ARTICLE X - Permissible Uses

§ 152-146. Table of Permissible Uses.

(A) The Table of Permissible Uses is hereby established. For convenience, this table is set forth at the end of this article.

(B) The Table of Permissible Uses should be read in close conjunction with the definitions set forth in section 152-15 and the other interpretive provisions set forth in this article. The table begins at the end of this article.

(C) In the event that the Table of Permissible Uses and any provision of article XI, "Overlay Districts and Supplementary Use Regulations," conflict, the Table of Permissible Uses shall control, except that retail services within the O-I zoning district shall be governed by the requirements of section 152-163.17.1.

§ 152-147. Use of the Designations Z, S, C in Table of Permissible Uses.

(A) Subject to section 152-148, when used in connection with a particular use in the Table of Permissible Uses, the letter "Z" means that the use is permissible in the indicated zone with a certificate of zoning compliance issued by the Land Use Administrator, the letter "S" means a special use permit must be obtained from the Planning Board, and the letter "C" means a conditional use permit must be obtained from the Board of Commissioners.

(B) Use of the designation "CZ" for townhomes (use 1.320) denotes that a conditional use permit is required for the approval of an entire townhome development and also that a certificate of zoning compliance must be issued for each individual townhome within a development unit prior to occupancy.

(C) Use of the designation "ZSC" for combination uses (use 30.000) is explained in section 152- 153, "Combination Uses."

§ 152-148. Planning Board Jurisdiction Over Uses Otherwise Permissible With a Certificate of Zoning Compliance.

Notwithstanding any other provisions of this article, whenever the Table of Permissible Uses (interpreted in the light of section 152-147 and the other provisions of this article) provides that a use in a nonresidential zone or a nonconforming use in a residential zone is permissible with a certificate of zoning compliance, a special use permit shall nevertheless be required if the Administrator finds that the proposed use would have an extraordinary impact on neighboring properties or the general public. In making this determination, the Administrator shall consider, among other factors, whether the use is proposed for an undeveloped or previously developed lot, whether the proposed use constitutes a change from one principal use classification to another, whether the use is proposed for a site that poses peculiar traffic or other hazards or difficulties, and whether the proposed use is substantially unique or is likely to have impacts that differ substantially from those presented by other uses that are permissible in the zoning district in question.

§ 152-149. Permissible Uses and Specific Exclusions.

(A) The presumption established by this ordinance is that all legitimate uses of land are permissible within at least one zoning district in the Town's planning jurisdiction. Therefore, because the list of permissible uses set forth in section 152-146 (the Table of Permissible Uses) cannot be all inclusive, those uses that are listed shall be interpreted liberally to include other uses that have similar impacts to the listed uses.

(B) Notwithstanding subsection (A), if the proposed use is not listed in section 152-146 (the Table of Permissible Uses), even given a liberal interpretation, the permit-issuing authority shall apply the minimum ordinance standards for the use found in the Table of Permissible Uses that is most closely related to the land use impacts of the proposed use and issue the permit. The Land Use Administrator or the Planning Board may request that the Town Board initiate an ordinance amendment addressing such proposed use. If the adoption of such an amendment occurs after the Land Use Administrator receives an application for a zoning compliance permit, special use permit or conditional use permit, however, the ordinance standards in effect at the time the application is received shall apply.

(C) Without limiting the generality of the foregoing provisions, the following uses are specifically prohibited in all districts:

(1) Any use that involves the manufacture, handling, sale, distribution, or storage of any highly combustible or explosive materials in violation of the Town's fire prevention code;

(2) Stockyards, slaughterhouses, abattoirs and rendering plants;

(3) The keeping of swine. This prohibition is adopted pursuant to authority granted by G.S. Chpt. 160A, Art. 19, Part 3 and G.S. 160A-186;

(4) Except as provided by this ordinance, salvage yards, junk yards and all other types of recycling facilities;

(5) Use of a recreational vehicle as a temporary or permanent residence. (Situations that do not comply with this subsection on the effective date of this ordinance are required to conform within one year of the effective date of this ordinance); and

(6) With the exception of roadside stands which are permitted subject to section 152-163.18, use of a motor vehicle parked on a lot as a structure in which, out of which, or from which any goods are sold or stored, any services are performed, or other business is conducted. Situations that do not comply with this subsection on the effective date of this ordinance are required to conform within thirty (30) days.

§ 152-150. Accessory Uses. *(Amended 4/3/2014, 12/12/2016)*

(A) Section 152-146 (the Table of Permissible Uses) classifies different principal uses according to their different impacts. Whenever an activity (which may or may not be separately listed as a principal use in the table) is conducted in conjunction with another principal use and the former use (i) constitutes only an incidental or insubstantial part of the total activity that takes place on a lot or (ii) is commonly associated with the principal use and integrally related to it, then the former use may be regarded as accessory to the principal use and may be carried on underneath the umbrella of the permit issued for the principal use. For example, a swimming pool/tennis court complex is customarily associated with and integrally related to a residential subdivision or multi-family development and would be regarded as accessory to such principal uses, even though such facilities, if developed apart from a residential development, would require a permit.

(B) For purposes of interpreting subsection (A):

(1) A use may be regarded as incidental or insubstantial if it is incidental or insubstantial in and of itself or in relation to the principal use,

(2) To be "commonly associated" with a principal use, it is not necessary for an accessory use to be connected with such principal use more times than not, but only that the association of such accessory use with such principal use takes place with sufficient frequency that there is common acceptance of their relatedness.

(C) Without limiting the generality of subsections (A) and (B), the following activities, so long as they satisfy the general criteria set forth above, are specifically regarded as accessory to residential principal uses:

(1) Offices or studios within an enclosed building and used by an occupant of a residence located on the same lot as such building to carry on administrative or artistic activities of a commercial nature, so long as such activities do not fall within the definition of a home occupation;

(2) Hobbies or recreational activities of a noncommercial nature;

(3) The renting out of one or two rooms within a single-family residence (which one or two rooms do not themselves constitute a separate dwelling unit) to not more than two persons who are not part of the family that resides in the single-family dwelling;

(4) Yard sales or garage sales, so long as such sales are not conducted on the same lot for more than three days (whether consecutive or not) during any ninety (90) day period; and

(5) Swimming pools.

(D) Temporary Family Health Care Structures

(1) On lots zoned for single-family detached dwellings (i.e. the RA, R30-18, R20-16, R18-14, R15-12, R10-10, R6-10, MH, and B-3 zoning districts), a temporary family health care structure shall be regarded as an accessory use to a single-family detached dwelling to the extent authorized and in accordance with the provisions of G.S. 160A-383.5 (S.L. 2014-94).

(2) Prior to installing a temporary family health care structure, the owner must first obtain a zoning permit from the Land Use Administrator. This permit must be renewed annually. The town may not withhold a permit if the applicant provides sufficient proof of compliance with this subsection and G.S. 160A-383.5. The owner shall be required to provide proof of compliance on an annual basis as long as the temporary family health care structure remains on the property. The evidence may involve the inspection by the town of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation, and annual renewal of a doctor's certification that the person living in the structure remains physically or mentally impaired, as those terms are used in G.S. 160A-383.5.

(E) Without limiting the generality of subsections (A) and (B), the following activities shall not be regarded as accessory to a residential principal use and are prohibited in residential districts and on properties that are used primarily for residential purposes (i.e. a single-family detached dwelling in the B-3 zoning district):

(1) The raising or keeping of ten (10) or more dogs.

(F) No accessory use or structure will be permitted on a lot without an established principal use. An accessory use or structure shall not be located on a separate lot from the principal use to which it is incidental and subordinate.

§ 152-151. Permissible Uses Not Requiring Permits.

Notwithstanding any other provisions of this ordinance, no zoning, special use, or conditional use permit is necessary for the following uses:

(A) Streets;

(B) Electric power, telephone, telegraph, cable television, gas, water, sewer and other utility lines, wires or pipes, together with supporting poles or structures, located within a public right-of-way;

(C) Neighborhood utility facilities located within a public right-of-way with the permission of the owner (State or Town) of the right-of-way; and

(D) Household Pets. Household pets are permitted in all zoning districts where residences are permitted and also within residences that are lawful nonconforming uses. Household pets include, but are not limited to, dogs, cats, rabbits, gerbils, hamsters, parakeets,

parrots, and cockatiels, provided they are not raised for commercial purposes. A maximum of five (5) household pets are allowed per residence.

(E) Bona Fide Farming. As used in this subsection, "bona fide farm purposes" are defined by G.S. 153A-340. In accordance with G.S. 153A-340, any of the following shall constitute sufficient evidence that a property is being used for bona fide farm purposes:

(1) A farm sales tax exemption certificate issued by the Department of Revenue,

(2) A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3,

(3) A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return,

(4) A forest management plan, or

(5) A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.

As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Pursuant to G.S. § 160A-360(k), property that is located in the geographic area of the Town's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from the exercise of the town's extraterritorial jurisdiction. Property that is located in the geographic area of the town's extraterritorial jurisdiction and that ceases to be used for bona fide farm purposes shall become subject to exercise of the town's extraterritorial jurisdiction. *(Amended 10/29/2013)*

(F) Small and Micro Wireless Facilities meeting the requirements of Section 15-163-23.1 and one of the following:

(1) Routine Maintenance; or

(2) The replacement of small wireless facilities with small wireless facilities; or

(3) Installation, placement, maintenance or replacement of micro wireless facilities that are suspended between existing utility poles or Town utility poles; or

(4) For a communications service provider authorized to occupy the Town rights-of-way and who is remitting taxes under N.C. Gen. Stat. § 105-164.4(a)(4c) or 105-164.4(a)(6). *(Amended 3/26/2018)*

(G) Communication services providers authorized to occupy Town rights-of-way who are paying taxes under N.C. Gen. Stat. §§ 105-164.4 (a) (4c) or (6). *(Amended 3/26/2018)*

§ 152-152. Change in Use.

(A) A substantial change in use of property occurs whenever the essential character or nature of the activity conducted on a lot changes. This occurs whenever:

(1) The change involves a change from one principal use category to another;

(2) If the original use is a combination use or planned development, the relative proportion of space devoted to the individual principal uses that comprise the combination use or planned development changes to such an extent that the parking requirements for the overall use are altered;

(3) If the original use is a combination use or planned development use, the mixture of types of individual principal uses that comprise the combination use or planned development use changes;

(4) If the original use is a planned residential development, the relative proportions of different types of dwelling units change; or

(5) If there is only one business or enterprise conducted on the lot (regardless of whether that business or enterprise consists of one individual principal use or a combination use), that business or enterprise moves out and a different type of enterprise moves in (even though the new business or enterprise may be classified under the same principal use or combination use category as the previous type of business). For example, if there is only one building on a lot and a florist shop that is the sole tenant of that building moves out and is replaced by a clothing store, that constitutes a change in use even though both tenants fall within principal use classification 2.120. However, if the florist shop were replaced by another florist shop, that would not constitute a change in use since the type of business or enterprise would not have changed. Moreover, if the florist shop moved out of a rented space in a shopping center and was replaced by a clothing store, that would not constitute a change in use since there is more than one business on the lot and the essential character of the activity conducted on that lot (i.e. a shopping center, which is a combination use) has not changed.

(B) A mere change in the status of property from unoccupied to occupied or vice versa does not constitute a change in use. Whether a change in use occurs shall be determined by comparing the two active uses of the property without regard to any intervening period during which the property may have been unoccupied, unless the property has remained unoccupied for more than 180 consecutive days or has been abandoned. In the case of nonresidential uses, if the property has been unoccupied for more than 180 consecutive days or abandoned, a new zoning, special use or conditional use permit must be obtained before property may be occupied again.

(C) A mere change in ownership of a business or enterprise or a change in the name shall not be regarded as a change in use.

§ 152-153. Combination Uses.

(A) When a combination use comprises two or more principal uses that require different types of permits (zoning, special use, or conditional use), then the permit authorizing the combination use shall be:

(1) A conditional use permit if any of the principal uses combined requires a conditional use permit.

(2) A special use permit if any of the principal uses combined requires a special use permit but none requires a conditional use permit.

(3) A certificate of zoning compliance in all other cases.

This is indicated in the Table of Permissible Uses by the designation "ZSC" in each of the columns adjacent to the 30.000 classification.

(B) Unless otherwise provided elsewhere in this ordinance, when a combination use consists of a single-family detached residential subdivision that is not architecturally integrated (see section 152-190, "Architecturally Integrated Subdivisions") and two-family or multi-family uses, the total density permissible on the entire tract shall be determined by having the developer indicate on the plans the portion of the total lot that will be developed for each purpose and calculating the density for each portion as if it were a separate lot.

(C) When a combination use consists of a single-family detached, architecturally integrated subdivision and two-family or multi-family uses, then the total density permissible on the entire tract shall be determined by dividing the area of the tract by the minimum square footage per dwelling unit in section 152-184, "Minimum Area per Dwelling Unit."

§ 152-154. More Specific Use Controls.

Whenever a development could fall within more than one use classification in section 152-146 (the Table of Permissible Uses), the classification that most closely and most specifically describes the development shall control. For example, a small doctor's office or clinic clearly falls within the 3.110 classification (office and service operations conducted entirely indoors and designed to attract customers or clients to the premises). However, classification 3.130 (offices or clinics of physicians or dentists with not more than a 10,000 square foot building footprint) more specifically covers this use and is, therefore, controlling.

§ 152-155 through 152-157. Reserved.