Attachment #1

CRAVEN COUNTY

An Ordinance to Amend the Code of Ordinances

WHEREAS, the requested amendments to the Code of Ordinances will: (i) clarify the composition, powers, and duties of the Board of Adjustment; (ii) clarify the rights of all parties who have standing under the Code of Ordinances related to zoning; (iii) clarify the process for notices, hearings and appeals under the Code of Ordinances related to zoning; and, (iv) bring the Code of Ordinances into compliance with recent statutory changes enacted by the North Carolina General Assembly; and,

WHEREAS, the proposed amendments are consistent with the County's Land Use Plan's goals and objectives, and with the County's overall land use regulations and ordinances; and,

WHEREAS, the proposed amendments will further the purposes of the Code of Ordinances as to zoning, and other ordinances and actions designed to implement the County's Land Use Plan; and,

WHEREAS, the Planning Staff recommends approval of the proposed amendments; and,

WHEREAS, on February 26, 2015, the County's Planning Board voted 5 to 0 to recommend that the Board of Commissioners approve the proposed Text Amendment set forth herein; and,

WHEREAS, the Board of Commissioners held a duly-noticed public hearing on April 6, 2015 to consider amending the Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS as follows:

SECTION I

The proposed text amendments are found to be consistent with the County's Land Use Plan, and other land use regulations, ordinances and policies; and otherwise promotes the public

health, safety and general welfare. Therefore, the County's Code of Ordinances is hereby amended as set forth herein.

SECTION II

1. That Appendix D ("Cherry Point Marine Corps Air Station", and hereafter referred to as "Ordinance"), Part I ("Marine Corps Air Station Zoning Ordinance"), Section 11.0 ("Board of Adjustment") of the Code of Ordinances be deleted, and replaced in its entirety as follows:

SEC. 11.0 BOARD OF ADJUSTMENT

SEC. D-I-11.1. CREATION; COMPOSITION

A Board of Adjustment ("Board") is hereby established pursuant to G.S. §153A-345.1, to be appointed by the Craven County Board of Commissioners. Insofar as possible, members of the Board shall be appointed as follows: at least one resident of the area which is zoned shall be appointed to the Board; however, the Board shall consist of five members. Insofar as possible, initial appointment to the Board shall be as follows: one-third for a term of three years; one-third for a term of two years; and one-third for a term of one year. Two alternate members may be appointed for a term of three years to serve in the absence or temporary disqualification of any regular members or to fill a vacant seat pending appointment of a member. The successor to the regular and the alternate members shall be appointed for three-year terms. Vacancies shall be filled for the unexpired term only. All members shall have equal rights, privileges and duties with regard to all matters.

SEC. D-I-11.2. MEETINGS; OFFICERS

The Board shall elect one (1) of its members as Chair, one (1) of its members as a Vice-Chair, and shall appoint a Secretary and other subordinates as it deems in its best interest. The Board shall adopt any rules of procedure under which it will operate. Meetings of the Board shall be held at the call of the Chair, or in his absence the Vice-Chair, or at least two (2) members of the Board. All meetings of the Board shall be open to the public. The Board shall keep full and accurate minutes of its proceedings.

SEC. D-I-11.3. POWERS AND DUTIES

The Board shall have the following powers and duties:

(a) ***Administrative Review.*** To hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with enforcement of this Ordinance.

(b) ***Interpretation.*** To interpret the terms of this Ordinance and zoning maps and to pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in the administration of this Ordinance.

(c) ***Conditional Use and Special Use Permits.*** To hear and decide special and conditional use permits in accordance with standards and procedures specified in this Ordinance. Reasonable and appropriate conditions may be imposed upon these permits.

(d) ***Subpoena.*** To subpoena witnesses and compel the production of evidence, through the chair, or in the chair's absence anyone acting as the chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under G.S. §160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties

(e) ***Oath.*** The chair of the Board, or any member acting as chair, and the clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board, willfully swears falsely is guilty of a Class 1 misdemeanor.

(f) ***Variance – In General.*** When unnecessary hardships would result from carrying out the strict letter of this ordinance, the Board may vary any of the provisions of this ordinance upon a showing of all of the following:

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

(2) 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.

(3) 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.

(4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance, such that public safety is secured, and substantial justice is achieved.

Provided, however, no change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

(g) ***Variance – Federal Fair Housing Act.*** Notwithstanding the provisions of subparagraph (f) above, the Board may provide for a variance under the Federal Fair Housing Act upon the following:

1. Application Requirements; Determination of Completeness.

(a) Persons Authorized to File Applications. An application for a reasonable accommodation may be filed only by the owner of the land affected by the reasonable accommodation; an agent, lessee, or contract purchaser specifically authorized by the owner to file such application; or any unit of government that is not the owner of the lot but proposes to acquire the lot by purchase, gift, or condemnation.

(b) Pre-Application Conference. Before filing an application for a reasonable accommodation, the applicant may request a pre-application conference with the Zoning Administrator.

(c) Application Filing. An application for a reasonable accommodation shall be filed with the Zoning Administrator. No filing fee is required for such application. Once the application is complete, the Zoning Administrator shall schedule the application for consideration at a hearing before the Board, and shall transmit to the Board all applications and other records pertaining to such reasonable accommodation prior to the hearing on the application.

2. Approval Criteria.

The Board shall grant a reasonable accommodation to any provision of this ordinance if it finds by a greater weight of the evidence that the proposed reasonable accommodation is determined to be both reasonable and necessary, in accordance with the following:

(a) **"Reasonable"** An accommodation will be determined to be reasonable if it would not undermine the legitimate purposes and effects of existing planning regulations, and if it will not impose significant financial and administrative burdens upon the County and/or constitute a substantial or fundamental alteration of this ordinance's provisions; and

(b) **"Necessary"** An accommodation will be determined to be necessary if it would provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and would afford an equal opportunity to enjoy and use housing in residential areas in the County.

3. <u>Effect of Approval or Denial.</u>

(a) After the Board approves a reasonable accommodation, the applicant shall follow the normal procedures set forth in this ordinance, and any other applicable ordinance, for approval of any permits, certificates, and other approvals required in order to proceed with development or use of the property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the reasonable accommodation granted by the Board.

(b) The Board shall refuse to hear a reasonable accommodation request that has been previously denied, unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

4. <u>Lapse</u>

Failure of an applicant to apply for a building permit or any other required development permit, and commence uninterrupted construction or action with regard to a variance granted hereunder within one (1) year of receiving approval of the reasonable accommodation shall automatically render the variance null and void.

(h) ***Decision.*** As used in this Ordinance, the term "decision" includes any final and binding order, requirement, or determination. The Board shall follow quasi-judicial procedures when deciding appeals and requests for variances and special and conditional use permits. The Board shall hear and decide all matters upon which it is required to pass under any statute or this Ordinance.

SEC. D-I-11.4. NOTICE OF HEARING

Notice of hearings conducted pursuant to this Ordinance shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning or unified development ordinance. In the absence of evidence to the contrary, the County may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same

time period, the County shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

SEC D-I-11.5. VOTING

(a) The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For all other matters, a majority of the members shall be required. For the purposes of this Section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members. Abstentions by a member not otherwise excused from voting shall be counted as a vote in favor of any motion or action.

(b) A member of the Board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible 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 and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(c) The Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made.

SEC D-I-11.6. QUASI-JUDICIAL DECISIONS AND JUDICIAL REVIEW

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

(b) Every quasi-judicial decision shall be subject to review by the Craven County Superior Court by proceedings in the nature of certiorari pursuant to G.S. §160A-393. A petition for review shall be filed with the Clerk of Craven County Superior Court by the later of 30 days

after the decision is effective or after a written copy thereof is given in accordance with Section 8.6(a). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

SEC D-I-11.7. APPEALS

The Board shall hear and decide appeals from decisions of administrative officials charged with enforcement of this Ordinance, pursuant to all of the following:

(a) Any person who has standing under G.S. §160A-393(d) or the County may appeal a decision to the Board. An appeal is taken by filing a notice of appeal with the County Clerk and payment of any applicable fees adopted by the County. 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 owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

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

(d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(e) The official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(f) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board 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 this Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an

expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

(g) Subject to the provisions of subdivision (f) of this section, the Board shall hear and decide the appeal within a reasonable time.

(h) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the 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 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.

(i) When hearing an appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. §160A-393(k).

(j) The parties to an appeal that has been made under this Ordinance may agree to mediation or other forms of alternative dispute resolution.

SEC. D-I-11.8. ADDITIONAL REMEDIES.

In addition to any other penalties and remedies allowed under the County's Code of Ordinances, if a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Ordinance, the County, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct, business or use in or about the premises

2. *That this Ordinance is effective upon adoption.*

Adopted and effective this ____ day of _____, 2015.

CRAVEN COUNTY

(County Seal)

_____
Steve Tyson, Chairman

Attest:

_____
Gwendolyn Bryan, Clerk

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