



The Town of Clayton
Clayton Board of Adjustment Agenda
Wednesday, April 19, 2017 @ 6:00 PM
Council Chambers

1. CALL TO ORDER

2. ROLL CALL

a. Roll Call

b. Election of Chair and Vice Chair

POTENTIAL ACTION: Election of Chair and Vice Chair

3. ADJUSTMENT OF THE AGENDA

4. APPROVAL OF MINUTES

a. Approval of Draft Minutes

[December 21, 2016, Minutes](#)

POTENTIAL ACTION: Approval of December 21, 2016 Minutes

5. NEW BUSINESS

a. Conditional Use Permit - 2017-29-CUP - The Rainlily Patch Playgarden Daycare

Presenter: Planning Department

[Staff Report - 2017-29-CUP Rainlily Daycare](#)

[Staff Report Map - 2017-29-CUP](#)

[Application - 2017-29-CUP](#)

[Neighborhood Meeting Minutes - 2017-29-CUP](#)

POTENTIAL ACTION: Approval with Conditions as Listed in Staff Report

6. OLD BUSINESS

7. INFORMAL DISCUSSION AND PUBLIC COMMENT

a. Legislative/Policy/Procedural Update

Presenter: Town Attorney

Attorney will provide guidance to the board regarding legislative changes, review of policies and procedures, and offer an opportunity for Q&A.

POTENTIAL ACTION: For informational purposes; no action required.

b. Zoning Districts

Presenter: Planning Department

Background information and data will be provided.

[Use Table Excerpt - Approved 20170403](#)

[Official Zoning Map REVISED April 5, 2016](#)

[Future Land Use Descriptions - Clayton Comp Plan](#)

[Maps - Clayton Comp Plan](#)

POTENTIAL ACTION:

For informational purposes; no action required.

- c. Variance Standards Supplemental Information

Presenter: Planning Department

[Variance Standards - Hardships Information - UNC School of Government](#)

POTENTIAL ACTION:

For informational purposes; no action required.

8. ADJOURN



**The Town of Clayton
Clayton Board of Adjustment Minutes
Wednesday, December 21, 2016 @ 6:00 PM
Town Council Chambers**

BOARD MEMBERS PRESENT:

Donna White (Chair), Bobby Bunn, Mark Helmer, Bill Wenzel, Johnny House and Butch Lawter (Ex-Officio)

STAFF PRESENT:

David DeYoung, Planning Director; Jay McLeod, Town Planner; Haley Hogg, Town Planner; Merrick Parrott, Town Attorney and Laura Gray, Clerk to Board.

MEMBERS ABSENT:

Matt Evans (Vice Chair) and Tom Medlin

1 CALL TO ORDER

- a) Donna White, Chair, called the meeting to order.
- b) David DeYoung, Planning Director, called roll.

2 ADJUSTMENT OF THE AGENDA

- a) None.

3 APPROVAL OF MINUTES

- a) November 16, 2016 Board of Adjustment Minutes

ACTION: Motion to approve minutes.

Motion: Bill Wenzel
Second: Johnny House
Vote: Unanimous

4 REPORTS AND COMMENTS

- a) None.

5 OLD BUSINESS

- a) None.

6 NEW BUSINESS

- a) 2016-230-VAR Rhodes Farm Subdivision
NC Pin: 166700-57-4793

The applicant is requesting a variance from the requirement for streets to be installed within the associated approved preliminary plat.

Stub-out roads provide connection to adjacent, undeveloped properties to assure road connectivity when they develop in the future.

The associated subdivision (15-56-01-SD) was approved in 2015 by Town Council. This subdivision was approved for 40± single-family residential lots, with four streets that end in stub-outs connecting to adjacent, undeveloped properties. These stub-outs, or cross street connections are required at a spacing requirement of one every 1,500 feet max (per §155.603(B)(2)). The applicant is requesting that two of these streets not be constructed.

The Unified Development Code requires stub-out connections be made to adjacent, undeveloped properties so that neighborhoods can develop with an efficient, connected roadway network. Developers are required to install the infrastructure (in this case, roads) on their property that serve their development, and provide the connection to adjacent (future) development.

Merrick Parrott, Town Attorney, gave a briefing on the variance request.

The Board of Adjustment decided they do not have jurisdiction to vote on the variance request.

The applicant does have the option to file a major subdivision modification application with Town Council.

ACTION: Motion to dismiss 2016-230-VAR.

Motion: Bill Wenzel
Second: Johnny House
Vote: Unanimous

7 INFORMAL DISCUSSION AND PUBLIC COMMENT

a) None.

8 ADJOURN

a) Motion to adjourn.

Motion: Bill Wenzel
Second: Bobby Bunn
Vote: Unanimous

Donna White
Chair

ATTEST:

Clerk to the Board

December 21, 2016
Minutes



Town of Clayton
Planning Department
111 E. Second Street, Clayton, NC 27520
P.O. Box 879, Clayton, NC 27528
Phone: 919-553-1545
Fax: 919-553-1720

*Board of Adjustment
April 19, 2017*

STAFF REPORT

Application Number: 2017-29-CUP
Project Name: The Rainlily Patch Playgarden Daycare Conditional Use Permit
NC PIN/Tag: 166909-16-2239 / 05H03200B
Town Limits/ETJ: Town Limits
Applicant: Meghan McLeod
Owners: Meghan and Jay McLeod
Project Location: 102 Gordon Street, on the corner of Gordon Street and Lake Drive
Neighborhood Meeting: April 7, 2017
Public Noticing: Property posted prior to April 7, 2017
Letters mailed April 3, 2017
Newspaper Ad published April 5, 2017 and April 12, 2017

REQUEST: The applicant is requesting a Conditional Use Permit to operate an in-home daycare, as a Class "B" home occupation, within an existing single-family residence.



SITE DATA:

Acreage: .86 acres
Present Zoning: Residential-8 (R-8)
Existing Use: Single-family residence

DEVELOPMENT DATA:

Proposed Uses: Class "B" Home Occupation (In-home daycare)
Square footage: 1,674 Square Feet (max. 336 square feet to be used for the day care)
Proposed Parking: Existing driveway will be utilized for parking and can accommodate up to five spaces
Access/Streets: The site is accessed via an existing driveway located off Lake Drive

ADJACENT ZONING AND LAND USES:

Direction	Zoning	Existing Use
North	Residential-8 (R-8)	Vacant
South	Residential-8 (R-8)	Single-Family Residence
East	Residential-8 (R-8)	Vacant
West	Residential-8 (R-8)	Single-Family Residence

STAFF ANALYSIS AND COMMENTARY:**Overview**

The applicant is requesting approval of a Conditional Use Permit to operate an in-home daycare within an existing single-family residence. Per UDC 155.308(C)(b), any business, occupation, or trade conducted within a residential dwelling that requires employees or customers to visit the home is considered to be a Class "B" Home Occupation and must obtain a Conditional Use Permit in order to be permitted.

The applicant is proposing to operate a daycare Monday through Friday, with hours of operation lasting from 7 AM to 6 PM in order to give parents time to pick up and drop off their children. The applicant is requesting approval to supervise up to eight children and a maximum of two employees on site during business hours. A site plan has been submitted concurrent with this request, which shows the site layout including the locations of outdoor play areas.

Access

The applicant is proposing to utilize the home's driveway, located off Lake Drive, to provide parents space to drop off/pick up their children in the mornings and evenings. Staff is comfortable with this location since the driveway may accommodate up to five vehicles at a time.

Landscaping and Buffering

The subject property is located on the corner of Gordon Street and Lake Drive, with a creek located along the eastern property line. As such, the only property directly abutting is located north and is currently undeveloped. In order to mitigate any potential effects on adjacent properties, the applicant is proposing to utilize existing landscaping in order to provide sufficient buffering.

Findings of Fact

The applicant has adequately addressed the Findings of Fact, and were accepted as part of their completed application.

Consistency with the Unified Development Code

The proposed use is consistent with and meets the applicable requirements of the Unified Development Code (UDC).

Compatibility with Surrounding Land Uses

The use is compatible with the surrounding uses since the primary use of the subject property will remain single-family residential.

Signs

Signage for Class "B" Home Occupations are limited to one unlighted wall sign no larger than three square feet in area, attached to the structure housing the home occupation, or one yard sign of the same size not to exceed three feet in height. Any proposed signage shall be required to obtain a sign permit from the Town of Clayton.

CONSIDERATIONS:

- The Board of Adjustment approves Conditional Use Permits.

FINDINGS:

When considering a Conditional Use Permit application, The Board of Adjustment shall consider specific Findings of Fact. A Conditional Use failing to meet any of these Findings shall be deemed adverse to the public interest and shall not be approved. The applicant has addressed the Findings expressly established by Chapter 155.710 (G) of the UDC. The applicant's Findings of Fact are incorporated into the record as an attachment to the Staff Report.

STAFF RECOMMENDATION:

Staff recommends approval with conditions of 2016-32-CUP.

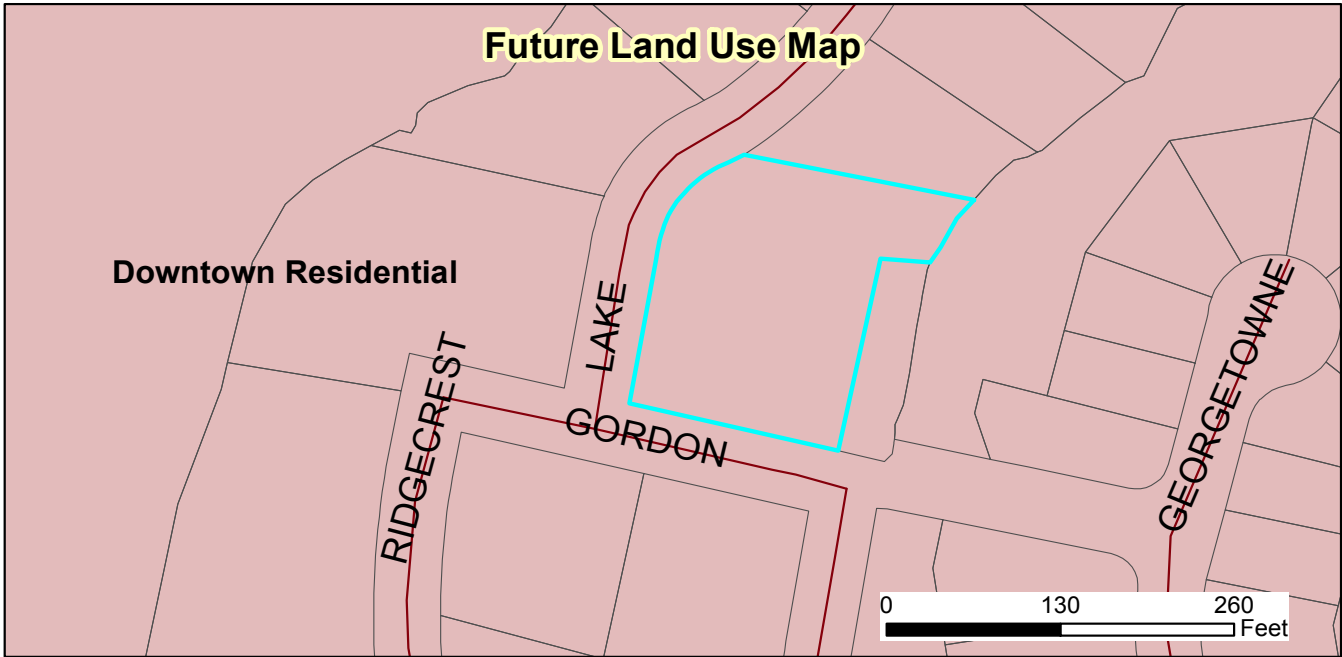
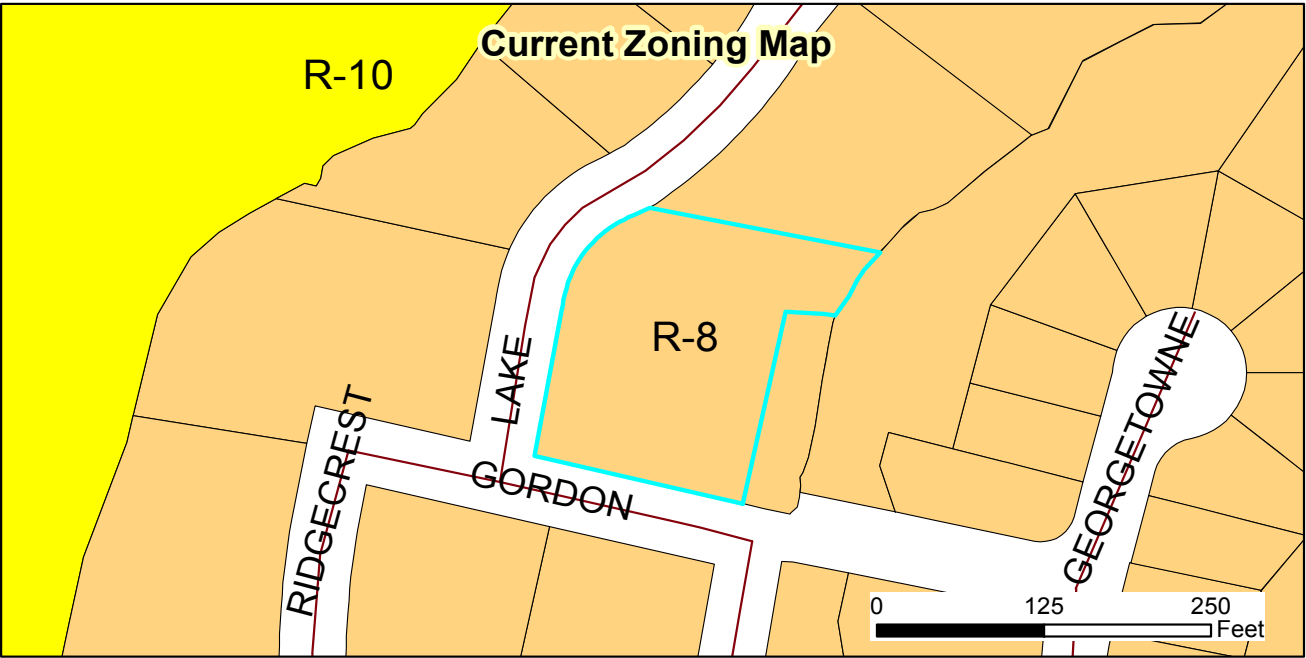
CONDITIONS:

Staff recommends that if the Board of Adjustment reaches positive conclusions on the required findings of fact, the approval of the petition be subject to the following conditions:

1. Hours of operation for the day care are limited to Monday thru Friday, 7 AM to 6PM.
2. A maximum of 20% of the total floor area of the dwelling may be used for day care purposes.
3. Not more than eight supervised children are permitted at the day care at one time.
4. No more than two employees not residing on the premises are permitted.

ATTACHMENTS:

- 1) Application
- 2) Maps
- 3) Neighborhood Meeting Materials
- 4) Site Plan

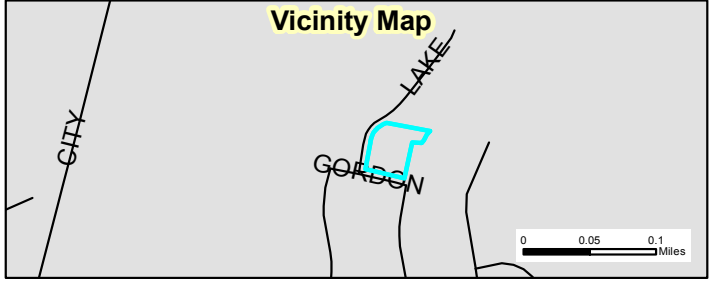


2017-29-CUP The Rainlily Patch Playgarden Daycare Conditional Use Permit
Request: To operate an in-home daycare within an existing single-family residence

Applicant: Meghan McLeod
Property Owners: Meghan & Jay McLeod
Parcel ID: 166909-16-2239
Tag #: 05H03200B



- Parcels
- All_Roads
- Special Use District
- Thorough Fare Overlay
- Scenic Highway Overlay
- Roads
- Railroads



Document Path: O:\PLANNING\CONDITIONAL USE\2017\2017-29-CUP The Rainlily Patch Playgarden Daycare\Maps\Staff Report Map 2017-29-



TOWN OF CLAYTON

Planning Department

111 E. Second Street, Clayton, NC 27520

P.O. Box 879, Clayton, NC 27528

Phone: 919-553-5002

Fax: 919-553-1720

CONDITIONAL USE APPLICATION

Pursuant to Article 7, Section 155.710 of the Unified Development Code, an owner of land within the jurisdiction of the Town (or a duly authorized agent) may petition the Board of Adjustment to allow a Conditional Use. Conditional Uses are uses that may be appropriate in a particular district, but has the potential to create incompatibilities with adjacent uses.

Application Fee: \$400.00.

Advertisement Fee: \$100.00.

All fees are due when the application is submitted.

APPLICATION TYPE

☒ **New Conditional Use Permit**

☐ **Major Modification to an approved CUP**

Permit Modified: _____

SITE INFORMATION

Name of Project: The Rainily Patch Playgarden Daycare Acreage of Property: 0.86

County Tag #: 05H03200B NC PIN: 166909-16-2239

Address/Location: 102 Gordon St Clayton, NC 27520

Existing Use: Residential home Proposed Use: Accessory in-home daycare

Is project within a Planned Development? ☒ No ☐ Yes

Planned Development District (if applicable): _____

Is project within an Overlay District?: ☒ No ☐ Yes

Overlay District (if applicable): _____

Is a site plan being concurrently submitted? ☐ No ☒ Yes

OFFICE USE ONLY		
Date Received: <u>MAR 01 2017</u>	Amount Paid: <u>\$500⁰⁰</u>	File Number: <u>2017-29-CUP</u>
TOWN OF CLAYTON PLANNING DEPARTMENT		

01/06/2017

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PROPERTY OWNER INFORMATION

Name: Meghan McLeod

Mailing Address: 102 Gordon St Clayton NC 27520

Phone Number: 919-912-1783 Fax: N/A

Email Address: meg.b.mcleod@gmail.com

APPLICANT INFORMATION

Applicant: (Same as above)

Mailing Address: _____

Phone Number: _____ Fax: _____

Contact Person: _____

Email Address: _____

REQUIRED INFORMATION (to be submitted with the application)

Please fill out the following checklist. The following items must accompany a Conditional Use Permit (CUP) application.

To be completed by the applicant:			To be completed by staff:		
<i>Submit 9 copies of all materials unless otherwise noted or directed by staff</i>	Yes	N/A	Yes	No	N/A
1. A pre-application conference was held with Town of Clayton staff. Date: _____	☒				
2. Review Fee (\$400) and Advertisement Fee (\$100)	☒				
3. Completed application	☒				
4. Owner's Consent Form	☐	☒			
5. Adjacent property owners list	☒				
6. Wastewater allocation request OR verification of wastewater allocation	☐	☒			
7. Signed and sealed traffic impact analysis (2 copies) <i>Required for projects generating at least 100 vehicle trips at peak hour. See §155.708 of the UDC.</i>	☐	☒			
8. Neighborhood meeting notice letter (1 copy) <i>See sample letter and meeting requirements included in this packet</i>	☒				
9. Set of stamped, addressed envelopes with no return address, using the adjacent property owners list (One set) <i>To be used for Town's public noticing of the Board of Adjustment hearing.</i>	☒				
10. Neighborhood meeting summary form (1 copy) <i>Form is included in this packet</i>	Must be submitted after neighborhood meeting is held and at least 10 days prior to Board of Adjustment meeting.				

Note: More information may be requested by the Planning Department depending on the project

01/06/2016

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EXPLANATION OF PROJECT

Please provide detailed information concerning all requests. Attach additional sheets if necessary.

My vision for the Rainlily Patch Playgarden daycare is to provide a small-scale, high-quality in-home childcare. The focus is on nature-immersion, community, and trust. Our home provides an ideal location. It is a 0.86 acre wooded lot with a creek along one side. It is also next to the Legend Park trail system. There is a fenced-in outside play area with play structure (slide/swing/etc.), as well as play space down at the creek for messy, muddy play.

REQUIRED FINDINGS OF FACT

Section 155.710(G) of the Unified Land Development Code requires applications for a Conditional Use to address the following findings. The burden of proof is on the applicant and failure to adequately address the findings may result in denial of the application. Please attach additional pages if necessary.

1. That the application will not materially endanger the public health or safety if located where proposed and ultimately developed according to the plans as submitted.

The Rainlily Patch Playgarden will comply with all regulations of the state and the Town of Clayton.

The site has two EMS access roads (Edgewater Drive and Ridgecrest Drive), and is a suitable place for an in-home daycare.

2. That the application meets all required specifications and conforms to the standards and practices of sound land use planning and the Town Code of Ordinances and other applicable regulations.

The site will meet all applicable regulations regarding site design, parking and pick-up/drop-off, and buffering. There is enough off street parking for 5+ vehicles. The property is surrounded on two sides by public right of way, on one side by a sewer easement, creek, and adjacent Open Space area (part of the Georgetown subdivision), and on the fourth side by a vacant residential lot.

3. That the application will not substantially injure the value of adjoining or abutting property, and will not be detrimental to the use or development of adjacent properties or other neighborhood uses.

The property is on a corner lot with roads to the South and West, and with the adjoining lot to the North being a vacant property.

Behind our home to the East is a sewer easement with no adjacent properties. Therefore, the property is ideal for children to play safely without detriment to the aesthetics of the neighborhood. This in-home daycare will not infringe upon the development or enjoyment of other properties.

4. That the application will not adversely affect the adopted plans and policies of the Town, or violate the character of existing standards for development of the adjacent properties.

The Rainily Patch daycare will comply with all town plans and policies. This program will add value to the community by offering a unique childcare experience that are not presently offered in Johnston County. Approval of this Conditional Use Permit to allow "Childcare (up to 8 children)" will be a benefit to the Town.

APPLICANT AFFIDAVIT

I/We, the undersigned, do hereby make application and petition to the Board of Adjustment of the Town of Clayton to approve the subject Conditional Use. I hereby certify that I have full legal right to request such action and that the statements or information made in any paper or plans submitted herewith are true and correct to the best of my knowledge. I understand this application, related material and all attachments become official records of the Planning Department of the Town of Clayton, North Carolina, and will not be returned.

Meghan McLeod

Print Name

M. McLeod
Signature of Applicant

2/28/17
Date

ADJACENT PROPERTY OWNERS LIST

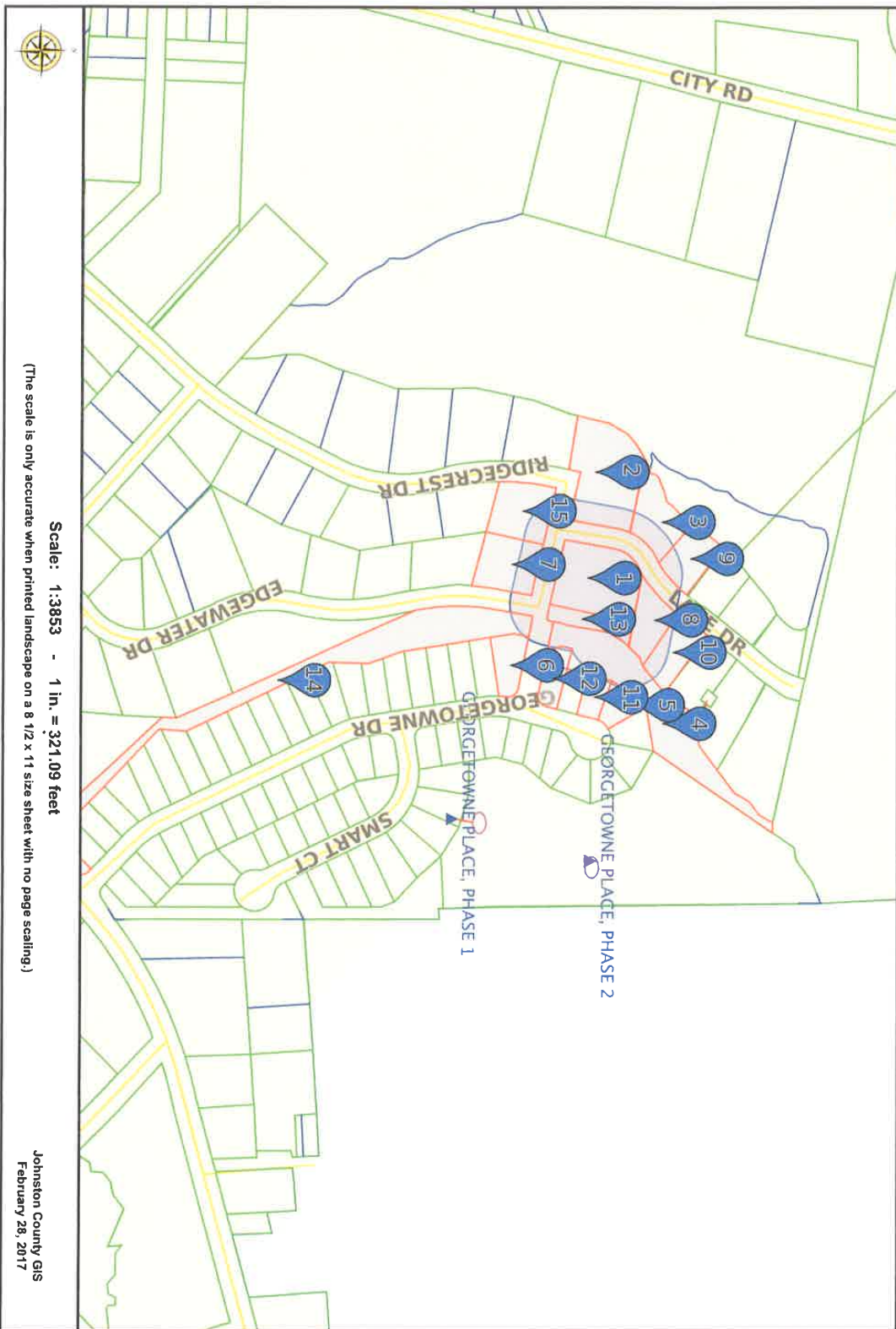
Project Name: Rainlilly Patch Daycare (up to 8 children)

The following are all the persons, firms, or corporations owning property within 100 feet and immediately adjacent to the property (including across street rights of way) subject to this request. Where the subject property immediately adjoins a public or private right-of-way, landscape or riparian buffer, commonly-owned private area, public property, or homeowners' association property, then letters of notification shall be sent to adjoining property owners as if they directly abut the subject property. Please use a separate sheet if necessary

It is the responsibility of the applicant to correctly identify the current owner, based upon records in the Johnston County GIS Office, for all property owners of land within the required public notice radius.

PARCEL NUMBER	NAME	ADDRESS
	Victor Wynne	104 Gordon St, Clayton, NC 27520
	Brookie Gordon	133 Plantation Circle S, Ponta Vedra Bch, FL 32082
	Georgetown Comm. Assoc.	2530 Meridian Pkwy, Durham, NC 27713
	Kurt Peck	101 Gordon St, Clayton, NC 27520
	Harvey & Mildred Gordon	133 Plantation Circle S, Ponta Vedra Bch, FL 32082
	Becky Gordon	107 Lake Dr, Clayton, NC 27520
	Mildred Gordon	328 W Barnes St, Clayton, NC 27520
	Jenny Pitts	103 Gordon St, Clayton, NC 27520
	Steven & Dana Price	237 Georgetowne Dr
	Jeremiah Carlson	Unit 61811, APO, AE 09321-1811
	Shirley Gordon	PO Box 284, Clayton, NC 27528
	Patricia Lane	233 Georgetowne Dr, Clayton, NC 27520
	Maurice & Elsie Eboundzian	225 Georgetowne Dr, Clayton, NC 27520

*** DISCLAIMER ***
Johnston County assumes no legal responsibility for the information represented here.



Scale: 1:3853 - 1 in. = 321.09 feet
(The scale is only accurate when printed landscape on a 8 1/2 x 11 size sheet with no page scaling.)

RAINFILLY PATCH PLAYGARDEN – SITE LAYOUT



Fenced Play Area
(existing)

Nature Play Area

Creek (approx.)

Parking Area
(5 spaces)

Driveway

Site Plan 1



NEIGHBORHOOD MEETING SUMMARY FORM

FILL OUT THE FOLLOWING:

Date of Mailing: 03/27/2017

I hereby attest that letters were mailed to the addresses listed on the Adjacent Property Owners List (attached):

Printed Name: MEG McLEOD Signature: M. Mc

Date of Meeting: 04/07/2017 Time of Meeting: 6:00 PM

Location of Meeting: 102 Gordon St (on-site)

Meeting Summary/Minutes: provide a summary of the discussion held at the meeting, including issues raised and any changes made by the applicant as a result of the meeting.

No one attended the meeting, although two adjacent neighbors did stop by independently. Both expressed support for the daycare.

Please write clearly (or submit a typed summary), and use additional sheets if necessary.

NEIGHBORHOOD MEETING ATTENDANCE ROSTER

Applicant: Rainlilly Patch Daycare
Location/Date: 102 Gordon St (on-site), 04/07/2017 at 6:00PM

	NAME	ADDRESS
1	(No one attended.)	
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§ 155.200 DISTRICTS ESTABLISHED

To carry out the provisions of this Chapter, within the jurisdiction of the Town, the following zoning districts are established.

<some text omitted for purposes of brevity>

(B) GENERAL USE DISTRICTS

(1) Residential Districts

- (a) ***R-E / Residential-Estate.*** The R-E district is comprised of low density, single-family dwellings, and other selected uses which are compatible with the open and rural character of the area. The established regulations for this district are designed to promote and encourage an environment for family life and agriculture. To encourage higher quality development and to ensure greater environmental protection, open space (cluster) subdivisions are permitted.
- (b) ***R-10 / Single-Family Residential-10.*** The R-10 district is established to provide for orderly suburban residential development and redevelopment and is intended to maintain residential areas at relatively low densities characterized predominantly by owner-occupied, single-family detached units. The district requirements protect existing neighborhoods from undesirable or incompatible uses. To encourage higher quality development and to ensure greater environmental protection, open space (cluster) subdivisions are permitted. A special permit process for higher intensity development is also allowed, using discretion to balance issues of higher density with improved amenities.
- (c) ***R-8 / Single-Family Residential-8.*** The R-8 district is established to provide for orderly suburban residential development and redevelopment and is intended to maintain residential areas at suburban densities characterized predominantly by owner-occupied, single-family detached units. To encourage higher quality development and to ensure greater environmental protection, open space (cluster) subdivisions are permitted. A special permit process for higher intensity development is also allowed, using discretion to balance issues of higher density with improved amenities.
- (d) ***R-6 / Single-Family Residential-6.*** The R-6 district is established to provide for orderly suburban residential development and redevelopment. Intended to protect, preserve and enhance existing residential areas of higher density, which includes multi-family dwellings mixed with other housing types. A special permit process for higher intensity development is also allowed, using discretion to balance issues of higher density with improved amenities.

(2) Nonresidential Districts

- (a) ***O-R / Office-Residential.*** The O-R district is intended to accommodate modest-scale professional occupations, along with single-family and multi-family residential units, to serve as a neighborhood activity center and as a transition between residential and more intense commercial uses.

- (b) ***O-1 | Office-Institutional.*** The O-1 district is intended to permit offices, institutions, and associated administrative, executive, professional and research uses in new and existing structures and limited retail uses. Such offices and institutional uses are generally located along or proximate to major roadways or adjacent to commercial uses and may act as a buffer between such areas and residential uses.
- (c) ***B-1 | Central-Business.*** The B-1 district is intended to foster a vibrant, safe, central business district and town center by encouraging dense residential development while retaining and further developing a broad range of commercial, retail, service, office, institutional, public, cultural, and entertainment uses and activities. The district is intended to define and promote the town center as a desirable place to live, work, shop, and recreate.
- (d) ***B-2 | Neighborhood-Business.*** The B-2 district provides opportunities for small-scale commercial uses offering primarily convenience shopping and services for adjacent residential areas. Proximity to residences requires that commercial operations are low intensity, unobtrusive, and conducted at a scale and density compatible with the surrounding neighborhood. There is a relatively low demand on public services, transportation, and utilities.
- (e) ***B-3 | Highway-Business.*** The B-3 district provides opportunities for offices, service uses, and businesses retailing durable and convenience goods for the community as a whole. Located on major and minor thoroughfares, this district is accessible to and serves the entire community. Site design and buffering mitigate impacts of traffic, operations, and scale on adjacent businesses and residential neighborhoods.
- (f) ***I-1 | Industrial-Light.*** The I-1 district fosters the retention and growth of employment opportunities by providing areas where a broad range of industrial uses may locate and where options for complementary uses exist. Industries should be operated in a relatively clean and quiet manner, and should not be obnoxious to nearby residential or business districts, warehousing and wholesaling activities, and research facilities. The regulations of this district are intended to prohibit the use of land for industries that by their nature may create very minor nuisance to surrounding properties.
- (g) ***I-2 | Industrial-Heavy.*** The I-2 district fosters the retention and growth of employment opportunities by providing areas where a broad range of industrial uses may locate and where options for complementary uses exist. Intended for heavy industries that, by their nature, may create some nuisance, and which are not properly associated with or are compatible with nearby residential or business districts, warehousing and wholesaling activities, and research facilities.
- (h) ***PF | Public Facilities.*** The PF district is established to provide a coordinated land planning approach to the sale, rent, lease, purchase, management, or alteration of publicly owned or operated lands. Notwithstanding those public uses permitted elsewhere in this Code, the PF district is primarily intended for, although not limited to, public parks and recreation areas, public buildings and facilities, and other capital improvements of a significant nature. (*Ord. 2015-09-03, adopted 09/28/2015*)

(3) **Planned Development Districts**

- (a) ***PD-R | Planned Development-Residential.*** The PD-R district provides opportunities for master-planned residential communities containing a mix of housing types, including associated amenities with appropriate perimeter buffering and open space. This district is primarily intended for large-scale residential projects that require either additional flexibility not available in a residential district or greater scrutiny by the Town due to their scale.
- (b) ***PD-C | Planned Development-Commercial.*** The PD-C district is intended to enhance the design of a commercial development by allowing for additional flexibility not available in the nonresidential districts. The district allows for innovations and special features in site development, including the location and type of structures, the conservation of natural features, the conservation of energy, and the efficient use of open space.
- (c) ***PD-I | Planned Development-Industrial.*** The PD-I district is intended to provide a means of achieving unified industrial complexes of high quality to promote amenities beyond those expected under conventional techniques, to achieve greater flexibility in design, to encourage well-planned industrial developments that provide for community needs, to provide for appropriate use of land which is significantly unique in its physical characteristics, location or other circumstances to warrant special methods of development, and to allow the expansion of existing industrial areas while safeguarding and maintaining the integrity of surrounding uses, especially those of a residential nature.
- (d) ***PD-MU | Planned Development-Mixed Use.*** The PD-MU district is intended to provide coordinated mixed use developments, which includes light industrial, commercial, office, educational, civic, institutional, residential and service uses within a planned development with appropriate perimeter buffering and open space. The variety of land uses available in this district allows flexibility to respond to market demands and the needs of tenants, which provides for a variety of physically and functionally integrated land uses.

<some text omitted for purposes of brevity>

(D) **OVERLAY DISTRICTS**

(1) **Thoroughfare Overlay District (TOD)**

The Thoroughfare Overlay District is established for the purpose of maintaining a safe, efficient, and functional development pattern adjacent to major thoroughfares, while maintaining an aesthetic streetscape environment. It is recognized that an enhanced development quality in areas of high visibility promotes economic development and stability in the entire community. The standards established in § 155.204(A) shall be applied to properties which adjoin major thoroughfares, as designated on the Town's Overlay Zoning Map.

(2) **Watershed Protection Overlay (WPO)**

- (a) The Watershed Protection Overlay (WPO) is hereby established as a district that overlays the designated water supply watershed. The designated water supply watershed under this district is defined and established by the overlay district "Watershed Protection Overlay" on the zoning map. Land use and development within the WPO must comply with all the requirements of both the underlying zoning district and the watershed overlay.
- (b) The designated water supply watershed within the Town is designated by the state as a Class IV watershed protected area (WS-IV PA) and is referred to as the Neuse River (Smithfield) watershed within the Neuse River basin. Only new development activities that require an erosion/sedimentation control plan under state law or approved local government program are required to meet the provisions of this program. See § 155.501 for watershed protection standards.

(3) **Scenic Highway Overlay (SHO)**

The Scenic Highway Overlay is established for the purpose of protecting the visual qualities of the scenic US Highway 70 West corridor, as further described in this Article, specifically in §155.204.

(4) **Downtown Overlay District (DOD)**

The Downtown Overlay District is established for the purpose of fostering the economic vitality of the area within the district's boundaries, as well as the aesthetics and character of the district as further described in this Article, specifically in §155.204.

(Ord. 2005-11-02, passed 11-21-05; Am. Ord. 2009-08-02, passed 8-3-09, Am. Ord. 2012-04-02, passed 4-2-12; Am. Ord. 2012-12-02, passed 12-3-12; Am. Ord. 2016-04-04, passed 04-04-2016; Ord. 2017-04-06, approved 04/03/2017)

§ 155.202 LAND USE REGULATIONS

(A) USE REGULATIONS TABLE

The use regulations table is subject to the explanation as set forth below.

(1) **Key to Types of Use**

- (a) **Permitted.** A "P" indicates that a use is permitted in the respective district subject to the specific use standards in §§ 155.300 through 155.311. Such uses are also subject to all other applicable requirements of this chapter.
- (b) **Conditional Use Review.** A "C" indicates a use that may be permitted in the respective general use district only where approved by the Board of Adjustment in accordance with § 155.710. Conditional uses are subject to all other applicable requirements of this chapter, including the specific use standards contained in §§ 155.300 through 155.311, except where such use standards are expressly modified by the Board of Adjustment as part of the conditional use approval.
- (c) **Special Use Review.** An "S" indicates a use that may be permitted in the respective general use district only where approved by the Town Council in accordance with § 155.711. Special uses are subject to all other applicable requirements of this chapter, including the specific use standards contained in §§ 155.300 through 155.311, except where such use standards are expressly modified by the Town Council as part of the special use approval.
- (d) **Specific Use Section.** The "Specific Use Section" column on the table is a cross-reference to any specific use standard listed in §§ 155.300 through 155.311. Where no cross-reference is shown, no additional use standard shall apply.
- (e) **Uses Not Permitted.** A blank cell in the use table indicates that a use is not permitted in the respective district. Except as pursuant to §155.110 and §155.300, the following uses are entirely prohibited within the jurisdiction of the Town, although such enumeration shall not necessarily be deemed exclusive or all-inclusive:
 - 1. Open dump;
 - 2. Outdoor gun range; and
 - 3. Any use prohibited by an applicable overlay zoning district.

(2) **Uses**

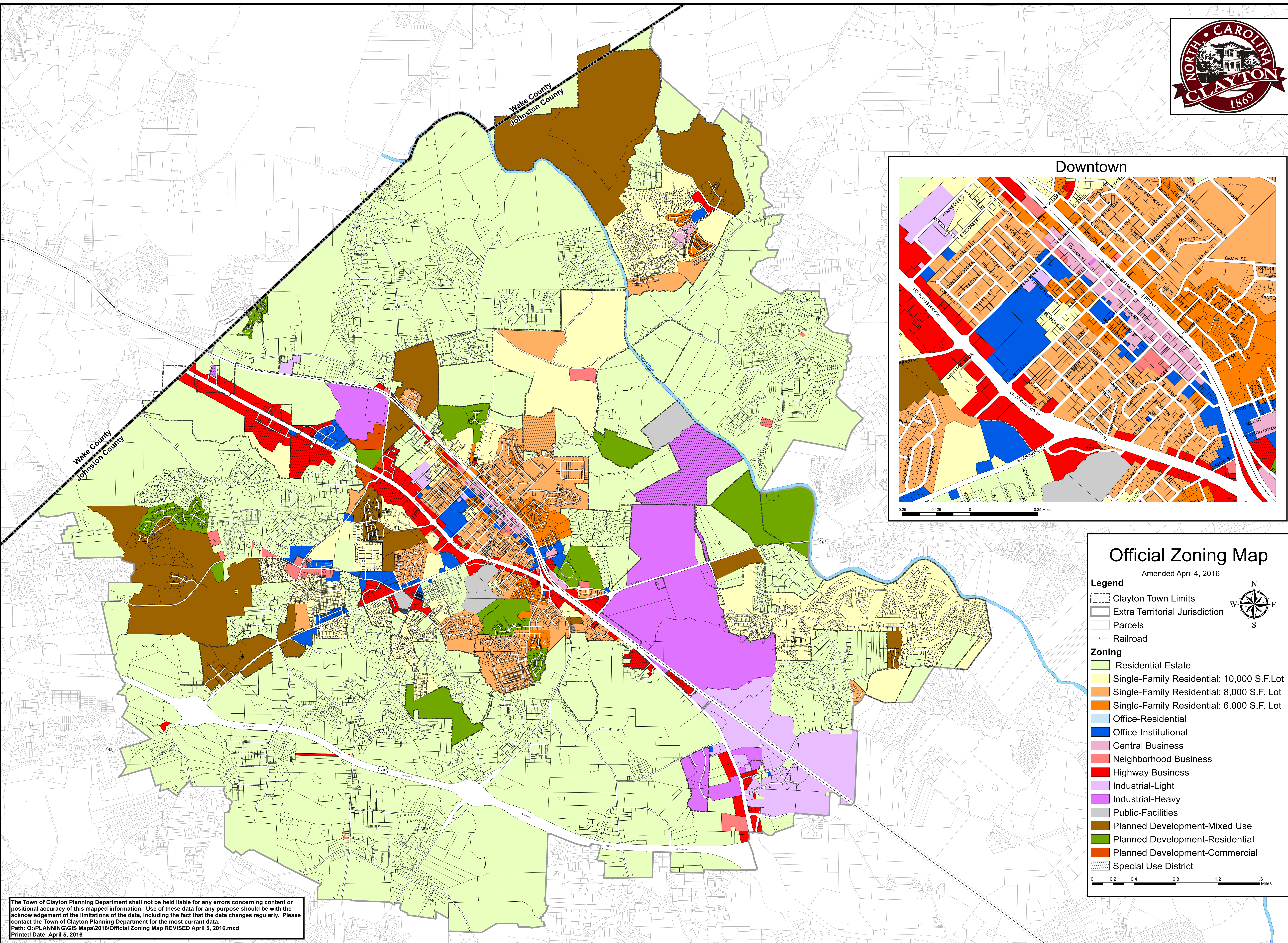
Table 2-1 "Use Regulations" lists the principal uses regulated by this chapter for general use districts. For special use districts see § 155.200(B), for overlay districts see § 155.204, for planned development districts see § 155.203(L), and for accessory structures and uses see § 155.308. In all cases, additional clarification and/or restrictions may be found in the Specific Use Standards (Article 3 of this chapter).

§ 155.202 - Table 2-1 Use Regulations

Use Type	Zoning Districts												Specific Use Section
	Residential				Nonresidential								
	R-E	R-10	R-8	R-6	O-R	O-I	B-1	B-2	B-3	I-1	I-2	PF	
Residential Uses													
Adult Care Home (2-6 Adults)	P	P	P	P									\$155.301(A)
Adult Care Home (7-12 Adults)	S	S	S	S	S	S		S					\$155.301(A)
Adult Care Home (13+ Adults)						S		S					\$155.301(A)
Apartments		S	S	S	S	S	S	S	S				\$155.301(B)
Boarding House				C		C		C					\$155.301(C)
Child Care Home	C	C	C	C	C								\$155.301(D)
Duplex		S	S	S	S								\$155.301(H)
Manufactured Home	P												\$155.301(E)
Manufactured Home Park	S												\$155.301(F)
Nursing Home (Congregate Living Facility)	C					P		S	P				\$155.301(G)
Townhouse		S	S	S	S	S	S	S	S				\$155.301(I)
Security/Caretaker Quarters	C								C			C	\$155.301(J)
Single Family House	P	P	P	P	P								\$155.301(K)
Upper-story Residence	S	S	S	S	S	P	P	P	P				\$155.301(L)
Zero Lot Line House		P	P	P									\$155.301(M)
Public and Civic Uses													
Assembly	C					P		C	C			P	\$155.302(A)
Cemetery	S								S			P	\$155.302(B)
Church or Place of Worship	C	C	C	C		C		C	C				\$155.302(C)
College or University						P						P	\$155.302(D)
Day Care Facility	C	C	C	C	C	P		P	P				\$155.302(E)
Government Service	S	S	S	S	P	P	P	P	P	P	P	P	\$155.302(F)
Hospital or Medical Center						P			P			P	\$155.302(G)
School (Elementary or Secondary)	S	S	S	S		S						P	\$155.302(H)
School (Technical, Trade or Business)	S	S	S	S		P			P	P	P	P	\$155.302(I)
Recreational Uses													
Entertainment, Indoor						C	C	C	P	P		P	\$155.303(A)
Entertainment, Outdoor									C	P		P	\$155.303(B)
Fitness/Recreation Center						P	C	P	P	P		P	\$155.303(C)
Golf Course	P	P	P	P								P	\$155.303(D)
Gun Range							S		S	S	S	S	\$155.303(E)
Park	P	P	P	P	S	P	S	P				P	\$155.303(F)
Stable, Private	P												\$155.303(G)
Agricultural Uses													
Agriculture, Livestock	C										C		\$155.304(A)
Agriculture, Sales and Service	P										C		\$155.304(B)
Nursery	P					C	S	C	P			P	\$155.304(C)
Commercial Uses													
Adult Oriented Business										S			\$155.305(A)
Bed and Breakfast	P			C	C	P	S	P					\$155.305(B)
Car Wash/Auto Detailing						C		P	P				\$155.305(C)
Contractor Office						C			C	P	P		\$155.305(D)
Convenience Store with Gas Sales								C	P	P			\$155.305(F)
Creative Studio					P	P	P	P	P				\$155.305(G)
Financial Institution					C	P	S	P	P				\$155.305(H)
Funeral Home	C				C	P							\$155.305(I)
Hotel/Motel						S	S	S	P				\$155.305(J)
Kennel	C							C	C				\$155.305(K)
Laundry Services								C	C	P	P		\$155.305(L)
Lounge, Cocktail							S	S	S	S			\$155.305(M)

Use Type	Zoning Districts												Specific Use Section
	Residential				Nonresidential								
	R-E	R-10	R-8	R-6	O-R	O-I	B-1	B-2	B-3	I-1	I-2	PF	
Microbrewery							P	S	P	P	P		\$155.305(N)
Publisher						P			P	P	P		\$155.305(O)
Office, General					P	P	P	P	P	P		P	\$155.305(P)
Office, Medical					P	P	S	P	P				\$155.305(Q)
Outdoor Seating/Sidewalk Cafe						C	P	P	C				\$155.305(R)
Parking Lot						S	S	S	S	S	S	S	\$155.305(S)
Pawn Shop									C	P			\$155.305(T)
Radio or Television Studio									P	P	P		\$155.305(U)
Restaurant						C	P	P	P				\$155.305(T)
Retail Sales							P	P	P	P			\$155.305(U)
Self-storage Facility									C	P			\$155.305(V)
Service					S	S	P	P	P				\$155.305(W)
Storage Yard										C	P	P	\$155.305(E)
Tattoo Parlor									S				\$155.305(X)
Towing Service and Storage									S	C	C		\$155.305(Y)
Vehicle Repair or Service									S	P	C		\$155.305(Z)
Vehicle Sales and Rental									S	P	C		\$155.305(AA)
Veterinary Clinic						C		C	P				\$155.305(BB)
Video Sweepstakes Operations										S			\$155.305(CC)
Industrial Uses													
Building Supplies, Wholesale										P	P		\$155.306(A)
Crematorium										P	P		\$155.306(B)
Gas and Fuel, Wholesale										P	P	P	\$155.306(C)
Laboratory, Research						P				P	P		\$155.306(D)
Manufacturing, Light										P	P		\$155.306(E)
Manufacturing, Heavy											P		\$155.306(F)
Research and Development						P				P	P		\$155.306(G)
Warehouse, Freight Movement									C	P	P		\$155.306(H)
Utilities													
Recycling Center										S	P	P	\$155.307(A)
Renewable Energy Facility	S									S	S	S	\$155.307(B)
Telecommunication Facility	S	S	S	S	S	S	S	S	S	S	S	S	\$155.307(C)
Utility, Minor	P	P	P	P	P	P	P	P	P	P	P	P	\$155.307(D)
Utility, Major										P	P	P	\$155.307(E)
Waste Service										C	P	P	\$155.307(F)
	Key:												
	P – Permitted												
	C – Conditional Use permitted in the zoning district only if approved by the Board of Adjustment (BOA) (§ 155.710)												
	S – Special Use permitted in the zoning district only if approved by the Town Council (TC) (§ 155.711)												

(Ord. 2005-11-02, adopted 11/21/2005; Am. Ord. 2006-06-01, adopted 06/19/2006; Am. Ord. 2007-04-05, adopted 04/02/2007; Am. Ord. 2007-05-02, adopted 05/07/2007; Am. Ord. 2009-06-06, adopted 06/01/2009; Am. Ord. 2009-08-03, adopted 08/03/2009; Am. Ord. 2012-01-04, adopted 01/03/2012; Am. Ord. 2012-04-02, adopted 04/02/2012; Am. Ord. 2012-12-02, adopted 12/03/2012; Am. Ord. 2014-12-02, adopted 12/01/2014; Ord. 2015-09-03, adopted 09/28/2015; Am. Ord 2016-04-04, passed 04-04-2016; Ord. 2017-04-06, approved 04/03/2017)



Official Zoning Map

Amended April 4, 2016

Legend

- Clayton Town Limits
- Extra Territorial Jurisdiction
- Parcels
- Railroad

Zoning

- Residential Estate
- Single-Family Residential: 10,000 S.F. Lot
- Single-Family Residential: 8,000 S.F. Lot
- Single-Family Residential: 6,000 S.F. Lot
- Office-Residential
- Office-Institutional
- Central Business
- Neighborhood Business
- Highway Business
- Industrial-Light
- Industrial-Heavy
- Public-Facilities
- Planned Development-Mixed Use
- Planned Development-Residential
- Planned Development-Commercial
- Special Use District

The Town of Clayton Planning Department shall not be held liable for any errors concerning content or positional accuracy of this mapped information. Use of these data for any purpose should be with the acknowledgement of the limitations of the data, including the fact that the data changes regularly. Please contact the Town of Clayton Planning Department for the most current data.
Path: O:\PLANNING\GIS Maps\2016\Official Zoning Map REVISED April 5, 2016.mxd
Printed Date: April 6, 2016

Description of Future Land Uses

Ten future land use categories are depicted on the map. Each category is intended to indicate a predominant land use—or set of uses—as well as other features that define the character of the category. A brief description of each category is provided below. Each is consistent with the community’s ideas and vision for the future development pattern. Furthermore, these descriptions do not propose a change to existing development within each category; instead, they suggest a direction for moving forward.

RESIDENTIAL LAND USES

Agricultural/Rural Residential (ARR)

Agricultural/Rural Residential areas are primarily located outside of existing and future sewer service areas. Most of these areas rely on septic systems for wastewater treatment, have a limited road network and, in some cases, lie within the watershed protection overlay of the Neuse River. The predominate existing land uses in these areas include low-density residential uses, as well as large tracts of agriculture land. The lack of utility and transportation infrastructure, the established low-density development pattern and ongoing agricultural activities in these areas contribute to their rural character. This character can be enhanced by encouraging only low-intensity uses and context-sensitive rural design. Single family residential at gross densities up to two units per acre are appropriate.

Typical Uses: Agriculture, Large Lot Single-family Residential, Clustered Single-family Residential (dependent on soils or utility availability), Parks and Conservation

Gross Residential Density: up to 2 dwelling units/acre

Low-Density Residential (LDR)

Areas designated as Low-Density Residential are intended to remain predominantly suburban in character and provide for low-density, single-family residential development on lots smaller than those in Rural Residential areas. Low Impact Development (LID) techniques such as clustering of dwellings to the degree that soils and/or available water and sewer infrastructure allows and flexibility to allow for innovative street cross sections that improve stormwater filtration via swales or other features are appropriate. However, mixed-residential uses may occur under a Planned Development - Residential District to support conservation of open space, so long as a density of 3 units per acre is not exceeded.

Typical Uses: Single-family Residential, Agriculture, Parks and Conservation

Gross Residential Density: up to 3 dwelling units/acre



Example: Agriculture/Rural Residential



Example: Low Density Residential



Top: Example: High Density Residential; Bottom Example: Downtown Core; Right Example: Neighborhood Commercial

Medium Density Residential (MDR)

The Medium Density Residential area is comprised predominantly of neighborhoods with housing units that are more urban in character and in closer proximity to commercial services and centers. This area provides a transition from the more suburban areas of the Town to more developed areas. The density of development in this area will vary based on the presence of utilities, topography and environmental features. This designation is applied to land which is developed, or is to be developed, at a density between three and five units per acre. Densities as high as seven units per acre may occur under a Planned Development - Residential District.

Typical Uses: Residential (all forms)

Gross Residential Density: up to 5 dwelling units/acre. Densities up to 7 dwelling units/acre may be approved as part of a Planned Development - Residential District.

High Density Residential (HDR)

The High Density Residential area provides for housing options located in close proximity to major transportation corridors, existing commercial areas and Downtown services. These areas have a connected street network, adequate pedestrian and bicycle facilities, and are served by public water and sewer. High Density Residential is designed to include all housing types. In some instances, this designation provides for a transition between lower-density residential use and commercial uses. In other instances, this designation allows the establishment of neighborhood commercial uses such as a grocery store or neighborhood services which are compatible with higher-

density residential uses. When neighborhood-serving commercial uses are placed within or adjacent to a residential area, such uses shall be limited to a size which is sufficient to accommodate the needs of an immediate residential neighborhood. These transitional areas will have opportunities for slightly higher-density development than the other residential categories.

Typical Uses: Residential (all forms), Limited Neighborhood Commercial Services
Gross Residential Density: up to 12 dwelling units/acre. Densities greater than 10 dwelling units/acre may be approved as part of a Planned Development.

Downtown Residential (DR)

The Downtown area provides for housing options and office-residential uses located in close proximity to the Downtown Core. The Downtown category is designed to retain established neighborhoods and maintain the historic character while allowing a variety of higher-density housing types that support and foster growth of the Downtown Core. Higher-density development should be directly bordering the Downtown Core or along US 70 Business Highway West. The Downtown area should have a connected street network with short block lengths, a grid-style street system, and adequate pedestrian and bicycle facilities.

Typical Uses: Residential (single-family, with higher density residential uses limited to areas as described above); Neighborhood Commercial in appropriate locations

Gross Residential Density: up to 12 units/acre, up to 20 units/acre with PD

NON-RESIDENTIAL LAND USES

Downtown Core (DC)

This designation is applied to the Town's Downtown Core area where the highest-density commercial, employment, residential and other uses are located. It is intended to foster an urban environment characterized by a sensitive blending of carefully preserved older structures, high-quality and context-sensitive new construction, and public spaces all working together and integrated with surrounding neighborhoods. The Downtown Core is the most flexible category and accommodates a variety of uses including commercial services (restaurants, retail, professional services, and entertainment), office, high-density residential, upper-story apartments, and older homes renovated to accommodate commercial uses. A mix of uses that creates a regional draw as well as serving the immediate community is desired. The Downtown Core provides a convenient road network with future transit opportunities and a pedestrian friendly system of sidewalks or greenways for non-motorized accessibility.

Gross Residential Density: up to 30 units/acre

Neighborhood Center (NC)

A Neighborhood Center is generally located near concentrations of existing or planned residences, and areas with access to major thoroughfares and utilities. These areas incorporate neighborhood-serving commercial uses including grocery stores, retail establishments, restaurants and services. A limited amount of office, civic and institutional uses are also appropriate. Higher-density residential including small-lot, single-family, townhouses and apartments should be located in close proximity to shopping and service destinations to provide more walking opportunities to internal and external pedestrian facilities and destinations. The scale of the Neighborhood Center varies depending on the market and competition. Typical Neighborhood Centers have a service area of one to two miles.

Community Center (CC)

Compared to the Neighborhood Center category, a Community Center typically serves a larger population and includes a typical

trade area of three-to-six miles, and is located adjacent to major thoroughfares or situated at a major intersection. A Community Center includes at least one major anchor such as a grocery store or retailer and incorporates community-serving commercial uses and opportunities for office, civic, and institutional uses. Where the market permits, multi-family housing opportunities may be integrated as part of a mix of uses. As with Neighborhood Centers, apartments and townhouses should be located in close proximity to shopping and services. All portions of the development should be accessible by both a convenient road network and a system of sidewalks or greenways.

Employment Center (EC)

Clayton's Employment Center is designated on the Future Land Use Map to provide locations for primary employment and economic development opportunities. The Employment Center is located along a major transportation corridor, and has adequate levels of infrastructure along access to rail and parcels large enough to accommodate future employment growth. Uses encouraged in the Employment Center include but are not limited to, industrial, warehouse, office, research and development, tech-flex, hospital, renewable energy, recycling, fabrication, assembly, and technology. Employment Center use may also include a limited amount of supporting commercial uses, such as restaurants and convenience retailers to serve employees. However, these uses should only be situated where not in conflict with existing employment land uses and should not be built in such a way as to jeopardize the use of those lands most suitable for office or industrial development.

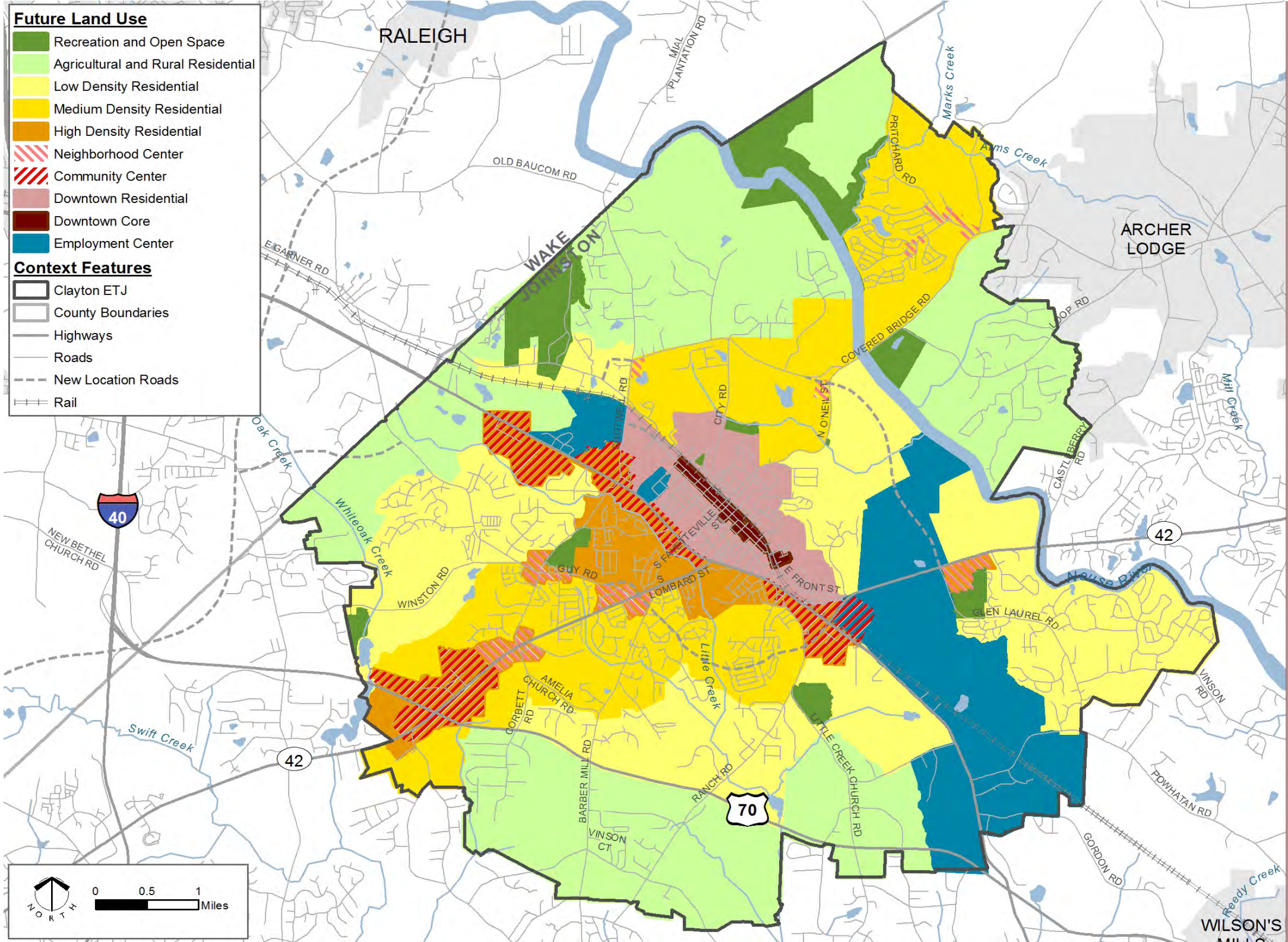
Recreation and Open Space (ROS)

The Recreation and Open Space designation applies to public recreational areas and open-space areas. Uses include wildlife management, active and passive recreation, environmental restoration/mitigation/preservation, open space, and educational uses. Structures that support or are associated with the intended uses shall be permitted. Land shown under this designation shall not be used for any purpose other than recreation, open space, or conservation.

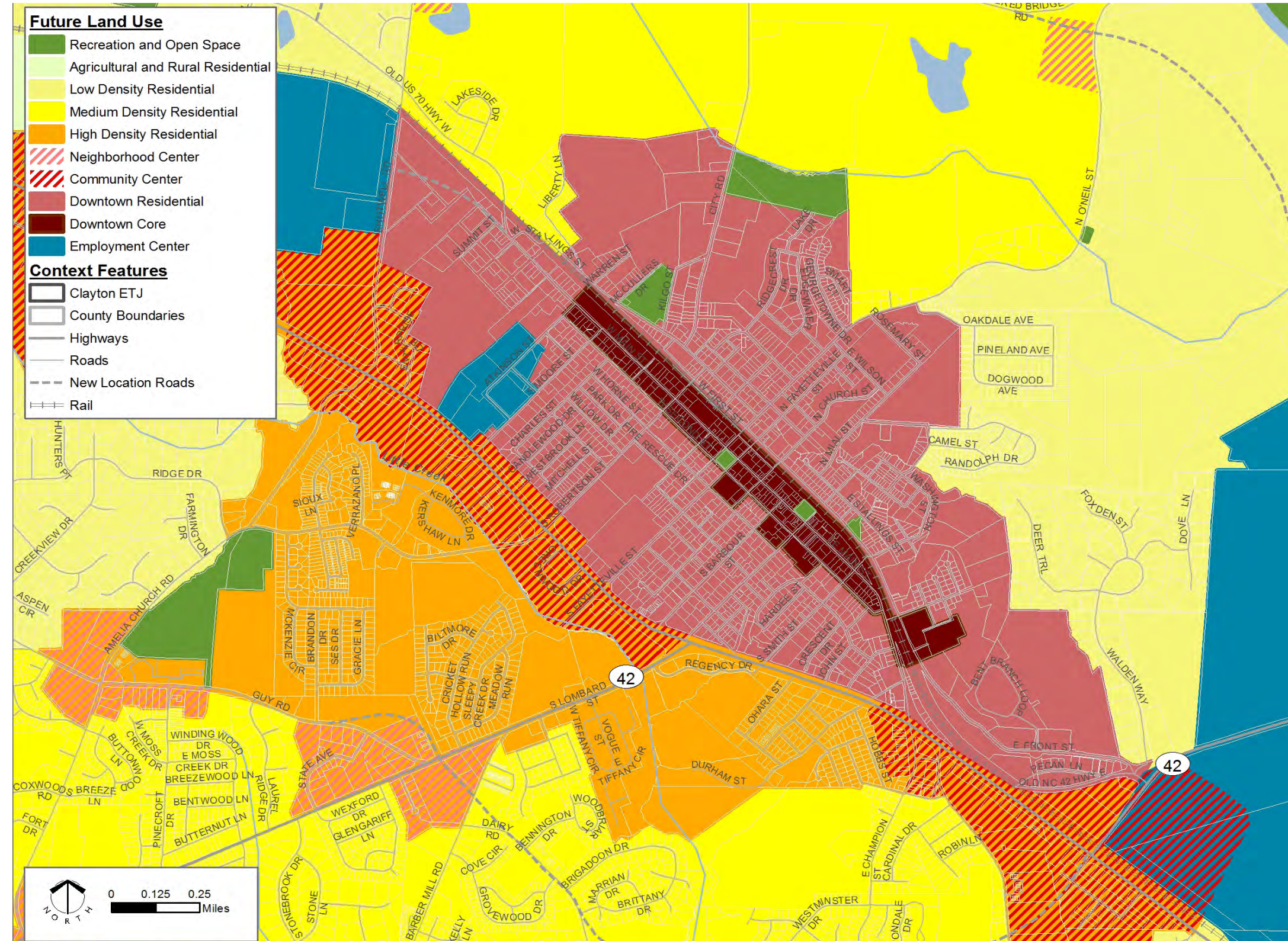
The following table identifies which zoning districts are consistent with the Future Land Use Map categories (designations).

Future Land Use Designation	COMPATIBLE ZONING DISTRICTS												
	R-E	R-10	R-8	R-6	O-R	O-I	B-1	B-2	B-3	I-1	I-2	PF	PDD
ARR	X											X	
LDR	X	X										X	
MDR		X	X	X								X	
HDR			X	X								X	
DR			X	X	X	X	X					X	X
NC						X	X	X				X	X
CC								X	X			X	X
DC							X					X	X
EC									X	X	X	X	X
ROS												X	

Future Land Use Map

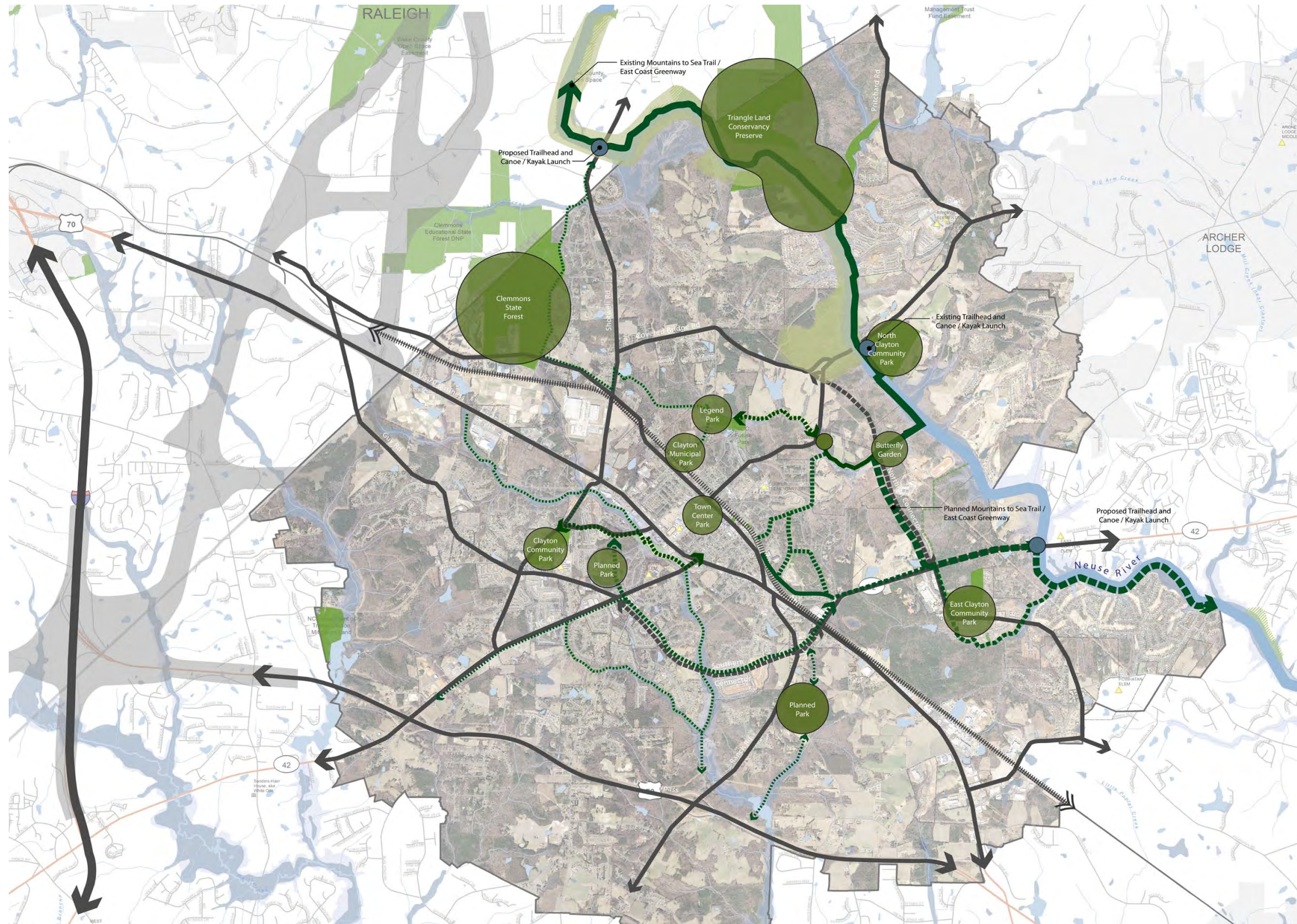


Appendix B: Maps



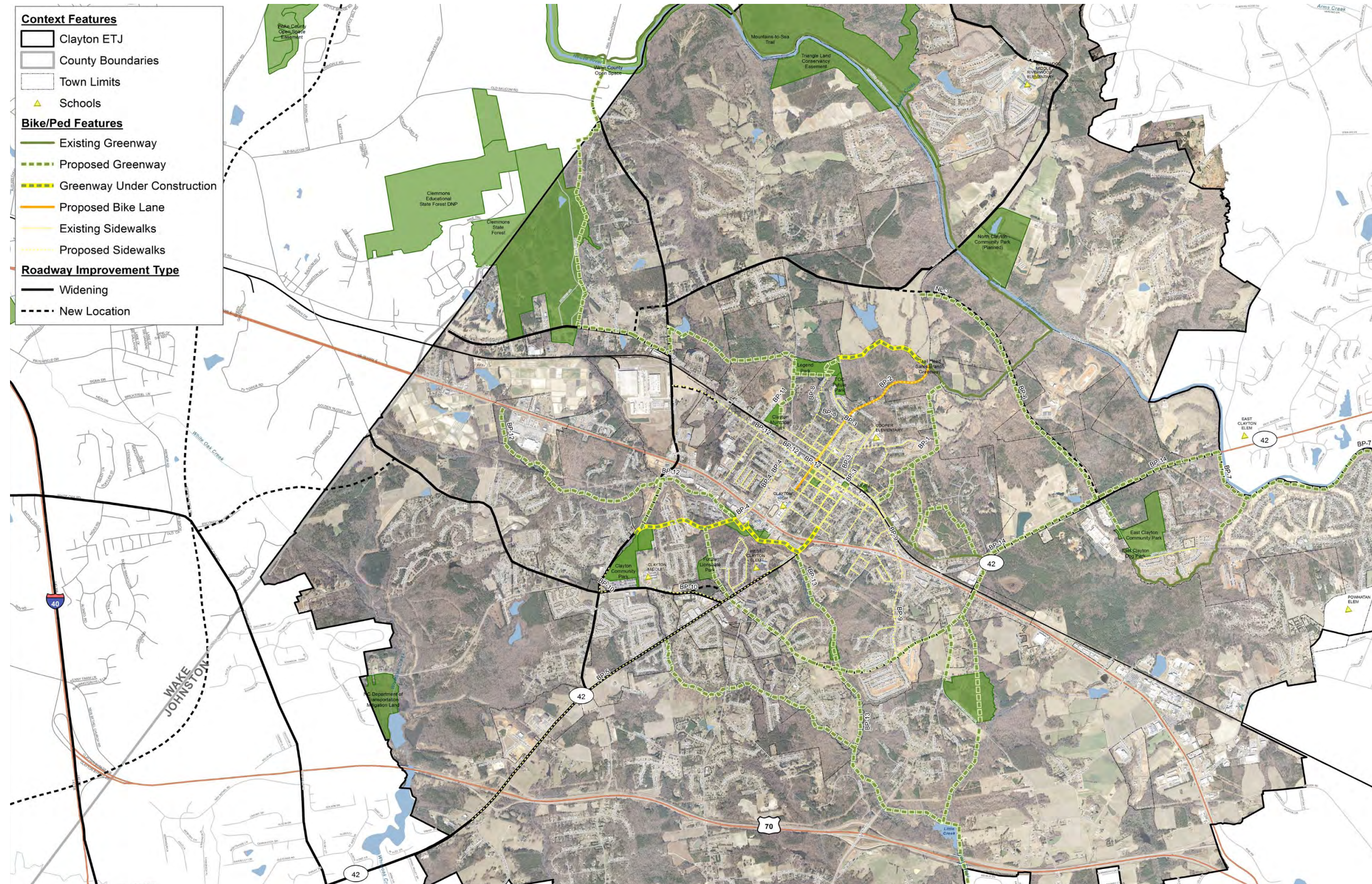
Downtown Future Land Use Map

Parks and Recreation Concept



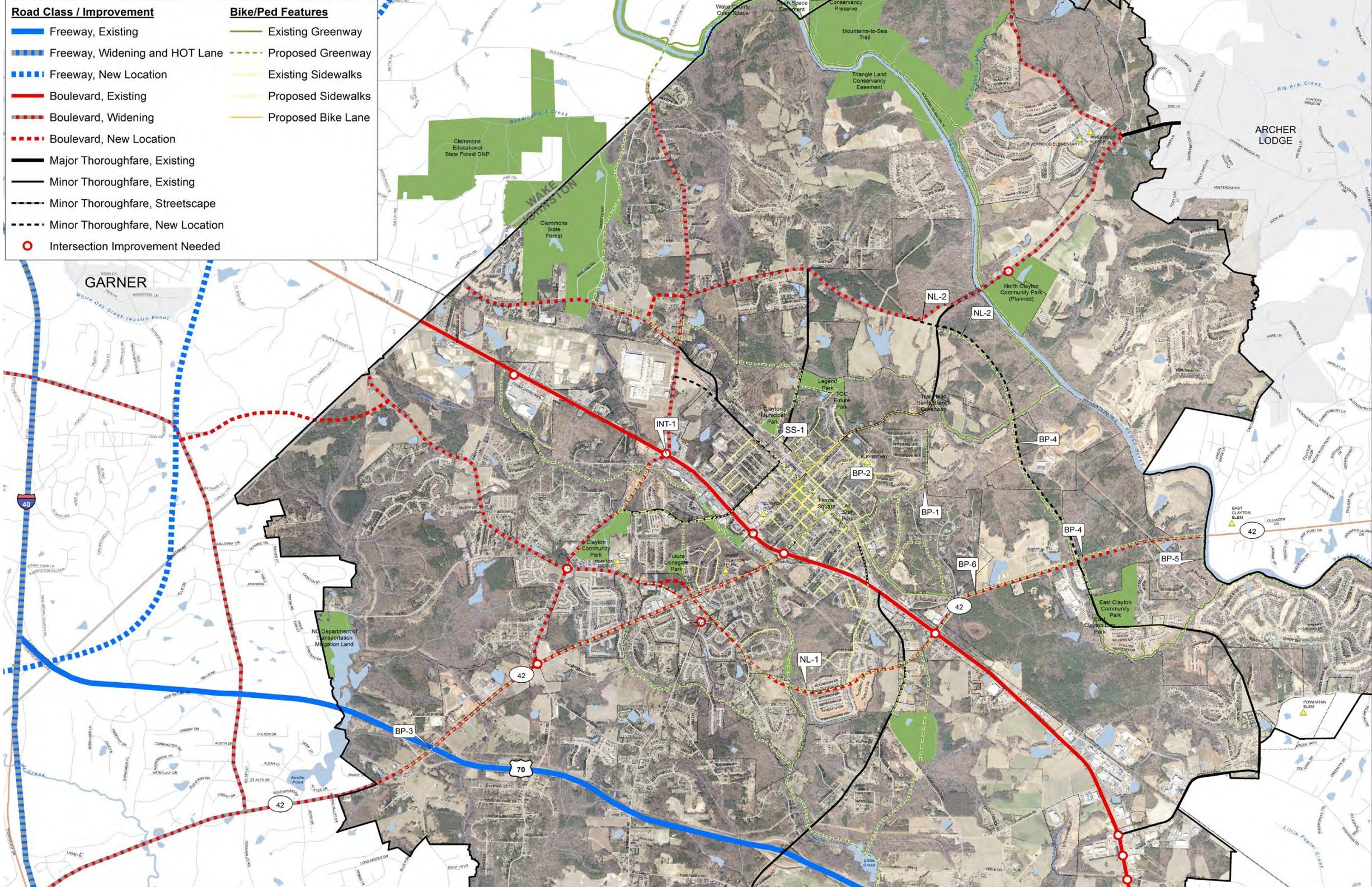
Comprehensive Plan 2040 : 60

Appendix B: Maps

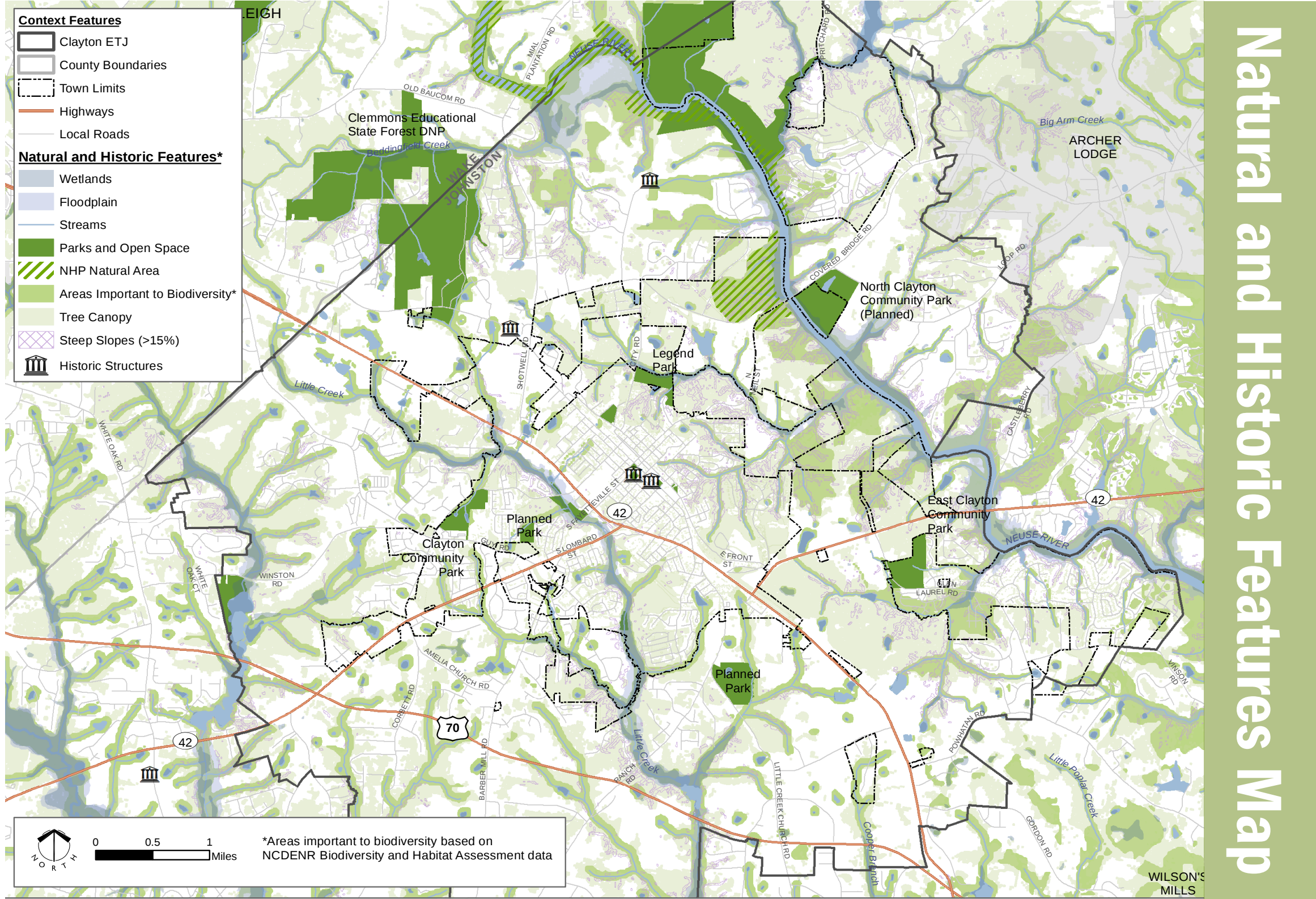


Bicycle and Pedestrian Concept

Transportation Priority Projects



Appendix B: Maps



Coates' Canons Blog: Variance Standards: What is hardship? And when is it unnecessary?

By Adam Lovelady

Article: <http://canons.sog.unc.edu/variance-standards-what-is-hardship-and-when-is-it-unnecessary/>

This entry was posted on May 27, 2014 and is filed under Land Use & Code Enforcement, Quasi-Judicial Decisions, Zoning

Generally, development regulations like zoning and subdivision standards apply equally to all properties. But sometimes a particular property is unfairly burdened by the general rules, creating an unnecessary hardship for the owner. The general statutes authorize the local board of adjustment to grant a variance from the rules in those limited circumstances. But what is an unnecessary hardship? Recent amendments to the state statute clarify what can (and what can't) qualify as unnecessary hardship. This blog explores those new standards.

General Statute section [160A-388\(d\)](#) sets forth the standards for granting a zoning variance (The standards also may be applied to subdivision and other development regulation). These mandatory standards apply to zoning variances for all counties and municipalities in the state, and the new standards override any contrary ordinance provisions that may have been in place prior to 2013. For a summary of the other changes to the board of adjustment statute, see this [blog](#) from my colleague David Owens.

Under the new statute a board of adjustment *shall* vary the provisions of the zoning ordinance if strict application of the ordinance would create unnecessary hardship. In order to obtain the variance, the applicant must show all of the following:

- Unnecessary hardship would result from the strict application of the ordinance
- The hardship results from conditions that are peculiar to the property
- The hardship is not a self-created hardship

Additionally, the applicant must show that the variance will

- Be consistent with the intent of the ordinance
- Secure public safety
- Achieve substantial justice

Finally, the statute prohibits any use variance.

To be sure, a variance is not a free pass from regulations or a tool to subvert the zoning ordinances. In order to obtain a variance, the applicant bears the burden of providing competent, substantial and relevant evidence to convince the decision-making board that the property meets all of the statutory standards for a variance. Merely showing some hardship is insufficient.

Let's consider each of the standards in more detail.

Unnecessary Hardship from Strict Application

Whenever there is regulation, there is some level of necessary hardship and inconvenience shared by all of the community. An applicant for a variance must show *unnecessary* hardship. What is enough hardship? Unfortunately, there is no simple formula. It is determined on a case-by-case basis. That is why the board of adjustment holds a quasi-judicial hearing and considers the evidence presented.

The hardship must be more than mere inconvenience or a preference for a more lenient standard. Cost of compliance may be a factor, but cost is not determinative. It is not enough for an applicant to say that development will cost more in order to comply. The applicant must show the substantial and undue nature of that additional cost as compared to others

subject to the same restriction.

Under the old statutes, many jurisdictions applied a standard that the applicant must show that there is no reasonable use of the property without a variance. Under current statutes, that stringent standard is no longer allowed. A property owner can prove unnecessary hardship, even if the owner has some reasonable use of the property without the variance.

Peculiar to the Property

The unnecessary hardship must be peculiar to the property, not general to the neighborhood or community. Such peculiar characteristics might arise, for example, from location of the property, size or shape of the lot, or topography or water features on the site.

Imagine a lot that narrows dramatically toward the front yard and where the side yard setbacks prohibit the property owner from building an addition. The hardship (not being allowed to build an addition) flows from the strict application of the ordinance (the setback) and is peculiar to the property (because of the shape of the lot). A variance may be appropriate if the owner presents evidence to show she meets all of the standards.

By contrast, a variance is not the appropriate remedy for a condition or hardship that is shared by the neighborhood or the community as a whole. Consider that same narrowing lot. If all of the houses on the street shared that hardship, a variance would not be appropriate. Such conditions should be addressed through an ordinance amendment.

Hardships that result from personal circumstances may not be the basis for granting a variance. The board is looking at the nature of the property and the land use ordinances, not the nature of the applicant and their circumstances. Bringing an elderly parent to live with the family, for example, is a change in personal circumstance, not a condition peculiar to the property.

The reverse is also true. An applicant's personal circumstances cannot be the basis for denying a variance. The board should consider the property, not the applicant's bank account and ability to cover the cost of the hardship. Moreover, the fact that the applicant owns property nearby is irrelevant to the consideration of whether this particular property deserves a variance (*Williams v. N.C. Dept. of Env. & Nat. Resources*, 144 N.C. App. 479, 548 S.E. 2d 793 (2001))

Not Self-Created Hardship

You can't shoot yourself in the foot and then ask for a variance. The hardship must not result from actions taken by the applicant or property owner.

So what is self-created? Suppose a property owner sells part of a conforming lot and makes the remainder of the lot nonconforming. The hardship (limitations on the non-conforming lot) was self-created (by the owner selling the sliver off the parcel. The owner may not seek a variance for building on the substandard lot. Similarly, where an owner failed to seek zoning and building permits and then incorrectly placed foundation footings in the setback, the hardship is self-created. No variance is allowed. Ignorance of the law is no excuse.

What if the owner relied in good faith on seemingly valid surveys and obtained building permits? After construction began, a neighbor objected, citing a new survey and arguing that the foundation wall is within the setback. Is the owner's hardship self-imposed? Our North Carolina courts have held that hardships resulting from such good faith reliance on surveys and permits are eligible for a variance (*Turik v. Town of Surf City*, 182 N.C. App. 427, 642 S.E.2d 251 (2007)).

An important statutory provision applies here: "The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship." For example, if the original owner had a legitimate case for a variance, someone buying the lot from that owner would have the same legal position as the original owner. They could seek a variance. This rule aligns with the broader zoning concept that land-use permissions run with the land, and land-use decisions are based on the property and impacts of development, not based on the particular owner. Is this a loophole for an unscrupulous owner to overcome the limit on variances for self-created hardship by selling the property to a spouse or sham LLC? Maybe, but the requirement for substantial justice (discussed below) probably protects from someone gaming the system.

Restrictive covenants and other legal limitations *may* be a factor in determining hardship. Consider a property that has limited development ability due to a privately-imposed covenant for a street setback and a publicly-imposed stream setback. Can the owner seek a variance from the public stream setback? The NC Court of Appeals—interpreting a specific local ordinance—found that the board should consider physical *and* legal conditions of the property, including restrictive covenants (*Chapel Hill Title & Abstract Co., Inc. v. Town of Chapel Hill*, 362 N.C. 649, 669 S.E.2d 286 (2008)).

Let me emphasize that covenants and other legal limitations *may* be a factor. In that case, the decision was based on the local ordinance, and the decision pre-dated the statutory variance standards. A self-imposed legal limitation—like an easement across a property that limits buildable area—that was created after a zoning ordinance limitation became effective, could be viewed as a self-imposed hardship so that no variance should be granted.

Ordinance Purpose, Public Safety, and Substantial Justice

In addition to those standards for “unnecessary hardship,” the statutory standard for granting a variance requires the applicant to show that “[t]he requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.”

Where an ordinance expresses a clear intent, a variance cannot subvert that intent. But, alternatively, a variance may help to give effect to the ordinance intent. In one North Carolina case, an applicant was seeking a variance to allow an additional sign at a secondary entrance. Among other things, the ordinance purpose was to provide “adequate and effective signage,” “prevent driver confusion,” and “allow for flexibility to meet individual needs for business identification.” The purpose, the court found, called for the flexibility that the applicant sought, and the variance was allowed. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 369, 713 S.E.2d 511, 515 (2011)).

The applicant also must show that the variance does not harm public safety. Even if an applicant met the standard for unnecessary hardship, a variance may be denied for public safety concerns. A property owner may prove an unnecessary hardship exists from limitations on on-site drives and parking for a commercial use. But, if neighbors presented expert evidence that the increased traffic and stormwater effects will harm public safety, the board may be justified in denying the variance.

Additionally, the statute requires the applicant to show that through the variance “substantial justice is achieved.” The concept of substantial justice raises issue of fairness for the community and neighbors. This concept echoes the requirement that hardship must be peculiar to the property—not shared by the community. If everyone bears this hardship, then one lucky person should not be relieved through a variance. Similarly, the justice standard draws upon a notion of precedence. Suppose Joe sought a variance last year and was denied. If Karl is seeking variance this year that is essentially the same request for a similar property, then the variance outcome should be the same.

The substantial justice standard also can play in favor of the applicant. If an applicant relies in good faith on a city permit, and that permit turned out to be wrongly issued, the applicant would have no vested rights in that mistakenly issued permit. Substantial justice might argue for allowing a variance for the applicant.

No Use Variance

North Carolina courts long ago established that use variances are not permitted, and that rule is now part of the statutory standards. If a land use is not permitted on the property, a variance cannot be used to, in effect, amend the ordinance and allow the use. If only single family residences are permitted in a district, a variance cannot permit a duplex (*Sherrill v. Town of Wrightsville Beach*, 76 N.C. App. 646, 334 S.E.2d 103 (1985)).

If the use is already permitted on the property, a variance to allow the expansion of the permitted use is permissible. So, for example, if a sign is permitted for a commercial property, a variance to permit an additional sign is allowable. It is an area variance, not a use variance. (*Premier Plastic Surgery Ctr., PLLC v. Bd. of Adjustment for Town of Matthews*, 213 N.C. App. 364, 713 S.E.2d 511 (2011)).



Conclusion

Making decisions about variances is a hard job. How much hardship is enough hardship? Is justice being served? Does the variance preserve the spirit of the ordinance? Rarely are there clear answers for these questions. Seeking those answers is the hard task of the board of adjustment. The applicant must present competent, material, and substantial evidence that they meet all of the standards. And the board must consider the issues on a case-by-case basis; they must weigh the evidence, apply the required statutory standards, and decide if a variance is warranted.

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-388