

**TOWN OF EAST ARCADIA
ZONING ORDINANCE**

As Amended December 2024

TOWN OF EAST ARCADIA ZONING ORDINANCE

Article I. Purpose, Authority, and Definitions

A. Purpose

The purpose of this ordinance is to guide the development of East Arcadia, North Carolina, and to facilitate the adequate provision of transportation, sewerage and water systems, parks and other public improvements, to regulate the location and use of land and buildings, the erection, reconstruction and alteration of buildings, the height and size of buildings, and the density of population, to divide the town into districts of such number, shape and size as may be best suited to carry out said purposes; and to encourage the appropriate use of land throughout the town utilizing the recommendations of the Land Use Development Plan to promote the health, safety, and general welfare of the Town of East Arcadia.

B. Authority

This ordinance is adopted pursuant to the authority vested in the Town of East Arcadia by its charter, Chapter 160D of the General Statutes of North Carolina, and other local legislation.

C. Definitions

For the purpose of this ordinance, the following words, phrases, terms and their derivations shall have the meaning given herein.

Unless the context clearly indicates to the contrary, words used in the present tense include the future; words used in the plural number include the singular, and words used in the singular include the plural; the word "herein" means in this ordinance; the words "shall" or "must" are mandatory and not directory; the word "building" includes the word "structure", and the words "structure" and "building" shall include any part thereof; the words "used" or "occupied" shall be construed to include the words "intended", "arranged", or "designed" to be used or "occupied".

A person shall include a corporation, a partnership and an unincorporated association such as a club; the word "development" shall be construed so as to include development by cooperative or collective or other similar means of development through common ownership or through the use of lease-hold estates; and the words "immediately adjacent" shall be construed to mean all land abutting the subject property and extending two hundred (200) feet therefrom or, when said property so defined includes right-of-way, it shall mean all land abutting the right-of-way and extending two hundred (200) feet therefrom.

Accessory facility or structure: Means an accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities or complexes, including, but not limited to, utility or transmission equipment and storage sheds or cabinets.

Accessory Use: An activity or structure incidental or secondary to the principal use on the same site.

Agriculture: The following definitions apply to the A/F, R20, R15 and R10 zoning districts:

- a. Agriculture-vegetative: The activity of cultivating the soil and/or producing crops and
- b. Agriculture-livestock: The activity of raising livestock. Minimum lot size for livestock activities:

Fowl Averaging Under Five Pounds in Weight: The number of such fowl shall not exceed twenty-five (25) per acre or a maximum of four hundred (400). All housing structures, outdoor pens and feeding areas shall be set back (1) foot per fowl from all property lines. All fowl must be confined or fenced together.

Fowl Averaging Over Five Pounds in Weight: The number of such fowl shall not exceed three (3) per acre or a maximum of thirty-five (35). All housing structures, outdoor pens and feeding areas shall be set back ten feet per fowl from all property lines. All fowl must be confined or fenced together.

Animals, Other Than Fowl, Averaging Over Thirty Pounds In Weight: The number of such animals shall not exceed three (3) per acre or a maximum of thirty-five (35). All housing structures, outdoor pens and feeding areas for such animals shall be set back ten feet per animal from all property lines. Such animals shall not be confined together. Offspring less than thirty (30) days old shall not be included in the number per acre.

The agriculture-livestock definition does not apply to animals ordinarily considered pets such as dogs, cats, birds and pot-bellied pigs.

Alley: A roadway which affords only a secondary means of access to abutting property and is not intended for general traffic circulation.

Amend, amendment and amended: Mean and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect

Apartment: A suite of rooms or a room in a multi-family residence arranged and intended as a place of residence for a single family.

Applicant: Means any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities.

Antenna: Means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

Application. Means all necessary and required documentation that an applicant submits in order to receive a special use permit or a building permit for wireless telecommunications facilities.

Arcade: Any establishment that maintains more than three (3) automatic amusement machines. Automatic amusement machine includes any machine or device activated by a coin or token, and which when operated is used as a game of skill, test, contest or entertainment (not to include pool tables or music machines). This definition does not include establishments which sell alcoholic beverages or have pool tables.

Bedroom: A fully enclosed interior room as shown on the building plan for the structure having, as a minimum, a doorway, window and closet.

Bona Fide Farm: A property that is located in the Town's extraterritorial jurisdiction that is used for bona fide farm purposes in accordance with G.S .160D-903(a) and is exempt from zoning regulation to the same extent bona fide farming activities are exempt from county zoning pursuant to G.S. 160D-903A.

Buffer Zone: A strip of land created to separate and protect one type of land use from another.

Building Area: The total area of a lot covered by a structure measured on a horizontal plane at mean grade level exclusive of uncovered patios, terraces and steps.

Building Height: The vertical distance from the average sidewalk grade, street grade or finished grade at the building line, whichever is highest, to the highest point of the building.

Certificate of completion or COC: Means a required document issued by the town that confirms that all work represented in the application i) was properly permitted; ii) was done in compliance with and fulfilled all conditions of all permits, including any final completion deadline; iii) was fully constructed as approved and permitted; and iv) a final inspection was requested, conducted and the facility or complex passed the final inspection.

Church or House of Worship: Any permanent structure designed or adapted for use by members of a church, temple, synagogue, mosque, or the like for the purpose of prayer,

religious service or other rite showing reverence or devotion for a deity. Where permitted by right or condition in this Ordinance activities at such facilities shall be limited to those associated with worship or fellowship by its members or congregation. Prohibited without further approval are such activities as education for preschool, primary, secondary and post secondary students, dormitory facilities, and ongoing commercial enterprise.

Co-location: Means the use of an approved telecommunications structure to support antenna for the provision of wireless services.

Conversion: The alteration of the use of an existing building to another type of use permitted under this ordinance.

Commercial impracticability or commercially impracticable: Means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not deem a situation to be "commercially impracticable" and shall not render an act or the terms of an agreement "commercially impracticable".

Commission: Means the town commission of the Town of East Arcadia, North Carolina.

Complete or completed application: Means an application that contains all necessary and required information and/or data required under this article and any information necessary to enable an informed decision to be made with respect to an application.

Complex: Means the entire site or facility, including all structures and equipment located at the site.

DAS or distributive access system: Means a technology using antenna combining technology allowing for multiple carriers or wireless service providers to use the same set of antennas, cabling or fiber optics.

Determination: A written, final, and binding order, requirement, or determination regarding an administrative decision.

Development Approval: An administrative or quasi-judicial approval made pursuant to this ordinance that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, site plan approvals, special use permits, and variances. The term also includes all other regulatory approvals required by regulations adopted pursuant to this ordinance, including plat approvals, permits issued, and building permits issued.

Dimensional Nonconformity: A nonconformity situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or lot line does not conform to the regulations applicable to the district in which the property is located.

Dwelling: A building that contains one or two dwelling units used, intended or designed to be used, rented, leased, let or hired out to be occupied for living purposes.

Dwelling Unit, Single-Family: A building designed to be occupied by one (1) family.

Dwelling, Duplex: A building containing two (2) dwelling units where the building is designed to be occupied by two (2) families living independently from each other.

Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Easement: Authorization by a property owner for the use of another party, for a specific purpose, of any designated part of said property without conferring exclusive possession.

Eligible facility: Means an existing wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a substantial modification (see definition of substantial modification).

Extra-Territorial Jurisdiction: A defined area extended one mile beyond the town limits in accordance with the requirements of G.S. 160D-202.

Evidentiary Hearing: Shall have the same meaning as **Quasi-Judicial Evidentiary Hearing**.

FAA: Means the Federal Aviation Administration, or its duly designated and authorized successor agency.

Facility: Means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.

Family: One or more persons living together that are related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit, exclusive of household servants. A number of persons living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage, and not exceeding three persons shall be deemed to constitute a family.

Family Care Home: A home with support and supervisory personnel that provides room and board, personal care and habitation services in a family environment for not more than six (6) resident handicapped persons. (GS 168-21, GS 168-22)

FCC: Means the Federal Communications Commission, or its duly designated and authorized successor agency.

Floor Area (for determining off-street parking and loading requirements): The sum of the gross horizontal areas of the several floors of the building, or portion thereof, devoted to such use, including accessory storage areas located within selling or working space as counters, racks, or closets, and any basement floor area devoted to retailing activities, to the production or processing of goods, or to business or professional offices.

However, "floor area" for the purposes of measurement for off- street parking spaces shall not include: floor area devoted to primarily storage purposes (except as otherwise noted herein); floor area devoted to off-street parking or loading facilities, including aisles, ramps, and maneuvering space; or basement floor other than area devoted to retailing activities, to the production or processing of goods, or to business or professional offices.

Floor Area, Gross: The total square footage on all floors within a building.

Frontage: The property abutting one side of a street or public way, measured along the right-of-way line.

Garage, Private: A building used as an accessory to the main building permitted in any district, and providing for the storage of a motor vehicle and in which no business, occupation, or service is conducted.

Garage, Public: Any building, except those described as a private garage, used for storage or care of motor vehicles.

Guest House (Tourist Home, Boarding House): Any dwelling occupied by owner or operator in which five rooms or less are rented for lodging of transients and travelers for compensation.

Halfway House: Therapeutic residences that provide a sheltered and transitional environment for persons emerging from mental or penal institutions or drug treatment centers.

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 or sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in GS 122C-3(11)b.

Height. Means, when referring to a tower or wireless support structure, the distance measured from the pre-existing grade level to the highest point on the tower or support structure, even if said highest point is an antenna or lightening protection device.

Home Occupation: An occupation for gain or support customarily conducted on the premises by a person or family residing thereon provided:

- (a) Only one (1) person other than members of the family residing on the premises shall be engaged in such occupation;
- (b) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purpose by its occupants, and not more than twenty-five percent (25%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation;
- (c) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation;
- (d) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off street and other than in any required yard. Vehicles used primarily as passenger vehicles including pickup trucks and step-type vans only shall be permitted in connection with the conduct of the customary home occupation;
- (e) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes or electrical interference detectable to the normal senses off the lot, if the occupation is conducted in a single family housing unit, or outside the housing unit if conducted in other than a single family housing unit. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises; or causes fluctuations in line voltage off the premises;
- (f) No display of products shall be visible from the street, and the selling of merchandise or the manufacture of merchandise for sale except baking, sewing and/or home crafts normally made in the home cannot be the primary function of the home occupation;
- (g) Instruction in music, dancing or tutoring of academic subjects shall be limited to four (4) students at a time;
- (h) Zoning permit must be obtained from Town Hall; and
- (i) All persons now operating a Home Occupation shall be grand fathered but they must declare their home occupation within 60 days of adoption of this ordinance.

Also, proof must be shown that occupation was in existence prior to ordinance adoption. All persons currently operating a home occupation will still be required to pay the license fee within 60 days of adoption of ordinance.

- (j) Signs shall be a fixed to the main building, shall not exceed 18"h X 30"w and shall not be illuminated.

Housekeeping Unit: Any part of a living area used to prepare food in any manner for human consumption, the existence of two or more of such areas shall create a conclusive presumption that the dwelling unit was designed for or is being used by two or more families.

Hotel: A building occupied or used as a more or less temporary abiding place of individuals or groups who are lodgers and in which there are six (6) or more sleeping rooms.

In-kind replacement: Means replacing a component(s) that is malfunctioning with a properly functioning component of the same weight and dimensions and that does not enable an increase in revenue for the service provider or increase the compensation paid to the owner or manager of the support structure.

Junk Yard: An area where scrap metal or other waste is bought, sold, exchanged, or handled on an on-going basis, including automobile salvage and wrecking yards.

Land Use Plan: The adopted Land Use Development Plan of the Town of East Arcadia. Also known as a comprehensive plan. This plan shall meet the requirements of GS 160D-501.

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 same.

Lot Area: The total horizontal area enclosed with lot lines.

Lot, Corner: A lot which has at least two (2) adjoining sides which abut a street or other public right-of-way, provided that the angle of intersection of the two lines is less than 135 degrees.

Lot, Depth of: The average horizontal distance between front and rear lot lines.

Lot, Front of: The portion of a lot nearest the street. For corner and through lots, all sides adjacent to street rights-of way shall be considered fronts.

Lot, Interior: A lot other than a corner lot.

Lot Lines: The lines bounding a lot as defined herein.

Lot Line, Front: The lines separating said lot from the street right-of-way.

Lot, Through: A interior lot having frontage on two streets.

Lot, Width of: The mean horizontal distance between side lot lines.

Maintenance: Means plumbing, electrical or mechanical work that may require a building permit but that does not constitute a modification to the WTF.

Manufactured Home: A dwelling that (i) is not constructed in accordance with the standards set forth in the North Carolina State Building Code, and (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 feet in length and eight feet in width.

Manufactured Home, Class A: A manufactured home constructed to the standards of the National Manufactured Housing Construction and Safety Standards Act (effective after June 15, 1976), that meets or exceeds any additional construction standards promulgated by the US Department of Housing and Urban Development that were in effect at the time of construction and that satisfies the following additional criteria:

- a. The manufactured home has a length not exceeding four times its width, with length measured along the longest axis and width measured at the narrowest part of the other axis;
- b. The manufactured home has a minimum of 1,120 square feet of enclosed and heated living area;
- c. The pitch of the roof of the manufactured home has a minimum vertical rise of two and two tenths feet for each twelve feet of horizontal run (2.2 feet and 12 feet) and the roof is finished with a type of shingle that is commonly used in standard residential construction;
- d. All roof structures shall provide an eaves projection of no less than six inches, which may include a gutter;
- e. The exterior siding consists predominantly of vinyl or aluminum horizontal lap siding (whose reflectivity does not exceed that of gloss white paint), wood or hardboard comparable in composition, appearance and durability to the exterior siding commonly used in standard residential construction;

- f. The manufactured home is set up in accordance with the standards set by the North Carolina Department of Insurance and a continuous, wall, unpierced except for required ventilation and access, is installed under the perimeter of the manufactured home;
- g. Stairs, porches, entrance platforms, ramps and other means of entrance and exit to and from the home shall be installed or constructed in accordance with the standards set by the North Carolina Department of Insurance, attached firmly to the primary structure and anchored securely to the ground; and
- h. The moving hitch, wheels and axles, and transporting lights have been removed.

It is the intent of these criteria to insure that a Class A manufactured homes, when installed, shall have substantially the appearance of an on-site, conventionally built, single-family dwelling.

Manufactured Home, Class B: A manufactured home constructed to the standards of the National Manufactured Housing Construction and Safety Standards Act (effective after June 15, 1976), that meets or exceeds any other construction standards promulgated by the US Department of Housing and Urban Development that were in effect at the time of construction, and that meet or exceed criteria (f), (g) and (h) for Class A homes above.

Manufactured Home, Class C: Any manufactured home that does not meet the definitional criteria of a Class A or Class B manufactured home.

Manufactured Home Park: Any site or tract of land, of contiguous ownership upon which manufactured home spaces are provided for manufactured home occupancy whether or not a charge is made for such service. This does not include manufactured home sales lots on which unoccupied manufactured homes are parked for the purpose of sales.

Modification or modify: Means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility or complex with identical components, including, but not limited to, antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to an existing support structure or tower as a co-location is a modification, unless the height, profile or size of the compound is increased, in which case it is not a modification

Modular Home: A dwelling unit constructed in accordance with the standards set forth in the North Carolina State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a modular home may consist of

two or more sections transported to the site in a manner similar to a manufactured home (except that the modular home meets the North Carolina State Building Code), or a series of panels or room sections transported on a truck and erected or joined together on the site.

Motel: Land developed for a single structure or a group of structures of permanent construction that contains guest rooms with vehicle parking space and utility structures provided to support the primary use.

Multi-Phased Development Plan: A development containing 25 acres or more that is submitted for development permit approval to occur in more than one phase and subject to a master development plan with committed elements showing the type and intensity of use of each phase. Multi-phased development plan includes applicable subdivision plats and site plans.

Necessary or necessity or need. Means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting the provision of service as intended and described in the narrative of the application. Necessary or need does not mean what may be desired, preferred or the most cost-efficient approach and is not related to an applicant's specific chosen design standards. Any situation involving a choice between or among alternatives or options is not a need or a necessity.

Neighborhood: A residential area whose residents have public facilities and social institutions in common and generally within walking distance of their homes.

NIER: Means non-ionizing electromagnetic radiation.

Nonconforming Lot: A lot existing at the effective date of this ordinance or any amendment to it that cannot meet the lot requirements of the district in which the lot is located.

Nonconforming Project: Any structure, development, or undertaking that is incomplete at the effective date of this ordinance and would be inconsistent with any regulation applicable to the district in which it is located if completed as planned.

Nonconforming Situation: A situation that occurs when, on the effective date of this ordinance or any amendment to it, an existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located.

Nonconforming Use: A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located.

Parking Lot: An area or plot of land used for the storage or parking of vehicles.

Person: Means any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

Personal wireless facility see definition for wireless telecommunications facilities.

Personal wireless services or PWS or personal telecommunications service or PTS shall have the same meaning as defined and used in the 1996 Telecommunications Act.

Planned Unit Development (PUD): A PUD is a land development project planned as a single entity by means of a unitary site plan which permits flexibility on building, siting, mixtures of housing types and land uses, usable open space, and the preservation of significant natural features.

Quasi-Judicial Evidentiary Hearing: A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under this ordinance.

Repairs and maintenance: Means the replacement or repair of any components of a wireless facility or complex where the replacement is identical to the component being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility or complex that will impose new visible burdens of the facility or complex as originally permitted.

Residence: A building designed to be used as permanent living quarters for one or more families.

Residence, Multi-Family: A building designed to be occupied by three (3) or more families living independently of each other.

Right-of-Way: Land occupied or intended to be occupied by a street, crosswalk, railroad, utility line or other special purpose and held exclusive from abutting properties.

Septic Tank: A tank used in combination with leaching fields or trenches in which sewage is purified by bacterial action. It is distinct from a cesspool which retains solids and must be periodically pumped out.

Service Station: A building or a lot where gasoline, oil, greases, and accessories are dispensed to the motor vehicle trade.

Setback Line: A line specifically established upon a plat or established by the zoning ordinance which identifies an area into which no part of a building shall project except as

provided by these regulations. A line measured parallel to the front property line (right-of-way) in front of which no structure shall be erected.

Shopping Center: A group of commercial establishments planned, developed and managed as a unit, with off-street parking on the property.

Sewage System: A facility designed for the collection, removal, treatment and disposal of waterborne sewage generated within a given service area.

Sign: A structure that is arranged, intended, designed or used as an advertisement, announcement or direction; and includes a sign, sign screen, billboard, poster panel and advertising devices of every kind which are displayed out-of-doors.

Sign Area: The surface area of a sign shall be computed as including the entire area within a regular geometric form or combination of forms comprising the total display area of the sign. When calculating sign area, only one side of a double-faced sign shall be considered.

Site-Specific Vesting Plan: A site-specific vesting plan consists of a plan submitted to the Town in which the applicant requests vesting pursuant to this ordinance and in accordance with the required procedure for approval, describing with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property.

Special Use: A use that may locate in certain zoning districts provided it will not be detrimental to the public health and general welfare and will not of itself impair the integrity and character of the district as determined by the Councilmen.

Special use permit: Means the official document or permit by which an applicant is allowed to file for a building permit to construct and use a facility or complex as granted or issued by the town.

Stable, Private: A stable with a capacity of not more than one (1) horse for 3,500 square feet of lot area whereon such stables are located and where such horses are owned by the owners or occupants of the premises and are not kept for remuneration of any kind.

Stable, Public: Any stable other than a private stable.

Stealth or camouflage siting technique: Means a design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean the least visually and physically intrusive facility and complex that is not technologically or commercially impracticable under the facts and circumstances. Stealth techniques include, but are not limited to the use of smaller antennas and camouflage techniques where the facility is disguised to make it

less visually obtrusive and not recognizable to the average person as a wireless facility or complex.

State: Means the State of North Carolina.

Story: That portion of a building included between the surface of any floor and the surface of the next floor above it, or if there is not floor above it, then the space between such floor and the ceiling above it.

Street: A thoroughfare which affords principal access to abutting property.

Structure: Anything constructed or erected, the use of which requires location upon the land, or attachment to something having a permanent location on the land.

Structural Alterations: Any change except for repair or replacement in the supporting members of a building, including bearing walls, columns, beams and girders.

Structural capability or structural capacity: Means, notwithstanding anything to the contrary in any other standard, code, regulation or law, up to and not exceeding a literal 100 percent of the designed loading and stress capability of the support structure.

Substantial modification: Means a change or modification that:

- (1) Increases the existing vertical height of the structure by the greater of (a) more than ten percent; or (b) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet; or
- (2) Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance; or
- (3) That increases the square footage of the existing equipment compound by more than 2,500 square feet.

Telecommunications: Means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems. **Definitions within this section apply only to Article X.**

Telecommunications site see definition for *wireless telecommunications facilities*.

Telecommunications structure: means a structure used to support equipment used to provide wireless communications.

Wireless telecommunications facility (WTF) or facility or complex: Means and includes a "telecommunications site" and "personal wireless facility site." It involves a specific location at which a structure that is designed, or intended to be used to house or accommodate antennas or other transmitting or receiving equipment is located. This includes without limit, towers, and support structures of all types and kinds including, but not limited to, buildings, church steeples, silos, water towers, signs or any other structure that is used or is proposed to be used as a support structure for antennas or the functional equivalent of such. It expressly includes all related and ancillary facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets and other structures associated with the complex used to provide, though not limited to, radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

Temporary. Means not permanent in relation to all aspects and components of this article, something intended to, and that does, exist for fewer than 90 days.

Town: Means the Town of East Arcadia, North Carolina.

Tower: Means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.

Trailer Camp: Any lot or parcel of land set aside and offered by any person to the transient public for the parking and accommodation of two (2) or more travel trailers which are to be occupied for sleeping or eating.

Travel Trailer: Any vehicle designed to be transported and intended for human occupancy as a dwelling for short periods of time, such vehicles containing limited or no kitchen or bathroom facilities.

Use, Permitted: A use which is permitted outright in a district for which a Zoning Permit may be issued by the Zoning Administrator.

Use, Special: A use which is permitted in a district under certain conditions only if a permit is expressly authorized by the Town Council.

Variance: A variance is a relaxation of the terms of the Zoning 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 action of the applicant a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of a structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by

variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district.

Yard: An open space on the same lot with a building, unoccupied and unobstructed from the ground upward, except by trees or shrubbery, or as otherwise provide herein.

Yard, Front: An open space across the full width of the lot measured between the building line of the main building and the street right-of-way line.

Yard, Rear: An open space extending across the full width of the lot and measured between the rear line of the lot and the rear line of the main building.

Yard, Side: An open space extending from the front building line of the main building to the rear building line of the main building.

Zoning Administrator: The Zoning Administrator is the official charged with handling the official duties of the Town relative to Zoning and Zoning Ordinance administration. The Zoning Administrator will make final decisions on proposals received from developers and citizens as to the consistency of such proposals with the regulations in this Ordinance. The Planning Board Secretary is the Zoning Administrator in the Town of East Arcadia.

Zoning Amendment: Changes in the zoning ordinance text or map, adopted by the Town Council upon recommendation by the Planning Board.

Article II. Establishment of Districts

A. Number and Titles

The Town of East Arcadia, North Carolina and its extra-territorial jurisdiction are hereby divided into the following districts:

- OAR - Open Area/Recreation District
- AF- Agriculture/Forestry District
- R-20 - Residential District (20,000 sq. ft.)
- R-15 - Residential District (15,000 sq. ft.)
- R-10 - Residential District (10,000 sq. ft.)
- MFR - Multiple-Family Residential District
- C - Commercial Districts 1, 2, 3
- LI - Light Industrial District
- HI - Heavy Industrial District
- PUD - Planned Unit Development
- MHO - Manufactured Home Overlay District
- MHP - Manufactured Home Park (Residential)

B. Zoning District Map

The boundaries of the zoning districts are shown upon the map accompanying this ordinance and made apart hereof, entitled "Official Zoning Districts, East Arcadia, North Carolina". The Zoning District Map and all the notations, references and all amendments thereto, and other information shown thereon is hereby made a part of this ordinance the same as if such information were all fully described and set out herein.

1. **Creation:** In the creation, by this ordinance of the respective zones, the Town Council has given due and careful consideration to the peculiar suitability of each and every zone for the particular regulations applied thereto, and the necessary, proper and comprehensive groupings and arrangements of the various uses and densities of population in accordance with a well considered land use plan for the development of the town.
2. **Zoning District Map Legitimacy and Location:** Regardless of the existence of purported copies of the Zoning District Map which may from time to time be made or published, the official Zoning District Map of the Town of East Arcadia, both current and prior adopted versions, shall be located in the office of the Town Clerk. The zoning map(s) may be in digital or paper format. The Planning Board Secretary is the Zoning Administrator in East Arcadia.

3. **Amendments to the Zoning District Map:** No changes of any nature shall be made to the Zoning District Map except in conformity with the procedure set forth in the Ordinance.

C. **Interpretation of District Boundaries**

The boundaries of each district which are indicated on the zoning map of the Town of East Arcadia, together with all explanatory matter thereon, are hereby adopted by reference and declaration to be a part of this ordinance.

Where uncertainty exists as to the boundaries of districts as shown on the zoning map, the following rules shall apply:

1. **Boundaries following center lines:** Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines.
2. **Boundaries following lot lines:** Boundaries indicated as approximately following plotted lot lines shall be construed as following such lot lines.
3. **Boundaries following town limits:** Boundaries indicated as approximately following town limits shall be construed as following town limits.
4. **Boundaries following shore lines:** Boundaries indicated as approximately following the center lines of streams, creeks, or other bodies of water shall be construed to follow such center lines.
5. **Boundaries parallel to center lines:** Where district boundaries are so indicated that they are approximately parallel to the center line of streets, alleys or highways, or the rights-of-way of the same, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the zoning map.
6. **Boundaries dividing lots:** Where a district boundary line divides a lot or tract in single ownership, the district requirements for the least restricted portion of such lot or tract shall be deemed to apply to the whole thereof, provided such extensions shall not include any part of a lot or tract more than fifty (50) feet beyond the district boundary line. The term "least restricted" shall refer to use restrictions and not to lot size.
7. **Cases of uncertainty in boundary decisions:** In the event that uncertainty exists in the interpretation of the district boundaries, the East Arcadia Zoning Administrator shall interpret the intent of the zoning map as to the location of such boundaries.

Article III. Regulations

A. Open Area/Recreation District, OAR
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1. **Purpose:** It is the purpose of this district to protect wetlands and prevent development in areas of potential flood hazard, where such development would be detrimental to both the natural and economic environment of the community. It is also the purpose of this district to provide both passive and active recreational opportunities to the public.
2. **Permitted Uses:** The following uses shall be permitted in OAR District subject to the various provisions of this article.

Accessory Uses to Permitted Uses (Cannot be occupied or rented, must meet the requirements of the district.)

Accessory buildings 10' X 12' or smaller may be placed 6' from the rear and side property line(s). Accessory buildings larger than 10' X 12' must be placed 15' from the rear and side property lines.

Amphitheaters (Provided there is no paving)

Camping and Picnic Areas (no paving, no permanent homes)

Historic Sites and Monuments

Manufactured Homes (Type A & B)

Modular Homes

Nature Exhibits

Parks (provided there is no paving)

Playgrounds

Fish Hatcheries and Fish Farms

3. **Special Uses:** The following uses may be permitted in an OAR District pursuant to Article IV Section III of the Town of East Arcadia Zoning Ordinance.

Golf Courses, Golf Driving Ranges

Private Clubs

4. **Lot, Yard and Height Requirements:**

Minimum Lot Size 20,000 sq. ft.

Front Yard 30 ft. (must not differ more than 10' from the average of adjacent buildings)

Side Yard 12 ft.

Rear Yard 30 ft.

Maximum Building Height 35 ft.

5. **Off Street Parking:** Not Applicable

6. **Signs:** Please refer to the appropriate section of the Town of East Arcadia sign ordinance.

B. Agriculture/Forestry District, AF

1. **Purpose:** It is the purpose of the AF (Agriculture/Forestry) District to preserve the rural and agricultural character of the land removed from readily available urban services.
2. **Permitted Uses:** The following uses shall be permitted in the AF District subject to the various provisions of this article.

Accessory Buildings to Permitted Uses (Cannot be occupied or rented, must meet the requirements of the district.) Accessory buildings 10' X 12' or smaller may be placed 6' from the rear and side property line. Accessory buildings larger than 10' X 12" may be placed 15' from the rear and side property lines.) Limit of 500 square feet.

Agriculture-Vegetative - (Refer to definition section)

Agriculture-Livestock - (Refer to definition section)

Wayside Stand (for the sale of agricultural products produced on the same parcel of land).

Forestry, production and harvesting

Greenhouses

Single Family Site Built Residential Units

Public Schools

Cemeteries

Correctional Institutions

Fair Grounds

Riding Stables

Fish Hatcheries, Fish Farms

Manufactured Homes (Type A & B)

Modular Homes

3. **Special Uses:** The following uses may be permitted in an AF District pursuant to Article IV Section III of the Town of East Arcadia Zoning Ordinance.

Churches

Hunting Lodge

Golf Courses, Golf Driving Ranges, Miniature Golf

Home Occupations (See Definitions for restrictions)

Public Buildings

Public/Private Utilities

Private Schools

Wireless Communication Towers

4. **Lot, Yard, and Height Requirements:**

Minimum Lot Size	20,000 sq. ft.
Front Yard	30 ft. (must not differ more than 10' from the average of adjacent buildings)
Side Yard	12 ft.
Rear Yard	30 ft.
Maximum Building Height	35 ft.

5. **Off Street Parking:** Please refer to Article VI of this text.

6. **Signs:** Please refer to the appropriate section of the Town of East Arcadia sign ordinance.

C. Light Density Residential District, R20

1. **Purpose:** It is the purpose of the R-20 District to provide for light density residential development in areas without water and sewer services.

2. **Permitted Uses:** The following uses shall be permitted in the R20 District subject to the various provisions of this article.

Accessory Buildings to Permitted Uses (Cannot be occupied or rented, must meet the requirements of the district.) Accessory buildings 10' X 12' or smaller must be placed 6' from the rear and side property line. Accessory buildings larger than 10' X 12' must be placed 15' from the rear and side property lines. Limit of 500 square feet.

- Agriculture-Vegetative
- Parks and Playgrounds
- Single Family Site Built Residential Units
- Manufactured Homes (Type A & B)
- Modular Homes
- Home Occupations (See Definitions for restrictions)
- Greenhouses (accessory use only)

3. **Special Uses:** The following uses may be permitted in the R20 District pursuant to Article IV Section III of the Town of East Arcadia Zoning Ordinance.

- Churches
- Day Care Facilities
- Bed and Breakfast Establishments (See 7 below)
- Golf Courses
- Public Utilities
- Tennis Courts
- Private Swimming Pools
- Play field or Athletic Field
- Agriculture-Livestock

4. **Lot, Yard, and Height Requirements:**

Minimum Lot Size	20,000 sq. ft
Front Yard	50 ft. (must not differ more than 10' from the average of adjacent buildings)
Side Yard	12 ft.
Rear Yard	30 ft.
Maximum Building Height	35 ft.

5. **Off Street Parking:** Please refer to Article VI of this text.

6. **Signs:** Please refer to the appropriate section of the Town of East Arcadia sign ordinance.

7. **Standards for Bed and Breakfast Establishments:**

1. Dwelling cannot provide more than three bedrooms for overnight guests.
2. One parking space per guest room be provided off the street in addition to two off street parking spaces for the principal occupants. The parking area must not encroach beyond the side, and rear set back lines of the zoning district.
3. The use shall conform to the sign ordinance.
4. No pulsating, flashing, oscillating, or other types of attention getting devices shall be permitted.
5. No outdoor activities other than those associated with the normal activities of a single family home are permitted.
6. The use must annually meet the health standards of the State and County Government and proof presented to the Building Inspector and Zoning Administrator.
7. The dwelling must be the primary residence of the owner.
8. Must comply with all applicable state and local regulations.
9. Must obtain a permit to operate from the Town. The fee to be determined by the Town Council.
10. A buffer of vegetation which will grow to a height of four feet must surround the parking area on three sides.

D. Moderate/Light Density Residential District, R-15

1. **Purpose:** It is the purpose of the R-15 District to provide for light density residential development in areas with available urban services.
2. **Permitted Uses:** The following uses shall be permitted in the R-15 District subject to the various provisions of this article.

Accessory Building to Permitted Uses (Cannot be occupied or rented, must meet the requirements of the district.) Accessory buildings 10' X 12" or smaller must be placed at least 6' from the rear and side property line. Accessory buildings larger than 10' X 12" must be placed at least 15' from the rear and side property lines. Size limit of 400 square feet.

Agriculture-Vegetative
Single Family Site Built Residential Units
Manufactured Homes (Type A & B)
Modular Homes
Two Family Residential Units (duplexes)
Home Occupations (See Definitions for restrictions)
Greenhouses (accessory use only)

3. **Special Uses:** The following uses may be permitted in the R-15 District pursuant to Article IV Section III of the Town of East Arcadia Zoning Ordinance.

Day Care Facilities
Golf Courses
Public Utilities
Schools
Agriculture-Livestock
Churches
Parks and Playgrounds

4. **Lot, Yard, and Height Requirements:**

Minimum Lot Size	15,000 sq. ft.
Front Yard	30 ft. (must not differ more than 10' from the average of adjacent buildings)
Side Yard	12 ft.
Rear Yard	30 ft.
Maximum Building Height	35 ft.

5. **Off Street Parking:** Please refer to Article VI of this text.
6. **Signs:** Please refer to the appropriate section of the Town of East Arcadia sign ordinance.

E. Moderate Density Residential District, R-10

1. **Purpose:** It is the purpose of the R-10 District to provide for light density residential development in areas with available urban services.
2. **Permitted Uses:** The following uses shall be permitted in the R-10 District subject to the various provisions of this article.

Accessory Buildings to Permitted Uses (Cannot be occupied or rented, must meet the requirements of the district.) Accessory buildings 10' X 12' or smaller must be placed at least 6' from the rear and side property line. Accessory buildings larger than 10' X 12' must be placed 15' from the rear and side property lines. Size limit of 200 square feet.

Agriculture-Vegetative

Parks and Playgrounds

Single Family Site Built Residential Units

Manufactured Homes (Type A & B)

Modular Homes

Home Occupations (See Definitions for restrictions)

Greenhouses (accessory use only)

3. **Special Uses:** The following uses may be permitted in the R-10 District pursuant to Article IV Section III of the Town of East Arcadia Zoning Ordinance.

Churches

Parks and Playgrounds

Day Care Facilities

Public Buildings

Public Utilities

Schools

Agriculture-Livestock

4. **Lot, Yard, and Height Requirements:**

Minimum Lot Size 10,000 sq. ft.

Front Yard 30 ft. (must not differ more than 10' from the average of adjacent buildings)

Side Yard 8 ft.

Rear Yard 30 ft.

Maximum Building Height 35 ft.

5. **Off Street Parking:** Please refer to Addendum I to this text.

6. **Signs:** Please refer to the appropriate section of this ordinance.

F. Commercial District, 1, 2, 3

The purpose of establishing several commercial districts is to regulate the intensity of land use to protect residential neighborhoods and places of worship.

Factors to consider when assigning retail establishments to Commercial Districts 1, 2, or 3: Health, safety, general welfare of the community and noise, odors, gas, fumes, smoke, dust, vibration, height and brightness of lights, hours of operation, traffic, parking spaces, and fire hazards.

Commercial District 1: Light Commercial Uses

Commercial District 1 is established as a district in which the principle use of land is for retail trade purposes which cause the least concern about the factors listed above.

Permitted: Professional Offices: Medical, attorney, accounting, insurance, financial, government and agency offices.

Single family homes.

Manufactured Homes (Type A & B)

Modular Homes

Special: Child and Adult day care.
Churches
Wireless Communications Towers

Buffer: Property owner must construct Buffer Number 1 when located in Commercial District 1.

Commercial District 2: Medium Intensity Commercial Uses

Commercial District 2 is established as a district in which the principle use of land is for retail trade purposes which cause a minimal amount of concern about the factors listed above.

Permitted: Professional Offices: Medical, attorney, accounting, insurance, financial, government and agency offices.

Stand alone stores: notions, dry goods, shoes, clothing, jewelry, leather goods, gifts, books, flowers, cameras, toys, sporting goods, paint, pets, hobby and craft goods, drugs, magazines, candy, wallpaper, furniture, appliances, upholstery, antiques, stationery, bicycles, shoe repair, dry cleaning, banks, barber and beauty shops.

Single family homes.

Child and Adult day care.

Churches

Manufactured Homes (Type A & B)

Modular Homes

Special: Wireless Communications Tower

Buffer: Buffer Number 2 when Commercial District 2 use is adjacent to a house(s) or residential district.

Commercial District 3: Heavy Commercial Uses

Commercial District 3 is established as a district in which the principle use of land is for retail trade purposes which cause the most concern about the factors listed above.

Permitted: Professional Offices: Medical, attorney, accounting, insurance, financial, government and agency offices.

Standalone stores: notions, dry goods, shoes, clothing, jewelry, leather goods, gifts, books, flowers, cameras, toys, sporting goods, paint, pets, hobby and craft goods, drugs, magazines, candy, wallpaper, furniture, appliances, upholstery, antiques, stationery, bicycles, shoe repair, dry cleaning, banks, barber and beauty shops, groceries, musical instruments, feed and seed.

Single Site Built Homes.

Manufactured Homes (Type A & B)

Modular Homes

Child and Adult day care.

Churches

Dealerships/sales: auto, boats, farm machinery, motorcycle, electrical, and plumbing.

Bus station

Cab stands

Parking lots

ABC store

Hotel/motel

Theater

Bowling alley

Arcade

Laundry

Grocery store

Fast food restaurants

Restaurants (sit down, not fast food)

Service stations/garages

Shopping center

Cafeterias

Funeral home

Convenience market

Special: Wireless Communication Towers

Buffer: Buffer Number 2 when Commercial District III use is adjacent to a house(s) or residential district.

Additional Commercial District 1, 2, 3 Requirements:

1. All of the Commercial District 1 uses will be permitted in District 2 and the District 1 and 2 uses will be permitted in District 3.
2. Single family homes will be permitted in all commercial districts. All building permits for homes located in a commercial district must include a statement that the property is located in a commercial district.
3. An opaque buffer will be constructed around all four sides of trash receptacles located in Commercial Districts 1, 2, and 3. Acceptable material for a buffer placed around trash receptacles: solid wooden fence, metal fence with vinyl slats woven through the metal mesh or other material approved by the Town Council.
4. Lighting: The lighting in Commercial District 1, 2, and 3 shall be as follows:

The lighting must be designed in such a way that it will have minimal effect on adjoining property. The light rays shall shine only upon the premises and shall not spill over the property lines in any direction except by indirect reflection. This is to be accomplished by the proper selection, placement and height of the fixtures. The lighting plan will be recommended by the Planning Board. Any challenges by the applicant to the approved site plan will be reviewed and approved by the Board of Adjustment.

5. Buffer 1 and 2 Definitions and Requirements:

Buffer 1: Required Buffers: Where this district abuts a lot in a residential district or land occupied by a pre-existing residential use permitted by this ordinance, the Town Council shall require the owner of the business property to provide and maintain along the property lines, a continuous visual buffer. The buffer shall be a compact evergreen hedge or other type of evergreen foliage hedge or other type of evergreen foliage screening or shall be a combined fence and shrubbery screen, the latter facing the residential use. The visual buffer shall be subject to inspection by the building inspector or by a duly appointed inspection officer. The buffer must provide a complete visual block of commercial operations from the residential property. Minimum height for such buffer shall be five feet. The buffer must be approved by the Zoning Administrator before a certificate of occupancy is issued.

Buffer 2: Required Buffers: Where this district abuts a lot in a residential district or land occupied by any pre-existing residential use, the owner of the business property shall provide and maintain, for the life of the use along the property line, a continuous unbroken visual buffer. The buffer shall consist of one of the following:

- a. A compact evergreen hedge or other type of ever-green foliage screening. Minimum height for such buffer shall be five feet when planted. The buffer must provide a complete visual block of commercial operations from the residential property.

- b. A combined fence and shrubbery screen, the latter facing the residential use. Minimum height for such buffer shall be five feet high when planted. The buffer must provide a complete visual block of commercial operations from the residential property.
- c. An earthen berm a minimum of three feet high and a maximum of five feet high with a minimum of three feet high evergreen foliage (of a width determined suitable by local inspections officers, Building Inspector or Zoning Administrator) on the crest of the berm. In the event the berm and shrub option is used, the maximum slope on the berm sides shall be no greater than one foot to one foot.

The visual buffer shall be inspected by the building inspector or Zoning Administrator and approved before a certificate of occupancy is issued.

6. Lot, Yard, and Height Requirements:

Minimum Lot Size	10,000 sq. ft
Front Yard	30 ft.
Side Yard (where existing)	12 ft.*
Rear Yard	30 ft.
Maximum Building Height	3 stories

* Common walls shall be allowed.

7. **Off Street Parking:** Please refer to Article VI of this text.

8. **Signs:**

Please refer to the appropriate section of the Town of East Arcadia sign ordinance.

G. Light Industrial District, LI

- 1. **Purpose:** It is the purpose of the Light Industrial District to provide an area for industry that has no nuisance or pollution factors.
- 2. **Permitted Uses:** The following uses shall be permitted in the LI District subject to the provisions of this article.

Accessory Uses (Clearly incidental to a permitted use and which will not create a nuisance or hazard and cannot be occupied or rented, must meet the requirements of the district.) Accessory buildings must be placed at least 6' from the rear and

side property line. Accessory buildings larger than 10' X 12' must be placed at least 15' from the rear and side property lines.

Automobile Repair and Service

Bakery Plants

Carpenters and Cabinet Makers Shop

Electrical and Industrial Equipment (repair and services)

Off Street Parking Facilities

Public Buildings and Utilities

Storage Yard for Building Materials (or contractor's construction equipment)

Storage Facilities

Wholesale Businesses

Electronic Assembly, Storage, Repair

Bottling and Canning

Apparel, Drapery Manufacturing

Single Family Site Built Residential

Manufactured Homes (Type A & B)

Modular Homes

3. **Special Uses:** The following uses may be permitted pursuant to Article IV Section III of the Town of East Arcadia Zoning Ordinance.

Light Manufacturing not otherwise named herein, provided no operations are carried on or are likely to be carried on, which will be detrimental to the health, safety, or general welfare of the community.

Wireless Telecommunication Towers

4. **Lot, Yard, and Height Requirements:**

Minimum Lot Size	10,000 sq. ft.
Front Yard	30 ft.
Side Yard	15 ft.
Rear Yard	30 ft.
Maximum Building Height	3 stories (40 feet)

5. **Off Street Parking:** Please refer to Article VI of this text.
6. **Signs:** Please refer to the appropriate section of the Town of East Arcadia sign ordinance.

H. Heavy Industrial District, HI

1. **Purpose:** It is the purpose of the Heavy Industrial District to provide for the orderly separation of intense industrial uses from commercial and residential development. This separation will help to avoid having people unnecessarily exposed to nuisance and pollution factors.

2. **Permitted Uses:** Single Family Site Built Residential Homes
Manufactured Homes (Type A & B)
Modular Homes
3. **Special Uses:** The following uses may be permitted pursuant to Article IV Section III of the Town of East Arcadia Zoning Ordinance.

Accessory Building Uses: Clearly incidental to a special use, which will not create a hazard and cannot be occupied or rented and must meet the requirements of this district.

Agricultural Processing (fruit, tobacco, grains, vegetables)
Apparel and Drapery Manufacturing
Wholesale Businesses
Beverage Manufacturing
Boat Building and Repair
Brick and Clay Tile, Brick and Block Manufacturing
Communications, Electronic, Electrical Equipment Manufacturing
Heavy Equipment Manufacturing
Tools and Hardware Manufacturing
Electric Generating Plants
Engines and Turbine Manufacturing
Fabrication of Metal Products and Manufacturing
Farm Products Warehousing and Storage
Fertilizer Manufacturing
Rugs, Carpet Manufacturing
Gum and Wood Chemicals Manufacturing
House and Office Furnishings and Equipment Manufacturing
Ice and Cold Storage Plants
Kennels
Motor Freight Garaging and Equipment Maintenance
Petroleum Bulk Stations and Terminals - Wholesale
Sawmills and Planning Mills
Textile Mills
Wireless Telecommunication Towers

4. **Lot, Yard, and Height Requirements:**

Minimum Lot Size	10,000 sq. ft.
Front Yard	30 ft.
Side Yard	15 ft.
Rear Yard	30 ft.
Maximum Building Height	3 stories

5. **Off Street Parking:** Please refer to Article VI of this text.
6. **Signs:** Please refer to the appropriate section of the Town of East Arcadia sign ordinance.

I. **Planned Unit Development District, PUD**

1. **Purpose:** The PUD District is established for the purpose of permitting greater flexibility than would normally be allowed in a particular Residential District, in the area, yard, space, height and density requirements for construction and development of residential areas; and, therefore, to promote and encourage more creative and imaginative site planning and design than would be possible if such construction and development were in strict compliance; with the requirements for the particular district. It is further the purpose of this district to promote more economical and efficient use of land while providing a harmonious variety of housing choices, a higher level of urban amenities, and preservation of the natural scenic qualities of open space.
2. **Permitted Uses:** The PUD District may contain any use permitted in the OAR, AF, R-20, R-15, R-10, MFR, and C districts subject to location and construction being on strict compliance with required plans and permits.
3. **Special Uses:** None
4. **Lot, Yard, and Height Requirements:** See Design Standards
5. **Design Standards:**
 - a. **Area Requirements** - a gross land area of ten acres or more shall be required in all PUD DISTRICTS.
 - b. **Density Limitation** - The maximum residential density shall be 20 dwelling units for any given residential area. Subject to this limitation, average development density shall be chosen prior to application for rezoning and shall be designated on a Master Land Use Plan for the project.
 - c. **Setback and Height** - No building erected in any PUD DISTRICT shall exceed 35 feet in height. No building shall be erected, reconstructed, altered, or moved within thirty-five feet of the property line such building faces. No building shall encroach upon the right-of-way of a publicly maintained street, a proposed thoroughfare shown in an officially adopted thoroughfare plan, or a private vehicular or pedestrian way in common ownership.
 - d. **Building Separation** - Within a PUD DISTRICT the minimum required separation between buildings shall be determined by the relationship between the height of adjacent buildings and the horizontal distance between vertical projections of such adjacent buildings.
For the purpose of this section: a vertical projection is any part of any exterior wall of a principal or accessory building, extending outward from such exterior wall at an angle of less than 180 degrees, the horizontal

distance is equal to the distance, measured anywhere, between imaginary lines drawn perpendicular to the ground and tangent to the outermost points of vertical projections of adjacent buildings. The minimum required separation between adjacent buildings is set out in the following table.

**MINIMUM REQUIRED SEPARATION
BETWEEN ADJACENT BUILDINGS**

<u>Height of taller building</u>	<u>Minimum horizontal distance between vertical projections</u>
20 feet or less	16 feet
between 20.1 and 25.0 feet	25 feet
between 25.1 and 30.0 feet	30 feet
between 30.1 and 35.0 feet	40 feet

- e. **Open Space** - In any PUD DISTRICT, a minimum of twenty percent of the total land area shall be reserved as open space. Any area or segment of land less than eight feet in width may not be included in calculating the minimum open space reservation unless such land is clearly a part of an open space system, such as a pedestrian walkway.

A minimum of twenty-five percent of the required open space shall be developed for active recreational purposes, such as tennis courts, ball fields, or playgrounds.

Provisions for continuous maintenance of open space, specifically including that developed for active recreational purposes, shall be made by the developer either through proposed dedication to the Town of East Arcadia, if acceptable, or through the establishment of a private homeowners association.

- f. **Transitional Use Area** - In order to insure compatibility with adjoining land uses and districts, a transitional use area, fifty feet in depth, shall be established along with exterior property lines of any PUD DISTRICT. Where the exterior property lines of a PUD DISTRICT are adjacent to Residential uses, only residential uses may be permitted within the transitional use area. Where the exterior property lines of a PUD DISTRICT are adjacent to C, and LI DISTRICTS, the transitional use area shall be a buffer zone and meet the standards for buffer zones as defined by this ordinance.

- 6. **Off street Parking:** Please refer to Article VI of this text.
- 7. **Signs:** Please refer to the appropriate section of the Town of East Arcadia sign ordinance.

8. **Master Land Use Plan Requirement:**

- a. **Purpose** - The Master Land Use Plan (LUP, herein) is intended to be the primary supporting proof, and shall demonstrate, when considered in its entirety or by its separate components, (if the proposed PUD DISTRICT is established and developed), that the purposes of this Ordinance and the purposes of this Section are met.

- b. **Criteria for Review by the Planning Board and the Town Council** - In reviewing the LUP and making recommendations thereon, the Planning Board and Town Council shall consider and be guided by the following criteria:
 - 1) the compatibility of the proposed project with the surrounding districts and land uses;
 - 2) the effectiveness of the proposed project in providing more economical and efficient use of land;
 - 3) the effect of the proposed project on the ability of the town and county to provide public facilities or services;
 - 4) the effectiveness of the proposed project in providing and preserving open space, the scenic quality of the site, and recreational opportunities;
 - 5) the degree to which the project will provide a more desirable development and living environment than would be possible under conventional District requirements.

- c. **Contents** - In addition to the information required in the application for rezoning, the LUP shall include the following:
 - 1) a map, drawn to a scale no less than one inch to 40 feet, showing the approximate location, size, and arrangement of existing and proposed:
 - open space areas, active and passive recreational areas;
 - buffer zones and transitional use areas;
 - neighboring land uses and zoning districts;
 - systems and easements for water, sewers, and drainage;
 - streets, sidewalks, and parking lots;
 - vehicular and pedestrian circulation systems;
 - access for emergency vehicles and refuse collection equipment;
 - structures, building, roads, easements, and land uses;

- order of development of areas to be developed in sequential order;
 - vegetation;
 - nonresidential land uses, buildings, and structures;
 - all single and/or multi-family dwelling units.
- 2) a copy of any declarations to be recorded under the "Unit Ownership Act";
 - 3) any covenants creating a homeowner's association;
 - 4) plans for the construction and location of water distribution and sewage disposal systems and certification, as may be required, from appropriate governmental agencies that such plans comply with applicable Federal, State, County, or Town statutes and regulations.

9. **Procedural Requirements for Establishment of PUD DISTRICTS and Development of PUD Projects:**

a. **Approval of Master Land Use Plan (LUP) and Rezoning Application -** A PUD DISTRICT may be established only after amendment to the Official Zoning Map under the same procedural requirements and standards of review as any other rezoning application; provided, however, that the following additional standards and procedures shall apply to PUD DISTRICT applications:

- 1) Twelve (12) copies of a Master Land Use Plan, as described above shall be submitted to the Planning Board with the rezoning application;
- 2) The Planning Board, after review of the LUP and application, shall submit its recommendation to the Town Council;
- 3) The Town Council shall, after consideration of the application, the LUP, the recommendations of the Planning Board, and the criteria set out in the Sections above either approve or disapprove the plan and application.

b. **Approval of Site Plan and Issuance of Building Permits -** No construction, excavation, or clearing shall be commenced, or any Building Permit issued within any PUD DISTRICT which does not conform to an approved Site Plan. The procedures for approval of a Site Plan are as follows:

- 1) The Site Plan shall be submitted to the Planning Board for its review and recommendation within 90 days after the Town Council's approval of the LUP and amendment to the Official Zoning Map;

- 2) The Planning Board, after review of the Site Plan in accord with the purposes and standards shall submit its recommendation to the Town Council.
 - 3) The Town Council, after consideration of the Site Plan, the recommendations of the Planning Board, and the purposes and standards of this Ordinance shall either approve or disapprove the Site Plan.
- c. **Authority to Impose Conditions and Modify LUP-** In order to promote the purposes of this Ordinance and Section, the Town Council is authorized to impose such reasonable conditions, make reasonable modifications, or require additional information that it may reasonably need, prior to approval of any LUP or Site Plan.

Any conditions imposed by the Town Council shall be consented to in writing by the applicant, and landowner if separate entities, for an LUP approval to become effective.

10. **Site Plan:**

- a. **Purpose** - A Site Plan is intended to insure that a proposed PUD development is actually constructed and developed in accordance with the approved LUP.
- b. **Criteria for Review by Planning Board and Town Council-** In reviewing a Site Plan, the Planning Board and Town Council shall consider and be guided by the following criteria:
 - 1) The degree to which the proposed Site Plan complies with the LUP, including any conditions;
 - 2) Compliance of the proposed Site Plan with the requirements of Town ordinances.
- c. **Contents and Forms** - Site Plans, or any portion thereof, shall be;
 - 1) drawn to a scale no less than one inch equals 40 feet;
 - 2) prepared and certified by a registered architect, landscape architect, engineer, or land surveyor;
 - 3) drawn accurately enough to permit any point on the plan to be readily identified on the ground. Eight copies of a Site Plan shall

be submitted to the Planning Board, each of which shall show the following;

11. General Delivery:

- The boundary of the property by courses and distances, area, and present zoning of the tract.
- The names and abutting recorded subdivisions, and owner and present use of all abutting property.
- Widths and names of abutting streets and alleys.
- All dimensions, both linear and angular, for locating boundaries of the tract, lots, streets, alleys, public easements, and private easements.
- Date, north arrow, scale, number of sheets.
- Name and address of the owner or owners of the tract and the name of the applicant.
- All building restriction lines, highway setback lines, easements, covenants, reservations, and rights-of-way.
- Existing topography with a maximum of two-foot contour intervals.
- Soil types and geology of the site.
- Name, address, signature, and registration number of the professional preparing the plan.

12. Existing Improvements and Features:

- Sidewalks, streets, alleys, and easements.
- Buildings and structures.
- Driveways, entrances, exits, parking areas, and loading spaces.
- Sanitary sewer systems.
- Water mains and fire hydrants.
- Gas, power, cable TV and telephone lines.
- Recreation areas.

- Storm drainage systems to include natural and artificial water courses.
- Limits of flood plains.

13. **Proposed Improvements:**

- All proposed streets and alleys and the boundaries of all other portions intended to be dedicated to public use.
- Buildings and structures to include:
 - a. distance between buildings (to scale)
 - b. number of stories
 - c. number of dwelling units
 - d. height of buildings
- Driveways, entrances, exits, parking areas, and loading spaces including the total number of parking and loading spaces.
- Sanitary sewer systems.
- Water mains and fire hydrants.
- Gas, power, cable TV, and telephone lines.
- Landscaping.
- Recreation and open space areas.
- Plans for collecting and depositing storm water and the method of treatment of natural and artificial water courses including the delineation of any proposed limits of flood plains.
- Proposed grading schedule, including time of the year when grading will be in progress.
- Finish grading with a maximum of two-foot contour intervals.
- Location of refuse disposal facilities and type.

14. **Required Improvements:**

- Designation of pedestrian walkways.
- Construction of vehicular traffic lanes or driveways which will permit vehicular travel on the site and to and from adjacent parking areas and adjacent property.

- Connection wherever possible of all walkways, travel lanes, and driveways with similar facilities in adjacent developments.
- Screening, fences, wall, curbs and gutters, buffer zones, as required by the Town or by the State Highway Commission.
- Easements of rights-of-way for all facilities to be publicly maintained, provided that each easement shall be clearly defined for the intended purpose.
- Extension or construction of service roads and access thereto on site bordering a state primary highway.
- Dedication or reservation of land for streets and service roads and the construction thereon.

<p>J. Manufactured Home Overlay District (MHO District)</p>
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1. **Purpose:** It is the purpose of this district to permit alternative housing arrangements for the citizens of the Town of East Arcadia Zoning Jurisdiction that are, in most cases, more affordable than conventional single family housing. Such housing, commonly referred to as mobile homes or manufactured housing may be permitted in "overlay districts" provided that the following regulations are followed:
2. **Permitted Uses:** Only Class A and Class B Manufactured homes are permitted. Class A and Class B as defined in this ordinance.
3. **Special Uses:** None
4. **Lot, Yard, and Height Requirements:** All uses including Overlay District uses must comply with the restrictions of the district.
5. **Off Street Parking:** All uses must comply with regular district requirements. Refer to Article VI of this text.
6. **Signs:** All Signs must comply with regular district requirements. Refer to the appropriate section of the Town of East Arcadia sign ordinance.
7. **Special Requirements:**
 - a. All manufactured homes must meet the requirements of the Minimum North Carolina State Standards for Manufactured Housing.

- b. Structures must have wheels, axles, and moving hitch removed and structures placed on a permanent foundation.
- c. Steps, porches, decks, roof lines, etc. must be in general conformance with surrounding property.
- d. The structure must be secured to meet specified local wind conditions.
- e. All means of ingress and egress must be designed and constructed to meet state and local requirements.
- f. Structures must be underpinned before issuance of certificate of occupancy.
- g. Mobile Homes will be underpinned with either vinyl or masonry (brick or block) material.
- h. The front door of the manufactured home must face the street.
- i. Above conditions must be met before a certificate of occupancy will be issued.

<p>K. Manufactured Home Park (Residential) MHP</p>

Manufactured home park regulations are established to encourage well planned, attractive land development in the Town of East Arcadia by providing fair standards and beneficial requirements for the siting, operation, and maintenance of manufactured homes.

1. Application to construct a manufactured home park

- (a) **Application:** Prior to the construction of a manufactured home park, the builder shall make application to the Zoning Administrator for a permit to construct such a park. The application shall include a plan of the proposed park, which shall be reviewed by the Planning Board for compliance with the requirements of this Ordinance before making a written recommendation to the Town Council.
- (b) **Required Information:** The following information shall be submitted with the application for a permit to construct a manufactured home park:
 - 1) A complete site plan of the park, showing streets, driveways, walkways, recreation areas, manufactured home spaces, vehicular parking spaces, buildings, street lighting, and the location and types of screening, fences, hedges, or buffers.
 - 2) Plans of proposed layouts and connections for sewers, water, storm drainage, and other utilities.

- 3) Where public water or public sewage is not available, a written statement from the Columbus County Health Department indicating that the park has sufficient land area and adequate soil conditions to accommodate the proposed water supply and sewage disposal systems.
- 4) The name of the park, names and addresses of the owner or owners, and the designer of the park.
- 5) A vicinity map showing the location of the manufactured home park in relation to other existing land uses within the general area.

2. **Manufactured home park site requirements**

- a) **Manufactured home park site:** All manufactured home parks shall be located on a site of not less than four (4) acres.
- b) **Manufactured home space:** The minimum manufactured home space in a manufactured home park shall be 4,000 square feet. Manufactured homes shall be placed on these spaces so that there shall be at least twenty (20) feet side clearance and twenty (20) feet end clearance between units. Furthermore, no manufactured home, trailer, or building used in conjunction with a manufactured home park shall be located closer than twenty-five (25) feet to any adjoining property line. Not more than one manufactured home per lot is allowed.
- c) **Access:** All manufactured home spaces shall abut upon a driveway of not less than forty (40) feet in right-of-way width. Such driveways shall have unobstructed access to a public street or highway. All driveways shall be hard surfaces and the minimum width of such driveways shall be well marked and lighted in the manufactured home parks. All manufactured home lots must enter and exit the park through the use of the interior road network of the park; no direct access to public roads from a lot shall be allowed.
- d) **Off-street parking:** At least two (2) off-street parking spaces shall be constructed and maintained for each manufactured home space and shall be located so as not to interfere with the movement of vehicles on streets or access drives. Each parking space shall be at least ten (10) feet by twenty (20) feet in dimensions and may be included within the 4,000 square feet required for each space.
- e) **Recreation space:** At least two hundred (200) square feet of usable land per manufactured home space shall be reserved by the manufactured home park owner for play or recreation usage and aggregated in suitable locations.

- f) **Curtaining:** All manufactured homes shall be curtained around their base and this shall extend around their entire circumference. This curtain wall shall be either masonry or vinyl siding.

3. Utility and garbage disposal requirements

- a) **Water supply:** Every manufactured home shall be provided with a supply of water for domestic purposes from a source approved by the Columbus County Health Department.
- b) **Sewage disposal:** Every manufactured home shall be provided with an adequate sewage disposal system by connection to a public sewage system or a septic tank system constructed in compliance with State regulations and approved by the Columbus County Health Department.
- c) **Garbage disposal:** All garbage and refuse in every manufactured home park, after removal from the manufactured home, shall be stored in suitable watertight and flytight metal or heavy duty plastic receptacles which shall be covered with fitted lids and enclosed in an animal proof rack. The manufactured home park owners or operators shall be responsible for the sanitary disposal of all refuse.
- d) **Buffer zone:** An evergreen vegetation and fence buffer at least six (6) feet high and three (3) feet wide shall be constructed and maintained around the entire perimeter of the manufactured home park with the exception of the points of ingress and egress.

Article IV. Administration

I. Generally:

A. Development approvals and determinations:

- 1. **Development Approvals:** To the extent consistent with the scope of regulatory authority granted by General Statute and local ordinance, no person shall commence or proceed with development without first securing any required development approval from the Town. A development approval shall be in writing and shall be conditional on compliance with all applicable State and local laws. The development approval may be issued in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.
- 2. **Determinations and Notice of Determinations:** The Zoning Administrator shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice

shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

3. **Duration of Development Approval:** Unless a different period is specified by the Code of Ordinances, including for a development agreement, a development approval expires one year after the date of issuance if the work authorized by the development approval has not been substantially commenced. Nothing in this subsection limits any vested rights secured under GS 160D-108 or GS 160D-108.1.
4. **Changes:** After a development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval of proposed changes or deviations has been obtained. The Town shall follow the same development review and approval process required for issuance of the development approval in the review and approval of any major modification of that approval.
5. **Inspections:** Administrative staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the Town at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.
6. **Revocation of Development Approvals:** In addition to initiation of enforcement actions under GS 160D-404, development approvals may be revoked by the Town issuing the development approval by notifying the holder in writing stating the reason for the revocation. The Town shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the Town for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to GS 160D-405. If an appeal is filed regarding a development regulation adopted by a Town pursuant to this Chapter, the provisions of GS 160D-405(e) regarding stays apply.
7. Development approvals shall run with the land.

B. Enforcement:

The Zoning Administrator is hereby authorized, and it shall be his or her duty to enforce the provisions of this ordinance. The Zoning Administrator is the Planning Board

Secretary. Appeal from the decision of the Zoning Administrator may be made to the Board of Adjustment.

1. **Notices of Violation:** When the Zoning Administrator determines work or activity has been undertaken in violation of a local development regulation or any State law delegated to the Town for enforcement purposes in lieu of the State or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the Town that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by GS 160D-1123 or GS 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to GS 160D-405.
2. **Stop Work Orders:** Whenever any work or activity subject to regulation pursuant to local development regulation or any State law delegated to the Town for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the Town that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by GS 160D-1112 and GS 160D-1208, a stop work order may be appealed pursuant to GS 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.
3. **Remedies:**
 - a. The Town's development regulations may be enforced by any remedy provided by GS 160A-175 or GS 153A-123. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of this Chapter or of any development regulation or other regulation made under authority of GS 160D, the Town, in addition to other remedies, may initiate any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.

- b. When a development regulation is to be applied or enforced in any area outside the planning and development regulation jurisdiction of the Town as set forth in Article 2 of GS 160D, the Town and the property owner shall certify that the application or enforcement of the Town's development regulation is not under coercion or otherwise based on representation by the Town that the Town's development approval would be withheld without the application or enforcement of the Town's development regulation outside the jurisdiction of the Town. The certification may be evidenced by a signed statement of the parties on any development approval.

II. Added Requirements: The following requirements qualify or supplement, as the case may be, the zone regulations or requirements appearing elsewhere in this ordinance:

- A. Public or semi-public buildings, hospitals, sanatoriums, schools and churches or temples, where permitted in a zone, may be erected to a height not exceeding 3 stories (40 feet).
- B. Chimneys, water tanks or towers, penthouses, scenery lofts, elevator bulkheads, stacks, ornamental towers or spires, wireless or broadcasting towers, or monuments, cupolas, domes, false mansards, parapet walls, similar structures, and necessary mechanical appurtenances may be erected to a height in accordance with existing or hereafter adopted ordinances.
- C. Every part of a required yard shall be open from its lowest point to the sky unobstructed.
- D. There shall be erected only one principle building and its accessory buildings on one lot except in the following:
 - 1. Any bona-fide farm
 - 2. Any existing lot presently zoned Agriculture/Forestry (AF).
- E. No building, structure or use of land other than agriculture purposes shall be established on a lot which does not abut a dedicated public street or which has a dedicated easement for ingress and egress.

III. Special Uses

A. Purpose:

The development and execution of this ordinance is based upon the division of the community into districts within which districts the use of land and buildings and structures in relation to the land, are substantially uniform. It is recognized, however, that there are certain uses which, because of their unique characteristics cannot be properly classified in any particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land and

of the public need for the particular use in the particular location. Such special uses fall into two (2) categories:

1. Uses publicly operated or traditionally affected with a public interest.
2. Uses entirely private in character, but of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.

B. Initiation of Special Uses

Any person having a freehold interest in land, or a possessory interest entitled to exclusive possession, or a contractual interest which may become a freehold interest or an exclusive possessory interest, and which is specifically enforceable, may file an application to use such land for one or more of the special uses provided for in this Ordinance in the zoning district in which land is located.

C. Application for Special Use:

An application for a special use shall be filed with the Zoning Administrator on a form prescribed by the Zoning Administrator. The application shall be accompanied by such plans and/or data prescribed by the Town and shall include a statement in writing by the applicant and adequate evidence showing that the proposed special use will conform to the standards set forth below hereinafter. Such application may be forwarded from the Zoning Administrator to the Planning Board with a request for review of said application. Pursuant to GS 160D-301(b)(6), no part of the Planning Board's deliberation may be used as a basis for decision. The Town Council shall hold an evidentiary hearing to make a decision regarding the special use permit application.

D. Hearing on Application:

Prior to making a decision on an application for a special use permit, the Town Council shall hold at least one evidentiary hearing on the proposed special use, following the notice and procedural requirements found in Article IV Sections V.D. and V.E. of the Town of East Arcadia Zoning Ordinance.

E. Authorization:

For each application for a special use, the Planning Board may report to the Council its findings and recommendations, including the stipulations of additional conditions and guarantees that such conditions will be complied with when they are deemed necessary for the protection of the public interest. Pursuant to GS 160D-301(b)(6), no part of the Planning Board's deliberation may be used as a basis for decision.

F. Standards:

No special use shall be approved by the Town Council unless such Board shall find:

1. That the establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
2. That the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
3. That the establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
4. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.
5. That adequate utilities, access roads, drainage and/or necessary facilities have been or are being provided.
6. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets, and
7. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by a variance approved under the requirements of this ordinance.

G. Conditions and Guarantees:

Prior to the granting of any special use, the Town Council may stipulate such conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the special use as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified above. In all cases in which special uses are granted, the Town Council shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with.

Pursuant to GS 160D-705(c), no conditions shall be imposed that the local government does not otherwise have statutory authority to impose.

Any conditions imposed by the Town Council shall be consented to in writing by the applicant, and landowner if separate entities, for a special use permit approval to become effective.

IV. Non-Conforming Uses

- A. The lawful use of a "building" existing at the time of the passage of this ordinance shall not be affected by this ordinance, although such use does not conform to the provisions of this ordinance; and such use may be extended throughout the building, provided no structural alterations, except those required by law or ordinance or ordered by an authorized officer to secure the safety of the building, are made therein, but no such use shall be extended to occupy any land outside such building. If such nonconforming building is removed or the nonconforming use of such building is discontinued for a continuous period of not less than one hundred and eighty (180) days, every subsequent use of such premises shall be in conformity with the provisions of this ordinance.
- B. The lawful use of "land" existing at the time of the passage of this ordinance, although such use does not conform to the provisions of this ordinance, shall not be affected by this ordinance; provided, however, that no such nonconforming use shall be enlarged or increased, nor shall any nonconforming use be extended to occupy a greater area of land than that occupied by such use at the time of the passage of this ordinance. If such non-conforming use is discontinued for a continuous period of not less than one hundred and eighty (180) days, any future use of said land shall be in conformity with the provisions of this ordinance.
- C. A non-conforming use may be changed to a conforming use. Thereafter, the property may not revert to a non-conforming use.
- D. **Minimum Single Lot Requirements:** Where the owner of a lot at the time of the adoption of this ordinance or his successor in title thereto does not own sufficient land to enable him to conform to the dimensional requirements of this ordinance, such **lot** may be used as a **building** site for a **single-family** residence in a district in which residences are permitted; provided, that the yard dimensions and requirements other than those applying to area or width or both shall not be reduced below the minimum specified in this ordinance and further provided if a septic tank is used that the Columbus County Health Department has approved the dimensional requirements reduction. Variance from dimensional requirements other than those related to lot width and area shall only be granted by the Board of Adjustment if, when applicable, the Columbus County Health Department submits a letter of approval.
- E. Any nonconforming building or any building containing a nonconforming use, which has been damaged by fire or other causes, may be reconstructed and used as

before if it be done within one (1) year of such damage, unless such building or structure has been declared by the Building Inspector to have been damaged to an extent exceeding sixty (60) percent of its appraised value at the time of destruction. If the physical structure of the building is damaged to a degree greater than sixty (60) percent, future use of the building and site must be in conformance with the zoning district regulations. The only exception to the 60 percent damage clause will be single family dwelling units on lots of record at the time of the adoption of this ordinance. Those structures may be replaced if damaged to any degree.

IV. Board of Adjustment

A Board of Adjustment is hereby established. In succeeding paragraphs the word "Board" shall mean the Board of Adjustment. Said Board shall consist of five (5) regular members and two (2) alternate members. Appointments shall be made in the following manner:

a) **Regular Members:**

Five (5) regular members shall be appointed by the Town Council from within the Town's corporate limits. All members shall be entitled to vote on all issues regardless of area of appointment. Initial appointments for regular members shall be as follows: Two (2) members shall be appointed for a term of three (3) years, two (2) members shall be appointed for a term of two (2) years, and one (1) member shall be appointed for a period of one (1) year. All appointments to fill vacancies shall be for the unexpired term.

b) **Alternate Members:**

Two (2) alternate members shall be appointed from within the Town's corporate limits. When called to serve in the place of a regular member, an alternate member shall have all the rights and responsibilities of the regular member, including a right to vote on all issues brought before the Board. Initial appointments for alternate members shall be as follows: One (1) member shall be appointed for a term of three (3) years, one (1) member shall be appointed for a term of two (2) years. All subsequent appointments shall be for a period of three (3) years. All appointments to fill vacancies shall be for the unexpired term.

c) **A Quorum:** A quorum shall consist of four (4) members.

- A. All meetings of the Board shall be held at a regular place and be open to the public. The Board shall keep minutes of its proceedings in a file maintained for that purpose. The minutes shall show those members present, the nature of the issue, facts presented as evidence, findings of fact by the Board, and the decision of the Board (including a record by name of each member's vote). The minutes shall be considered public record. No action shall be taken on any matter unless a quorum is present.

C. The Board of Adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the Zoning Administrator. The majority vote of the Board shall be necessary to reverse any order, requirement, decision or determination of the Zoning Administrator to decide in favor of the applicant any matter which it is required to pass under the zoning ordinance or to effect any variation in such ordinance. No appeal shall be heard by the Board unless notice thereof is filed within thirty (30) days after the interested party or parties receive notice of the order, requirement, decision, or determination by the Building Inspector and/or Zoning Administrator. If the town provides notice of determination by mail, it shall be presumed to be received on the third business day after it is sent.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board that by reasons of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by restraining order which may be granted by the Board or by a court of record on application of notice to the officer from whom the appeal is taken and on due cause shown.

The official who made a decision, or their successor if they are no longer employed by the Town, shall appear as a witness at the appeal.

2. To permit a temporary building for business or industry in the residential zone, which is incidental to the residential development, such permit to be issued for a period of not more than one (1) year following the process for reviewing special uses found in Article IV Section III.
3. To permit a garage, other than a private garage, but for storage purposes only, as an accessory building to a hotel, hospital or similar institution in the residential zone where it is deemed necessary for the public convenience or welfare and where this can be done without substantially derogating from the intent and purposes of this ordinance following the process for reviewing special uses found in Article IV Section III.
4. To authorize in specific cases variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in undue hardship, and so that the spirit of this ordinance shall be observed and substantial justice done.

The concurring vote of four-fifths of Board members shall be necessary to grant a variance from the ordinance provisions.

No variance shall be granted unless the Board of Adjustment finds all four of the following conditions to exist:

- A. That there are special circumstances or conditions affecting said property such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of his land.
- B. That the variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
- C. That the circumstances giving rise to the need for the variance are peculiar to the parcel and are not generally characteristic of other parcels in the jurisdiction of this article.
- D. That the granting of the variance will not be detrimental to the public health, safety and welfare or injurious to other property in the territory in which said property is situated.

In considering all proposed variations of this ordinance, the Board shall before making any finding in a specified case, first determine that the proposed variation will not constitute any change in the zones shown on the zoning map and will not impair an adequate supply of light and air to adjacent property, or materially increase the public danger of fire, and safety, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, morals, and general welfare.

In granting a variance the Board may attach thereto such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable in furtherance of the purposes of this ordinance.

Before a variance is granted, it shall be shown that special circumstances attach to the property which does not generally apply to other property in the neighborhood. A variance may be granted only when the practical difficulty of undue hardship complained of is due to the particular characteristics of the property and not to the general conditions of the neighborhood which may reflect an undue stringency of the ordinance itself. A hardship peculiar to the applicant, as distinguished from others affected by the general rule, must be shown. The fact that property may be utilized more profitably will not be considered adequate to justify the Board in granting a variance. (Economic circumstances do not constitute grounds for a variance.)

- D. Any person or persons, jointly or severally, aggrieved by any decisions of the Board, or any taxpayer, or any officer, department, board or bureau of the Town of East Arcadia may within thirty (30) days after the filing of the decision in the office of the Board, but not thereafter, present to a court of competent jurisdiction, a petition duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality, whereupon such decision of said Board shall be subject to review as provided by law.
- E. Procedure for Filing Applications for the Board of Adjustment:

The applicant must file his application for a hearing with the Zoning Administrator, who shall act as clerk for the Board in receiving this notice. All applications shall be made on the form furnished for that purpose, and all information required thereon shall be complete before an application may be considered as having been filed.

The applicant shall also provide sufficient #10 envelopes with postage, typed delivery address, and the Town's return mailing address to provide notice to adjoining property owners as required by ordinance.

E. Hearings:

1. Time: After an application is received, the Board Chairman shall schedule a time for the hearing. The hearing shall be held as soon as possible after the application is received but shall not be delayed more than thirty (30) days.
2. Notice: The board shall give notice of the hearing in a newspaper of general circulation by advertisement published at least ten (10) days before the date of the hearing. The Board shall cause to be posted notice of the hearing on the property in question at least ten (10) but not more than 25 days before the hearing. Within the same time period for posted notice, notice 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 separated by a street, railroad, or other transportation corridor. Such notice shall state the location of the building or lot, the general nature of the question involved in the case, and the time and place of the hearing. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement if one has been scheduled.
3. Conduct of the Hearing: The hearing shall be quasi-judicial in nature, pursuant to GS 160D-406. Any party may appear in person, by agent, or by attorney at the hearing. The order of business for each hearing shall be as follows: a) the chairman, or such person as he shall direct, shall give a preliminary statement of the case; b) the applicant shall present the evidence and arguments in support of his application; c) persons opposed to granting the application shall present evidence and arguments against the application; d) both sides shall be permitted to present rebuttals to opposing evidence and arguments; e) the chairman shall summarize the evidence that has been presented, giving the parties opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of such evidence as would be admissible in a court of law. All witnesses before the Board shall be placed under oath, and the opposing party may cross-examine them.

4. Rehearings: An application for a rehearing may be made in the same manner as an application for an original hearing. Evidence in support of the application shall initially be limited to what is necessary to enable the Board to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. The Board shall deny the application for rehearing if, from the record, it finds that there has been no substantial change in facts, evidence, or conditions. If the Board finds that a change has occurred, it shall thereupon treat the request in the same manner as any other application.
- F. Decisions: Decisions by the Board shall be made not later than thirty (30) days from the time of the hearing.
1. Form: The Board's final decision shall be shown in the record of the case as entered in the Board's minutes and signed by the Secretary/Clerk and the chairman on approval of the minutes by the Board. Such record shall show the reasons for the determinations, with a summary of the evidence introduced and the findings of fact made by the Board. When a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the variance was based and which the Board finds to exist. The record shall state in detail what, if any, conditions and safeguards the Board imposes in connection with granting of a variance. A decision on an appeal may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from. A separate record of the decision of each case shall be prepared, filed in the Town Clerk's Office, and furnished to the parties as specified in subsection 4.
 2. Expiration of Permits: Unless otherwise specified, any order or decision of the Board granting a variance shall expire if the applicant does not obtain a building permit or certificate of occupancy for such use within twelve (12) months from the date of the decision.
 3. Voting at Hearings: The vote of the majority of Board members shall be necessary to reverse any order, requirement, decision, or determination of the Building Inspector and/or Zoning Administrator, or to decide in favor of the applicant any matter on which the Board is required by ordinance to pass. The concurring vote of four-fifths of Board members shall be necessary to grant a variance from the ordinance provisions.

The Chairman shall rule on any objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal, inclusion or exclusion of administrative materials, or the standing of a party, and the Mayor's rulings may be appealed to the full Board.
 4. Notice and Public Record of Decisions: The Secretary/Clerk shall give written notice of the decision in the case to the appellant and/or the applicant and to every aggrieved party who has filed a written request for such notice with the Secretary/Clerk or the Chairman of the Board when the hearing is held. A copy

of the decision shall also be filed in the Town Clerk's office. The decision shall be a public record, available for inspection at all reasonable times.

VI. Certification of Occupancy

No land shall be used or occupied, except for agricultural purposes, and no building hereafter structurally altered or erected shall be used or changed in use until a certificate of occupancy shall have been issued by the Building Inspector stating that the building and/or the proposed use therefor complies with the provisions of this ordinance. A like certificate shall be issued for the purpose of maintaining, renewing, changing, or extending a nonconforming use. A certificate of occupancy, either for the whole or a part of a building shall be applied for coincident with the application for a building permit and shall be issued within 10 days after the erection or structural alterations of such building, or part, shall have been completed in conformity with the provisions of this ordinance. A record of all certificates shall be kept on file in the office of the Zoning Administrator and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building erected. No permit for excavation for, or erection of, any building or part of a building, or for repairs to, or alteration of, a building shall be issued until after a statement of its intended use has been filed by the applicant.

VII. Plats

Each application for a building permit shall, if required by the Town Council, be accompanied by a plat in duplicate, drawn to scale, showing accurate dimensions of the lot to be built upon, accurate dimensions of the building to be erected, the location on the lot, and such other information as may be necessary to provide for the enforcement of this ordinance. A careful record of such applications and plats shall be kept in the office of the Zoning Administrator.

VIII. Interpretation, Purpose and Conflict

In the interpretation and application of the provisions of this ordinance applicants shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity and general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any easements, covenants or other agreements between parties, provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings, or requires larger open spaces than are imposed or required by other ordinances, rules, regulations, or by easements, covenants or agreements, the provisions of this ordinance shall govern.

IX. Changes and Amendments

The Town Council may amend, supplement or change the text regulations and zoning map according to the following procedures.

A. Action by the Applicant

The following action shall be taken by the applicant:

1. **Initiation of amendments:** Proposed amendments may be initiated by the Town Council, Planning Board, Board of Adjustment, or by one or more interested parties.
2. **Application:** An applicant for any change or amendment shall contain a description and/or statement of the present and proposed zoning regulation or district boundary to be applied, and the names and addresses of the property owner. Such application shall be filed with the Zoning Administrator not later than ten (10) working days prior to the Planning Board meeting at which the application is to be considered.

No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the Town. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:

- A. By decreasing the development density of the land to be less dense than was allowed under its previous usage.
 - B. By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.
3. **Fee:** When a proposed amendment is initiated by individuals or parties other than the Town Council, Planning Board, or Board of Adjustment, a fee shall be paid to the Town of East Arcadia, North Carolina, for each application for an amendment to cover the costs of advertising and other administrative expenses involved.

B. Action by the Planning Board

The following action shall be taken by the Planning Board:

1. **Planning Board consideration:** The Planning Board shall consider and make recommendations to the Town Council concerning each proposed Zoning Amendment. The Planning Board may hold separate hearings or may sit concurrently with the public hearing held by the Town Council. Previously denied zoning amendments may be requested to be heard again only after six months has passed.

The Planning Board shall advise and comment on whether the proposed text amendment or map amendment is consistent with the adopted comprehensive plan and any other applicable officially adopted plans. The

Planning Board shall provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the land use plan shall not preclude consideration or approval of the proposed amendment by the Town Council.

If a zoning map amendment qualifies as a large-scale rezoning under GS 160D-602(b), the planning and zoning commission statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

C. **Action by the Town Council**

1. **Notice and public hearings:** No amendment shall be adopted by the Town Council until after public notice and hearing. Notice of such a public hearing shall be published once a week for two (2) successive calendar weeks in a local newspaper of general circulation in the municipality.

Previously denied zoning amendments may be requested to be heard again only after six months has passed.

The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

For map amendments, notice will also be made by posting the property concerned or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the local government shall post sufficient notices to provide reasonable notice to interested persons.

The Town shall also provide mailed notices to the owners of the affected and surrounding properties at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are "surrounding" even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing.

For map amendments proposing to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, the Town may utilize the notice requirements for large-scale rezonings listed in GS 160D-602(b).

2. **Town Council:** Before taking such lawful action as it may deem advisable, the Town Council shall consider the Planning Board's recommendation on each proposed Zoning Amendment. If no recommendation is received from the Planning Board within thirty (30) days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Town Council without a recommendation from the Board. The Town Council, at the close of public hearing, may defer taking lawful action on the proposed amendment until it has sufficient time to consider any new evidence or suggestions presented at the public hearing.

3. **Required Statements:** In deciding whether to approve or deny a proposed zoning or text amendment, the Town Council shall consider, and adopt a statement describing, whether the proposed amendment is consistent with the Land Use Plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Council meeting that at the time of action on the amendment the Council was aware of and considered the Planning Board's recommendations and any relevant portions of an adopted land use plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review.

If a zoning map amendment qualifies as a large-scale rezoning under GS 160D-602(b), the Town Council statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

For all zoning map amendments, the Town Council shall also consider, and adopt a statement explaining, why the proposed amendment is reasonable and in the public interest. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a large-scale rezoning under GS 160D-602(b), the Town Council statement on reasonableness may address the overall rezoning. The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

X. Validity

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Council hereby declares that it would have passed this ordinance and each section, subsection, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

XI. Building Permits Prior to Effective Date

No section of this ordinance shall in any way prohibit, restrict or affect in any manner or form any person, firm or corporation who has secured a building permit prior to the effective date of this ordinance.

XII. Penalty

Any person, firm or corporation who violates the provisions of this ordinance shall, upon conviction, be guilty of a misdemeanor and shall be fined not exceeding fifty dollars (\$50.00) or imprisoned not exceeding thirty (30) days. Each day that violation continues to exist shall be considered a separate offense.

XIII. Conflicts of Interest

1. **Town Council:** A Council member shall not vote on any legislative decision regarding a development regulation adopted pursuant to GS 160D where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Council member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
2. **Appointed Boards:** Members of appointed boards, such as the Planning Board, shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to GS 160D where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
3. **Administrative Staff:** No staff member shall make a final decision on an administrative decision required by GS 160D if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of

interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

4. **Quasi-Judicial Decisions:** A member of any board exercising quasi-judicial functions pursuant to this ordinance shall not participate in or vote on any special use permit, request for variance, or appeal 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.
5. **Resolution of Objection:** If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.
6. **Familial Relationship:** For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

Article V. Vested Rights and Permit Choice

A. Definitions

For the purposes of this ordinance, the words and phrases defined in this subsection shall have the meaning indicated unless otherwise specifically provided, or unless otherwise clearly required by the context:

1. **Multi-Phased Development Plan** - A development containing 25 acres or more that is submitted for development permit approval to occur in more than one phase and subject to a master development plan with committed elements showing the type and intensity of use of each phase.
2. **Owner** - Any owner of a legal or equitable interest in real property, including heirs, devisees, successors and assigns, having a vested estate, and the agent or personal representative of such owner. For purposes of this Article, owner shall include a person holding a valid and recorded option to purchase the real property with respect to which he seeks to establish a vested right.

3. Site specific vesting plan - A plan that has been submitted to the Town by an owner, describing with reasonable specificity the type and intensity of use for a specific parcel or parcels of property. At a minimum, such plan must include the approximate boundaries of the site; significant topographic and other natural features affecting development of the site; approximate location on the site of proposed buildings, structures and other improvements; approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type of and intensity of use for a specified parcel or parcels of property may constitute a site-specific vesting plan.

The process of applying for a site-specific vesting plan is distinct from any other development application discussed in the Town of East Arcadia Code of Ordinances.

4. Vested right - The right of an owner of property to undertake and complete the development and use of property under the terms and conditions of an approved site-specific vesting plan or multi-phased development plan.
5. Approval Authority - The approval authority for the establishment of vested rights shall be the East Arcadia Town Council.

B. Establishment of a Vested Right

1. A vested right shall be deemed established upon the valid approval or conditional approval, by the East Arcadia Town Council, as applicable, of a site-specific vesting plan following notice and public hearing as provided for by the law.
2. The Town Council may approve a site-specific vesting plan upon such terms and conditions as may be reasonably necessary to protect the public health, safety and welfare. Such conditional approval shall result in a vested right being established; provided, that failure to satisfy any of the terms and conditions so imposed will result in a forfeiture of vested rights.
3. A site-specific vesting plan shall be deemed approved as of the effective date of the Town Council's final action or adoption of an ordinance relating thereto.

C. Approval Procedures and Approval Authority

1. The application shall be considered and acted on by the East Arcadia Town Council following notice and a public hearing as provided in G.S. 160D-602, in accordance with the procedures set forth in Article IV, IX of this Chapter for consideration of zoning map amendment requests.

3. In order for a zoning vested right to be established upon approval of a site-specific development plan, the applicant must submit any application, supporting documentation, and fees established for the review of a site-specific vesting plan.
4. Any map, plat, site plan or other document submitted with a site-specific development plan application shall contain the following notation: "Approval of this plan established a zoning vested right under G.S. 160D-108. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

D. Duration of Vested Rights

1. A vested right established pursuant to this Article shall remain vested for a period of two years from the effective date thereof. A multi-phased development plan remains vested for seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.
2. Nothing in this Article shall be construed to exempt a site-specific vesting plan with respect to which a vested right has been established from subsequent review and approvals by the Town to ensure compliance with the terms and conditions of the original approval as provided for in the original approval or by applicable Town Code provisions.
3. The establishment of a vested right pursuant to this Article shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the Town, including but not limited to: building, fire, plumbing, electrical and mechanical codes. New and amended zoning regulations that would be applicable to certain property but for the establishment of a vested right with respect thereto shall become effective upon the expiration or termination of the vested right in accordance with this Article.
4. Upon issuance of a building permit, the expiration provisions of G.S. 160D-1111 and the revocation provisions of G.S. 160D-1115 shall apply, except that a building permit shall not expire or be revoked because of the running time while a zoning vested right under this section is outstanding.

E. Termination of Vested Rights

A zoning right that have been vested as provided in this Article shall terminate:

1. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
2. Upon written request or with the written consent of the affected landowner;

3. Upon findings by the Town Council, by ordinance after notice and a evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific vesting plan;
4. Upon payment of the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning marketing, legal, and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate as provided under G.S. 160D-106.
5. Upon findings by the Town Council, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site-specific vesting plan or multi-phased development plan; or
6. Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan, in which case the approval authority may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

F. Miscellaneous Provisions

1. A vested right, once established as provided for in this Article, precludes any zoning action by the Town which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific vesting plan.
2. Nothing in this Article shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.
3. A vested right is not a personal right but shall attach to and run with the land with respect to the affected property. All successors in title and interest of the owner who obtained the vested right shall be entitled to exercise the right.

G. Voluntary Annexation

A petition for annexation filed with the Town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under G.S. 160D-108.1.

H. Limitations

Nothing in this Article is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 160D-108 unless otherwise recognized by state statute or judicial precedent.

I. Permit Choice

1. If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, G.S. 143-755 applies. The Town shall not make an applicant wait for final action on a proposed change to the Code of Ordinances before proceeding if the applicant wishes to proceed under the rules as adopted at the time a complete application is received.
2. Where multiple local development permits are required to complete a development project, the development permit applicant may choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. For purposes of the vesting protections of this subsection, a sign permit is not an initial development permit.

J. Effective Date

1. This Article will be implemented upon the date of adoption of the East Arcadia Zoning Ordinance.
2. A violation of any provisions of this ordinance shall subject the offender to the penalties set forth in Article IV, Subsection XII, Penalty, of this zoning ordinance.
3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.
4. If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions hereof.
5. This ordinance shall be effective immediately upon its adoption.

Article VI. Off Street Parking Requirements

1. Off Street Parking:

The following off-street parking space shall be required and maintained:

<u>Uses</u>	<u>Required Off-Street Parking</u>
Residential use consisting of one or more dwelling units	Two (2) parking spaces on the same lot for each dwelling unit.
Auditorium or Theater	One (1) space for each four (4) seats in the largest assembly area.
Churches	One (1) parking space for each four (4) seats in the sanctuary
Clinics, Medical	Four (4) parking spaces for each doctor plus one (1) parking space for each employee.
Elementary Schools and Junior High School	Two (2) parking spaces for each classroom and two (2) spaces for each administrative office, plus ten (10) additional parking spaces.
General or Professional Offices	One (1) parking space for each Offices two hundred and fifty (250) square feet of gross floor space.
Golf Course, Par 3 or Miniature Golf Course	Three (3) spaces for each hole plus requirements for any other use associated with the golf course, restaurant, etc.
Home Occupations	Two (2) parking spaces in addition to the residential parking requirements.
Hotel	One (1) space for each guest room, suite, or unit plus one (1) space for each two employees.
Industrial or Manufacturing Establishment or Warehouse	One and one-half (1-1/2) spaces for each two (2) employees on shift of greatest employment, one (1) space for each managerial personnel, one (1) visitor parking space for each ten (10) managerial personnel and one (1) space for each vehicle used directly in conduct of the business.

Kindergarten or Nursery	One (1) space for each employee and four (4) spaces for drive-in off-street drop off and pickup.
Motel	One (1) space for each unit plus one (1) space for each two (2) employees plus requirements for any other use associated with the establishment.
Nursing Homes	One (1) parking space for each four (4) beds intended for patient use, plus one (1) per employee on largest shift.
Public or Private Clubs	One (1) parking space for each one hundred (100) square feet of gross floor space.
Restaurant or Place Dispensing Food, Drink or Refreshments	One (1) space for each three (3) seats plus one (1) space for each two (2) employees.
Religious Conferences or Assembly Uses	One (1) space for each five (5) seats plus one (1) space for each two (2) beds.
Restaurant, Drive-In	One (1) space for each three (3) seats plus a minimum of fifteen (15) spaces for drive-in service plus one (1) space for each two (2) employees.
Retail Use Not Otherwise Listed	One (1) parking space for each four hundred (400) square feet of gross floor area
Senior High School	One (1) parking space for each five (5) students for which the building was designed, two (2) parking spaces for each classroom and two (2) spaces for each administrative office, plus ten (10) additional parking spaces.

If the required parking space cannot be reasonably provided on the same lot or premises, such required space may be provided on another lot or premises separated therefrom by not more than five hundred (500) feet, provided, such lot is located in a zone in which such use is permitted.

In accordance with the foregoing provisions, off-street parking space shall be provided as set out above, and a required parking space shall be an area not less than nine (9) feet by twenty (20) feet.

Article VII. Handicapped Parking Requirements

In addition to the use requirements for off-street parking detailed in number 1 above, a minimum of one (1) parking space for the handicapped shall be provided at governmental buildings, public or quasi-public buildings, professional offices, clinics, short and long term care facilities, commercial facilities and any triplex residential units. An additional handicapped space shall be provided in parking areas for each additional twenty-five (25) spaces above the initial twenty-five (25) spaces. Each space must be a minimum of 12' 6" wide and be visibly marked.

The handicapped parking sign must meet State sign requirements. The State approved sign which can be purchased through safety equipment companies is designated R7-8 or R7-8a. As of January 1, 1991, the State of North Carolina requires each handicapped parking sign to include a statement indicating there is a \$100 penalty imposed on anyone violating handicapped parking laws.

(See illustrations on pages 55-A - 55-E)

Article VIII. Bylaws for the Operation of the Town Of East Arcadia Planning Board

I. General Rules:

The Town of East Arcadia Planning Board created by a local Ordinance dated December 19, 1994, shall be governed by that Ordinance, Chapter 160D of the General Statutes of North Carolina, and these Bylaws.

II. Members and Terms of Office:

The Planning Board shall consist of five members. All five members shall be citizens and residents of the Town of East Arcadia and shall be appointed by the Town Council. Two of the initial members shall be appointed for a term of one year; two, for two years; and one for three years. Their successors shall be appointed for terms of three years. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period for the unexpired term. Members may be removed for cause by the East Arcadia Town Council.

Members shall take an oath of office before starting their duties as required by G.S. 160A-61.

III. Officers and Duties:

- A. **Election of Officers:** The Planning Board shall organize and elect a chairman, vice-chairman, and secretary at the regular meeting in July. All officers may succeed themselves.
- B. **The Chairman:** The chairman shall preside at all meetings and public hearings of the Planning Board; shall decide on all matters of order and procedure; shall appoint any committees necessary to study specific matters; shall develop a meeting agenda with the assistance of the zoning administrator; and shall provide the East Arcadia Town Council with an annual report of Planning Board activities by May 30th of each year.
- C. **The Vice-Chairman:** In the absence of the chairman, the vice-chairman shall perform all duties assigned to the chairman.
- D. **The Secretary:** The secretary is charged with keeping the minutes of all regular meetings, special meetings, and public hearings called by the Planning Board. The secretary, after conferring with the chairman, shall send notices of all regular meetings, special meetings and public hearings at least four (4) days in advance of the meeting and shall notify members by phone at least twenty-four (24) hours in advance of special or emergency meetings. In addition, the secretary shall carry on routine correspondence and maintain the Planning Board's records and files. The Secretary to the Planning Board will be a member of the Planning Board.
- E. **The Building Inspector:** Inspections will be provided by Columbus County.

IV. Meetings:

- A. **Regular Meetings:** Regular meetings of the Planning Board shall be held on the third Tuesday of each month. Unless special notice is given by the chairman all meetings will begin at 7:00 p.m. and will be conducted at the Town Hall.
- B. **Special Meetings:** Special meetings of the Planning Board may be called at any time by the chairman or the vice-chairman acting in the absence of the chairman, provided that a minimum of twenty-four (24) hours notice is given to members.
- C. **Quorum:** A quorum shall consist of three (3) members.
- D. **Conduct of Meetings:** All meetings shall be open to the public and public comment or input shall be encouraged. The order of business at regular meetings shall be as follows:
1. Call to order
 2. Approval of minutes of the previous meeting
 3. Old business
 4. New business
 5. Committee reports
 6. Chairman's report
 7. Member comments
 8. Public comment
 9. Adjournment
- E. **Vote:** Except as otherwise specified herein, the vote of a majority of those members present shall be sufficient to decide matters coming before the Planning Board, provided a quorum is present. Members shall be required to vote unless excused by the chairman for reasons of financial or personal interest on the subject. An abstention shall constitute an affirmative vote. Proceeding shall be conducted according to Roberts Rules of Order.
- F. **Cancellation of Meetings:** Whenever there is no business for the Planning Board, the chairman may dispense with a regular meeting by giving notice to all members.
- G. **Attendance:** The Planning Board will request the Town Council to replace any member missing three (3) consecutive regular meetings or fifty percent (50%) or more of all meetings over a twelve (12) month period.
- H. **Agenda Preparation for Regular Meetings:** The agenda for regular meetings shall be prepared by the chairman with the assistance of the secretary. Only those items requested by planning board members or those items properly filed with the

Town according to its ordinances shall be placed on the agenda. The public and specific interests may appear for comment or input on any matter not on the agenda at any meeting regular or special, but no formal action will be taken on non-agenda items. This rule does not preclude public comment and input on regular agenda items that will be acted upon. The agenda shall be circulated to all members of the Planning Board, the Town Council, and the Town Clerk by the Thursday prior to the regular meeting date.

V. Records:

- A. **Public Record:** All records of the Planning Board shall be made available to the public in accordance with state statutes.

- B. **Retention:** The secretary shall maintain a file of all studies, plans, reports, recommendations, minutes, and correspondence of the Planning Board. The file should be maintained at the Town Hall. Requests for copies shall be forwarded to, or addressed to the Town Clerk.

Date Adopted Chairman

Secretary

Article IX. Town of East Arcadia Board of Adjustment

RULES OF PROCEDURE

I. General Rules:

The Zoning Board of Adjustment shall be governed by the terms of Chapter 160D, Article 7, Part 3 of the North Carolina General Statutes and by the Zoning Ordinance of the Town of East Arcadia. All members of the Board shall thoroughly familiarize themselves with these laws. The Board of Adjustment shall consist of five (5) members. (A quorum is four (4) members.)

II. Officers And Duties:

- A. CHAIRMAN:** The Chairman shall be a regular member and be elected by the regular members of the Board of Adjustment. The Chairman's term of office shall be one (1) year beginning on July 1st. The chairman shall be eligible for reappointment. The Chairman shall preside over the meetings and shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The Chairman shall appoint any committees found necessary to investigate any matter before the Board.
- B. VICE-CHAIRMAN:** The Vice-Chairman shall be a regular member elected by the regular members of the Board. The Vice-Chairman's term of office shall be for one (1) year beginning July 1st. The Vice-Chairman shall serve as Chairman in the absence of the Chairman and at such times shall have the same powers and duties as the Chairman. The Vice-Chairman shall be eligible for reappointment.
- C. SECRETARY/CLERK:** The Secretary/Clerk shall be a regular member elected by the regular members of the Board of Adjustment and shall serve for a period of one (1) year beginning January 1st. The Secretary/Clerk, subject to the direction of the Chairman and the Board, shall keep all records, conduct all correspondence of the Board, notify members of pending meetings and their agenda, and shall generally supervise the clerical work of the Board. The Secretary/Clerk shall keep the minutes of every Board meeting in a permanent volume. The minutes shall show those members present, the nature of the issue, facts presented as evidence, findings of fact by the Board, and the decision of the Board, including a record, by name, of each member's vote. The Secretary/Clerk shall be eligible for reappointment. (Arranging for all required notices and notifying interested parties of the Board's decisions, shall be the responsibility of the Zoning Administrator. The Zoning Administrator will prepare the minutes of the Board of Adjustment under the supervision of the Secretary/Clerk.)

III. Alternate Members:

Two alternate members will be appointed. Alternate members of the Board shall be notified of all meetings and hearings. They will be called on for active participation by the chairman only when one or more regular members are absent or are unable to participate in hearing a case because of financial or other interest. Regular members, on receiving notice of a special meeting that they cannot attend or on learning that they will be unable to participate in a particular case, shall give prompt notice to the Board Secretary/Clerk that they are unable to attend or to participate. On receiving such notice, the Secretary/Clerk shall, by the most expeditious means, notify an alternate member to attend. Assignments shall be rotated among the alternate members. At any meeting that they are called on to attend, alternate members shall have the same powers and duties as regular members. At no time shall more than five (5) members participate officially in any meeting or hearing.

IV. Rules of Conduct For Members:

- A. Members of the Board may be removed for cause, including violation of the rules stated below.
- B. Faithful attendance at all Board meetings and conscientious performance of the duties required of Board members shall be considered a prerequisite of continuing membership on the Board.
- C. No Board member shall take part in the hearing, consideration, or determination of any case where a conflict of interest is present, as identified in Article IV, Section XIII of the Town of East Arcadia Zoning Ordinance.
- D. No Board member shall discuss any case with any parties thereto before the public hearing on that case.
- E. No Board member shall vote on any matter that decides an application or appeal unless he has attended the evidentiary hearing on that application or appeal.
- F. Members of the Board shall not express individual opinions on the proper judgment of any case with any parties thereto before that case is determined. Violation of this rule shall be cause for dismissal from the Board.

V. Meetings:

- A. **TIME:** The Board of Adjustment shall not hold regularly scheduled meetings. Meetings will be called as needed and each member shall be given at least 48 hours notice prior to the meeting. The meeting shall be held as soon as possible after receiving application for appeal or hearing but shall not be delayed more than 30 days. Meetings shall be held at the Town Hall at a time and date designated by the Board.

- B. QUORUM:** A quorum shall consist of four (4) members.
- C. VOTING:** All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in Section IV. The required vote to decide appeals and applications shall be as provided in Section VI, D, 3, and shall not be reduced by any disqualification. In all other matters the vote of a majority of the members present and voting shall decide issues before the Board.
- D. CONDUCT OF MEETINGS:** All meetings shall be open to the public. The order of business at meetings shall be as follows: a) roll call; b) approval of minutes of the previous meetings; c) hearing of cases; d) reports of committees; e) unfinished business; f) consideration and determination of cases heard.

Article X. Wireless Communication Towers

I. Purpose. The purpose of this section is to:

- (a) Minimize the impacts of telecommunications facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;
- (b) Encourage the location and co-location of telecommunications facilities equipment on existing structures thereby minimizing new visual, aesthetic and public safety impacts, and to reduce the need for additional antenna - supporting structures;
- (c) Encourage coordination between suppliers of telecommunications services in the Town of East Arcadia and its planning jurisdiction;
- (d) Accommodate the growing demand for telecommunications services and the resulting need for telecommunications facilities;
- (e) Regulate in accordance with all applicable federal and state laws;
- (f) Establish review procedures to ensure that applications for telecommunications facilities are reviewed and acted upon within a reasonable period of time or any specific period of time required by law;
- (g) Protect the unique aesthetics of the Town while meeting the needs of its citizens and businesses to enjoy the benefits of wireless communications services; and
- (h) Encourage the use of existing buildings and structures as locations for telecommunications facilities infrastructure as a method to minimize the aesthetic impact of related infrastructure.

II. Siting Hierarchy Preferences.

The following list indicates the Town's preferences for facility locations, in descending order of preference:

- (a) Antennae Co-location on Existing Tower
- (b) Concealed (Stealth) Antennae on Existing Building/Structure
- (c) Building-Mounted Antennae and/or Tower
- (d) New Concealed (Stealth) Towers
- (e) New Freestanding Non-Stealth Towers (monopoles)
- (f) New Freestanding Non-Stealth Towers (lattice-type)

These preferences are intended as guidance for development of an application for telecommunications facilities.

III. Antenna Co-location on Existing Tower. Co-location and eligible facilities requests, as defined in G.S. 160D-933 or 47 U.S.C.1455, shall be processed in accordance with G.S. 160D-934, and/or federal laws and regulations as appropriate.

IV. Other Structure-Mounted Antennae

(a) Height

- 1. Structure-mounted antenna located outside of the right-of-way and not on an existing street light or utility pole shall have a maximum height as described below.

MAXIMUM STRUCTURE-MOUNTED ANTENNAE HEIGHT

(outside of right-of-way, not on street light or utility pole)

Structure Height	Maximum Tower Height (including antennae; measured from the height of the structure)
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Over one-hundred fifty (150) feet	Fifteen (15) percent of structure height
Seventy-five (75) to one hundred forty-nine (149) feet	Twenty-five (25) percent of structure height
Less than seventy-five (75) feet	Forty (40) percent of structure height

2. Structure-mounted antennae located in the right-of-way of any public road or street shall only be located on an existing utility or street light pole, which pole does not exceed a height of thirty-five (35) feet above the immediate surrounding ground.
 3. Antennae located on an existing utility or street light pole, whether inside or outside of the right-of-way, shall not be higher than ten (10) feet above the highest point of the pole.
- (b) The ground-mounted components of structure-mounted antennae, whether inside or outside of the right-of-way, shall be located flush to grade where necessary to avoid inconveniencing the public, or creating a hazard; and to the extent permitted above ground, shall otherwise be appropriately camouflaged to blend in with the surroundings, and non-reflective paints shall be used.

V. Concealed (Stealth) Antennae and Towers

(a) Design Considerations and Visibility

Concealed (stealth) towers shall be designed to complement the physical landscape in which they are intended to be located. Examples of stealth towers that may be compatible include but are not limited to faux pine trees, unipoles barb/slick sticks, bell towers, etc. New stealth towers shall be configured and located in a manner that shall minimize adverse effects including visual impacts on the landscape, horizon, and adjacent properties. New freestanding stealth towers shall be designed to be compatible with adjacent structures and landscapes with specific design considerations such as architectural designs, scale, color, and texture.

(b) Review and Decision Authority

The decision authority and review type for applications for new concealed (stealth) towers shall be by the Town Council through the issuance of a special use permit.

(c) Setbacks

Stealth towers must comply with the minimum building setback for the zoning district in which they are located and shall also be set back as follows:

1. From all existing dwellings in a non-residential zoning district by a minimum of the height of the proposed tower;
2. From the property line of non-residentially zoned property by a distance equal to one-half (1/2) the height of the proposed tower, but in no case less than the minimum required buffer width as required by the applicable zoning district.
3. From the property line of all residentially-zoned property that is used for residential purposes or is vacant by a minimum of the height of the proposed tower;
4. From the property line of all residentially-zoned property used for non-residential purposes by a distance equal to one-half (1/2) the height of the proposed tower, but in no case less than the minimum required buffer width as required by the applicable zoning district; and
5. From adjacent road right-of-way boundaries by the height of the proposed tower.

(d) Height

The maximum permitted height for stealth towers is one-hundred ninety-nine (199) feet.

(e) **Stealth Antennae**

Stealth antennae shall be allowed as a permitted use with a special use permit with supplemented regulation in all non-residential zoning districts. Stealth antennae shall be prohibited in all residential zoning districts. If permitted to be located in the right-of-way of any public road or street, stealth antennae shall be located on an existing utility or street light pole which does not exceed a height of thirty-five (35) feet above the immediate surrounding ground. Stealth antennae located on an existing utility or street light pole, whether inside or outside of the right-of-way, shall not be higher than ten (10) feet above the highest point of the pole. The ground-mounted components of stealth antennae, whether inside or outside of the right-of-way, shall be located flush to grade where necessary to avoid inconveniencing the public, or creating a hazard; and to the extent permitted aboveground, shall otherwise be appropriately camouflaged to blend in with the surroundings, and non-reflective paints shall be used.

VI. Other Freestanding Non-Stealth Towers

(a) **Review and Decision Authority**

In all zoning districts, a special use permit with supplemented regulation is required to erect any freestanding non-stealth tower.

(b) **Setbacks**

Freestanding non-stealth towers must comply with the minimum building setback for the zoning district in which they are located and shall also be set back as follows:

1. From all existing dwellings in a non-residential zoning district by a minimum of two-hundred (200) feet or two times (2x) the height of the proposed tower, whichever is greater;
2. From the property line of non-residentially zoned property by the height of the proposed tower;
3. From the property line of all residentially-zoned property that is used for residential purposes or is vacant by a minimum of two-hundred (200) feet or two times (2x) the height of the proposed tower, whichever is greater;
4. From the property line of all residentially-zoned property used for non-residential purposes by the height of the proposed tower; and
5. From adjacent road right-of-way boundaries by the height of the proposed tower.

(c) **Height**

The maximum permitted height for freestanding non-stealth towers is three-hundred fifty (350) feet.

VII. Additional Requirements/Standards for All Towers

(a) **Existing Towers**

New antennae may be co-located upon towers that exist on the effective date of this Ordinance. A request for an increase in tower height for an existing tower shall require issuance of a special use permit with supplemented regulation by the Town Council.

(b) **Co-Location Required**

Towers shall be constructed to accommodate antenna arrays as follows:

1. All freestanding towers up to one hundred twenty (120) feet in height shall be engineered and constructed to accommodate no less than four (4) antenna arrays.

2. All towers between one hundred twenty-one (121) feet and one hundred fifty (150) feet shall be engineered and constructed to accommodate no less than five (5) antenna arrays.
 3. All towers between one hundred fifty-one (151) feet and taller shall be engineered and constructed to accommodate no less than six (6) antenna arrays.
- (c) General Development Standards
1. Design and Neighborhood Compatibility
 - a. The exterior appearance of all associated support structures and buildings shall be compatible with the other buildings in the surrounding area.
 - b. The review and decision body may require the applicant to apply to the Federal Aviation Administration (FAA) for compliance with FAA standards for a dual lighting system rather than a red and white marking pattern, when the review and decision-making body determines such a marking pattern would cause aesthetic blight due to the visibility of the tower.
 - c. Support buildings located in any residential district may not be used as an employment center for any worker. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments.
 - d. No advertising sign or logo shall be permitted on any telecommunications facility.
 2. Buffering and Screening
 - a. All buffers, fences, and walls shall be screened in accordance with the requirements of Sections 5 of this Ordinance.
 - b. The base of the tower and each guy anchor shall be surrounded by an opaque fence or wall at least eight (8) feet in height.
- (d) Neighborhood Meeting
- At the time of submitting an application for a proposed tower, the applicant shall submit written documentation that they have conducted a neighborhood meeting, to which owners of property within four hundred (400) feet of the subject property have been invited, to explain the proposed facility and answer questions. Documentation should include the time, date and location of the meeting; a list of meeting attendees; a brief summary of any presentations and/or information discussed; and questions/concerns expressed by neighboring property owners.
- (e) Balloon Test
- A balloon test shall be required for all towers proposed within four hundred (400) feet of property zoned, used or otherwise approved for residential purposes. The balloon test shall be required prior to the submittal of photo simulations in order to illustrate the proposed height of the tower. The applicant shall arrange to raise a colored balloon no less than three (3) feet in diameter at the maximum height of the proposed tower, and within fifty (50) horizontal feet of the center of the proposed tower.
- The applicant shall meet the following for the required balloon test:
1. Applicant must inform the Zoning Administrator and abutting property owners within four hundred (400) feet of the subject property in writing of the date and times, including alternative date and times, of the test at least fourteen (14) days in advance.
 2. The date, time, and location, including alternative date, time and location, of the balloon test shall be advertised in a locally distributed paper by the applicant at least seven (7) but no more than fourteen (14) days in advance of the test date.

3. The balloon shall be flown at the required height for at least four (4) consecutive hours during daylight hours on the date chosen. The applicant shall record the weather conditions during the balloon test.

VIII. Additional Requirements/Standards for All Telecommunications Facilities

(a) Availability of Existing Structures

Applicants seeking a special use permit for tower(s) greater than seventy-five (75) feet in height, and proposed to be located within three thousand (3,000) feet of any other communication tower greater than seventy-five (75) feet in height, shall provide evidence that reasonable efforts have been made to lease or otherwise acquire space on all existing planned or constructed towers or that no existing tower(s) will technically satisfy the applicant's needs. No new freestanding tower shall be permitted unless the applicant demonstrates that no existing tower can accommodate the applicant's proposed use; or that use of such existing facilities would prohibit personal wireless services in the geographic search area to be served by the proposed tower. Collocation on an existing structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the tower is unwilling to enter into a contract for such use at fair market value.

(b) Setback Reductions

1. In considering an application for a special use permit for telecommunications facilities, Town Council may grant a reduction of the minimum required setbacks listed in Section 5 and 6 upon consideration of circumstances or aspects which reduce the off-site effects of the facility on adjacent properties. Such circumstances or aspects may include, but are not limited to: topography; berms; the proximity of existing or potential uses; existing vegetation and improvements made or proposed to the site to obscure or reduce the visibility of the tower from adjacent properties; the concentration of existing and/or proposed towers in the area; and whether the height, design (including structural features), placement or other characteristics of the proposed tower could be modified to have a less intrusive impact.
2. Requests under this sub-section may be approved provided that such action is not inconsistent with the general purposes and applicable approval criteria of this Ordinance. The Town Council, in considering any request(s) for reduction of the minimum required setbacks under this Section, shall consider any unique circumstances for such a request(s).

(c) Conditions

Notwithstanding any of the standards of this Section, the Town Council may require any other reasonable conditions (including any modifications of the standards in this Section) to mitigate the impact of the tower on adjacent properties and uses including, but not limited to, conditions or modifications related to the style, height and design of the facility.

IX. Outside Experts and Disputes

- (a) Review by an outside consultant shall be required for all facilities requiring approval of a special use permit. The fee for review by the outside consultant shall be collected together with the application fee for the special use permit. Additional reasonable and cost based fees may be imposed for costs incurred should the applicant amend its application. Selection of the outside consultant shall be at the sole discretion of the Town.

- (b) If an applicant for a telecommunications facility claims that one (1) or more standards of this Ordinance are inconsistent with federal law as applied to a particular property, or would prohibit the effective provision of wireless communications within the relevant market area, the decision-making body may require that the application be reviewed by a qualified engineer for a determination of the accuracy of such claims. Any costs shall be charged to the applicant.

X. Time Limits for Action

- (a) Antennae Co-location on Existing Towers
 - 1. Within thirty (30) days of application submittal staff shall, consistent with applicable law, either deem the application complete, or notify the applicant in writing of the deficiencies in the application.
 - 2. Within forty-five (45) days from the date that the application is accepted, the approving authority should take action to approve or deny the request.
- (b) Other Telecommunications Facilities
 - 1. Within thirty (30) days of application submittal staff shall either deem the application complete, or notify the applicant in writing of the deficiencies in the application.
 - 2. Within a reasonable period of time consistent with other land use permits, or one-hundred fifty (150) days from the date that the application is submitted to the Town, whichever occurs first, the approving authority shall, consistent with applicable law, take action to approve or deny the request.

XI. Submittal Requirements

- (a) In addition to the submittal requirements of Article IV – Section III (Special Use) and Section VI (Plat) of this Ordinance, as may be applicable, applications for proposed telecommunications facilities shall also include maps, reports and documents as specified by the Zoning Administrator. At a minimum, this information shall describe the facility with regard to its proposed location, design and operation.
- (b) Due to the characteristics specific to each type of proposed facility (e.g., co-location vs. new tower, stealth vs. non-stealth), the Zoning Administrator shall have the authority to waive one (1) or more of the submittal requirements for telecommunications facilities, if requested by the applicant, if the Zoning Administrator determines the required information is not relevant to the review of such facility and/or does not further the intent and purpose of providing such information for review. If, as part of review by an outside expert, additional submittal information is determined to be necessary in order to review the application for compliance with this Ordinance, such information shall be required regardless of the items initially submitted with the application.
- (c) Applicant must obtain all other required permits, authorizations, approvals, or declarations that may be required for installation or modification of the proposed facility under federal, state, or local law, including but not limited to building permits and FCC approvals. An approval issued under this Section is not in lieu of any other permit required under this Zoning Ordinance or the Town Code, nor is it a franchise, license, or other authorization to occupy the right-of-way, or a license, lease or agreement authorizing occupancy of any other public or private property. It does not create a vested right in occupying any particular location, and an

applicant may be required to move and remove facilities at its expense consistent with other provisions of applicable law. An approval issued in error, based on incomplete or false information submitted by an applicant, or that conflicts with the provisions of the Zoning Ordinance, is not valid.

XII. Nonconforming Setbacks for Existing Towers

Telecommunications facilities towers that do not meet the minimum required setbacks from lots that were created after the construction of the tower shall be deemed conforming with regard to setbacks for the purposes of this Section.