

APPENDIX D
MARINE CORPS AIR STATION ZONING ORDINANCE*

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SECTION 1.0 GENERAL

1.1 Authority.

The provisions of this ordinance are adopted under authority granted by the General Assembly of North Carolina (General Statute's 153A-340-348).

1.2 Jurisdiction.

The regulations set forth in this ordinance shall be applicable within the following area of Craven County.

BEGINNING at a point on the center line of N.C. Highway 101, said point being the intersection of the January 31, 1989, Town of Havelock extraterritorial jurisdiction boundary line (said line being located approximately at the intersection of Shop Branch (a tributary of Hancock Creek) and N.C. Highway 101) as shown on the official Town of Havelock zoning map dated January 1982; thence east along the center line of N.C. Highway 101 to a point, said point being the intersection of the center line of N.C. Highway 101 and the center line of N.C. Highway 306 for a distance of 2,000 feet to a point located on the center line of N.C. Highway 306; thence easterly along a line perpendicular to the center line of N.C. Highway 306 for a distance of 1,000 feet to a point; thence north along a line parallel to the center line of N.C. Highway 306 for a distance of 6,400 feet to a point, said point being located on a line drawn perpendicular to the center line of N.C. Highway 306 to a point, said point being the intersection of the line perpendicular to N.C. Highway 306 and the center line of N.C. Highway 306; thence north along the center line of N.C. Highway 306 to a point, said point being the intersection of the center line of N.C. Highway 306 and the center line of the Pine Cliff Recreation Area access road if extended; thence northwest along the center line of the Pine Cliff Recreation Area access road to its intersection, if extended, with the mean high water level of the southern shore of the Neuse River; thence west along the mean high water level of the southern shore of the Neuse River to its intersection, if extended, with the Town of Havelock extraterritorial boundary as shown on the Town of Havelock official zoning map dated January 1982; thence southwest along a line conterminous with the official Town of Havelock extraterritorial boundary line as shown on the Town of Havelock official zoning

map dated January 1982 to its intersection with the center line of N.C. Highway 101, the POINT OF THE BEGINNING.

Also included within the territorial jurisdiction of the zoning ordinance are those additional areas depicted on the map entitled “Craven County Official Zoning Map dated March 30, 2004 and prepared by Craven County Planning Department, said map being incorporated herein by reference for a more detailed and particular description of all areas subject to this zoning ordinance

1.3 Conflicting regulations

In the event of conflict between any airport zoning regulations and any other county regulations applicable to the same property, the more stringent limitation or regulation shall govern and prevail.

1.4 Title

This ordinance shall be known as the “Marine Corps Air Station Zoning Ordinance of Craven County,” and may be cited as the “zoning ordinance”.

[SECTION 2.0 DEFINITIONS]

[2.1] Definitions.

1. *Airport* means any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purposes, including but not limited to the Cherry Point Marine Corps Air Station.

2. *Airport elevation* mean the highest point of airport’s landing area measured in feet above mean sea level.

3. *Airport environs* means that area which has been identified as being significantly impacted by airport noise and accident potential.

4. *Building inspection department* means the administrative agency which has been designated by the Craven County Board of Commissioners to administer airport zoning regulations.

5. *Construction* means the erection or alterations of any structure either of a permanent or temporary character.

6. *Day-night average sound level (Ldn)* is a basic measure for quantifying noise exposure, namely: The A-weighted sound level averaged over a twenty-four-hour time period, with a ten-decibel penalty applied to nighttime (10:00 p.m. to 7:00 a.m.) sound levels.

7. *dBA* means the unit of corrected noise level measured in accordance with the “A-weighting scale” which replicates the response characteristics of the ear.

8. *Decibel* is a unit for measuring the relative loudness of sound or sound pressure equal approximately to the smallest degree of difference of loudness or sound pressure ordinarily

detectable by the human ear, the range of which includes about one hundred thirty (130) decibels on a scale beginning with one (1) for the faintest audible sound. Abbreviated dB.

9. *Dwelling unit* means a structure or portion of a structure designed or occupied as self-contained living quarters for one (1) family.

10. *Family* means one (1) or more persons related by blood, marriage or adoption, and living together as a single housekeeping unit.

11. *Forestry* means the cultivation and harvesting of trees. The term shall not include the retail sale of trees or similar products.

12. *Height* means the overall height of a structure, including any appurtenance thereon, and for the purpose of determining the height limitations set forth herein, the datum shall be mean sea level elevation unless otherwise specified.

13. *Lot* means the least fractional part of subdivided lands, which have been duly recorded, having fixed boundaries, and assigned number, letter or other name through which it may be identified.

14. *Mobile home* means any structure which is mounted or designed for mounting on wheels and which is designed for sleeping and living purposes for one (1) or more than one (1) person.

15. *Multi-family dwelling* means a structure which contains three (3) or more dwelling units.

16. *Nonconforming use* means any structure, growth or use of land which was lawfully in existence prior to the enactment of the regulations and which does not conform to these regulations.

17. *Person* means any individual, firm, co partnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.

18. *Single-family dwelling* means a detached structure which is designed for or occupied exclusively as a residence for one (1) family.

19. *Structure* means any object constructed or installed by man, including but not limited to buildings, towers, smokestacks, utility poles, and overhead transmission lines.

20. *Use* means the purpose for which land or a building is arranged, designed, occupied, or maintained.

SECTION 3.0 USE RESTRICTIONS

3.1 General.

Notwithstanding any provision of the zoning ordinance, the permitted land use for any property within the airport environs area shall be defined as set forth in Table 1.

3.2 Key to Table 1.

1. *Accident Potential Zones (APZ's)* are divided into three (3) types along primary flight paths. The Clear Zone is an area which possesses a high potential for accidents. APZ 1 is the area normally beyond the Clear Zone which possesses a significant potential for accidents. APZ 2 is an area normally beyond APZ 1 which has a measurable potential for accidents.

2. Airport Noise Zones are hereby established as follow:

| <i>Airport Noise Zone</i> | <i>Ldn Values</i> |
|---------------------------|-------------------|
| 1 | Less than 65 |
| 2 | 65 to 75 |
| 3 | Greater than 75 |

3. *Airport Environs Zones* are hereby established as follows:

| <i>Area</i> | <i>Characteristics</i> |
|-------------|--|
| A | Clear Zone |
| B3 | Accident Potential Zone 1 & Noise Zone 3 |
| B2 | Accident Potential Zone 1 & Noise Zone 2 |
| B1 | Accident Potential Zone 1 & Noise Zone 1 |
| C1 | Accident Potential Zone 2 & Noise Zone 2 |
| C2 | Accident Potential Zone 2 & Noise Zone 1 |
| 3 | Noise Zone 3 |
| 2 | Noise Zone 2 |
| 1 | Potential Noise Zone |

4. *Development:*

- (a) *Acceptable development:* The provisions of the zoning code are appropriate without modifications.
- (b) *Conditional development:* The land uses set forth in the zoning code are appropriate; however, certain conditions or safeguards need to be imposed to protect the public interest.
- (c) *Unacceptable development:* The land uses permitted by the zoning code are incompatible with and prohibited by the airport environs zone in which the property is located.

Zones:

| | |
|--------------|--|
| 3, B3 and A | No residential development |
| B1 and B2 | Maximum density not to exceed one (1) dwelling unit per five (5) acres |
| 2, C1 and C2 | Maximum density not to exceed two (2) dwelling units per acre |
| 1 | Maximum density not to exceed three (3) dwelling units per acre |

Table 1
LAND USE OBJECTIVES

Yes = Acceptable Development

* = Conditional Development Permitted by Table 2
 No = Unacceptable Development and Prohibited

| <i>Land Use Category</i> | <i>Airport Environs Areas</i> | | | | | | | | |
|--|-------------------------------|-----|--------|-----|--------|-----|-----|--------|-----|
| | A | B3 | B2 | B1 | C2 | C1 | 3 | 2 | 1 |
| <i>Residential</i> | | | | | | | | | |
| Single-family dwellings (including mobile homes)..... | No | No | *22,15 | *22 | *14,15 | *14 | No | *14,15 | *23 |
| Two-family dwellings; multi-family dwellings; mobile home parks or court..... | No | No | No | No | No | No | No | *15 | *23 |
| Group quarters; residential hotels; transient lodge..... | No | No | No | No | No | No | No | *15 | Yes |
| <i>Industrial/Manufacturing</i> | | | | | | | | | |
| Food and kindred products; textile mill products..... | No | No | No | No | *10 | Yes | *3 | *10 | Yes |
| Apparel; chemicals & allied product activities; petro refining & related rubber & misc. plastic products..... | No | No | No | No | n | n | *3 | *10 | Yes |
| Lumber & wood products; furniture & fixtures; paper and allied products; printing & publishing; stone, clay & glass products; primary metal industries; fabricated metal products; product assembly; motor freight; warehousing..... | No | *3 | *10 | Yes | *10 | Yes | *3 | *10 | Yes |
| Professional, scientific & control instruments..... | No | No | No | No | *10 | No | *3 | *10 | Yes |
| <i>Transportation, Communication & Utilities</i> | | | | | | | | | |
| Railroad..... | *2 | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Highway & street right-of-way..... | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Automobile parking..... | No | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Communications..... | *2 | *3 | *10 | Yes | *10 | Yes | *3 | *10 | Yes |
| Utilities (except aboveground transmission lines)..... | *1 | *3 | *10 | Yes | *10 | Yes | *3 | *10 | Yes |
| Aboveground transmission lines.... | No | No | No | No | Yes | Yes | Yes | Yes | Yes |

Commercial/Retail Trade

| | | | | | | | | | |
|---|----|----|-----|-----|-----|-----|-----|-----|-----|
| Wholesale trade; building material; hardware; farm equipment (retail); auto, marine, aviation (retail)..... | No | *3 | *10 | Yes | *10 | Yes | *3 | *10 | Yes |
| General merchandise (retail); food retail; apparel and accessories (retail)..... | No | No | No | No | *11 | Yes | *4 | *11 | Yes |
| Furniture; home furnishing (retail)... | No | No | No | No | *10 | No | *4 | *11 | Yes |
| Eating & drinking establishments.... | No | No | No | No | No | No | *12 | *4 | Yes |

Personal & Business Services

| | | | | | | | | | |
|---|----|-----|-----|-----|-----|-----|-----|-----|-----|
| Finance; real estate; insurance; personal services; business services; professional services; indoor recreation services..... | No | No | No | No | *4 | Yes | *12 | *4 | Yes |
| Repair services; contract construction services..... | No | *4 | *11 | Yes | *11 | Yes | *4 | *11 | Yes |
| Automobile service stations..... | No | Yes |

Public & Quasi-Public Services

| | | | | | | | | | |
|---|----|----|----|----|--------|-----|-----|-----|-----|
| Government services..... | No | No | No | No | *11,16 | *18 | *4 | *11 | Yes |
| Educational services; cultural activities; nonprofit organizations... | No | No | No | No | No | No | No | *12 | Yes |
| Medical & other health services..... | No | No | No | No | No | No | *4 | *12 | Yes |
| Cemeteries..... | No | *5 | *5 | *5 | *5 | *5 | Yes | Yes | Yes |
| Landfills..... | No | No | No | No | No | No | No | No | Yes |

Outdoor Recreation

| | | | | | | | | | |
|--|----|------|------|------|-------|-------|-----|-----|-----|
| Playground; neighborhood parks.... | No | No | No | No | *17 | *17 | No | Yes | Yes |
| Community & regional parks..... | No | *6 | *6 | *6 | *6 | *6 | Yes | Yes | Yes |
| Nature exhibits..... | No | *4 | *11 | Yes | *11 | Yes | *4 | Yes | Yes |
| Spectator sports, including arenas... | No | No | No | No | No | No | No | Yes | Yes |
| Golf courses; riding stables..... | No | *7,8 | *7,8 | *7,8 | *7,13 | *7,13 | *20 | Yes | Yes |
| Water based recreational areas..... | No | *7 | *7 | *7 | *7 | *7 | *20 | Yes | Yes |
| Resorts and group camps..... | No | No | No | No | No | No | *21 | Yes | Yes |
| Entertainment assembly; amphitheater; music shell..... | No | No | No | No | No | No | No | No | Yes |

Resource Production, Extraction & Open Land

| | | | | | | | | | |
|---|----|----|--------|-----|-----|-----|-----|-----|-----|
| Agriculture, including livestock grazing..... | *1 | *9 | *22,15 | *22 | *15 | Yes | *19 | *15 | Yes |
|---|----|----|--------|-----|-----|-----|-----|-----|-----|

| | | | | | | | | | |
|---|-----|-----|--------|-----|-----|-----|-----|-----|-----|
| Livestock farms; animal breeding..... | No | No | *22,15 | *22 | *15 | Yes | No | *15 | Yes |
| Agriculture related activities..... | No | *9 | *22,15 | *22 | *15 | Yes | No | *15 | Yes |
| Forestry activities..... | *2 | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Fishing activities..... | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Mining activities (no blasting)..... | No | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Underdeveloped areas; unused land areas; permanent open space; water areas..... | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Demolition landfill containing inert materials..... | No | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |

CONDITIONS FOR DEVELOPMENT

(For this table, NLR means Noise Level Reduction)

- (1) No structures (except airfield lighting), buildings or aboveground utility Communication lines shall be located in the Clear Zone.
- (2) Permitted only within height constraints.
- (3) Compatible development is conditioned on design and construction providing for a NLR of 30 dBA, A-weighted (dBA) reception, and office, retail and employee lounge areas.
- (4) Compatible development is conditioned on design and construction providing for a NLR of 30 dBA throughout the facility.
- (5) Chapels are not permitted.
- (6) Development is subject to the condition that spectator stands are not built as part of this land use operation.
- (7) Development is subject to the condition that clubhouses are not built as part of this land use operation.
- (8) Development is subject to the condition that concentrated rings with classes larger than twenty-five (25) are not built as part of this land use operation.
- (9) Residential structures are not permitted.
- (10) Compatible development is conditioned on design and construction providing for a NLR of 25 dBA in reception, office, retail and employee lounge areas.
- (11) Compatible development is conditioned on design and construction providing for a NRL of 25 dBA throughout the facility.
- (12) Compatible development is conditioned on design and construction providing for a NLR of 35 dBA throughout the facility.

- (13) Development is subject to the condition that concentrated rings with classes larger than fifty (50) are not built as part of this land use operation.
- (14) Development is subject to the condition that maximum density not exceed two (2) dwelling units per acre.
- (15) Compatible development is conditioned on dwelling design and construction providing for a NLR of 30 dBA and location of outdoor activity areas such as balconies and patios on the side of the building which is sheltered from the aircraft flight path.
- (16) Development is subject to the condition that meeting places, auditoriums and the like for gatherings are not built as part of this land use operation
- (17) Development is subject to the condition that the park is oriented toward forest trails and similar activities which do not concentrate groups of people greater than fifty (50) within the park. Playgrounds are not permitted.
- (18) Development is subject to the condition that meeting places, auditoriums and the like for a gathering of more than fifty (50) people are not built as part of this land use operation.
- (19) Compatible development is conditioned on residential unit design and construction providing for a NLR of 35 dBA and location of outdoor activity areas such as balconies and patios on the side of the building which is sheltered from the aircraft flight path.
- (20) Compatible development is conditioned on design and construction providing for a NLR of 30 dBA in the clubhouse.
- (21) Compatible development is conditioned on design and construction providing for a NLR of 30 dBA in permanent structures.
- (22) Development is subject to the condition that maximum density not exceed one (1) dwelling unit per five (5) acres.
- (23) Development is subject to the condition that maximum density not exceed three (3) dwelling units per acre.

SECTION 4.0 USES INTERFERING WITH AIRCRAFT

4.1 General.

It is unlawful to establish, maintain or continue any use within the airport hazard area in such a manner as to interfere with the operations of aircraft. The following requirements shall apply to all lawfully established uses within the airport hazard area:

1. All lights or illumination used in conjunction with street, parking, signs, or use of land and structures shall be arranged and operated in such a manner that it is not

misleading or dangerous to aircraft operating from an airport or in vicinity thereof as determined by the airport operator.

2. No operations of any type shall produce smoke, glare or other visual hazards within the zoning area.
3. No operations of any type shall produce electronic interference with navigation signals or radio communication between the airport and the aircraft.
4. No use of land shall be permitted which encourages large concentrations of birds or waterfowl within the zoning area.

SECTION 5.0 LIGHTING

5.1 General.

Notwithstanding the provisions of any other section or ordinance, the owner of any structure over two hundred (200) feet above ground level shall install lighting in accordance with Federal Aviation Advisory Circular 70-7460-1 Series and amendments thereto on that structure. In addition, the owner shall construct high intensity white obstruction lights on a high structure, which exceeds seven hundred forty-nine (749) feet above, mean sea level.

SECTION 6.0 HAZARD MARKING AND LIGHTING

6.1 General.

In granting any permit or variance under this ordinance, the building inspection department or the board of adjustment may, if it deems such action advisable to effectuate the purposes of this ordinance and reasonable under the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit Craven County or the United States government, at its own expense, to install, operate and maintain thereon, such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

SECTION 7.0 DISCLOSURE STATEMENT

7.1 Disclosure Requirements by Property Owners.

No person shall sell, lease, no offer for sale or lease any property subject to this zoning ordinance unless the prospective buyer or lessee has been given the following notice:

Air Installation Compatible Use Zone Disclosure

The property subject to this contract/lease is situated within the following zones of the Air Installation Compatibility Use Zone (AICUZ) of the Marine Air Corps Station (MCAS) Cherry Point:

___ Clear Zone (CZ) Greatest potential for accidents & highest noise exposure

___ Accident Potential Zone 1 (APZ 1): Significant potential for accidents

___ Accident Potential Zone 2 (APZ 2): Measurable potential for accidents

___ Noise Exposure Level N3 (75 Ldn or Higher): Area if significant impact

___ Noise Exposure Level N2 (65 or 74 Ldn): Area of moderate impact

___ Noise Exposure Level N1 (below 65 Ldn) Are of some impact.

Craven County has placed certain use restrictions on the development of property within the MCAS AICUZ footprint. Before purchasing or leasing this property or commencing improvements of any type on the property, you should consult the Craven County Planning Department to determine what restrictions have been placed on the subject property. For properties identified as being within Noise Exposure Levels Zones, Craven County provides information for methods to reduce noise levels for existing or planned development.

I, _____, owner of the subject property, hereby certify that I have informed the prospective purchaser/lessee that the subject property is located in a Air Installation Compatibility Use Zone.

Owner

Owner

As a prospective purchaser/lessee of the subject property, I hereby certify that I have been informed that the subject property is subject to the above requirements of Craven County's Marine Corps Air Station Zoning Ordinance.

7.2 Disclosure Requirements For Approval of Subdivision Plats

No preliminary or final plat approval under Craven County's Subdivision ordinance shall be given for any property subject to this zoning ordinance unless such plat contains a notice in form substantially as follows.

Air Installation Compatible Use Zone Disclosure

The property Depicted on this plat is situated within the following zones of the Air Installation Capability Use Zone (AICUZ) of the Marine Air Corps Station (MCAS) Cherry Point:

___ Clear Zone (CZ): Greatest potential for accidents & highest noise exposure

___ Accident Potential Zone 1 (APZ 1): Significant potential for accidents

___ Accident Potential Zone 2 (APZ 2): Measurable potential for accidents

___ Noise Exposure Level N3 (75 Ldn or Higher): Area of significant impact

___ Noise Exposure Level N2 (65 to 74 Ldn): Area of moderate impact

___ Noise Exposure Level N1 (below 65 Ldn): Are of some impact

Craven County has placed certain use restrictions on the development of property within the MCAS AICUZ footprint. Before purchasing this property or commencing improvements of any type on the property you should consult the Craven County Planning Department to determine what restrictions have been placed on the subject property. For properties identified as being within Noise Exposure level zones, Craven County provides information for methods to reduce noise levels for existing or planned developments.

7.3 Disclosure Requirements for Issuance of Improvement Permits

No permit or license for any improvement on any property subject to this zoning ordinance shall be issued by Craven County until applicant thereof has acknowledge in writing

Air Installation Compatible Use Zone Disclosure

The property for which a **(insert type of permit)** has been requested is situated within the following zones of the Air Installation Compatibility Use Zone (AICUZ) of The Marine Air Corps Station (MCAS) Cherry Point:

___ Clear Zone (CZ): Greatest potential for accidents & highest noise exposure

___ Accident Potential Zone 1 (APZ 1): Significant potential for accidents

___ Accident Potential Zone 2 (APZ 2): Measurable potential for accidents

___ Noise Exposure Level N3 (75 Ldn or Higher): Area of significant impact

___ Noise Exposure level N2 (65 to 74 LDN): Area of moderate impact

___ Noise Exposure Level N1 (below 65 LDN): Area of some impact

Craven County has placed certain use Restrictions on the development of the property within the MCAS AICUZ footprint. Before purchasing the above property or commencing improvements of any type on the property, you should consult the Craven County Planning Department to determine what restrictions have been placed on the subject property. For properties Identified as being within Noise Exposure Level Zones, Craven County Provides information for methods to reduce noise levels for existing or planned development.

I, _____, Owner of the subject property, herby certify that I have been informed that the subject property is located in a Air Installations Compatibility Use Zone.

Owner

Owner

7.4 Disclosure Requirements Though Tax Records

1. The Craven County Tax Assessor shall include a Disclosure in form substantially as follows on the Craven County Geographic Information System for properties subject to this zoning ordinance:

Air Installation Compatible Use Zone Disclosure

The property Depicted on this plat is situated within the following zones of the Air Installation Capability Use Zone (AICUZ) of the Marine Air Corps Station (MCAS) Cherry Point:

- Clear Zone (CZ): Greatest potential for accidents & highest noise exposure
- Accident Potential Zone 1 (APZ 1): Significant potential for accidents
- Accident Potential Zone 2 (APZ 2): Measurable potential for accidents
- Noise Exposure Level N3 (75 Ldn or Higher): Area of significant impact
- Noise Exposure Level N2 (65 to 74 Ldn): Area of moderate impact
- Noise Exposure Level N1 (below 65 Ldn): Area of some impact

Craven County has placed certain use restrictions on the development of property within the MCAS AICUZ footprint. Before purchasing this property or commencing improvements of any type on the property you should consult the Craven County Planning Department to determine what restrictions have been placed on the subject property. For properties identified as being within Noise Exposure level zones, Craven County provides information for methods to reduce noise levels for existing or planned developments.

2. The Craven County Tax Assessor shall include a disclosure in form substantially as follows in all tax notices or billing statements for properties subject to this zoning ordinance.

Air Installation Compatible Use Zone Disclosure

This property is situated within the Air Installation Compatibility Use Zone (AICUZ) of the Marine Air Corps Station (MCAS) Cherry Point. Craven County has placed certain use restrictions on the development of the property within the MCAS AICUZ footprint. Before commencing improvements of any type on the property, you should consult the Craven County Planning Department to determine what restrictions have been placed on the subject property. For properties identified as being within Noise exposure Level Zones, Craven County provides information for methods to reduce noise levels for existing or planned development. Lastly, before selling or leasing this property, the owner of this property must give to prospective purchases and lessees certain notices concerning the fact that this property is within the Air Installation Compatibility Use zone and subject to certain developments restrictions.

7.4 Disclosure Requirements on Public Roads and Rights of Way

The Craven County Planner shall, in cooperation with the State of North Carolina and other entities having legal jurisdiction over public roads and public rights of way, place on the outermost boundaries of the territorial jurisdiction of this zoning ordinance public information signs indication that the area entered is subject to the provisions of this zoning ordinance.

SECTION 8.0 NONCONFORMING SITUATIONS

8.1 General.

After the effective date of this ordinance, land or structures, or the uses of land or structures which would be prohibited under the regulations for the district in which it is located and which were existing prior to the effective date of this ordinance, shall be considered as nonconforming. It is the intent of this ordinance to permit these nonconformities to continue until they are removed, but not to encourage their continual use. Nonconforming structures or uses may be continued provided they conform to the provisions of this ordinance.

8.2 Definitions.

Unless the context clearly indicates otherwise, the terms defined below are used in this article in the following manner:

1. *Nonconforming situation*: A situation that occurs when, on the effective date of this ordinance or any amendment hereto, an existing lot or structure, or use of an existing lot or structure, does not conform to one (1) or more of the regulations applicable to the district in which the lot or structure is located.
2. *Nonconforming use*: A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the permitted use regulations applicable to the district in which the property is located.
3. *Nonconforming building or structure (dimensional nonconformity)*: A nonconforming situation that occurs when the height, size or minimum floor space of a building or the relationship between an existing building and the required yard setbacks does not conform to the regulations applicable to the district in which the property is located.
4. *Nonconforming project*: Any structure, development or undertaking that is incomplete at the effective date of this ordinance and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

8.3 Completion or nonconforming projects.

The construction or erection of any nonconforming project may be completed provided:

- (1) All construction is done pursuant to a validly issued building permit.

8.4 Extension or enlargement of nonconforming situations.

1. Except as specifically provided in this subsection, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation.

2. Subject to paragraph (4) of this subsection, a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this ordinance, was manifestly designed or arranged to accommodate such use. However, subject to subsection 8.4.4 of this section, a nonconforming use may not be extended to additional buildings or to land outside the original building.

3. Subject to subsection 8.3 of this section, a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., a quarry) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming, if ten (10) percent or more of the earth products had already been removed at the effective date of this ordinance.

4. Where a nonconforming situation exists, the equipment or processes may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this subsection occur.

5. Physical alteration of structures or the placement of new structures on open land are unlawful if they result in:

- (a) An increase in the total amount of space devoted to a nonconforming use;
- (b) Greater nonconformity with respect to dimensional restrictions such as height limitations or density requirements.

6. Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted and encouraged.

7. Notwithstanding paragraph 8.5, any structure used for single-family residential purposes and maintained as a nonconforming use may be replaced with a similar structure of a larger size, so long as the replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to yard size and setback requirements. In particular, a mobile home may be replaced with a larger mobile home, and a "single-wide" mobile home may be replaced with a "double-wide." This paragraph is subject to the limitations stated in subsection 8.6, "Abandonment and discontinuance of nonconforming situations."

8. A structure that is nonconforming in any respect or a structure that is used in a nonconforming manner may be reconstructed or replaced if partially or totally destroyed, subject to the following restrictions:

- (a) A letter of intent is received by the building inspector within six (6) months from the time of such destruction;
- (b) A building permit is obtained from the building inspector within one (1) year from the time the damage took place;
- (c) The total amount of space devoted to a nonconforming use may not be increased, except that a larger, single-family residential structure may be constructed in place of a smaller one and a larger mobile home intended for residential use may replace a smaller one;

- (d) The reconstructed building may not be more nonconforming with respect to dimensional restrictions such as yard requirements, height limitations or density requirements, and such dimensional nonconformities must be eliminated if that can reasonably be accomplished without unduly burdening the reconstruction process or limiting the right to continue the nonconforming use of such building.

8.5 Change in kind of nonconforming use.

1. A nonconforming use may be changed to a conforming use. Thereafter, the property may not revert to a nonconforming use.

2. A nonconforming use may be changed to another nonconforming use only in accordance with a conditional use permit issued by the board of adjustment. The board shall issue approval if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use in operation at the time the approval is applied for. If a nonconforming use is changed to any use other than a conforming use without obtaining approval pursuant to this paragraph, that change shall constitute a discontinuance of the nonconforming use, and the property involved may thereafter be used only for conforming purposes.

- (a) A nonconforming accessory use of building may only be changed to another nonconforming accessory building according to section 8.5.2 of this ordinance. Changes in a principal use are also considered as changes to any accessory use or building.

3. If a nonconforming use and a conforming use, or any combination of a conforming and nonconforming use, or any combination of nonconforming uses exist in one (1) lot, the use made of the property may be changed substantially (except to a conforming use) only in accordance with approval if it finds that the proposed use will be more compatible with the surrounding neighborhood than the use or combination of uses in operation at the time the approval is applied for.

8.6 Abandonment and discontinuance of nonconforming situations.

1. When a nonconforming use is discontinued for a consecutive period of one hundred eighty (180) days, the property involved may thereafter be used only for conforming purposes.
2. For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this subsection, all of the buildings, activities and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one in a nonconforming apartment building or one space in a nonconforming mobile home park for one hundred eighty (180) days shall not result in a loss of the right to rent the apartment or space thereafter so long as the apartment building or mobile home park as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter. And so, if a mobile home is used as a nonconforming use on a residential lot where a conforming residential structure also is located, removal of that mobile home for one hundred eighty (180) days terminates the right to replace it.

3. When a structure or operation made nonconforming by this ordinance is vacant or discontinued at the effective date of this ordinance, the one hundred eighty-day period for purposes of this subsection begins to run at the effective date of this ordinance.

SECTION 9.0 ADMINISTRATION AND ENFORCEMENT

9.1 Administration and enforcement.

The building inspector shall administer and enforce this ordinance. He may be provided with assistance of such other persons as the county commissioners may direct.

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

9.2 Building permit requirements.

After the adoption of this ordinance, no new uses shall be established unless a building permit is applied for and issued by the building inspector. No permit shall be issued except in conformity with the provisions of this ordinance, except after written order from the board of adjustment.

9.3 Application for building permit.

All applications for building permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; the location and dimensions of the proposed building or alterations and evidence of Craven County Board of Health's approval of the sewage disposal system. The application shall include such other information as may be existing or proposed uses of the building and land; the number of families or rental units the building is designed to accommodate; conditions existing on the lot; noise abatement proposals; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this ordinance.

One (1) copy of the plans shall be returned to the applicant by the building inspector after he shall have marked such copy either as approved or disapproved and attested to same by his signature on such copy. Should the building inspector disapprove an application for a building permit, the reasons for disapproval shall be listed on the application. The second copy of the plans, similarly marked, shall be retained by the building inspector.

9.4 Expiration of building permit.

If the work described in any building permit has not begun within six (6) months from the date of issuance thereof, said permit shall expire; it shall be cancelled by the building inspector and written notice thereof shall be given to persons affected.

If after commencement the work is discontinued for a period of twelve (12) months, the permit therefore shall immediately expire and be cancelled by the building inspector and written notice thereof shall be given to the persons affected, together with notice that further work as described in the cancelled permit shall not proceed unless and until a new building permit has been obtained.

9.5 Building permits for new or altered uses.

It shall be unlawful to use or occupy or permit the use or occupancy of any building or premises, or part thereof, hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a building permit shall have been issued therefore by the building inspector stating that the proposed use of the building or land conforms to the requirements of this ordinance.

No permit for erection, alteration, moving or repair of any building shall be issued until an application has been made for a building permit. The permit shall be issued in conformity with the provisions of this ordinance upon completion of the work.

A temporary building permit may be issued by the building inspector for a period not exceeding six (6) months during alterations or partial occupancy of a building pending its completion.

The building inspector shall maintain a record of all building permits and a monthly summary of all permits issued shall be made available to the public.

Failure to obtain a building permit shall be a violation of this ordinance and punishable under section 12.3 of this ordinance.

9.6 Construction and use to be as stated on building permits.

Building permits issued on the basis of plans and applications approved by the building inspector authorize only the use, arrangements and construction set forth in such approved plans and applications. Use, arrangement or construction at variance with that authorized shall be deemed a violation of this ordinance and punishable as provided by section 12.3 herein.

9.7 Right of appeal.

If the building permit is denied, the applicant may appeal the action of the building inspector to the board of adjustment.

9.8 Certificate of occupancy.

No new building or part thereof shall be occupied, and no addition or enlargement of any existing building shall be occupied, and no existing building after being altered or moved shall be occupied, and no change of occupancy shall be made in any existing building or part thereof, until the building inspector has issued a certificate of occupancy therefore. A temporary certificate of occupancy may be issued for a portion or portions of a building which may safely be occupied prior to final completion and occupancy of the entire building.

Application for certification of occupancy may be made by the owner or his agent after all final inspections have been made for new buildings, or, in the case of existing buildings, after supplying the information and data necessary to determine compliance with this ordinance and appropriate regulatory codes of the county for the occupancy intended. The building inspector shall issue a certificate of occupancy when, after examination and inspection, it is found that the building in all respects conforms to the provisions of the ordinance and appropriate regulatory codes of the county for the occupancy intended.

A certificate of occupancy shall not be issued for any building until revised noise abatement construction procedures have been accomplished.

9.9 Duties of building inspector, board of adjustment, courts and county commissioners as to matters of appeal.

It is the intention of this ordinance that all questions arising in connection with the enforcement of this ordinance shall be presented first to the building inspector and that such questions shall be presented to the board of zoning adjustment only on appeal from the building inspector; and that from the decision of the board of adjustment recourse shall be to courts as provided by law.

It is further the intention of this ordinance that the duties of the county commissioners in connection with the ordinance shall not include the hearing and passing of disputed questions that may arise in connection with the enforcement thereof, but only considering and passing upon any proposed amendment or repeal of the ordinance.

SECTION 10.0 AMENDMENTS

10.1 Amending the ordinance.

The county board of commissioners may amend the text regulations and zoning map according to the following procedures.

The following action shall be taken by the applicant:

- (1) *Initiation of amendments.* Proposed amendments may be initiated by the county commissioners, planning board, board of adjustment, or by one (1) or more interested parties.
- (2) *Application.* An application for any amendment shall contain a description of the proposed zoning regulation or district boundary to be applied. Such application shall be filed with the planning department not later than fifteen (15) working days prior to the planning board meeting at which the application is to be considered.
- (3) *Fee.* A fee to be established by the county commissioners shall be paid to Craven County, North Carolina, to cover necessary administrative costs and advertising costs.
- (4) *Letter of notification.* Whenever any property is petitioned for rezoning or application for special use permit, and such property does not have frontage on a dedicated public right-of-way, all such petitions shall be accompanied by letters of notification in the following manner:

- a. A letter of notification for each property owner and resident within two hundred (200) feet from any and all points of the property in question shall be included for mailing by the planning department staff;
- b. The letter shall contain adequate information to notify such owners and residents of the specific request of the applicant as well as the time, date and location of public hearing;
- c. Such letters are to be placed in unsealed, stamped and addressed envelopes ready for mailing. The return address of the planning department must appear on the envelopes;
- d. A list of all persons and their addresses to whom the letters are to be sent must accompany all such applications; and
- e. Failure of any addressee of such letter of notification to receive same shall not in any way invalidate or affect subsequent action on the petition for rezoning.

10.2 Action by the planning board.

Planning board consideration: The planning board shall consider and make recommendations to the county commissioners concerning each proposed zoning amendment. The planning board shall review any proposed amendment at a regularly scheduled meeting held and advertised in accordance with its rules of procedure then in effect. In lieu of separate consideration, the planning board may review an amendment in a joint meeting with the county commissioners at a public hearing held in conformity with the requirements of section 10.3 of this ordinance.

10.3 Action by the county commissioners.

Notice and public hearing. No amendment shall be adopted by the county commissioners until after public notice and hearing. Notice of public hearing shall be published once a week for two successive calendar weeks in the local newspapers. The notice shall be published the first time not less than ten (10) days nor more than twenty-five (25) days before the date the proposed change and date of public hearing. Public notice may also be posted on the property concerned indicating the proposed change and date of public hearing.

Action by county commissioners. Before taking such lawful action as it may deem advisable, the county commissioners shall consider the planning board's recommendation on each proposed zoning amendment.

1. Petitions for amendments that receive favorable recommendation of the planning board, or petitions on which the planning board fails to make its recommendation within thirty (30) days after the planning board's public hearing, shall be scheduled for public hearing before the county commissioners. Such public hearing shall be duly advertised.
2. Petitions for amendments that receive an unfavorable or adverse recommendation of the planning board may be appealed within ten (10) days of the date of such adverse decision to the county commissioners by filing with the clerk of the board a notice, in writing, stating therein the action of the planning board and the amendment requested. Before taking action on

any proposed amendment, the county commissioners shall hold a public hearing. Public hearings on proposed zoning amendments will be held at such times as the county commissioners shall decide.

10.4 Resubmission of a denied petition.

No resubmission of a denied petition may be submitted within six (6) months of its previous denial. A petition which is withdrawn after action by the planning board, but before action by the county commissioners, shall not be resubmitted prior to a period of six (6) months from the date of original submission to the planning board.

SECTION 11.0 BOARD OF ADJUSTMENT

11.1 Creating the board of adjustment.

The Craven County Board of Commissioners shall provide for the appointment of the Craven County Board of Adjustment (hereinafter called "the board"). Insofar as possible, members of the board shall be appointed as follows: at least one (1) resident of the area which is zoned shall be appointed to the board; however, the board shall consist of a minimum of five (5) members. Insofar as possible, initial appointment to the board shall be as follows: one-third for a term of three (3) years; one-third for a term of two (2) years; and one-third for a term of one (1) year. Two (2) alternative members may be appointed for a term of three (3) years to serve in the absence of regular members. 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. Members of the board of adjustment may be removed for causes by the county commissioners upon written charges and after public hearing.

11.2 Meetings.

The board shall elect one of its members as chairmen and another as vice-chairman, who shall serve for one (1) year. The building inspector shall serve as secretary to the board of adjustment. The board shall draw up and adopt the rules of procedure under which it will operate. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the acting chairman, may administer oaths. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon every question, or his absence or failure to vote, indicating such fact, and also keep records of its examination and any other official action.

11.3 Filing and notice for an appeal.

Appeals from the enforcement and interpretation of this ordinance and appeals for variances may be taken to the board of adjustment by any person aggrieved or by any office, department, board or bureau of the county affected. Notice of an appeal to the board of adjustment shall be filed with the building inspector. An appeal stays all proceedings in furtherance of the action [appealed] from, unless the building inspector files a certificate stating that by reason or facts stated in the certificate a stay would, in his opinion, interfere with enforcement of the ordinance because the violation is transitory in nature, or would cause imminent peril to life and property. The building inspector shall have on (1) copy of said certificate delivered by registered mail or by personal service to the appellant and to each member of the board within ten (10) calendar days from the date the appeal is filed with the building

inspector. The certificate shall also be placed on file in the office of the building inspector for public inspection and recorded in the minutes of the next meeting of the board. Where said certificate is filed by the building inspector, proceedings in furtherance of the original order shall not be stayed otherwise than by a restraining order, which may be granted by a court of record in Craven County.

Hearing of the appeal. After receipt of notice of an appeal, the board chairman shall schedule the time for a hearing, which shall be at a regular or special meeting.

Notice. At least one (1) week prior to the date of the hearing, the building inspector shall furnish all adjoining property owners with written notice of the hearing. Notice of public hearing shall be published once a week for two (2) consecutive calendar weeks in the local newspaper. Public notice may also be posted on the property concerned indicating the proposed change and date of public hearing.

Fees for appeal variances. A fee to be established by the county commissioners shall be paid to Craven County, North Carolina, to cover the necessary administrative costs and advertising expenses.

11.4 Power and duties.

The zoning board of adjustment shall have the following powers and duties:

- (a) To hear and decide appeals where it is alleged by the appellant that there is error in any decision made by the building inspector or other administrative officials in the carrying out or enforcing of any provision to the ordinance. A concurring vote of four-fifths of the members of the board shall be necessary to reverse, wholly or partly, any such decision.
- (b) To authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship. In granting any variance, the board may prescribe appropriate conditions and safeguards in conformity with this ordinance. A concurring vote of four-fifths of the members of the board shall be necessary to grant a variance. A variance from the terms of this ordinance shall not be granted by the board unless and until the following findings are made:
 - (1) That special condition[s] and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other land, structures or buildings in the same districts;
 - (2) That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance;
 - (3) That the special conditions and circumstances do not result from the actions of the applicant;
 - (4) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other land, structures or buildings in the same district.

11.5 Appeal from the board of adjustment.

An appeal from the decision of the zoning board of adjustment shall be subject to review by the superior court by proceeding in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within thirty (30) days after the decision of the board is filed in the office of the clerk to the board, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk or chairman of the board at the time of the hearing of the case, whichever is later.

SECTION 12.0 LEGAL PROVISIONS

12.1 Provisions of ordinance declared to be minimum requirements.

The provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, morals, or general welfare. Wherever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted regulation, the most restrictive or that imposing the higher standards shall govern.

12.2 Complaints regarding violations.

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis thereof shall be filed with the building inspector. He shall record properly such complaint, immediately investigate, and take action thereon as provided by this ordinance.

12.3 Penalties for violation.

Violation of the provisions of this ordinance or failure to comply with any of its requirements shall constitute a misdemeanor and shall be punishable pursuant to the provisions of N.C.G.S. 14-4 which provides that violation of a county ordinance is a misdemeanor punishable by either a maximum fine of fifty dollars (\$50.00) or imprisonment for not more than thirty (30) days, as amended. Each day such violation continues shall be considered a separate offense.

The owner or tenant of any building, structure, premises or part thereof, and any architect, builder, contractor, agent or other person who commits, participates in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

In addition to an injunction, the county may petition the court to enter an order of abatement as part of the judgment in the cause. Such petition may request that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other chattel be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this ordinance.

If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt and the county may execute the order of abatement. If the county executes the order, it has a lien on the property, in the nature of a mechanic's or material man's lien, for the cost of executing the order.

Nothing herein contained shall prevent Craven County from taking such other lawful action as is necessary to prevent or remedy any violation.

12.4 Approval of the Craven County Health Department.

The building inspector shall not issue a building permit for any structure which requires the Craven County Health Department's approval for the installation of a sewage disposal system until such approval has been granted by the Craven County Health Department. Evidence of approval shall accompany the application for a building permit.

12.5 Separability clause.

Should any section or provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decisions shall not affect the validity of the ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

12.6 Effective date.

This ordinance shall take effect and be in force from and after its adoption by the Commissioners of Craven County, North Carolina, this 25th day of September, 1989.

***Editor's note** – Appendix D derives from an ordinance of September 25, 1989.

Cross references – Buildings and building regulations, Ch. 4; fire prevention and protection, Ch. 7; flood damage prevention, Ch. 7.5; mobile homes, Ch. 9; parks and recreation, Ch. 10; subdivisions, App. A; Neuse River Water and Sewer District, App. B; Northwest Craven Water and Sewer District, App. C; improvement permits, disclosure to buyers of certain land, § 2-1 planning by recreation and parks commission, § 10-33.