

ZONING AND SIGN ORDINANCE
Updated October 2021

HAYESVILLE, NORTH CAROLINA

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ZONING AND SIGN ORDINANCE

HAYESVILLE, NORTH CAROLINA

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ZONING ORDINANCE

TOWN OF HAYESVILLE, NORTH CAROLINA

TITLE

AN ORDINANCE OF THE TOWN OF HAYESVILLE, NORTH CAROLINA, REGULATING THE LOCATION AND USE OF BUILDINGS, STRUCTURES, AND LAND, THE SIZE OF BUILDINGS AND OTHER STRUCTURES, THE SIZE OF YARDS, THE DENSITY AND DISTRIBUTION OF POPULATIONS. CREATING DISTRICTS FOR SAID PURPOSES AND ESTABLISHING BOUNDARIES THEREOF; PROVIDING FOR THE METHOD OF ADJUSTMENT; DEFINING CERTAIN TERMS USED HEREIN; AND PROVIDING FOR THE IMPOSITIONS OF PENALTIES FOR VIOLATIONS OF PROVISIONS OF THIS ORDINANCE

ARTICLE 100 AUTHORITY AND ENACTMENT CLAUSE

Pursuant to the authority conferred by the North Carolina general Statutes, particularly Chapter 160D, and for the purpose of promoting the health, safety, morals, convenience, order, prosperity or the general welfare of the town; securing safety from fire, panic, and other dangers; preventing the overcrowding of land; avoiding undue concentration of population; facilitating the adequate provisions of transportation, water, sewerage, schools, and other public requirements; conserving the value of buildings and encouraging the most appropriate use of land and buildings throughout the town, all in accordance with a comprehensive plan, the Town Council of Hayesville, North Carolina, does ordain and enact into law the following Articles and Sections.

ARTICLE 200 SHORT TITLE

This Ordinance shall be known and may be cited as "The Zoning and Sign Ordinance of the Town of Hayesville, North Carolina."

ARTICLE 300 APPLICATION

Section 310 Jurisdiction.

The provisions of this Ordinance shall apply within the corporate limits of the Town of Hayesville and within the one-mile extraterritorial area as established on the map entitled, "Town of Hayesville Official Zoning and ETJ Area Map - Clay County"

adopted by the Town Council. Said map and all explanatory matter thereon accompanies and is hereby made a part of this Ordinance; it shall be on file in the office of the Town Clerk and the Register of Deeds.

ARTICLE 400
DEFINITIONS OF TERMS USED IN THIS ORDINANCE

Section 410 Interpretation of Certain Words and Terms.

Except as specifically defined herein, all words used in this Ordinance have their customary dictionary definitions. For the purpose of this Ordinance, certain words or terms used herein are defined as follows:

1. Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular,
2. The word "shall" is always mandatory.
3. The word "lot" includes the word "plot" or "parcel".
4. The word "building" includes the word "structure".
5. The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual.
6. The word "used" or "occupied", as applied to any land or building, shall be construed to include the words intended, arranged or designed to be used or occupied.
7. The word "map", "zoning map", or "Hayesville Zoning Map" shall mean the "Official Zoning Map of the Town of Hayesville, North Carolina."
8. Definitions herein which are inconsistent with NCGS Chapter 160D terminology are replaced by definitions in NCGS 160D-706.

Section 420 Definitions.

Boarding House. Any dwelling in which more than three persons either individually or as families are housed or lodged for hire, with or without meals. A rooming house shall also be deemed a boarding house.

Bona Fide Farm. The use of land for the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

Buffer Strip. A buffer strip is a strip of land containing vegetation consisting of evergreen trees or shrubs and/or fencing located along the side and rear lot lines, but said buffer along streets shall be set back sufficiently to avoid interference with street right-of-way. If consisting only of vegetation, such buffer shall not be less than 15 feet in width and shall be composed of trees and shrubs of a type which at inception shall be not less than five feet in height, unless otherwise specified. If a fence is used, said fence shall be opaque and at least eight feet in height. The Board of Adjustment may vary these requirements when it deems appropriate.

Building. Any structure having a roof supported by columns or walls and intended for shelter, housing or enclosure of persons, animals or property.

Building, Accessory. A detached building subordinate to an existing residential dwelling on a lot and used for purposes customarily incidental to the main or principal building and located on the same lot therewith no larger than 25% of the ground floor square footage living area of the existing dwelling.

Building, Principal. A building in which is conducted the principal use of the lot on which said building is located.

Building Setback Line. A line delineating the minimum distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. Whenever the front, side or rear portions of a lot abut a street right-of-way, setback lines shall be measured from said right-of-way line.

Customary Incidental Home Occupations. Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof, and in connection with which there is no display and no person, not a resident on the premises, is employed specifically in connection with the activity, except that not more than one assistant may be employed by the following home occupations: lawyer, physician, dentist and chiropractor. Provided further that no mechanical equipment is installed or used except such as is normally used for domestic or professional purposes, and that not over twenty-five (25) percent of the total floor space of any structure is used for home occupations.

Dwelling Unit. A building or portion thereof, providing complete and permanent living facilities for one family.

Dwelling, Single-Family. A building arranged or designed to be occupied by one family.

Dwelling, Two-Family. A building arranged or designed to be occupied by two families living independently of each other.

Dwelling, Multi-Family. A building arranged or designed to be occupied by several families living independently of each other.

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

Group Project. Two or more principal buildings constructed on a plot of ground of at least two acres not subdivided into the customary streets and lots. (May be permitted as a "special use" by the Board of Adjustment, but shall comply with all the provisions set forth in Section 1240 of this Ordinance).

Handicapped Person. A person with a temporary or permanent physical, emotional, or mental disability including, but not limited to, mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments, but not including mentally ill persons who are dangerous to others as defined in G.S. 122-58.2

Homeless Person. A person who lacks a fixed, regular and adequate nighttime residence.

Homeless Shelter. A facility which provides temporary emergency shelter and services for not more than six homeless people. (May be permitted as a "Special Use" by the Board of Adjustment, but shall comply with all the provisions set forth in Sections 1245 and 1454 of this Ordinance.)

Junkyard. A lot, land or structure, or part thereof, used primarily for the collection, storage and sale of waste paper, rags, scrap metal or discarded material; or for the collecting, dismantling, storage and/or salvaging of machinery or vehicles not in operating condition and for the sale of parts thereof.

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

Lot Depth. The mean horizontal distance between front and rear lot lines.

Lot of Record. A lot which is a part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds of Clay County, North Carolina, or a lot described by metes and bounds, the description of which has been so recorded.

Lot Width. The distance between side lot line measured at the building line.

Manufactured Home. A dwelling unit that (I) is not constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for One- and Two-Family Dwellings; (II) is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis; and (III) exceeds forty (40) feet in length and eight feet in width.

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

1. The manufactured home has a length not exceeding four times its width; and
2. The pitch of the manufactured home's roof has a minimum vertical rise of two and two tenths feet for each twelve feet of horizontal run (2.2' in 12') and the roof is finished with shingles or raised seam metal roofing; and
3. The exterior siding consists predominately of vinyl or aluminum horizontal lap siding, wood or hardboard; and
4. A continuous, permanent masonry, or an industry approved material having the appearance of masonry, curtain wall or foundation, unpierced except for ventilation and access, is installed under the manufactured home; and
5. The tongue, axles, removable towing apparatus, and transporting lights are removed after final placement on site.

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

the time of construction, but which does not meet the definition of a Class A manufactured home.

Manufactured Home, Class C: A manufactured home that does not meet the definition of either a Class A or a Class B manufactured home.

Modular Home. A dwelling unit constructed in accordance with the construction standards of North Carolina Uniform Residential Building Code for One- and Two-Family Dwellings and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly and placement on permanent foundation. Without limiting the generality of the foregoing, a modular home may consist of two or more sections, each transported to the site on its own chassis or steel frame, or a series of panels or room sections transported to the site on a truck and erected, assembled or joined there.

Non-conforming Use. A structure or use of land lawfully occupied by an existing use which does not conform with the permitted uses for the zoning district in which it is situated, either at the effective date of the Ordinance, or as the result of subsequent amendments to this Ordinance.

Parking Space. An area of not less than nine feet by 18 feet, plus the necessary access space. Parking space(s) shall be provided with vehicular access to a street or alley, shall not be provided in a required front yard area, and shall always be located outside the dedicated street right-of-way.

Restaurant. An establishment which is permitted by the Clay County Health Department to prepare and serve food.

Retail Business. Establishments selling commodities in small quantities to the consumer.

Retail Services. Establishments providing intangible needs for immediate use.

RV. Recreational Vehicle

Special Use. A use that would not be appropriate generally or without restriction throughout the zoning district but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in a use district, if specific provision for such special uses is made in this zoning ordinance.

Street. A dedicated and accepted public right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Structure. anything constructed or erected, the use of which requires more or less permanent location on the ground or which is attached to something having more or less permanent location on the ground.

Travel Trailer. A structure that is:

- 1) intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle), and
- 2) is designed for temporary use as sleeping quarters, but that does not meet the definition of a manufactured home.

Travel Trailer (RV). Any vehicle used or so constructed as to permit its being used as a conveyance upon the public streets or highways, duly licensable as such and constructed in such a manner as will permit occupancy thereof as a dwelling or sleeping place for one or more persons and designed, for short term occupancy, for frequent and/or extensive travel, and for recreational and vacation use, including camper trucks and self propelled campers etc.. All travel trailers must remain in a mobile condition, display a valid state DMV tag and have no permanent or semi-permanent structure(s) attached to the travel trailer or erected on the rented site.

Use. Any activity, occupation, business or operation carried on, or intended to be carried on, in a building or structure or on a tract of land.

Variance. A variance is a relaxation of the terms of the Zoning and Sign Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary and undue hardship.

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

Yard, Front. An open unoccupied space on the same lot with a principal building, extending the full width of the lot, and situated between the street and the front line of the building, projected to the side lines of the lot.

Yard, Rear. An open, unoccupied space on the same lot with a principal building, extending the full width of the lot situated between the rear line of the lot and the rear line of the building projected to side lines of the lot.

Yard, Side. An open, unoccupied space on the same lot with a principal building, situated between the building and the side lot line and the extending from the rear line of the front yard to the front line of the rear yard.

ARTICLE 500 ESTABLISHMENT OF DISTRICTS

Section 510 Use Districts.

For the purpose of this Ordinance, the Town of Hayesville, North Carolina, and its one-mile extraterritorial area, is divided into seven use districts designated as follows:

R-1	General Residential District
R-2	Rural Residential District
RO	Residential Office
C-1	Central Business District
C-2	General Business District
C-3	General Commercial District
M-1	Industrial District

Section 520 District Boundaries.

The boundaries of the districts enumerated in Section 510 above, are hereby established as shown on the map entitled, "Town of Hayesville Official Zoning and ETJ Area Map - Clay County", adopted by the Town Council and certified by the Town Clerk. Said map and all explanatory matter thereon accompanies and is hereby made a part of this Ordinance as if fully written herein. Said map shall be retained in the office of the Town Clerk.

Section 530 Interpretation of District Boundaries.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the Official Zoning Map, the following shall apply:

1. Where district boundaries are indicated as approximately following the center lines of streets, highways, streams, or rivers, street right-of-way lines or such lines extended, such lines shall be construed to be such boundaries.
2. Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be said boundaries.

3. Where district boundaries are so indicated that they are approximately parallel to the center lines of streets or highways, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Zoning Map. If no distance is given, such dimension shall be determined by the use of the scale shown on said Zoning Map.
4. Where a district boundary line divides a lot of single ownership, the district requirements of the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such lot more than 35 feet beyond the district boundary line.

ARTICLE 600 USE REGULATIONS

Section 610 Intent.

It is the intent of this Article that if any use or class of use is not specifically permitted in a district as set forth below, it shall be prohibited in that district.

Section 611 R-1 General Residential District.

612 Intent.

The R-1 District is established in which the principal use of and is for single-family dwellings. The R-1 District is established in order to:

1. Protect the present residential development.
2. Protect and promote a suitable environment for family life.
3. Discourage any use which would create excessive requirements and cost for public services in excess of that of the surrounding area.

613 Uses Permitted.

Within the R-1 General Residential District, a building or premises shall be used only for the following purposes:

1. Single-family dwelling unit(s) that comply with North Carolina State Building code: Residential Code.
2. Garage apartment for one family located on the same lot and incidental to a single-family dwelling.

3. Churches and other places of worship provided that no building for such use shall be located within 50 feet of any property line and such uses shall be on a lot that abuts and has main access to a major thoroughfare, and there shall be provided a buffer strip at least 10 feet wide planted with evergreen shrubs or trees which at maturity will be between eight and 12 feet high along the side and rear property lines.
4. Customary incidental home occupations, including two boarders or roomers, provided there is no external evidence of such occupation.
5. Customary accessory buildings, including private garages and non-commercial greenhouses and workshops, provided they are located in the rear yard and not closer than five feet to any property line.
6. Elementary and high schools to be enclosed by a woven wire fence at least four feet in height.
7. Family Care Homes.
8. Manufactured Home, Class A
9. Bona Fide Farms
10. Private Garages located in the side yard which comply with the Principal Building setbacks, in Article 700.
11. Rooftop Solar Electric panels that provide power to only serve the building's power needs using a single meter array.

614. Special Uses.

1. Group Projects
2. Hospitals
3. Trade Schools
4. Law Offices, Medical Offices and clinics not used primarily for the treatment of drug addicts or alcoholics.
5. Public buildings and cemeteries.
6. Nursing Homes.
7. Multi-family dwellings
8. Child Care arrangements or facilities licensed by the State of North Carolina as a day care center.
9. Public and semi-public parks and playgrounds.
10. Building size exceeding 15,000 Sq. Ft.
11. Building Height exceeding 35 feet above finished grade.
12. Public Utility Facilities

13. Rooftop Solar Electric panels installed by a third party to generate power which is not available to serve the building's power needs, but which will be sold to a utility using a dual meter array.
14. Short Term Residential Rentals

Section 620. R-2 Rural Residential District.

621 Intent.

The R-2 District is established in which the principal use of land is for residential purposes. The R-2 District is established in order to:

1. Protect the present residential development.
2. Protect and promote a suitable environment for family life.
3. Discourage any use which would create excessive requirements and costs for public services in excess of that of the surrounding area.

622 Uses Permitted. Within the R-2 Residential District a building or premises shall be used only for the following purposes:

1. All uses permitted in the R-1 District.
2. Manufactured homes Class B.

623 Special Uses.

1. All special uses listed for the R-1 District.

Section 630 RO Residential Office.

631 Uses Permitted.

Within the RO Residential Office District a building or premises shall be used only for the following purposes:

1. All uses permitted in the R-1 District

632 Special Uses.

1. Professional Offices in converted dwellings which are not owner occupied.

Section 640 C-1 Central Business District.

641 Intent.

The C-1 District is established to promote the future development within the business districts to serve as a vibrant nucleus for Clay County residents and visitors,

offering information, goods and services, dining and family entertainment.

642 Uses Permitted.

Within the C-1 Central Business District, a building or premises shall be used only for the following purposes:

1. Single family dwelling unit(s) that comply with North Carolina State Building Code: Residential Code. (Must meet R-1 lot requirements).
2. Retail establishments such as department, clothing, sporting goods, variety, drug, hardware, furniture, appliance, floor covering, antiques, jewelry, music, toys, book and stationery, art and crafts stores, but not excluding similar retail outlets.
3. Any retail business making products sold at retail on the premises, providing such manufacturing is incidental to the retail business or service, occupies less than 60 percent of the floor area, and employs not more than five employees.
4. Offices and banks
5. Public buildings
6. Family Entertainment Facilities
7. Public parks
8. Bona Fide Farms
9. Rooftop Solar Electric panels that provide power to only serve the building's power needs using a single meter array.
10. Apartments above commercial buildings.
11. Personal Grooming
12. Medical Offices
13. Pet Grooming
14. Coffee and Ice Cream Shops
15. Yoga Studio

643 Special Uses

1. Multi-family dwelling units
2. Fencing
3. Travelers' Accommodation
4. Hotels and Motels
5. Restaurants
6. Rooftop Solar Electric panels installed by a third party to generate power which is not available to serve the building's power needs, but which will be sold to a utility using a dual meter array.
7. Tattoo and Body Art Establishments
8. Short Term Residential Rental

9. Living Quarters not exceeding 30% of floor area, in rear portion of street level commercial buildings. Limited to use by owner or manager.
10. Commercial Storage Buildings

Section 650 C-2 General Business District.

651 Intent.

The C-2 General Business District is established in which the principal use of land is for retail businesses primarily of the drive-in type and businesses requiring frontage on a major highway. The C-2 District is established in order to:

1. Protect existing development.
2. Provide for orderly expansion of business requiring highway frontage.
3. Exclude incompatible uses that would pre-empt land designated for highway business uses.

653 Uses Permitted.

Within the C-2 General Business District, a building or premises shall be used only for the following purposes:

1. All uses permitted in the C-1 District.
2. Any business of a drive-in nature including but not limited to banks, restaurants, and pick-up stations for laundry and dry cleaning.
3. Public uses and entertainment.
4. Farm implement sales.
5. Service Stations
6. Public utility offices including sales offices incidental thereto.
7. Lending institutions.
8. Stores offering merchandise for rent.
9. Automobile repair garages.
10. Automobile sales.
11. Bona Fide Farms.
12. Veterinary Hospital per Clay County Animal Control Ordinance
13. Kennels per Clay County Animal Control Ordinance

654 Special Uses

1. All special uses listed for the C-1 District.
2. Group Projects
3. Wireless Communication Facilities
4. Homeless Shelters
5. Vending Machines for Beverages and Ice.

Section 660 C-3 General Commercial District.

661 Intent.

The C-3 General Commercial District is established for commercial districts generally located on the fringe of the Business Districts and along major radial highways leading out of town. Typically businesses located in this district dispense retail goods and services to the community and provide space for light manufacturing and warehousing activities:

1. Protect existing development.
2. Provide for orderly expansion of business requiring highway frontage.
3. Provide for warehousing activities and light manufacturing not requiring the M-1 designation

662 Uses Permitted.

Within the C-3 General Commercial District, a building or premises shall be used only for the following purposes:

1. All uses permitted in C-1 and C-2.
2. Any business of a construction nature including but not limited to: Building material storage and sales yards; contractor's offices and storage yards; electrical supplies, equipment, sales, repairs, and storage; cabinet, woodworking, and upholstery shops; building specialties outlets; plumbing and heating supply shops and storage; sheet metal and roofing storage and shops;.
3. Public works and public utility facilities, including service and storage yards.
4. Wholesale and warehousing establishments.
5. Customary accessory uses and structures including open storage, provided the area devoted to open storage is enclosed by a solid fence not less than eight feet in height within the Corporate limits of the Town of Hayesville. A buffer strip as provided in Section 420, item 3 may be used in lieu of the fencing requirement only within the Extraterritorial Jurisdiction of the Town of Hayesville.
6. Greenhouses and horticultural nurseries
7. Machine and welding shops
8. Industrial supplies and equipment, sales and services.
9. Bona Fide Farms.

663 Special Uses

1. Group Projects
2. Wireless Communication Facilities
3. Solar Panel Installations; "Solar Farm Ordinance for Clay County, North Carolina is added to this section by reference."
4. Wind Powered Electric Generating Turbines
5. Cemeteries

Section 670 M-1 Industrial District.

671 Intent.

The M-1 Industrial District is established as a district intended to provide for manufacturing and warehousing and similar uses. It is not the intent of this district to allow such uses in areas where they would be incompatible with surrounding land uses.

672 Uses Permitted.

Within the M-1 Industrial District the following uses are permitted:

1. Any industry which does not cause injurious or obnoxious noise, vibrations, smoke, gas, fumes, odor, dust or fire hazard.
2. Storage yards, not including junkyards, but including open storage (All storage must be enclosed within adequate fencing to insure public safety.)
3. Wholesaling or warehousing
4. Transportation terminals, freight and passenger
5. Farm equipment sales and services.
6. Public buildings

673 Special Uses.

The following uses are permitted as special uses subject to a finding by the Board of Adjustment that all applicable provisions of Sections 1240 and 1454 have been met:

1. Group Project - Uses allowed in the Group Projects are limited to those uses listed as permitted or conditional in this district.
2. Wireless Communication Facilities
3. Homeless Shelters
4. Hydraulic Fracturing (Fracking)

674 Uses Prohibited.

1. Any facility which produces, mixes, or combines any materials to create asphalt.

Section 680. RV-C2 Modified General Business.

681 Intent.

Same as Section 651

682 Uses Permitted.

Same as Section 653

683 Special Uses.

1. All Special Uses listed for the C-2 District
2. Section 1280 Travel Trailer (RV) Parks and Campgrounds

690 Design Restriction.

1. Buffering: Along each C-2, C-3 or M-1 property line which is adjacent to a residential district, the property owner of the tract to be developed, or the developer, shall place and maintain a buffer strip as defined in this Ordinance to provide appropriate visual screening as well as screening against noise, glare, fumes, dust, and other harmful effects. The buffer strip may utilize existing evergreen vegetation.
2. All outdoor area lighting, except for single family residential, shall be full-cut-off downcast lighting which protects the night sky from glare while maintaining ground level illumination.

**ARTICLE 700
DIMENSIONAL REQUIREMENT**

DISTRICT	MINIMUM LOT SIZE		MINIMUM FRONT YARD		MINIMUM SIDE Yard in Feet	MINIMUM REAR Yard in Feet
	Area in Square Ft	Lot Width In Feet	Setback from Edge of Street Major	Minor		
R-1	8,000*	75	30	30	10	20
R-2	8,000*	75	30	30	10	20
RO	8,000*	75	30	30	10	20
C-1	---	---	---	---	50 on all sides contiguous to any residential district	
C-2	---	---	50	50	50 on all sides contiguous to any residential district	
C-3	---	---	50	50	50 on all sides contiguous to any residential district.	
M-1	10,000	100	50	50	50 on all sides contiguous to any residential district	

* Lots without public water and/or public sewer shall comply with the lot size requirements of the Clay County Health Department

* Multifamily dwelling 8,000 sq. ft. for first dwelling unit plus 3,000 sq. ft. for each additional dwelling unit in building; Group Projects (single-family or multi-family dwellings or some combination of such) 8,000 for each dwelling unit.

BUILDING HEIGHT ABOVE FINISHED GRADE SHALL NOT EXCEED 40 FEET, BUILDING SIZE SHALL NOT EXCEED 15,000 SQUARE FEET UNLESS PERMITTED AS A SPECIAL USE UNDER SECTION 1454.

**ARTICLE 800
APPLICATIONS OF REGULATIONS**

Section 810 Use.

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

Section 820 Height and Density.

No building shall hereafter be erected or altered so as to exceed the height limits, or to exceed the density regulations of this Ordinance for the district in which it is located. Height above finished grade shall not exceed 40 feet unless permitted as a Special Use under Section 1454.

Section 825 Building Size.

No building shall hereafter be erected or altered so as to exceed the size limits of this Ordinance for the district in which it is located. Building size shall not exceed 15,000 square feet unless permitted as a Special Use under Section 1454. There shall be no minimum square footage for structures subject to the one and two family Residential Building Code.

Section 830 Lot Size.

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

Section 840 Yard Use Limitations.

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

Section 850 Only One Principal Building on Any Lot.

Only one principal building and its customary accessory building may hereafter be erected on any lot, except as authorized by Section 1240 nor shall any building be erected on any lot which does not abut at least 35 feet on a publicly dedicated or maintained street.

**ARTICLE 900
GENERAL PROVISIONS**

Section 910 Non-conforming Uses.

It is the intent of this Section to discourage the survival of nonconforming uses and to prohibit their enlargement, expansion or extension. The lawful use of any building or premises at the time of the enactment of this Ordinance may be continued even though such use does not conform with the provisions of this Ordinance except that the non-conforming building or premises shall not be:

1. Changed to another non-conforming use.
2. Re-established after discontinuance for 180 days.
3. Enlarged or extended except in conformity with this Ordinance.
4. Repaired, rebuilt, or altered after damage exceeding 60 percent of its replacement cost at the time of destruction. Reconstruction to begin within six months after damage is incurred.

911 Cessation of Use.

Non-conforming uses of land such as junk yards, open storage of wrecked or inoperable vehicles, and refuse dumps within the town limits of Hayesville or any uses similar to those enumerated, shall be discontinued within one year from the date of adoption of this Ordinance.

Section 920 Non-conforming Lots of Record.

Where the owner of a lot of official record in any district at the time of the adoption of this Ordinance or his successor in title thereto does not own sufficient contiguous land to enable him to conform to the minimum lot size requirements of this Ordinance, such lot may be used as a building site provided that:

Where the lot area and lot width are not more than 20 percent below the minimum specified in this Ordinance, and other dimensional requirements are otherwise complied with, the Building Inspector is authorized to issue a building permit.

1. Where the lot area and lot width are more than 20 percent below the minimum specified in this Ordinance or other dimensional requirements cannot be met, the Board of Adjustment is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.

Section 930 Off-Street Parking.

Off-street automobile parking space shall be provided on every lot, except in the C-1 District, on which any of the following uses are hereafter established. The number of parking spaces provided shall be at least as great as the number specified below for various uses. Each space shall be provided with vehicular access to a street or alley.

<u>Uses</u>	<u>Required Parking</u>
Automobile Sales	Two spaces for each sales associate plus one space for each employee
Automobile Repair	Two spaces for each 300 square feet of repair and maintenance space
Banks	One space for each 200 square feet of gross floor area plus one space for each employee
Bowling Alley	Two spaces for each alley plus: One space for employee and one space for each four spectator seats
Churches	One space for each four seats or seven feet seating capacity in the principle assembly room
Hospitals	One space for each four patient beds plus one space for each employee, staff or visiting care provider
Hotels, Motels, Inns, Bed & Breakfast, Rooming and Boarding Houses	One space for each accommodation plus one space for each employee
Laboratories and Light Manufacturing	One space for each employee on shift of maximum employment plus one space for each office and work room
Mortuaries and Funeral Homes	One space for each four seats in the assembly room or chapel plus one space for each employee
Multi-family Housing	Two spaces for each apartment plus designated spaces for visitors equal to 16% of the total.
Places of Public Assembly, Including Private Clubs, Lodges, Gymnasiums, Community Centers, Libraries, Theaters, and all similar places of public assembly	One space for each four seats plus one space for each 100 square feet of floor or ground area used for amusement or public assembly
Professional, business, or public offices	One space for each 300 square feet of gross floor area

Restaurants	One space for each three seats plus one space for each employee on shift of greatest employment
Retail Business and Consumer Service Outlet	One space for each 200 square feet of gross floor area
Sanitariums, Rest and Convalescent Homes, homes for the elderly and similar institutions	One space for each six patient beds plus one space for each visiting staff or doctor and one space for each employee on the shift of maximum employment
Schools: Elementary and Middle	One space for each employee plus one space for each classroom and office
Schools: High School and College	One space for each four students plus one space for each classroom and office
Warehouses, Wholesale and industrial	One space for each employee on the shift of maximum employment plus one space for each office and work room

931 Extension of Space into a Residential District.

Required parking space may extend up to 120 feet into a residential zoning district, provided that:

1. The parking space adjoins a commercial district,
2. has its only access to or fronts upon the same street as the property in the commercial district for which it provided the required parking space, and
32. is separated from abutting properties in the residential district by a ten foot wide buffer strip planted with evergreens which at maturity will be between six and ten feet in height.

Section 940 Off-Street Loading and Unloading Space.

Every lot on which a business use is hereafter established, shall provide space as indicated herein for the loading and unloading of vehicles off the street. Such space shall have access to a street. For the purpose of this section an off-street loading space shall have minimum dimensions of twelve (12) feet by forty (40) feet for each loading door.

1. Retail Business: One space each loading door.
2. Wholesale and Industrial: One space for 10,000 square feet.

Section 950 Visibility at Intersections.

In all use districts except the C-1 Central Business District, no fence, wall, shrubbery, gutter or other obstruction to vision between the heights of three feet and fifteen (15) feet shall be permitted within twenty (20) feet of the intersection of the right-of-way lines of streets.

Section 960 Gasoline Service or Filling Stations.

The following regulations shall apply to all gasoline service or filling stations:

1. All buildings shall be located at least forty (40) feet from any street right-of-way line.
2. Gasoline pumps and other appliances shall be located at least fifteen (15) feet from any street right-of-way line.
3. All service, storage or similar activities shall be conducted entirely on the premises.
4. All major repair work if any, shall be conducted within a completely enclosed building.
5. Open storage of wrecked or inoperable car, discarded tires, auto parts or similar material shall not be permitted.

**ARTICLE 1000
SIGN REGULATIONS**

Section 1010 Signs, Billboards and Other Advertising Structures.

These conditions are established as a reasonable and impartial method of regulating advertising structures in order to ensure light, air and open space, to reduce hazards at intersections, and to protect property values of the entire community.

Section 1015 Special Uses.

Any sign other than two-dimensional flat panel signs with fixed copy.

Section 1020 Definitions.

The following words or terms shall have the meanings as herein defined:

Abandoned Sign. A sign which was erected on property in conjunction with a particular use, which use has been discontinued for a period of one hundred eighty (180) days or more, or a temporary sign for an event which has occurred.

Changeable Copy Sign. A sign on which message copy is changed manually or electronically in the field, through the utilization of attachable letters, numbers, symbols and other similar characters or changeable pictorial panels. Time and temperature signs are not included in this definition.

Commemorative Sign. Any sign erected in remembrance of a person or event or which is commemorative in nature. Any commemorative sign shall be approved by the Town Council.

Community Festival Sign. Signs that are placed to commemorate and/or attract attention to a community festival officially recognized by the Town Council.

Construction Sign. A temporary sign whose message is limited to identification of architects, engineers, contractors, and other individuals or firms involved with construction on a specific site, the name of the building, the intended purpose of the building, and the expected completion date.

Directional Sign, Off-Premise. Any off-premise sign indicating the location of or providing directions to a business, development, or other activity.

Exempt Sign. Any sign that is specifically listed as exempt from this Ordinance. Said listed exempt signs are not regulated by the terms of this Ordinance.

Flashing Sign. A sign that incorporates flashing or blinking lights or a sign with moving parts or parts which simulate movement, including signs or lights on signs reflecting or emitting a glaring light that could impair driver vision.

Governmental Sign. Any sign erected by or on the order of an authorized public official in the performance of his office or duty including, but not limited to, traffic control signs, street name signs, warning and directional signs, public notice, or signs of a similar nature.

Home Occupation Signs. A sign used in association with a permitted home occupation conducted in the dwelling unit occupied by the operator of the business.

Incidental Sign. A single face, non-illuminated professional or announcement sign attached wholly to a building, window or door containing information relative to emergencies, store hours, credit cards honored, and other similar accessory information.

Multiple Tenant Development. A development in which there exists a number of individual and/or separate activities, in which there are appurtenant shared facilities such as parking.

Non-Commercial Message. Any message protected by the First Amendment that does not direct attention to a business operated for profit, or to a commodity or service for sales.

Off-Premise Advertising Sign. A sign identifying, advertising or directing the public to a business, merchandise, service, institution, residential area, entertainment, or activity which is located, sold, rented, based, produced, manufactured, furnished or taking place at

a location other than the property on which the sign is located.

On-Premise Advertising Sign. A sign identifying or advertising a business, person, activity, goods, products or services located on the premises where the sign is installed and maintained.

Political Sign. A sign erected for the purpose of advertising a candidate or stating a position regarding an issue upon which the voters of the Town may vote.

Portable Sign. A sign generally constructed to be easily movable without a permanent attachment to the ground and which may or may not be equipped with wheels. Such signs may be designed for changeable messages. Signs painted on or attached to operational vehicles and signs defined as temporary signs are not included in this definition.

Real Estate Sign. A sign erected by the owner, or his agent, advertising real property upon which the sign is located for rent, for lease, or for sale.

Roof Sign. A sign erected over or on, and wholly supported by or partially dependent upon the roof of any building for support, or attached to the roof in any way and extends above the roof line or a building.

Setback. The shortest horizontal distance between the edge of the pavement or traveled surface and the closest point of a sign or its supporting member.

Sign. Any form of publicity or advertising which is designed to be visible from any public way, directing attention to an individual business, commodity, service, activity or product by means of words, lettering, numerals, trade names or trademarks, or other pictorial matter designed to convey such information. Signs shall include the sign structure.

Sign Structure. A supporting structure erected or intended for the purpose of identification, with or without a sign thereon, situated upon or attached to the premises upon which any sign may be fastened, affixed, displayed or applied, provided however, said definition shall not include a building or fence.

Temporary Sign. Any sign, whether attached to a principle structure or free standing, which is intended to be displayed for a limited time for a specific event. This definition does not include portable signs. If a sign display area is permanent but the copy displayed is subject to periodic changes, that sign shall not be regarded as temporary.

1021 Off-Premise Directional Signs.

Off premise directional signs, as defined in Section 1020, can be displayed with a properly acquired permit. Such signs are not to exceed four square feet in area and six feet in height and shall not be illuminated.

1022 Area of Sign Defined.

The area of a sign shall be considered to be that of the smallest rectilinear figure which encompasses all lettering, wording, design or symbols, but which shall have a continuous perimeter of not more than eight straight lines, together with any background difference on which the sign is located if such background is designed as an integral part of and related to the sign. Any cut-outs or extensions shall be included in the area of a sign, but supports and bracing which are not intended as part of the message shall be excluded. In the case of a double-faced sign, the area of the sign shall be considered to include all faces visible from one direction. The area of a wall or window sign consisting of individual letters or symbols attached to or painted on a surface, building, wall or window shall be considered to be that of the smallest rectangle which encompasses all of the letters or symbols.

1023 Method of Attachment Defined.

Attached Sign. Any sign attached to, applied to or on, or supported by any part of a building (such as a wall, window, canopy, awning or marquee) which encloses or covers useable space.

Free-Standing Detached Signs. Signs supported by a structure placed in the ground and which are wholly independent of any building or object other than the sign structure for support.

1024 Height of Free-Standing, Detached Signs Defined.

The height of a free-standing detached sign shall not exceed the maximum height set forth in this Ordinance. The height of a free-standing detached sign shall be measured as the vertical distance from the uppermost point of the sign or sign structure, whichever is higher, and the base of the sign at grade. However, when the base of a sign at grade is located below the adjacent street grade, the height of the sign shall be measured

from the uppermost point of the sign or sign structure to the street grade.

1024.1 Materials for Monument Signs:

Monument signs shall be constructed with natural wood, natural stone or approved materials which simulate wood or masonry.

1025 Value of Signs Defined.

The value of an existing sign shall be the value for tax purposes of any sign so listed. If the tax value is not available, the value shall mean the original cost of the sign. In the absence of information as to the original cost submitted by the sign owner, the Zoning Administrator shall estimate the original cost based upon the best information reasonably available.

Section 1030 Permits Required.

All signs hereafter erected, placed, posted, attached, painted or otherwise made visible from an adjacent property or right-of-way require a sign permit in accordance with the provisions of this Ordinance except as otherwise prohibited, exempted or not requiring a permit by this article. Any sign which requires a permit and which is displayed without the requisite permit shall be in violation of this Ordinance and shall be considered an illegal sign.

1031 Signs Exempt from Regulations.

The following signs are exempt from the regulations of this Ordinance, except where such sign would be prohibited under Section 1060.

1. Signs not visible from beyond the boundaries of the property on which they are located.
2. Signs of a governmental body, including traffic warning or regulatory signs and devices. These signs shall also include other governmental signs including building identification, directional, information, and welcome signs.
3. Trade names and graphics which are located on gas pumps, newspaper, soft drink and similar vending devices.
4. Flags, or insignia of any governmental, non-profit, or business organization of customary size.
5. Seasonal/holiday signs and decorations associated with a national or religious holiday.
6. Warning of danger signs posted by utility or construction companies.

7. Signs on vehicles indicating the name of a business, unless the primary use of the vehicle is for the display of signs.
8. Signs required by law, statute or Ordinance.
9. No trespassing, no loitering and similar private warning signs.
10. Incidental signs.
11. Commemorative signs.
12. Special event signs and special event directional signs related to events sponsored by non-profit organizations.
13. Signs painted on or displayed in windows.

1032 Signs Not Requiring Permit.

The following on-premise signs shall not require a permit and shall not be counted as part of the allowable sign area. However, such signs shall conform to the requirements set forth below as well as other applicable requirements of this Ordinance.

1. Private Information Signs: Signs containing information to direct pedestrian or vehicular traffic or informing the public of private regulations shall be located on the premises for which directions or information are indicated. Such signs, shall not exceed three square feet per face, two faces per sign, and shall not exceed three feet in height if free-standing or six feet in height if attached to the principal or an accessory structure. These signs may be directly or indirectly illuminated.
2. Copy Changes and Maintenance: No permit is required for copy changes made to a changeable copy sign, menu board or marquee sign. No permit is required for maintenance carried out in accordance with the provisions in Section 1060 and where no structural changes are made.
3. Residential Identification Signs: Signs which provide the name and/or address of an individual residence, either attached or detached, indirectly or non-illuminated, provided no sign shall exceed two square feet in size per sign face, two faces per sign.
4. In any Residential District: One real estate sign, not exceeding six square feet per sign face area shall be permitted per lot. Real estate signs for property over three acres shall comply with the standards

for business, commercial or industrial real estate signs.

5. In any business, commercial or industrial district a real estate sign shall be permitted on the premises for sale, rent or lease. Such sign shall not be illuminated, not exceed thirty two (32) square feet in area per sign face and, if freestanding, shall not exceed eight feet in height.
6. Temporary Signs: Signs related to special events such as special sales, grand openings, and going out of business. Such signs shall be located on the premises where the event occurs and shall be removed when the event concludes. Total square footage of such signs shall not exceed fifty percent (50%) of the allowed sign area for the property as indicated in Section 1040.
7. Off-Premise Directional Signs: Such signs shall not exceed four square feet in area and six feet in height and shall not be illuminated.
8. Political Signs: No political sign may be placed within a street right-of-way or attached to a utility pole or tree. Such signs must be removed no later than seven days after the election.
9. Construction Site Signs: Construction site identification signs shall be permitted provided such signs do not exceed one sign per construction site. Such signs shall not exceed two faces per sign and sixteen (16) square feet in area per display face, and a maximum of ten (10) feet in height. Construction signs shall not be erected prior to the issuance of a building permit and shall be removed within seven days of the issuance of a certificate of occupancy or the completion of work. These signs may not be illuminated.

1033 Signs Prohibited.

The following are prohibited within the jurisdiction of this Ordinance:

1. Any non-governmental sign that resembles a public safety warning or traffic sign.
2. Signs, whether temporary or permanent, within any public street or highway right-of-way, with the exception of governmental signage.
3. Flashing signs.
4. Any sign or sign structure which does not conform to the building codes or creates in any way an unsafe distraction for motor vehicle operators, or

- obstructs the view of motor vehicle operators entering a public roadway.
5. Abandoned signs not in conformance with the height, size or location requirements of this Ordinance.
 6. Off-premise advertising signs.

Section 1040 On-Premise Signs

1041 General Provisions.

All on-premise signs permitted the provisions of this article shall conform to the following general provisions:

1. Time, Date and Temperature Signs: Time, date and temperature signs which do not exceed ten square feet per face shall not be required to be included in the allowable sign area provided, however, if an existing free-standing sign is located on the premise, then the time, date and temperature sign must either be incorporated into the existing free-standing sign or attached to the building. It shall be the responsibility of the owner of such signs to maintain such signs and insure that they are kept accurate. If these conditions are not met, the sign shall be repaired or removed.
2. Signs Accessory to Non-conforming Uses: Signs accessory to legal non-conforming uses shall be permitted subject to all regulations of the district in which located.
3. Temporary Signs, Banners, and Community Festival Signs: These signs shall not be counted as part of the allowable sign area and shall be permitted in the C-1 Central Business District, subject to the following provisions:
 - a) Temporary Signs, banners, and community festival signs shall not exceed 32 square feet.
 - b) No temporary sign, banner, or community festival sign shall remain posted or visible for more than 30 consecutive days and 60 cumulative days during a calendar year.

Section 1045 Projecting Signs:

A sign shall not project more than four feet from the façade of building (exclude awning/canopy signs from the requirement), clearance over sidewalks shall be at a minimum of nine feet, and clearance over streets, alleyways and/or driveways shall be at a minimum of

14 feet, the sign shall not project above third floor of building and/or building parapet, or eave line.

Section 1050 On-Premise Signs:

The following on-premise signs are regulated by this Ordinance and require a permit:

1051 All Residential Districts:

1. Residential developments (subdivisions, planned unit developments, manufactured home parks) and all permitted non-residential uses shall be allowed one attached sign not to exceed 12 square feet in area, and one free-standing sign per street frontage not to exceed 32 square feet in area and eight feet in height. A free-standing sign shall have a setback of no less than ten feet from the street right-of-way or 15 feet from the traveled portion of a street where the right-of-way does not exist or cannot be determined. Such signs may be illuminated.
2. On plots containing permitted public utility buildings or home occupations or uses, other than accessory, one attached non-illuminated sign not to exceed six square feet in area.

1052 C-1 Central Business District: Single Tenant Development.

Within the C-1 district, the following sign types are permitted:

1. Attached: Projecting, flush, changeable copy, canopy/awning, window, suspended, marquee.
2. Free-Standing Ground Sign: Each single tenant property shall be permitted one free-standing ground sign not to exceed sixteen (16) square feet and a maximum of ten (10) feet in height.
3. Portable Sandwich Sign: Displayed on sidewalk at curb in front of owner's storefront during business hours only. Uniform design, maximum 23 inches wide x 42 inches high + a 12-inch icon on top.
4. Size, Number and Dimensional Requirements: Each single tenant property shall be permitted a total of attached on-premise signage not to exceed one square foot of signage per sign face for each one linear foot of building frontage per street frontage. A maximum of two signs shall be permitted per street frontage, not to exceed a maximum of four signs per property. Signs may be indirectly or directly illuminated. Signs shall not extend above

the third floor of any structure, nor shall any sign be attached to or extend above the roofline of a building.

1053 C-1 Central Business District: Multiple Tenant Development.

Within the C-1 District the following sign types are permitted for multiple tenant developments:

1. Attached: Projecting, flush, changeable copy, canopy/awning, window, suspended.
2. Free-standing Ground Sign: Each multiple tenant development shall be permitted one free-standing ground sign not to exceed sixteen (16) square feet and a maximum of ten (10) feet in height.
3. Portable Sandwich Sign: Displayed on sidewalk at curb in front of owner's storefront during business hours only. Uniform design, maximum 23 inches wide x 42 inches high + a 12-inch icon on top.
4. Size Number and Dimensional Requirements: A multiple tenant development is permitted one attached directory, development, or joint identification sign per street frontage, said sign may include the names of businesses or activities within the building or development. Said sign shall not exceed one square foot of area per sign face for each one linear foot of building frontage per street frontage. Additionally, each business or activity within the multiple tenant development shall be permitted one attached sign per street frontage, not to exceed six square feet per sign face. Signs may be directly or indirectly illuminated. Signs shall not extend above the third floor of any structure, nor shall any sign be attached to or extend above the roofline of the building.

1054 C-2 General Business, C-3 Commercial, and M-1 Industrial Districts

1. As this subsection is applied to multiple tenant developments, only one free-standing sign shall be permitted per street frontage. This sign may be illuminated. Said sign shall not exceed 100 square feet in area, shall be a maximum 15 feet in height and shall be located no closer than 10 feet to the street right-of-way or 15 feet to the traveled portion of a street where the right-of-way does not exist or cannot be determined. In addition, each establishment in the development shall be

permitted illuminated attached signage of the place of occupancy not to exceed one and one-half square feet per lineal foot of business frontage.

2. Any establishment not operating in a multiple tenant development shall be allowed one illuminated free standing sign per street frontage not to exceed 64 square feet in area and 15 feet in height and shall be located no closer than 10 feet to the street right-of-way or 15 feet to the traveled portion of a street where the right-of-way does not exist or cannot be determined. Illuminated attached signage shall also be allowed and shall not exceed one and one-half square feet per lineal foot of building frontage.
3. Attached signs shall not extend above the third floor of any structure, nor shall any attached sign be attached to or extend above the roofline of the building.
4. The ten foot sign setback from the street right of way shall NOT apply along NC 69 or US 64 by-pass only.

Section 1060 Sign Maintenance

1061 Maintenance Provisions.

All signs, supports, braces, poles, wires and other appurtenances of signs or sign structures shall be kept in good repair, maintained in safe condition, and shall conform to the following standards:

1. A sign shall be in a state of disrepair when more than twenty percent (20%) of its total surface area is covered with disfigured, cracked, ripped or peeling paint or poster paper, or any combination of these conditions. Any sign in a state of disrepair shall be considered in violation of this Ordinance.
2. No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts which causes the sign to stand more than 15 degrees from the perpendicular.
3. No sign or sign structure shall be allowed to have weeds, vines or other vegetation growing on it and obscuring it from the street or highway from which it is intended to be viewed.
4. No illuminated sign shall be allowed to stand with only partial illumination operational.

5. If illuminated, signs shall be illuminated only by the following means:
 - a) By a steady stationary light of reasonable intensity, shielded and directed solely at the sign.
 - b) Light sources to illuminated signs shall be shielded from all adjacent residential buildings and streets and shall not be of such brightness so as to cause glare hazardous to pedestrians or auto drivers or so as to create a nuisance.
 - c) Electrical requirements pertaining to signs shall be as prescribed in local codes.
6. Any sign, which violates the maintenance provisions listed above, shall be in violation of this Ordinance and shall be repaired or removed as required by the applicable sections of this Ordinance.

1062 Unlawful Cutting of Trees or Shrubs.

No person may, for the purpose of increasing or enhancing the visibility of any sign, damage, trim, destroy or remove any trees, shrubs or other vegetation located within a public right-of-way of any road or highway, except as required by the North Carolina Department of Transportation.

Section 1070 Non-Commercial Messages.

Notwithstanding any other provisions of this article, any sign, display or device allowed under this article may contain, in lieu of any other copy, and otherwise lawful non-commercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale, and that complies with size, lighting, height and other requirements of the district in which it is located.

Section 1080 Permits, Fees, Non-conforming Signs, and Enforcement.

1. Permits. All new signs, except as otherwise provided in Section 1032 of this Ordinance, shall require a sign permit prior to being located or erected on any property within the jurisdiction of this Ordinance. Sign permits shall be issued by the Zoning Administrator. If a sign permit is denied, the decision may be appealed to the Board of Adjustment as provided in this Ordinance.
2. Permit Fees. The Town Council may establish a fee schedule for all sign permits issued in accordance with this Ordinance.
3. Non-Conforming Sign

- a) Signs that were erected and were in place prior to the adoption of this Ordinance but which do not conform to the provisions of this Ordinance are declared nonconforming signs. Signs that were erected and that are in place and which conformed to the provisions of this Ordinance at the time erected, but which do not conform to an amendment of this Ordinance enacted subsequent to the erection of said signs also are declared nonconforming signs. Any sign erected after the passage of this Ordinance must meet all the criteria within this Ordinance.
- b) Non-conforming portable and temporary signs shall be removed within 180 days of the effective date of this Ordinance (April 11, 2000).
- c) All signs that were non-conforming as of April 11, 2000 shall be brought into conformance with the provisions of this Ordinance or replaced with a sign that conforms to the provisions of this Ordinance within seven years after July 1, 2000.

4) Enforcement.

Violation of the provisions of these sign regulations shall be enforceable as set forth below in addition to the enforcement provisions as set forth in this Ordinance.

- a) Notice of Violation. The Zoning Administrator shall have the authority to issue a notice of violation for all violations of the sign Ordinance. Where the owner of the sign is indicated on the sign or is otherwise apparent or known to the Zoning Administrator, a copy of the notice of violation shall be delivered to the sign owner by hand delivery or by certified mail. In all other cases, a copy of the notice of violation shall be posted on the sign and a copy shall be delivered by hand delivery or certified mail to the property owner as shown on the Clay County tax records. In addition, service hereunder may be made in accordance with Rule 4 of the North Carolina Rules of Civil Procedure.
- b) Time to Remedy Violation. The sign owner and/or the property owner shall have fifteen (15) days to remedy all violations set forth in the notice of violation. The fifteen-day period shall commence upon the earlier of the posting of the notice of violation on the sign or the delivery of a copy of the notice of violation to the sign owner or property owner.
- c) Extension of Time for Compliance. The Zoning Administrator shall have the authority to grant a single thirty-(30) day extension of time within which the sign owner must comply with the notice of violation. The

single extension of time may be issued based upon a written request for extension of time, which sets forth valid reasons for not complying within the original 15-day period.

- d) Remedies for Failure to Comply. Pursuant to NCGS Chapter 160D, the Zoning Administrator may choose from the remedies set forth below to enforce the Ordinance when there is a failure to comply with the notice of violation. Those remedies are as follows:
- 1) In addition to or in lieu of the other remedies set forth in this section, the Zoning Administrator may issue a citation setting forth a civil penalty of \$50.00. In the case of a continuing violation, each 24-hour period during which the violation continues to exist shall constitute a separate violation. The citation shall be served upon the person(s) described in subsection (a) by the means set forth therein. In the event the offender does not pay the penalty within ten days of service of the citation, the civil penalty shall be collected by the town in a civil action in the nature of debt, which shall not constitute a misdemeanor, and in so providing, the town council hereby chooses to exercise the option provided by NCGS Chapter 160D,
 - 2) In addition to or in lieu of the other remedies set forth in the section, the Zoning Administrator shall have the authority to issue a remove order for any sign not repaired or brought into compliance within the time required by the foregoing provisions. Remove orders shall be issued to and served upon the person(s) described in subsection (a) by the means set forth therein. The sign owner or the landowner shall be allowed a period of 30 days after the service of the remove order within which to remove the sign at his own expense. The remove order shall describe specifically the location of the sign to be removed and all of the reasons for issuance of the remove order, including specific reference to the provisions of the Ordinance which have been violated.
 - 3) In addition to or in lieu of the other remedies set forth in this section, the Zoning Administrator may seek injunctive relief in the appropriate court.
- e) Removal and Recovery of Expense. If a sign owner or property owner fails to comply with the requirements of a remove order, the Zoning Administrator may cause

such sign to be removed. The sign owner and property owner shall be jointly and severally liable for the expense of removal. Notice of the cost of removal shall be served upon the person(s) described in subsection (a) by the means set forth therein. If said sum is not paid within 30 days thereafter, said sum shall be collected by the Town in a civil action in the nature of debt, which shall not subject the offender to the penalty provisions of NCGS Chapter 160D..

- f) Removal of Dangerous Signs. Pursuant to NCGS Chapter 160D, the Zoning Administrator shall have the authority to summarily remove, abate, or remedy a sign which is dangerous or prejudicial to the public health or safety. The expense of the action shall be paid by the sign owner, or if the sign owner cannot be determined, by the land owner, and if not paid, shall be a lien upon the land or premises where the nuisance arose, and shall be collected as unpaid taxes.

ARTICLE 1100 WIRELESS COMMUNICATION FACILITIES

In recognition of the Telecommunications Act of 1996, it the intent of the Town of Hayesville to allow communications providers the opportunity to locate wireless communication facilities within the jurisdiction of this Ordinance in order to provide an adequate level of service to its customers while protecting the health, safety and welfare of the citizens of Hayesville.

Section 1110 Application.

This section shall regulate the placement, construction and modification of wireless communication facilities within the jurisdiction of this Ordinance. However the following types of installations are excluded from the regulations of this section:

1. Amateur radio facilities with antennas mounted on supporting structures less than 100 feet in height.
2. Residential antennas for receiving television, AM radio or FM radio broadcast signals.
3. Customer premise antennas for receiving microwave or satellite signals, provided such antennas are less than one meter (39.4 inches) in height or diameter and are mounted on a support structure less than twelve (12) feet in height.

1111 Location and Permits.

Wireless communication towers and attached wireless communication facilities extending more than 15 feet above the highest point of the attachment structure

may be located in any non-residential zoning district as a special use after a permit is issued by the board of adjustment under procedures outlined in this Ordinance. Such towers and facilities shall be subject to all requirements of this and all other applicable sections of this Ordinance. Attached wireless communication facilities extending not more than 15 feet above the highest point of the attachment structure may be located in any zoning district after issuance of a zoning permit under the provisions of this Ordinance. Such facilities shall meet all applicable requirements of this Ordinance and all other applicable town codes.

1112 Placement and Setbacks.

Wireless communication towers shall be situated in such a manner as to not fall across a public street or adjoining property line in the event of structural failure. Such assurance shall be made by either situating the tower a distance from the street or adjoining property line that is greater than the height of the tower or by using a self-collapsing or telescoping structure that will collapse upon itself. Any self-collapsing or telescoping design structure must be documented by a registered engineer or architect. Required setbacks for both the communication tower and any accessory structure shall not be less than those specified in this Ordinance.

1113 Lighting and Height.

No wireless communication tower shall be of a type or height, or placed in a location that the Federal Aviation Administration would require the tower to be lighted or painted. The applicant shall be required to certify that the proposed tower is not required to be painted or illuminated by any FAA rule or regulation. In any case, no tower shall exceed one hundred fifty (150) feet in height measured from its base at grade to its highest point.

1114 Co-location Requirements.

All new wireless communication towers with a height of 100 feet or more shall be designed and constructed to provide for the co-location of a minimum of two additional services. A written document, signed and sealed by a registered professional engineer, licensed in North Carolina, indicating that the proposed tower will accommodate at least two additional users shall be

submitted with the special use permit application. Written documentation, signed by the owner or his representative, indicating that future co-locations on the proposed tower will be allowed and made available at fair market value shall also be submitted.

1115 Relationship with Existing Towers.

New wireless communication towers shall not be located closer than 1,320 feet to an existing wireless communication tower unless the applicant submits written documentation sufficient, to the satisfaction of the board of adjustment, to show that the proposed facilities cannot be accommodated on the existing tower.

1116 FCC License Required.

The applicant for a new wireless communication tower must currently be licensed by the Federal Communications Commission (FCC) to provide fixed or mobile wireless communication services or, if the applicant is not such an FCC licensee, must demonstrate that it has binding commitments from one or more FCC licensees to utilize the proposed tower.

1117 Graphics and Text.

No graphics or text shall be displayed on a wireless communication tower.

1118 Fencing and Screening

All wireless communication towers and their ancillary and accessory structures and equipment shall be enclosed within a secured fence. The name and telephone number of the tower owner and operator shall be posted on the site for emergencies. The fenced area shall be screened with evergreen trees on all exterior sides visible from adjacent properties and public or private roads. The trees shall be species native to the local area and shall be at least eight feet in height when planted. The trees shall be planted eight feet apart in two staggered rows. The trees shall be maintained and all dead material shall be replaced by the next growing season. A proposed screening plan shall be submitted with the application.

1119 Removal of Abandoned Wireless Communication Towers.

If the permitted use of any wireless communication tower ceases for a continuous period of 90 days, the

owner or the owner of the property on which the tower is located shall be required to dismantle and remove the entire tower structure within 90 days of notification that the 90 day period has expired. The owner of the tower shall provide the town's building inspector a copy of the notice to cease operation which is filed with the FCC, within seven days of filing said notice with the FCC.

Section 1120 Definitions.

Antenna Array. An antenna array is one or more rods, panels, discs or similar devices used for the transmission or reception of wireless communication signals, which may include omni-directional antenna (rod), directional antenna (panel) parabolic antenna (disc).

Attached Wireless Communication Facility. An attached wireless communication facility is an antenna array that is attached to an existing building or structure (attachment structure), which structures shall include but not be limited to utility poles, signs, water towers, rooftops, towers with any accompanying pole or device which attaches the antenna array to the existing building or structure and associated connection cables, and an equipment facility which may be located either inside or outside of the attachment structure.

Equipment Facility. An equipment facility is any structure used to contain ancillary equipment for a wireless communication facility which includes cabinets, shelters, a build out of an existing structure, pedestals, and other similar structures.

Wireless Communications Tower. A wireless communications tower is a structure designed and constructed specifically to support an antenna array, and may include monopole, self supporting (lattice) tower, guy-wire-supported tower and other similar structures. Any device (attachment device) which is used to attach an attached wireless communication facility to an existing building or structure (attachment structure) shall be excluded from the definition of and regulations applicable to wireless communications towers.

Wireless Communications. Wireless communications shall mean any personal wireless communications services as defined in the Telecommunications Act of 1996, which includes Federal Communications Commission (FCC) licensed commercial wireless telecommunications

services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist.

Wireless Communication Facility. A wireless communication facility is any unstaffed facility for the transmission and/or reception of wireless telecommunications services, usually consisting an antenna array, connection cables, an equipment facility and a tower or other supporting structure to achieve the necessary elevation.

ARTICLE 1200 EXCEPTIONS AND MODIFICATIONS

Compliance with the requirements of this Ordinance is mandatory except that under the specific conditions enumerated in the following Sections the requirements may be varied or modified as so stated.

Section 1210 Front yard Setback for Dwellings.

The front yard setback requirements of this Ordinance for dwelling shall not apply on any lot where the average setback of existing buildings, located either wholly or in part within one hundred (100) feet on each side of such lot within the same block and zoning district and fronting on the same side of the street, is less than the minimum required setback. In such cases, the setback on such lot may be less than the required setback but not less than the average of the setbacks of the aforementioned existing buildings.

Section 1220 Side Yard Setback for Dwellings.

Where a side yard abuts a street, the setback requirement for said side yard shall be the same as the front yard setback requirements for abutting property on the side street.

Section 1230 Projections into Required Open Space.

Every part of a required yard shall be open from its lowest point to the sky unobstructed, except as follows:

1. The ordinary projection of sills, belt courses, cornices, buttresses, ornamental features and eaves; provided, however, that none of the above shall project into a minimum side yard more than twenty-four (24) inches.
2. Open or enclosed fire escapes, fireproof outside stairways and balconies projecting into a minimum yard not more than three and one-half (3 ½) feet, and the ordinary projections of chimneys and flues may be permitted by the

Building Inspector where same are so placed as not to obstruct the light and ventilation.

Section 1240 Group Projects.

In the case of two or more principal buildings to be constructed on a plot of ground of at least two acres not subdivided into the customary streets and lots and which will not be so subdivided, a group project may be authorized as a special use by the Board of Adjustment in a manner that will be in harmony with the character of the neighborhood provided:

1. Such uses are limited to those permitted within the zoning district in which the project is located.
2. The overall intensity of land use is no higher, and the standard of open space is no lower than that permitted in the district in which the project is located.
3. The distance of every building from the nearest property line shall meet the front, side, and rear yard requirements of the district in which the project is located.
4. If the property lies within or abuts upon a residential district, and is to be used for a non-residential purpose, there shall be a densely planted evergreen buffer at least eight feet in height and not less than ten (10 feet in width along the rear and/or side lot lines abutting the residential properties. No such buffer shall, however, extend nearer to the street right-of-way line than the established building line of the adjoining residential lot.

Section 1245 Homeless Shelters.

May be authorized as a Special Use by the Board of Adjustment provided:

THE FOLLOWING DOCUMENTS HAVE BEEN SUBMITTED WITH THE APPLICATION:

1. A current year written count as provided by HUD's "A Guide to Counting Unsheltered Homeless People" 2nd Rev. January 2008.
2. A written Needs Assessment.
3. A copy of the Sponsor's Incorporation documents and current Annual Report.
4. A copy of the Sponsor's 501 (c)(3) Non-profit approved filing and current annual non-profit's report to the IRS.

THE BOARD FINDS THAT:

5. Filings #1 through #4 above are adequate.
6. Applicant certifies that the Health and Safety provisions of NC SUBCHAPTER 13G – LICENSING OF FAMILY CARE HOMES can and will be met by the facility and staff.

7. All provisions and conditions of Section 1454 Special Use are met.

Section 1250 Right-of-way.

Street and highway rights-of-way shall not be determined as a part of a lot or any required yard or open space.

Section 1260 Manufactured Home Tie-Downs.

All manufactured homes shall be anchored or tied down in accordance with the Regulations for Manufactured Homes, State of North Carolina.

Section 1270 Junkyards.

The following regulations shall apply to all junkyards.

1. No material shall be placed in a junkyard in such a manner that it is capable of being carried off the premises by wind, water or other causes.
2. All paper, rags, cloth or other fibers, and all activities involving the same, excepting loading and unloading, shall be within fully enclosed buildings.
3. All outdoor salvage operations and all open storage of materials shall be located not less than fifty (50) feet from any street line and shall be completely enclosed within a fence or wall eight to ten (10) feet in height, or a densely planted evergreen buffer strip not less than to (10) feet in width and height. This requirement may be modified where abundant natural buffering exists in the form of natural vegetation and/or terrain.

Section 1280 Travel Trailer (RV) Parks and Campgrounds

Section 1281 Definitions.

RV. Recreational Vehicle

Travel Trailer (RV). See Section 420

Travel Trailer (RV) Parks. Any plot of land approved as a planned unit development upon which two or more travel trailers are located and used as temporary living or sleeping quarters. The occupants of such parks may not remain in the same trailer park more than 180 days of any one year. Park management shall maintain a register of guests, their DMV tag numbers and record of arrival and departure dates. Register shall be for the current 2-year period and be open for inspection by Town Officials.

Section 1282

1. Travel Trailer (RV) Parks and campgrounds including time share arrangements: No site shall be sold within the development unless it has been approved as a subdivision in accordance with the Clay County Subdivision Ordinance.
2. The premises of each RV Park/Campground shall be kept free of accumulations of garbage, refuse and debris etc. permanent and semi-permanent structures in any RV/Campground shall be located 25 feet from any other structure or rental site.
3. No permanent or semi-permanent structures shall be constructed or attached on any rental site.
4. The ratio of toilet, lavatory, urinals and bathing facilities for occupants of non-self-contained Trailer/RV shall be provided in service building(s) as follows:

Number of Sites	Toilets	Urinals	Lavatories	Bathing Facilities
1 - 15	Men - 2 Women - 2	Men - 2	Men - 2 Women - 2	Men - 2 Women - 2
16 - 30	Men - 2 Women - 3	Men - 2	Men - 3 Women - 3	Men - 2 Women - 2
31 - 45	Men - 3 Women - 3	Men - 2	Men - 4 Women - 4	Men - 2 Women - 2
46 - 60	Men - 3 Women - 4	Men - 3	Men - 4 Women - 4	Men - 3 Women - 3
61 - 80	Men - 4 Women - 5	Men - 3	Men - 5 Women - 5	Men - 3 Women - 3
81 - 100	Men - 4 Women - 5	Men - 3	Men - 5 Women - 5	Men - 4 Women - 4

5. For campgrounds with more than 100 sites or spaces there shall be provided one additional toilet and lavatory for each sex for each additional 30 sites and additional bathing facility for each sex for each additional 30 sites or spaces.
6. A dumping station to drain the holding tanks of self-contained Trailer/RV's shall be provided.
7. All toilets, lavatories and bathing facilities shall be maintained in a state of good repair and shall be kept clean at all times. Toilets, bathhouses and/or service buildings shall be located no further than 300 feet from any rental site.

1. All garbage and refuse shall be stored in durable, water tight, rust resistant, rodent-proof, fly proof containers, maintained in good repair, fitted with minimum 1 mil. plastic liners and cleaned and sanitized each time they are emptied. Containers at sites shall not exceed 30 gallon capacity. Concrete or pressure-treated wood platforms, racks or holders shall be designed to prevent tipping, minimize spillage and container deterioration and facilitate cleaning around them.
2. Central dumpster stations located within 200 feet of any site may be provided in lieu of individual containers at sites.
3. All containers shall be emptied as needed to prevent overflow and the creation of a nuisance. The RV Park/Campground shall be under contract for waste services whenever the premises is in use.

**ARTICLE 1300
ADMINISTRATION AND ENFORCEMENT**

Section 1310 Intent.

It is the intent of this Ordinance that all questions arising in connection with the enforcement or the interpretation of this Ordinance shall be first presented to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from the Zoning Administrator and that from the decisions of the Board of Adjustment, recourse shall be taken to the courts as provided by law. It is further the intent of this Ordinance that the duties of the Town Council in connection with this Ordinance shall not include hearing and passing on disputed questions which might arise in connection with the enforcement or interpretations of this Ordinance, but the procedures for determining such questions shall be as stated in this Ordinance, and the duties of the Town Council in connection with this Ordinance shall be only the duty of holding a public hearing and voting upon any proposed amendment or repeal of this Ordinance as provided by law. The Planning Board shall serve in an advisory capacity to the Town Council and shall provide recommendations to the Council including recommendations pertaining to zoning amendments and other matters as designated in NCGS Chapter 160D.

1320 Zoning Enforcement.

Prior to receiving any Building Permit from the office of the Building Inspector, a properly executed *Zoning Certification* from the Town of Hayesville shall be presented. The Building Inspector

shall issue no Certificate of Occupancy for any building until a properly executed *Zoning Compliance Certificate* shall have been completed. It shall be the duty of the duly appointed Zoning Administrator and he/she is hereby given the authority to administer and enforce these provisions of this Ordinance.

Section 1321 Building Permits Required.

1. No building or other structure shall be erected, moved, added to, or structurally altered until a building permit has been issued by the building inspector. The Building Inspector shall in no case approve any permit for the construction or alteration of any building if the building as proposed to be constructed would be in violation of any of the provisions of this Ordinance. A Building Permit, Electrical Permit or Septic Permit shall not be issued for use within the Jurisdiction of the Town of Hayesville until a Certificate of Zoning Compliance has been issued to the applicant by the Town.
2. A Certificate of Zoning Compliance which has not been filed with a Building Permit Application within six months of the date of issuance shall become invalid.

Section 1322 Application for a Building Permit.

All applications for building permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions of the lot to be built upon, the sizes and the locations on the lot of any existing buildings or structure proposed to be erected or altered, and such other information as may be necessary to provide for the enforcement of the provisions of this Ordinance.

Section 1323 Construction Progress.

If no substantial construction progress has been made within six months of the date of the issuance of the building permit or if work is suspended for six months, the permit becomes invalid.

Section 1330 Certificate of Occupancy.

A Certificate of Occupancy issued by the Building Inspector is required in advance of the use or occupancy of any building or premises or part thereof, hereafter created, erected, changed, converted, moved, altered, or enlarged, wholly or partly in its use or structure. Said certificate shall indicate that such building or

premises or part thereof and the proposed uses thereof are in conformity with the provisions of this Ordinance.

ARTICLE 1400
BOARD OF ZONING ADJUSTMENT

Section 1410 Establishment of Board of Zoning Adjustment.

1. A Board of Zoning Adjustment may be established by the Town Council. Said Board shall consist of five members. Three members shall be representatives of the Town of Hayesville and two members shall be residents of the one-mile extraterritorial jurisdiction.
2. The members from the Town of Hayesville shall be appointed by the Town Council and the members from the one-mile extraterritorial jurisdiction shall be appointed, following proper public notification and procedures, by the Clay County Board of Commissioners. Each appointment shall be for term of three years. Any vacancy in the membership shall be filled in the same manner as the initial appointment.
3. Members shall serve without pay but may be reimbursed for any expenses incurred while representing the Board.
4. In appointing the original members of such Board, or in the filling of vacancies caused by the expiration of the terms of existing members, the Council may appoint certain members for less than three years, to the end that thereafter the terms of all members shall not expire at the same time.
5. The Council may, in its discretion, appoint alternate members to serve on the Board in the absence of any regular member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

Section 1420 Proceedings of the Board of Adjustment.

1421 Officers.

The Board of Adjustment shall elect a chair and a vice-chair from its members who shall serve for one year or until re-elected or until their successors are elected. The Board shall appoint a secretary, who may be a municipal officer, an employee of the Town, or a member of the Board of Adjustment. The Board shall adopt rules and by-laws in accordance with the

provisions of this Ordinance and of NCGS Chapter 160D.

1422 Meetings.

The Board of Adjustment shall establish a regular meeting schedule. If there is no business for the Board, or if so many regular and alternate members notify the secretary that they cannot attend that a quorum will not be available, the chair may dispense with a regular meeting by giving written or oral notice to all members not less than 72 hours before the time set for the meeting. All meetings of the Board shall be open to the public. Items to be considered by the Board shall be submitted at least 14 days before the meeting date.

1423 Notice of Hearings.

1. Notice of hearings conducted pursuant to this section 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, including those located across rights-of-way; and to any other persons entitled to receive notice as provided by the zoning ordinance. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice.
2. 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 Town 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.

1424 Oaths.

The chair of the Board, or any member acting as chair, and the secretary 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 of Adjustment, willfully swears falsely is guilty of a Class 1 misdemeanor. Upon a hearing, any party may appear in person, or by agent or by attorney.

1425 Subpoenas.

1. The Board of Adjustment through the chair, or in the chair's absence, anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, persons with standing under NCGS Chapter 160D may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled.
2. 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 of Adjustment.
3. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment 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.

1426 Voting.

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 the purposes of this subsection, 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.

1427 Violations of Due Process.

A member of any Board exercising quasi-judicial functions pursuant to this Article 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.

Section 1430 Powers and Duties of the Zoning Board of Adjustment.

The Zoning Board of Adjustment shall hear and decide special use permits, requests for variances, and appeals of decisions of the Zoning Administrator. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The Board of Adjustment shall follow quasi-judicial procedures when deciding appeals and requests for variances and special use permits and any other matters upon which it may decide, as required by law. The Board shall hear and decide all matters upon which it is required to pass under any statute or ordinance that regulates land use or development.

1431 Appeals.

The Board of Adjustment shall hear and decide appeals of decisions of the Zoning Administrator and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

1. Any person who has standing under NCGS Chapter 160D or in the Town may appeal a decision to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.
2. 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.
3. 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.
4. 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" or "Subdivision 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. Posting of signs shall not be required, however.

5. The Zoning Administrator shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The Zoning Administrator 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.
6. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the Zoning Administrator certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the Zoning Administrator 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.

7. Subject to the provisions of subdivision (6) of this subsection, the Board of Adjustment shall hear and decide the appeal within a reasonable time.
8. The Zoning Administrator 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 Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Zoning Administrator.
9. When hearing an appeal pursuant to NCGS Chapter 160D or any other 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 NCGS Chapter 160D.
10. The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution.

1432 Special Uses.

The Board of Adjustment may grant a Special Use permit only after making the following findings:

1. An application for the Special Use has been submitted.
2. The use for which the Special Use permit is sought will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood and will be in harmony with the character of the neighborhood.
3. Before any Special Use permit is issued, the Board of Adjustment shall make written findings certifying compliance with the specific rules governing the individual special use in the use districts and that satisfactory provisions and arrangements have been made for the following, where applicable.
 - a) Satisfactory ingress and egress to property and proposed structure(s) thereon, with particular reference to automotive and

- pedestrian safety and convenience, traffic flow and control.
- b) Provision of off-street parking and loading areas where required, with particular attention to the items listed above and the noise, glare and odor effects of the Special Use on adjoining properties in the area.
 - c) Buffering, with reference to type, location and dimensions.
 - d) Proposed exterior lighting with reference to glare, traffic safety and compatibility and harmony with the properties in the use district.
4. The Zoning Administrator shall make periodic inspections during construction as well as a final inspection after construction is complete to determine whether the conditions imposed and agreements made in the issuance of the Special Use Permit have been met. The Zoning Administrator shall report findings to the Town Council and the Board of Adjustment. If at any time after a Special Use permit has been issued, the Board of Adjustment determines that the conditions imposed and the agreements made have not been or are not being fulfilled by the holder of the Special Use permit, the Permit shall be terminated and the operation of such use discontinued. If a Special Use permit is terminated for any reason, it may be reinstated only after reapplying for a Special Use permit.

1433 Variances.

1. When unnecessary hardships would result from carrying out the strict letter of the Zoning Ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:
 - a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to

- the neighborhood or the general public, may not be the basis for granting a variance.
- c. 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.
 - d. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with the knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
2. No change in permitted uses may be authorized by variance.
 3. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

Section 1440. Quasi-Judicial Decisions and Judicial Review.

1441. Quasi-Judicial Decisions.

1. The Board shall determine contested facts and make its decision within 60 days of the date of the hearing. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.
2. 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.
3. A quasi-judicial decision is effective upon filing the written decision with the secretary.
4. 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 of the decision shall certify that proper notice has been made.

1442. Judicial Review.

1. Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the

nature of certiorari pursuant to NCGS Chapter 160D.

2. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with above of this section.
3. When first class mail is used to deliver notice, three days shall be added to the time to file the petition.

Section 1450 Fees for Variances, Appeals and Special Uses.

A standard fee, as determined by the Town Council, plus expenses shall be paid to the Town of Hayesville, North Carolina for each application for a variance, special use, or appeal to cover the necessary administrative costs.

**ARTICLE 1500
AMENDMENTS**

Section 1510 Amendments.

1. This Zoning Ordinance, including the zoning map, may be amended from time to time by the Town Council; but no amendment shall become effective unless it shall have been proposed by or shall have first been submitted to the Planning Board for review and recommendations.
2. The Planning Board shall have 30 days within which to submit its report. If said Board fails to submit a report within the 30 day period, it shall be deemed to have approved the present amendment.
3. In case, however, of a protest against such change signed by the owners of 20 percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent thereto, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of such opposite lots, such amendments shall not become effective except by favorable vote of two-thirds of all the members of the Town Council.
4. Before enacting an amendment to this Ordinance, the Town Council shall hold a public hearing thereon. A notice of such public hearing shall be given in accordance with Article 19 in Chapter 160A of the North Carolina General Statutes as amended.
5. Owner of any lot bisected by the outer ETJ boundary may apply to have said lot rezoned as being totally outside the ETJ provided it is already more than 50 percent outside the ETJ. The process and fees shall be the same as any Rezoning Application.

Section 1520 Fees for Amendments.

A standard fee as determined by the Town Council plus expenses shall be paid to the Town of Hayesville, North Carolina for each application for an amendment, to cover the costs of advertising and other administrative expenses involved.

**ARTICLE 1600
LEGAL STATUS PROVISIONS**

Section 1610 Conflict with Other Laws.

1. Whenever the regulations of this Ordinance require a greater width or size of yard, or require a lower height of buildings or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under any other statute, the requirements of this Ordinance shall govern.
2. Whenever the provisions of any other statute require more restrictive standards than are required by this Ordinance, the provisions of such statute shall govern.

Section 1615 Member Conflict of Interest.

Provisions of NCGS Chapter G.S. 160D-109 shall apply to all zoning board members and staff.

Section 1617 Minutes of Board proceedings.

Provisions of NCGS Chapter G.S. 160D-308 shall apply to all zoning boards.

Section 1619 Oath of Office.

All members shall take the oath of office before serving. NCGS 160D-109 shall apply to all zoning boards.

Section 1620 Validity.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Section 1630 Repel of Conflicting Ordinances.

All Ordinances and parts of Ordinances in conflict herewith are repealed.

**ARTICLE 1700
PENALTY AND EFFECTIVE DATE**

Section 1710 Penalty.

Any person, firm, or corporation who violates any provisions of this Ordinance, including violations of conditions and safeguards established in connection with grants of variances or special uses, shall, upon conviction, be guilty of a misdemeanor and shall be fined not exceeding \$50 or imprisoned not exceeding 30 days. Each day that a violation continues to exist shall be considered to be a separate offense, provided the violation is not corrected within 30 days after notice of the violation has been given.

Section 1720 Effective Date.

This Ordinance shall take effect and be in force from and after April 11, 2000 the public welfare demanding it.