximum sign area of 700 square feet and shall be located at least 50 feet from a street right-of-way line; five feet from a property line that is not a of-way line; 50 feet from any other freestanding sign, building or structure on the same lot; and be a minimum of 500 feet from another billboard.

SECTION 12-1208. SIGNS PROHIBITED.

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

A. Signs Not to Constitute Traffic Hazard. No sign or advertising structure shall be erected or maintained at the intersection of any streets or roads so as to obstruct free and clear vision; or at any location where, by reason of the position, illumination, shape or color, it may impair, obstruct the view or be confused with any authorized traffic sign, signal, or device; or that makes use of the words “stop”, “look”, “drive-in”, “danger” or any other word, phrase, symbol or character in such manner as to interfere with, mislead or confuse traffic. In any case, signs shall be prohibited within 20 feet of a street intersection measured to the intersection of the two nearest street lines.

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

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

D. Obscene Matter Prohibited. No sign shall be erected or maintained which bears or contains statements, words, or pictures of an obscene character.

E. Signs on Private Property; Consent Required. No sign may be erected by any person on private property of another person without first obtaining the verbal or written consent of such owner and is compliant with the provisions of this article.

F. Flashing signs.

ARTICLE XIII SITE PLANS

SECTION 13-1301. GENERAL OBJECTIVES.

This article recognizes that through ingenuity, imagination and quality design, community development can be improved. All non-residential uses shall be subject to site plan review and approval prior to application for any permits. The careful review of development plans by the County Planning and Inspections staff is a process that will:

- A. Permit creative approaches to the development of land, reflecting changes in the technology of land development.
- B. Provide for an efficient use of land, which can result in smaller networks of utilities and streets and thereby lower development costs.
- C. Provide and ensure an environment of stable character compatible with surrounding land uses.
- D. Accomplish a more desirable environment than would otherwise be possible; and
- E. Enhance the appearance of the community.

SECTION 13-1302. DETAILED SITE PLAN SPECIFICATIONS.

Prior to any non-residential use of property, permits shall not be issued by the Code Enforcement Manager except in conformance with a detailed plan submitted to and approved by the Linden Board of Commissioners. Plans submitted for approval shall be in the number as required by the County Planning and Inspections Director drawn to an engineering scale of not less than one inch equals 200 feet, and shall show all information necessary for proper evaluation of the plan, including:

- A. The dimensions and location of the property, all existing and proposed structures, including any existing and/or proposed freestanding signs, and all existing and proposed right(s)-of-way.
- B. The parking and general circulation plan, including entrances, exits and pedestrian ways.
- C. The service area, including off-street loading facilities, service drives and dimensions thereof and proposed uses of all structures.

D. The proposed location and material of fences, walls, buffers and landscaping; and

E. The name of the developer, the date, the scale, the north arrow, REID (Parcel ID) number, general vicinity sketch map, and the person or firm preparing the plan.

SECTION 13-1303. SITE PLAN REVIEW.

Plans for developments shall be submitted to the County Planning and Inspections Staff in accordance with the schedule established by the Planning Board. The County Planning and Inspections Staff shall ensure the plan is in compliance with this ordinance, and the Linden Subdivision Ordinance.

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

A. Proposed land uses, the location of various land uses, their types and densities.

B. Proposed circulation pattern for vehicles and pedestrians, including providing for the interconnectivity of drives and parking areas by means of lateral access.

C. Proposed parks and other common open space areas, proposed means of dedication of any common open space areas and organizational arrangements for the ownership, maintenance, and preservation of common open space.

D. Delineation of the units or phases to be constructed in progression.

E. Relation to land uses in surrounding areas and to the general development plan.

F. The layout of motor vehicle parking and loading areas, service areas, entrances, exits, yards, courts and landscaping, location of freestanding signs, control of lighting, noise or other potentially adverse influences in order to protect the residential character within and/or adjacent to the planned development.

G. The yard setbacks and type of buffering and/or screening of various land uses.

H. The plan shall note, and the developer shall ensure that all utilities are placed underground, except for 25kv or greater electrical lines; and

I. Extension and connection to public water and/or sewer is required if extension and/or connection would be required under the provisions of the Linden Subdivision Ordinance. If the development consists of a non-residential use or mixed use, and utilities are present within the right-of-way or if any adjacent lot is served by utilities, extension and connection is mandatory.

The County Planning and Inspections Staff shall either recommend approval of the site plan and draft the conditions of such approval, if any, or shall recommend disapproval of the site plan and state its reasons. Where a site plan meets the provisions of the Linden Subdivision Ordinance, approval of the site plan shall constitute preliminary subdivision plan approval for the purposes of the Linden Subdivision Ordinance. The approved plan shall be filed with the Code Enforcement Manager. The approved plan may be amended in the same manner as provided for original plan approval.

SECTION 13-1304. BOARD OF COMMISSIONERS' CONSIDERATION.

The Linden Board of Commissioners shall hear and approve the plan and state the conditions of approval, if any, or shall disapprove the plan and state its reasons. Where a development plan meets the provisions of the Linden Subdivision Ordinance, approval of the development plan shall constitute preliminary subdivision plan approval for the purposes of the Linden Subdivision Ordinance. The decision of the Linden Board of Commissioners shall be the final decision on the plan. The approved plan shall be filed with the Code Enforcement Manager and may be amended in accordance with Section 5-506 if appropriate, or in the same manner as provided for original plan approval.

ARTICLE XIV AMENDMENTS

SECTION 14-1401. SUBMISSION OF AMENDMENTS AND CHANGES.

The Linden Board of Commissioners may amend, supplement, change, modify, or repeal the provisions of this ordinance, including but not limited to: its regulation of, or the number, area, boundaries and classifications of the zoning districts, upon petition, recommendation of the Planning Board, or on its own motion after public notice and hearing as provided by law. No amendment shall become effective unless and until it is first submitted to, considered by and reported on from the Planning Board and thereafter approved by the Linden Board of Commissioners. The following provisions shall govern submissions for amendment of this ordinance.

A. Submission of Petition. Petitions for amendments to this ordinance shall be submitted in the form prescribed by the County Planning and Inspections Director. Submissions by the Linden Board of Commissioners or by the Joint Planning Board on its own initiative shall state the proposed amendment succinctly. When a petition for rezoning is made by a person other than the tax record property owner, local government entity or authorized agent, the application must provide certification that the property owner has received actual notice of the petition and a notice of the legislative hearing. Third-party down-zonings are prohibited unless initiated by the governing body.

B. Schedule for Public Hearings. All petitions for amendments may be set for a public meeting to be considered for recommendation by the Planning Board, and then shall be heard at a legislative hearing and decided by the Linden Board of Commissioners according to their adopted regular meeting schedule.

C. Revisions to Petitions. Once the initial review of the petition for amendment has been reviewed by the County Planning and Inspections Staff, and the petition is found to be inaccurate, incomplete or requires revision, or if the applicant of his own accord desires to make a change in the application for the petition, the petition may be rescheduled to the next available scheduled hearing.

D. Notice to Military Bases. All request for amendments that would change or affect the permitted uses of land located five miles or less from the perimeter boundary or Fort Bragg, Pope Air Force Base, and/or Simmons Army Airfield shall be provided to the Commander of said bases in accordance with N.C. Gen Stat. § 160D-601.

SECTION 14-1402. COUNTY PLANNING STAFF RECOMMENDATION.

Upon submission of a complete petition for amendments of this ordinance, the County Planning and Inspections Staff shall review the petition and the request and make a recommendation to the Planning Board. The staff shall take into consideration, among other related issues, the following factors when considering criteria for their recommendation:

- A. The appropriateness of the request in relation to, and the request's consistency with the current Land Use Plan and adopted land use policies for the subject area.
- B. The availability of public services, to include utilities, schools, fire, police, recreation, and other typical services.
- C. The suitability of the request as related to the nature of the surrounding land area and any foreseeable effects on the surrounding area.
- D. The policies of the Planning Board and the Linden Board of Commissioners in similar cases.
- E. The effect of the request regarding environmental concerns.
- F. Any changed conditions or circumstances in the area of a proposed change since any previous zoning action.
- G. Whether the proposed amendment would correct an inadvertent mistake.
- H. Whether or not the request is reasonable and in the public interest.

SECTION 14-1403. COUNTY PLANNING BOARD MEETING AND RECOMMENDATION.

A. The Planning Board, upon receipt of a proposed amendment, by petition or otherwise, and upon a recommendation from the County Planning and Inspections Staff, shall consider each proposed amendment and may hold a public meeting, public notice of which shall be given, for such consideration. Minutes of each meeting shall be kept in writing. Upon petition or other proposal for an amendment of the ordinance for the purpose of changing the classification of an existing district or part thereof, the Planning Board may consider amending the ordinance to provide a classification or reclassification other than that specifically requested or recommended, provided that the notice to landowners and notice of public meeting state that classifications or reclassifications other than that requested may be considered. If, upon receipt of a proposal to reclassify one type of general zoning district to another, or the Planning Board proposes, or has a proposal from the Board of Commissioners, to consider establishment of a Conditional Zoning

district, it must refer such proposal to the owners of the property to be included in such district for submission of a petition in accordance with the provisions of Article V hereof; no consideration of such a proposal shall occur unless and until such a petition is received.

B. Following consideration of proposed amendments, supplements, changes, modifications, or repeal of provisions of this ordinance, the Planning Board shall report all proposals it has considered to the Linden Board of Commissioners along with a statement addressing consistency of the request with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable and with its recommendation thereon. Failure of the Planning Board to make a report and recommendation within 30 days after hearing a petition for a specific amendment shall constitute a favorable report and recommendation for such amendment.

C. A Planning Board member shall not vote on any zoning amendment recommendation if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship. If an objection is raised to a member's participation at or prior to the hearing or vote on the matter and that member does not recuse himself or herself, the remaining members shall be majority vote rule on the objection.

SECTION 14-1404. BOARD OF COMMISSIONERS' HEARING AND FINAL DISPOSITION.

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

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

C. To approve any amendment, supplement, change, modification, or repeal of any provisions of this ordinance, the Linden Board of Commissioners shall address in a brief statement the consistency of the action with any officially adopted comprehensive plan; and

make a finding and determination, entered in the minutes of the meeting, that such action is reasonable, neither arbitrary or unduly discriminatory and in the public interest. Consideration of any Conditional Zoning district is governed by Article V of this ordinance.

D. Notice of approval of any amendment for an industrial zoning district within 660 feet of the right-of-way of interstate or primary highways shall be sent by registered mail to the North Carolina Department of Transportation in accordance with N.C. Gen. Stat §136-153.

E. A governing board member (Commissioner) shall not vote on any legislative decision regarding a development regulation pursuant to Chapter 160D where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable impact on the Commissioner. A Commissioner shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the Commissioner has a close familial, business, or other associational relationship. If an objection is raised to a member's participation at or prior to the hearing or vote on the matter and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

SECTION 14-1405. PETITIONS FOR AMENDMENTS LIMITED; REAPPLICATIONS LIMITED.

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

ARTICLE XV BOARD OF ADJUSTMENT

SECTION 15-1501. ESTABLISHMENT.

The Board of Commissioners, pursuant to N.C. Gen Stat. §160D-302, does establish a Board of Adjustment. The powers and duties of the Board of Adjustment shall be exercised by the five members of the Board of Commissioners. The Board of Adjustment, however, is an independently operating board, and shall be bound by and shall follow the requirements of the article. The Board of Adjustment will meet on an as-needed basis.

SECTION 15-1502. COMPOSITION.

The Mayor Pro Tempore shall serve as the Chairperson of the Board of Adjustment and shall preside over all meetings of that board.

The Town Clerk shall serve as the Clerk of the Board of Adjustment, and shall keep minutes of the proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact. The Clerk shall also keep records of its examinations and official action. The County Planning & Inspections Director shall appoint a County Planning Staff member to serve as the Secretary to the Board of Adjustment, and the Secretary shall be responsible for the proper dissemination of information and processing applications submitted and presenting said applications to the Board of Adjustment. The Secretary and Clerk to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the board members prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on objections shall be made by the board at the hearing.

The Board of Adjustment shall elect a Vice Chairperson by majority vote from among its members. The Vice Chairperson shall serve a term of one year but is eligible to serve consecutive terms. The Vice Chairperson or any member of the board while temporarily acting as Chairperson has and can exercise like authority. The Mayor shall not be a member of the Board of Adjustment.

SECTION 15-1503. POWERS AND DUTIES.

When sitting as the Board of Adjustment, the board shall have the following powers and duties:

A. Appeals. To hear and decide appeals from decisions of the Town Manager, County Planning & Inspections Director, Code Enforcement Manager and/or other administrative

officials charged with enforcement of this ordinance and other land development ordinances. To this end, the board shall have all the powers of the officer from whom the appeal is taken. An appeal to the Board of Adjustment shall be conducted in accordance with the provisions of Section 15-1504.

B. Variances. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance or any other land development ordinance that authorizes Board of Adjustment consideration, the Board may vary any of the provisions of the ordinance. Requests for variances shall be processed and considered in accordance with the provisions of Section 15-1505.

C. Special Use Permits. The Board of Adjustment is authorized to hear and decide special use permit applications in accordance with the provisions of Section 15-1506.

D. Oaths. The Chairman or any member temporarily acting as Chairman is authorized in his or her official capacity to administer oaths to witnesses in any matter coming before the Board.

E. Subpoenaing Witnesses. The Board of Adjustment through the Chair, or in the Chair's absence, anyone acting as Chair, may subpoena witnesses and compel the production of evidence.

SECTION 15-1504. APPEALS.

The Board of Adjustment shall hear and decide appeals from decisions of administrative officials charged with enforcement of this ordinance or other land development ordinances and may hear appeals arising out of any other ordinance that regulates land use or development, subject to the terms of this section.

A. Any person who has standing under G.S. 160D-1402 or the town may appeal a decision to the Board of Adjustment. The notice of appeal shall state the grounds for the appeal.

B. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the subject property owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. In the absence of evidence to the contrary, notice given by first class mail shall be deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

C. The owner or other party shall have 30 days from the receipt of the written notice within which to file an appeal. Any other person withstanding to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

D. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for development approvals to use such property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

E. Subject to the provisions of subdivision (D) of this sub-section, the Board of Adjustment shall hear and decide the appeal within a reasonable time.

F. The official who made the decision or the person currently occupying that position if the decision-maker is no longer employed by the County shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the County would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

SECTION 15-1505. VARIANCES.

When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the Board of Adjustment shall vary any of the provisions of the zoning regulation upon a showing of all of the following:

A. Unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

B. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.

C. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

D. The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured, and substantial justice is achieved.

Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any variance granted becomes null and void if not exercised within the time specified in such approvals, or if no date is specified, within one calendar year from the date of such approval. No change in permitted uses may be authorized by a variance. The Board of Adjustment is also not authorized to grant variances to any use approved in a Conditional Zoning district or to the specific conditions or other performance criteria imposed upon such use. If the board denies a variance request, the board shall enter the reason for its action in the minutes of the meeting at which the action is taken. In the event of a denial, the Board of Adjustment shall not consider resubmission of the application for the same variance request on the same property without a substantial material change concerning the property and the application.

SECTION 15-1506. SPECIAL USE PERMITS.

The Board of Adjustment shall hear and decide applications for Special Use Permits. The various Special Uses set forth in the Use Matrix in Article IV, because of special site or design requirements, operating characteristics or potential adverse effects on surrounding property and neighborhoods, shall be permitted only upon approval by the Board of Adjustment in accordance with the standards and procedures specified in the ordinance. Reasonable and appropriate conditions may be imposed upon these permits.

A. Permitting special uses adds flexibility to this ordinance. Subject to high standards of planning and design, certain property uses are allowed in the several districts where these uses would not otherwise be acceptable. By means of controls exercised through the Special Use Permit procedures, property uses that would otherwise be undesirable in certain districts can be developed to minimize any negative effects they might have on surrounding properties.

B. Special Use Permits shall be granted by the Board of Adjustment as permitted for only those uses enumerated in Section 4-403, Use Matrix, as Special Uses. Uses specified as a Special Use in Section 4-403 shall be permitted only upon the issuance of a Special Use Permit by the Board of Adjustment.

The owner or owners of all property included in the petition for a Special Use Permit shall submit a complete application and a detailed site plan (drawn in accordance with the specifications listed in Section 13-1302) to the Planning and Inspections staff. The staff, in communication with the Town Clerk, will schedule the application to be heard by the Board of Adjustment.

Developers are encouraged to discuss their Special Use plans with the Planning and Inspections staff before submission. The staff shall assist the developer upon request by reviewing Special Use plans to ensure that the technical requirements of this ordinance are met before submission to the Board of Adjustment. All applications and site plans shall provide information indicating compliance with the development standards for individual uses as listed in Article VIII of this ordinance, as applicable, and the height and area regulations for the zoning district in which they are located, unless the provisions for the Special Use provide to the contrary.

C. The Board of Adjustment shall consider the application, site plan and any other evidence presented in accordance with this article and may grant or deny the Special Use Permit requested. In granting a Special Use Permit, the Board shall find that:

1. The use will not materially endanger the public health or safety if located according to the plan submitted and proposed.
2. The use meets all required conditions and specifications.
3. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity.
4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with Cumberland County's most recent Land Use Plan, either comprehensive or a detailed area plan.

D. In granting approval of a Special Use Permit, the Board of Adjustment shall impose such reasonable terms and conditions as it may deem necessary for the protection of the public health, general welfare and public interest and as authorized under N.C. Gen Statute 160D. The applicant/landowner must give written consent to all imposed conditions. In granting a Special Use Permit and considering the imposition of conditions, the Board of Adjustment may give due consideration to one or all of the following:

1. The compatibility of the proposal, in terms of both use and appearance, with the surrounding neighborhood.
2. The comparative size, floor area and mass of the proposed structure in relationship to adjacent structures and buildings in the surrounding area and neighborhood.
3. The frequency and duration of various indoor and outdoor activities and special events, and the impact of these activities on the surrounding area.
4. The capacity of adjacent streets to handle increased traffic in terms of traffic volume, including hourly and daily levels and weight-bearing limitations.

5. The added noise level created by activities associated with the proposed use.
6. The requirements for public services where the demands of the proposed use are in excess of the individual demands of the adjacent land uses, in terms of police and fire protection, and the presence of any potential or real fire hazards created by the proposed use.
7. Whether the general appearance of the neighborhood will be adversely affected by the location of the proposed use on the parcel.
8. The impact of night lighting in terms of intensity, duration, and frequency of use, as it impacts adjacent properties and in terms of presence in the neighborhood.
9. The impact of the landscaping of the proposed use, in terms of maintained landscaped areas, versus areas to remain in a natural state, as well as the openness of landscaped areas, versus the use of buffers and screens.
10. The impact of a significant amount of hard-surfaced areas for buildings, sidewalks, drives, parking areas and service areas, in terms of noise transfer, water runoff and heat generation.
11. The availability of public facilities and utilities.
12. The harmony in scale, bulk, coverage, function and density of the proposed development and compliance with the development standards of the individual uses.
13. The reasonableness of the request as compared to the purpose and intent of the most recent Land Use Plan, this ordinance, and adopted policies, for the physical development of the district, and protection of the environment.

All such additional conditions imposed on the permit by the Board of Adjustment shall be entered in the minutes of the meeting at which the Special Use Permit is granted. The specific conditions shall run with the land and shall be binding on the original applicants for the Special Use Permit, their heirs, successors, and assigns. The applicant for the Special Use Permit is responsible for the recordation of the "Notice of Special Use Permit" with the Cumberland County Register of Deeds prior to application for any zoning permit.

If the Board denies the Special Use Permit, it shall enter the reason for its action in the minutes of the meeting at which the action is taken. In the event of a denial, the Board of Adjustment shall not consider resubmission of the application for the same Special Use Permit on the same property without a substantial material change concerning the property and the application.

E. Any Special Use granted becomes null and void if not exercised within the time specified in such approval, or if no date is specified, within one calendar year from the date of such approval if the permit has not been recorded with the County Register of Deeds. If recorded, the Special Use Permit shall run with the land until such time that the permit is revoked. Furthermore, once the Certificate of Occupancy has been issued for a special use and then the special use ceases to exist for a time period of one calendar year or more, a resubmittal of the special use application for the same use may be required if there has been a material change in the ordinance standards.

F. The Board of Adjustment shall review any change, enlargement or alteration in site plans submitted as a part of a Special Use application, and new conditions may be imposed where findings require. The Planning and Inspections staff may approve minor modifications of the approved plans in the same manner as authorized in Section 5-506 for Conditional Zoning districts, provided that the changes do not materially alter the original plan as approved, and the intent and objectives of the original approval are not deviated from.

G. If for any reason any condition imposed pursuant to this section is found to be illegal or invalid, the Special Use Permit shall be null and void and of no effect, and the Planning and Inspections staff shall institute proceedings for the case to be reheard by the Board of Adjustment.

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

H. No appeal may be taken from the action of the Board of Adjustment in granting or denying a Special Use Permit except through the Cumberland County Superior Court in the same manner as set forth in this article for appeal of any Board of Adjustment decision.

SECTION 15-1507. HEARINGS.

A. The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(d) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Objections regarding jurisdictional and evidentiary issues, including but not limited to, the timeliness of an appeal, the standing of a party, or the inclusion or exclusion of administrative material may be made to the board. The board chair shall rule on any objections and the chair's rulings may be appealed to the full board.

B. The Board of Adjustment shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the Clerk to the board. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted written request for a copy, prior to the date the decision becomes effective. The Clerk to the board shall certify that proper notice has been made and the certificate shall be deemed conclusive in the absence of fraud.

C. The Secretary to the Board of Adjustment shall ensure the Commanders of Fort Bragg are notified of any application affecting the use of property located within five miles or less of the perimeter boundary of the base in accordance with N.C. Gen Stat. 160D-601.

SECTION 15-1508. REQUIRED VOTE.

A. The concurring vote of four-fifths of the Board of Adjustment shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this sub-section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

B. A member of the board exercising quasi-judicial functions pursuant to Chapter 160D shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected person's constitutional rights to an impartial decision maker. Impermissible violations of due process 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 at or prior to the hearing or vote on the matter and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

SECTION 15-1509. REVERSAL/REVOCATION OF DECISION.

After a hearing has been held and approval granted, the Board of Adjustment may reverse or revoke any decision in the same manner as was required for the approval upon finding that:

- A. The approval was obtained by fraud.
- B. The use for which such approval was granted is not being executed.
- C. The use for which such approval was granted has ceased to exist or has been suspended for one calendar year or more.
- D. The permit granted is being, or recently has been, exercised contrary to the terms or conditions of such approval or in violation of any regulation or statute.
- E. The use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

SECTION 15-1510. APPEAL OF FINAL DECISION.

Every quasi-judicial decision shall be subject to review by the Superior Court by proceedings in the nature of certiorari pursuant to N.C. Gen Stat. 160D-1402. The aggrieved party shall file a *Notice of Intent to Appeal* with the County Planning Staff on the next business day following the meeting in which the board's decision was made final, or the next business day following receipt of the written copy thereof and delivery is made to every aggrieved party, whichever is later. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 calendar days after the decision of the board is made final. The decision of the board may be delivered to the aggrieved party either by personal service, first-class mail, or certified mail, return receipt requested. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition and the notice shall be presumed to be delivered to the recipient. **State Statute References: N.C. GEN. STAT. §160D-109(d); -302; -403(b); -405; -406; -702; -705; -1402; -1405.**

ARTICLE XVI LEGAL PROVISIONS

SECTION 16-1601. VALIDITY.

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

SECTION 16-1602. VESTED RIGHTS.

For the purposes of vesting development rights, this ordinance incorporates by reference the provisions set forth in NC Gen. Stat. §160D-108; to include site-specific vesting plans.

If an application is submitted for a development approval and a development regulation change between the time the application was submitted and a decision for approval was rendered, the applicant may choose which version of the development regulation will apply to the development approval. If the applicant chooses the version of the rule in place at the time of the application, the applicant shall not be required to await the outcome of the amendment to the development regulation(s) prior to acting on the development approval. If the application is delayed or placed on hold for six consecutive months, the permit choice rule is waived, and the application must meet the development regulations in place at the time the consideration of the application is resumed.

Nothing in this ordinance shall be interpreted or construed to give rise to any permanent vested rights or expectations in the continuation of any particular use, district, zoning classification, or other permissible activities herein; and the same are all hereby declared to be subject to subsequent amendment, change or modification as may be necessary for the preservation or protection of the public health, safety, and welfare.

Further, the provisions of this ordinance shall apply from and after its effective date. The requirements of any section of this ordinance expressly stating it shall apply to developments existing on the effective date hereof, shall so apply to any such site plan.

SECTION 16-1603. VIOLATIONS.

A. Statutory Authority. This ordinance may be enforced by any appropriate equitable action, including but not limited to, injunction and abatement, in addition to any other remedy authorized by N.C. Gen. Stat. 160D-404(c).

B. Notice of Violation. If a Code Enforcement Manager finds that any provision of this ordinance is being violated, the Manager shall cause to serve upon the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail, a notice of violation. The notice of violation may be posted on the property. The person providing the notice of violation shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. The notice of violation shall indicate the nature of the violation and order the action necessary to correct it. The notice of violation shall also state the monetary penalty and the right of the offender to appeal the violation that is the basis of the citation to the Board of Adjustment within ten days from the date of service of the notice of violation.

C. Responsible Parties. The owner, lessee, tenant or occupant of any building or land or part thereof and any architect, builder, contractor, agent, or any other person who participates in, assists, directs, creates or maintains any violation of the provisions of this ordinance may be held responsible for the violation and be liable for the penalties and be subject to the remedies provided in Section 16-1604 below.

D. Separate Offense. Each day that any violation continues after notification by the Code Enforcement Manager that such violation exists shall be considered a separate offense for purposes of penalties and remedies specified herein.

E. Appeal of Notice of Violation. If the offender files notice of appeal to the Board of Adjustment within the ten-day time period, the appeal shall stay the collection of the penalty so imposed as well as the corrective action prescribed in the citation. Appeals to the Board of Adjustment shall be administered as provided in Article XV; however, the time for perfecting the appeal shall be ten days as hereinbefore stated. A violation of this ordinance may not be appealed to the Board of Adjustment if the offender did not perfect an appeal to the Board of Adjustment within the ten-day time period set forth herein.

F. Emergency Enforcement. Notwithstanding the forgoing, in cases where delay would seriously threaten the effective enforcement of this ordinance or pose a danger to the public health, safety or welfare, the Code Enforcement Manager may seek enforcement of this ordinance without prior written notice by invoking any of the penalties or remedies herein authorized.

SECTION 16-1604. PENALTIES.

A person who violates any of the provisions of this ordinance shall be subject to revocation of any permits and a civil penalty in the sum of \$500.00 following the issuance of a civil citation. The penalty shall be recovered by the Town in a civil action if the offender fails to pay the penalty to the Town Clerk, Town of Linden, 9444 Academy Street, Linden, North Carolina 28356, within ten calendar days after being cited for the violation. The civil action of recovery shall be in the nature of an action to recover a debt and shall include as an additional sum to be recovered the full costs of the action, including but not limited to, filing, service and attorney fees. Second and subsequent violations shall subject the offender to a \$500.00 penalty. Nothing in this section shall preclude the enforcement of this ordinance pursuant to all of the provisions of N.C. Gen. Stat. §14-4 where appropriate.

SECTION 16-1605. EFFECTIVE DATE.

This ordinance shall be in full force and effect from and after its passage by the Linden Board of Commissioners, this sixteenth day of November, year 2021.