

**TOWN OF RIVER BEND  
BOARD OF ADJUSTMENT MEETING  
June 28, 2022  
6:00 p.m.  
45 Shoreline Drive, River Bend**

**Agenda**

1. Call to Order
2. Accept minutes from February 3, 2022 meeting
3. Conduct Evidentiary Hearing
  - A. Announce the case
  - B. Explanation of Quasi-Judicial nature of the case
  - C. Swear all witnesses
  - D. Call for disclosures by Board of Adjustment members
  - E. Consider Questions on Standing
  - F. Staff overview and presentation of preliminary materials
  - G. Presentation by applicant
  - H. Presentation by other parties with standing
  - I. Other witnesses called if necessary
  - J. Applicant rebuttal
  - K. Other parties' rebuttal
  - L. Board deliberations on case
4. Consideration of granting Special Use permit
  - A. Vote on findings
  - B. Vote on issuing permit
5. Adjournment

River Bend Board of Adjustment  
February 3<sup>rd</sup>, 2022  
Municipal Building  
7:00 PM

Board Members present: Chairman Paige Ackiss, Vice Chair Patty Leonard (via telephone), Kelly Forrest (ETJ Representative), Helmut Weisser

Board Members absent: Chris Barta, Rick Fisher (ETJ Alternate), Kelly Forrest (ETJ Representative), Cinda Hill

Others present: Councilman Buddy Sheffield (Liaison to BOA), Assistant Zoning Administrator Allison McCollum

CALL TO ORDER

Chairman Paige Ackiss called the meeting to order at 5:48 PM on Thursday, February 3<sup>rd</sup>, 2022 at the River Bend Municipal Building. Chairman Ackiss had Vice Chair Patty Leonard announce her attendance individually as she was joining the meeting by phone.

APPROVAL OF JANUARY 4<sup>TH</sup>, 2022 MEETING MINUTES

Board Member Helmut Weisser made a motion to accept the minutes from the January 4<sup>th</sup>, 2022 meeting of the Board of Adjustment. Motion was seconded by Board Member Kelly Forrest. Chairman Ackiss asked that Patty Leonard cast her vote individually and the motion carried unanimously.

ADJOURNMENT

Vice Chair Patty Leonard motioned to adjourn the meeting. Board Member Kelly Forrest seconded the motion; it carried unanimously. The meeting adjourned at 5:51 PM.

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Allison McCollum, Secretary

## TABLE OF EVIDENCE

EXHIBIT 01 – Special Use Permit Application

EXHIBIT 02 – Recommendation from the Planning Board

EXHIBIT 03 – Online Notice of Public Hearing

EXHIBIT 04 – Newspaper Advertisement of Public Hearing

EXHIBIT 05 – Sign Posted at Parcel #8-206-8004

EXHIBIT 06 – Letter Sent to Adjacent Property Owners

EXHIBIT 07 – Ordinance §15.02.124 – District Use Regulations

EXHIBIT 08 – Attorney Opinion Letter

EXHIBIT 09 – GIS Map of Parcel

EXHIBIT 10 – Zoning Map of Parcel

EXHIBIT 11 – Building Rendering

EXHIBIT 12 - Ordinance §15.02.122 – Review and Approval of Special Uses

EXHIBIT 13 - Ordinance §15.02.120 – General Regulations

EXHIBIT 14 - Ordinance §15.02.221 – Description of Buffers



TOWN OF RIVER BEND

45 Shoreline Drive  
River Bend, NC 28562  
T 252.638.3870  
F 252.638.2580  
www.riverbendnc.org

APPLICATION FOR SPECIAL USE PERMIT

Applicant Information

Full Name: Town of River Bend Date: 5-17-22  
Address: 45 Shoreline Drive  
River Bend NC 28562  
Phone: 638-3870 Email: manager@riverbendnc.org

Request

I/We request a Special Use Permit to allow: a Public Works Office  
to be built at 1504 Plantation Drive

- 1. Legal description of land: see attached map and schedule A
- 2. Is map/plat plan/drawing enclosed? YES  NO
- 3. Land described is currently zoned: (R15, BD, etc.) R-20A
- 4. Intended use of land: Public Works Office
- 5. Will the proposed use adversely affect the health and safety of residents and/or workers in the zoned area? YES  NO
- 6. Will the proposed use be detrimental to the use or development of adjacent properties? YES  NO
- 7. Is the lot sufficient size to accommodate the proposed use? YES  NO
- 8. Will the intended use create a nuisance or hazard for the adjacent property owners? YES  NO
- 9. Will the proposed use adversely affect the value of adjacent properties? YES  NO
- 10. Is a site plan enclosed? YES  NO
- 11. Are architectural drawings enclosed? YES  NO

EXHIBIT 1

12. Is an off-street parking plan enclosed?

YES

NO

13. Is the \$200 fee for Special Use Permits enclosed?

YES

NO

Additional Information

Please list any additional relevant information or further justification for the request.

The special use permit is requested to allow for the construction/operation of a Public Works Office complex. The facility is currently located at 115 Wildwood Drive. If allowed, the facility/operations will be relocated to a 2 acre site at 1504 Plantation Drive.

Signature

I certify that my answers are true and complete to the best of my knowledge.

Signature:

Delane Jackson

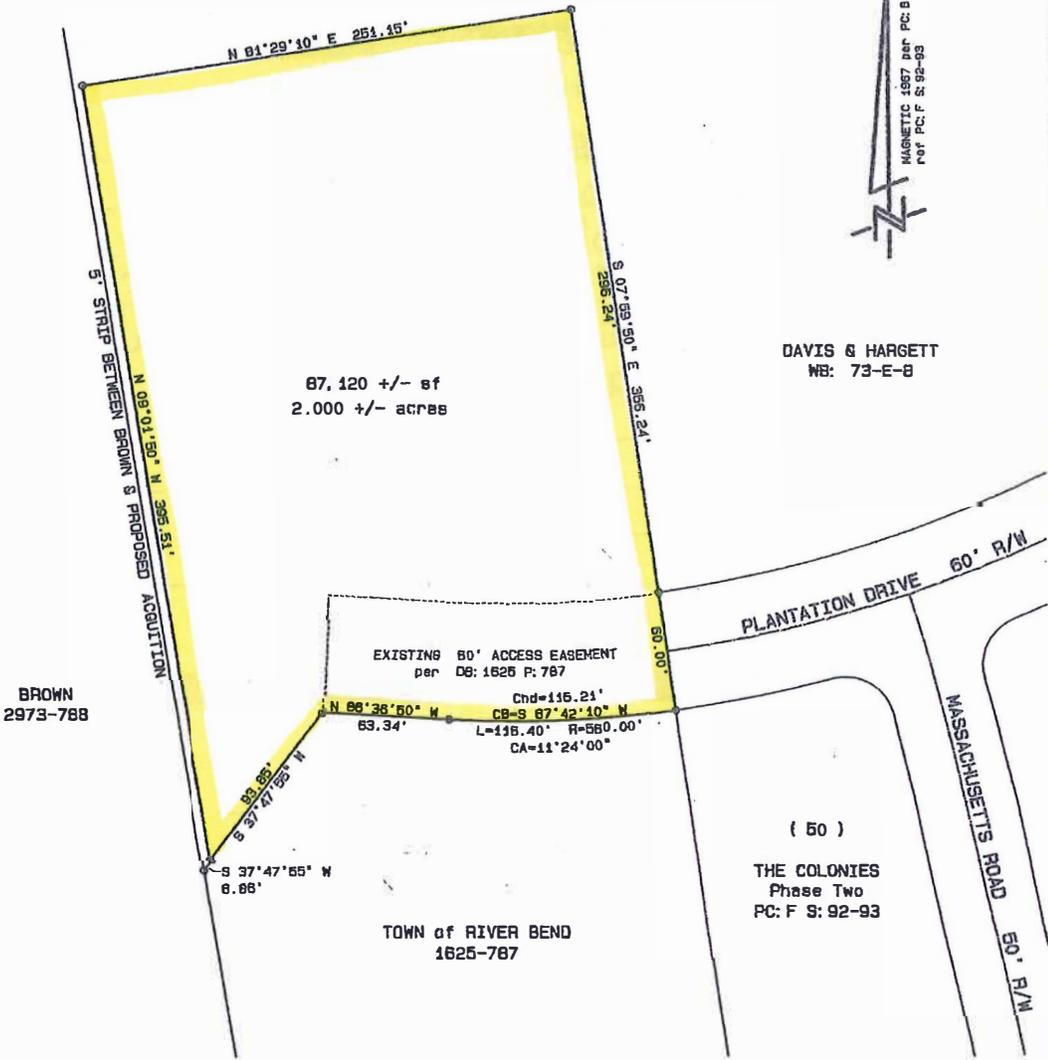
Date:

5-26-22

DAVIS & HARGETT  
WB: 73-E-8



DAVIS & HARGETT  
WB: 73-E-8



BROWN  
2973-788

EXISTING 80' ACCESS EASEMENT  
per DB: 1625 P: 787

PLANTATION DRIVE 60' R/W

MASSACHUSETTS ROAD 60' R/W

TOWN of RIVER BEND  
1625-787

( 50 )  
THE COLONIES  
Phase Two  
PC: F S: 92-93

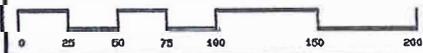
LEGEND  
sf - Square Feet  
R/W - Right of Way

NOTES:  
OWNERS: ROBERT H. & OPHELIA H. DAVIS,  
& MELBA DAVIS HARGETT  
REFERENCES: DB: 371 P: 136, MB: 10 P: 68,  
MB: 73-E-8, PC: F S: 92-93,  
& DB: 1625 P: 788

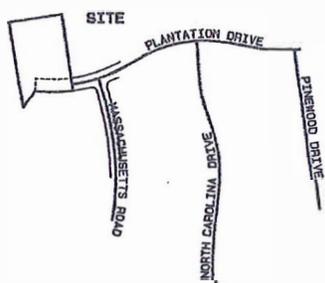
THIS PROPERTY SCALES WITHIN ZONE X ACCORDING TO  
THE FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD  
INSURANCE RATE MAP "97020545900 J" DATED JULY  
2, 2004. THIS STATEMENT DOES NOT SUPERCEDE THE  
ABOVE REFERENCED MAP.

Map of Proposed  
Acquisition for  
**Town of RIVER BEND**  
PLANTATION DRIVE  
NEW BERN, NORTH CAROLINA

#8 TOWNSHIP CRAVEN CO. NC  
PORTION OF PROPERTY DESCRIBED AT  
DEED BOOK: 371 PAGE: 136 & MB: 10 P: 68  
97175.3 02-18-22 1" = 60'



VICINITY MAP  
not to scale



I, ROBERT H. DAVIS, CERTIFY THAT THIS MAP WAS  
DRAWN UNDER MY SUPERVISION FROM DEED DESCRIPTIONS  
RECORDED IN BOOK 371 PAGE 136, MB: 10 P: 68, WILL  
BOOK 73-E-8, DEED BOOK 1625 PAGE 788 AND PLAT  
CABINET: F SLIDES 92 & 93, THAT THE RATIO OF  
PRECISION AS CALCULATED IS 1/40,000+, THAT THE  
BOUNDARIES WERE NOT SURVEYED AT THIS TIME AND  
THAT THIS MAP MEETS THE REQUIREMENTS OF THE  
STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH  
CAROLINA (11 N.C. GEN. STAT. § 170-100)  
WITNESS MY HAND AND SEAL THIS 18TH DAY OF  
FEBRUARY, 2022.



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DELETIONS, AND/OR REPRODUCTIONS  
ARE PROHIBITED. ONLY COPIES WITH  
ORIGINAL SEAL & SIGNATURE SHALL  
BE CONSIDERED VALID.

**ROBERT H. DAVIS, PLS**  
SURVEYORS AND PLANNERS  
7175 HIGHWAY 70 EAST  
NEW BERN, NORTH CAROLINA 28562  
252-514-3150



**TOWN OF RIVER BEND**

45 Shoreline Drive  
River Bend, NC 28562

T 252.638.3870  
F 252.638.2580

[www.riverbendnc.org](http://www.riverbendnc.org)

ATTN: River Bend Board of Adjustment  
RE: Parcel #8-200-27001 – River Bend Public Works

On June 2<sup>nd</sup>, 2022, members of the Planning Board reviewed and discussed with Town Manager Delane Jackson the Special Use Permit application he submitted for the Town of River Bend to develop a new facility for the Public Works staff on Parcel #8-200-27001, located 1405 Plantation Drive.

The Planning Board recommends granting the requested Special Use Permit.

A handwritten signature in black ink, appearing to read "Egon Lippert", is written over a horizontal line.

Egon Lippert  
Chairman, Planning Board

Special Use Application

Important Hurricane Information

New Leaf & Limb Rules

New Public Works Building Plan

FY 2022-2023 Budget Preparation



Town of River Bend, NC

MAPS

Emergency Info

Contact Us

Register for Alerts

Make a Payment



Government Departments About River Bend Advisory Boards Fourth of July 2022 Solid Waste Ordinance

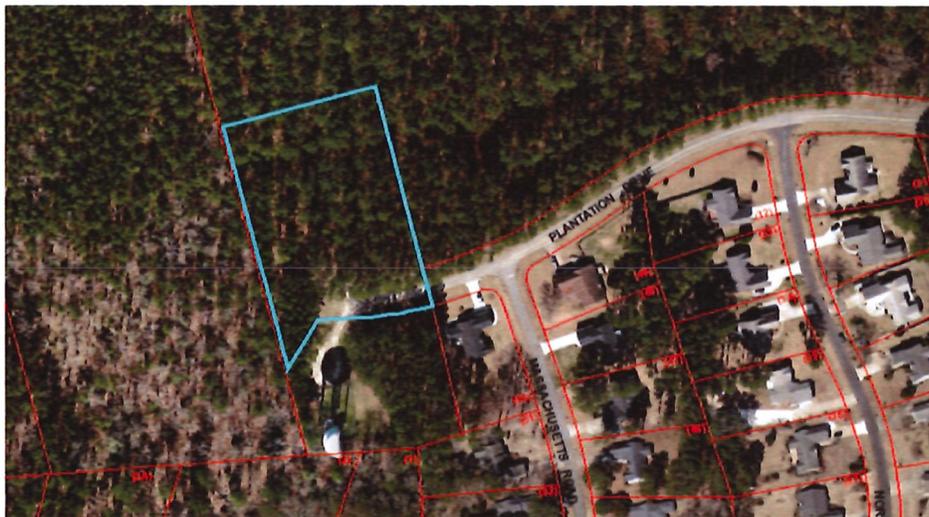
Home >

# Special Use Application

## NOTICE OF PUBLIC HEARING

The Board of Adjustment (BOA) of the Town of River Bend has received a request from the Town of River Bend to obtain a special use permit to construct a Public Works Facility in River Bend. The proposed site is located at 1405 Plantation Drive, near the town's water tank, is zoned R-20A (Residential-Agriculture), and identified by Craven County PIN: 8-200-27001. The request requires a quasi-judicial hearing, which is very similar to a court hearing. All testimony must be sworn and in person before the BOA. Comments called in and letters or written statements [such as petitions] cannot be entered into the record. Having first-hand testimony allows for cross-examination of all witnesses by the BOA and others in attendance. Testimony offered on the case should be from direct personal or professional knowledge, and focus on the ordinance-specified considerations of the BOA. The hearing will be held on June 28, 2022 at 6 p.m. at Town Hall, located at 45 Shoreline Drive, River Bend, NC. The application and maps may be reviewed at the Town of River Bend Zoning Department, 45 Shoreline Drive, between 8:00 AM and 4:00 PM, Monday through Friday or by visiting the town's website at [www.riverbendnc.org](http://www.riverbendnc.org) and clicking on the "Special Use Application" tab.

See map below. The subject property is outlined in blue.



# Classifieds

to advertise, visit our website: [classifieds.newbernsj.com](http://classifieds.newbernsj.com)



- classifieds phone: 888.263.9575
- classifieds/auto/real estate email: [NewBernClassifieds@gannett.com](mailto:NewBernClassifieds@gannett.com)
- public notices/legals email: [SunJournalLegals@gannett.com](mailto:SunJournalLegals@gannett.com)
- business & services email: [NewBernBusSer@gannett.com](mailto:NewBernBusSer@gannett.com)
- jobs website: [newbernsj.com/jobs](http://newbernsj.com/jobs)
- jobs email: [recruitads@localliq.com](mailto:recruitads@localliq.com)
- jobs phone: 833.516.0229

All classified ads are subject to the applicable rate card, copies of which are available from our Advertising Dept. All ads are subject to approval before publication. The New Bern Sun Journal reserves the right to edit, refuse, reject, classify or cancel any ad at any time. Errors must be reported in the first day of publication. The New Bern Sun Journal shall not be liable for any loss or expense that results from an error in or omission of an advertisement. No refunds for early cancellation of order.

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### NOTICE OF PUBLIC HEARING

The Board of Adjustment (BOA) of the Town of River Bend has received a request from the Town of River Bend to obtain a special use permit to construct a Public Works Facility in River Bend. The proposed site is located at 1405 Plantation Drive, near the town's water tank, is zoned R-20A (Residential-Agriculture), and identified by Craven County PIN: 8-200-27001. The request requires a quasi-judicial hearing, which is very similar to a court hearing. All testimony must be sworn and in person before the BOA. Comments called in and letters or written statements (such as petitions) cannot be entered into the record. Having firsthand testimony allows for cross-examination of all witnesses by the BOA and others in attendance. Testimony offered on the case should be from direct personal or professional knowledge, and focus on the ordinance-specified considerations of the BOA. The hearing will be held on June 28, 2022 at 6 p.m. at Town Hall, located at 45 Shoreline Drive, River Bend, NC. The application and maps may be reviewed at the Town of River Bend Zoning Department, 45 Shoreline Drive, between 8:00 AM and 4:00 PM, Monday through Friday or by visiting the town's website at [www.riverbendnc.org](http://www.riverbendnc.org) and clicking on the "Special Use Application" tab.

June 10, 2022 (adv) 7405699

### NOTICE OF PUBLIC HEARING OF THE CRAVEN COUNTY BOARD OF COMMISSIONERS REGARDING CONVEYANCE OF REAL PROPERTY FOR ECONOMIC DEVELOPMENT PURPOSES

Pursuant to N.C. Gen. Stat. § 158-7.1, Craven County (hereinafter "County") intends to convey for economic development purposes a fee simple interest in a +/- nine (9) acre tract (hereinafter "Tract") of land, the Tract being a portion of the Tract known as Lot 19-4 in the Craven County Industrial Park. The value of the Tract is Twenty Thousand and no/100 Dollars (\$20,000.00) an acre, for a total value of One Hundred Eighty Thousand and no/100 Dollars (\$180,000.00), and the County intends to convey and sell same for such value. The County believes the proposed conveyance will stimulate and stabilize the local economy, result in the creation of a substantial number of new permanent jobs in the County, and result in increased tax revenues to the County. The Craven County Board of Commissioners will hold a public hearing on these matters at 8:30 a.m. (or as soon thereafter as the matter can be reached) on Monday, June 20th, 2022 in the Commissioners' Room in the Craven County Administration Building, and all interested persons are invited to attend and present their views.

Done this 6th day of June, 2022.  
NAN HOLTON, Clerk,  
Craven County Board of Commissioners  
406 Craven Street, New Bern, NC 28560

### NOTICE OF PUBLIC HEARING OF THE CRAVEN COUNTY BOARD OF COMMISSIONERS REGARDING AWARD OF BUILDING REUSE GRANT

Pursuant to N.C. Gen. Stat. § 158-7.1, Craven County (hereinafter "County") intends to (a) apply for a \$500,000 building reuse grant from the North Carolina Department of Commerce (through the Rural Infrastructure Authority and the Rural Economic Development Division) and (b) if approved, award same to White River Marine, LLC to assist in construction activities at its facility in New Bern. The County believes the proposed grant will stimulate and stabilize the local economy, result in the retention and further creation of a substantial number of new permanent jobs in the County, and result in the retention of existing and creation of new tax revenues to the County. The Craven County Board of Commissioners will hold a public hearing on this matter at 8:30 a.m. (or as soon thereafter as the matter can be reached) on Monday, June 20th, 2022 in the Commissioners' Room in the Craven County Administration Building, and all interested persons are invited to attend and present their views.

Done this 6th day of June, 2022.

NAN HOLTON, Clerk,  
Craven County Board of Commissioners  
406 Craven Street, New Bern, NC 28560  
6/10/2022 (adv) 7402897

# SELL IT BUY IT FIND IT SELL IT BUY IT FIND IT



49% of business owners  
want a marketing partner  
to help them grow.

## **PUBLIC NOTICE**

A public hearing concerning a special use permit request for this property has been scheduled for June 28, 2022 at 6pm at Town Hall in River Bend located at 45 Shoreline Dr. 252-638-3870



## TOWN OF RIVER BEND

45 Shoreline Drive  
River Bend, NC 28562T 252.638.3870  
F 252.638.2580[www.riverbendnc.org](http://www.riverbendnc.org)

June 8, 2022

Dear Property Owner:

The River Bend Board of Adjustment (BOA) will hold a public hearing on Tuesday, June 28<sup>th</sup>, 2022 at 6:00 PM in the Council Chambers of the River Bend Town Hall located at 45 Shoreline Drive, for the following request:

To gather comments on a request for a special use permit for the construction of a Public Works Facility by the Town of River Bend. The proposed site is located at 1504 Plantation Drive, is zoned Residential Agriculture (R20-A) and has Craven County PIN: 8-200-27001. The lot is shown on the attached map (outlined in blue).

This is a quasi-judicial hearing, very similar to a court hearing. All testimony must be sworn and in person before the BOA. Comments called in and letters or written statements [such as petitions] cannot be entered into the record. Having first-hand testimony allows for cross-examination of all witnesses by the BOA and others in attendance. Testimony offered on the case should be from direct personal or professional knowledge, and focus on the ordinance-specified considerations of the BOA. If several people have testimony to offer, it is suggested they coordinate their efforts to avoid repetition. Action on issuing the permit may be taken by the BOA following the public hearing.

The application and maps may be reviewed at the Town of River Bend Zoning Department, 45 Shoreline Drive, between 8:00 AM and 4:00 PM, Monday through Friday or by visiting the town's website at [www.riverbendnc.org](http://www.riverbendnc.org) and clicking on the "Special Use Application" tab.

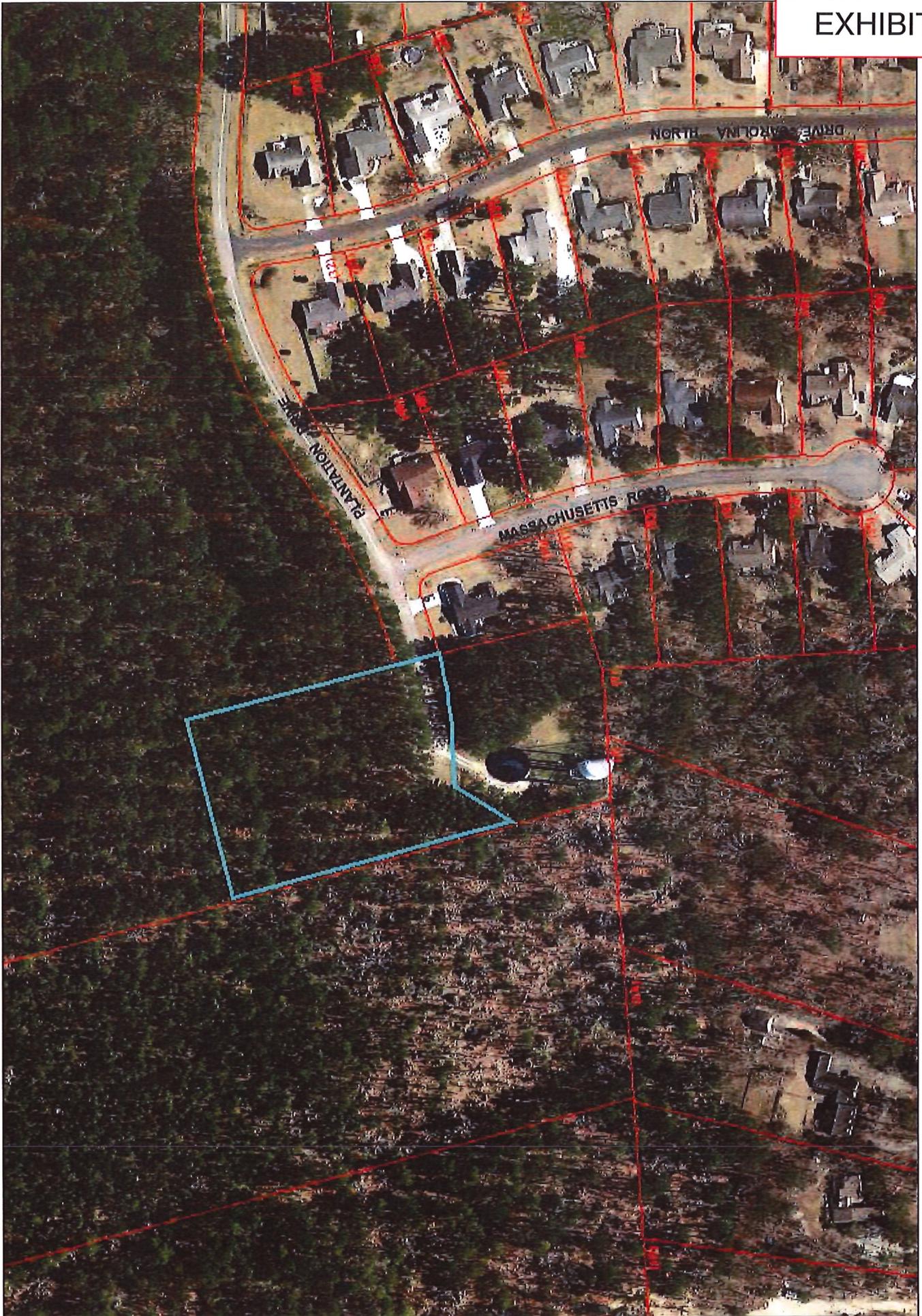
All decisions of the Board of Adjustment are subject to appeal to Superior Court within 30 days after the aggrieved party receives the BOA's written decision. An appeal to the BOA action must be filed pursuant to procedures noted in the North Carolina General Statutes.

If you have questions, please contact me between 8:00 AM and 4:00 PM, Monday through Friday at 252-638-3870 or via email at [manager@riverbendnc.org](mailto:manager@riverbendnc.org).

Sincerely,

*Delane Jackson*  
Delane Jackson,  
Town Manager

EXHIBIT 6



**Craven County GIS**

Craven County does NOT warrant the information shown on this map and should be used ONLY for tax assessment purposes. Printed on June 3, 2022 at 13:42:54 PM

1 inch = 169 feet

SCHEDULE OF DISTRICT USE REGULATIONS									
<b>KEY:</b> P – Use permitted by right SU – Special use permitted upon approval by Board of Adjustment after recommendation of the Planning Board Blank/Unlisted – Prohibited use									
Use	R20/ R20A	R15	PDR- SF	PDR- MF	ID	BD	BD- PD	AGR	Parking Code*
Jewelry and Watch Repair						P	P		G
Libraries	SU	SU	SU	SU		P	P		G
Marina						P			G
Nursing Home and Rest Home					P				G
Office for Business, Professional and Personal Services						P	P		G
Pet Shops (excluding Veterinary Services)						P	P		G
Pharmacy						P	P		G
Photo Shop/Supply						P	P		G
<b>Police Station</b>	<b>SU</b>	<b>SU</b>	<b>SU</b>	<b>SU</b>	<b>SU</b>	<b>SU</b>	<b>SU</b>		<b>F</b>
Public Enterprise**	SU	SU	SU	SU		SU	SU		F
Public Utility	SU	SU	SU	SU	SU	SU	SU		F
Restaurants					P	P	P		F
Schools	SU	SU	SU	SU	SU				F
Service Station						SU	SU		J
Shoe Sales and Repair						P	P		G
Sporting Goods Sales						P	P		G

SCHEDULE OF DISTRICT USE REGULATIONS									
<b>KEY:</b> <b>P</b> – Use permitted by right <b>SU</b> – Special use permitted upon approval by Board of Adjustment after recommendation of the Planning Board <b>Blank/Unlisted</b> – Prohibited use									
Use	R20/ R20A	R15	PDR- SF	PDR- MF	ID	BD	BD- PD	AGR	Parking Code*
Storage Rental Units/Areas						P	P		G
Travel Agency						P	P		G
Utility Tanks, Pumps, Electrical Substations & Related Services	SU	SU	SU	SU	SU	SU	SU	SU	
Wholesale and/or Retail Janitorial Sales & Services						SU	SU		F
Youth Center					P	P	P		G
*Parking code described in §15.02.080 ** As defined by G.S. § 160A-311									

Penalty, see § 1.01.999

*Amended 11/18/10*

**§ 15.02.125 CONTROL OF BACKFLOW AND CROSS-CONNECTIONS.**

*A. Purpose.*

1. The purpose of this section is to protect the public potable water supply of the town from the possibility of contamination or pollution by isolating within the consumer's internal distribution system(s) or the consumer's private water system(s) such contaminants or pollutants which could backflow into the public water system.
2. This section shall apply to all users connected to the town's public potable water supply regardless of whether the user is located within the town limits or outside the town limits.

*B. Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AIR-GAP SEPARATION.** An unobstructed vertical distance through the atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level rim of the receptacle. An approved air-gap vertical separation shall be at least double the diameter of the supply pipe. In no case shall the air-gap be less than 1 inch.

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**PRIVILEGED & CONFIDENTIAL**  
**ATTORNEY WORK PRODUCT - ATTORNEY/CLIENT PRIVILEGE**

November 29, 2021

Town of River Bend  
Board of Adjustment  
c/o Chairperson  
45 Shoreline Drive  
New Bern, North Carolina 28562

Re: Application of Schedule of District Use Regulations to Unlisted Uses  
Our File: 67667.02

Dear Chairperson:

I have been asked by the Town of River Bend (“Town”) to prepare an opinion letter to you regarding the application of the Schedule of District Use Regulations (“Use Table”) contained in the Zoning section of the Town’s Code of Ordinances to uses of property that are not expressly listed in the Use Table. For example, if a company wanted to build a hospital and applied to the Town for a Zoning Permit, how would the Use Table be used to analyze whether the requested use is allowed, since “hospital” is not a listed use?

The Town’s Use Table is contained in Section 15.02.124 of the Town’s Code of Ordinances. The Used Table described which land uses in each zoning district are prohibited, allowed as a matter of right, or require a special use permit. The Use Table contains language that indicates (1) if the use is unlisted it is prohibited and (2) if the use is listed but there is a blank in the corresponding column for the district, then it is prohibited in that district. The first scenario of unlisted uses has been the cause of much litigation in North Carolina. The second scenario is generally permissible and will not be the focus of this opinion.

North Carolina Courts generally favor the unrestricted use of private property, free from government intervention. Accordingly, North Carolina Courts have applied this rule in construing local government land use regulations, specifically dealing with permitted use tables. *See Land v. Village of Wesley Chapel*, 697 S.E.2d 458 (N.C. Ct. App. 2010). Courts have traditionally struck down zoning actions that deny the right of a property owner to use his or her property for a use that is not expressly listed in the table of permitted uses. *See id.*; *see also Byrd v. Franklin County*, 765 S.E.2d 805 (N.C. Ct. App. 2014) (Hunter, R. dissenting), *rev’d by*, 778 S.E.2d 268 (N.C. 2015) (per curiam) (adopting reasoning contained in the dissent). Instead, the Courts have held that local governments must analyze whether an unlisted use is permissible by finding the listed use that is closest to the use being applied for and regulate that use in accordance with the regulations applicable to the listed use. *Id.*

In my hospital example above, based on the analysis used by the Courts, the “Nursing Home and Rest Home” use is likely the closest listed use to a hospital. The Town would analyze

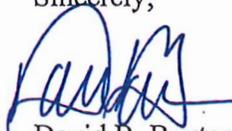
River Bend Board of Adjustment  
Chairperson  
November 29, 2021  
Page 2

the request for a zoning permit as if the applicant had applied to use the property for a nursing home or rest home, which is only permitted as a matter of right in the Institutional District (ID).

Based on the foregoing, I recommend any unlisted use applied for be analyzed in accordance with the framework outlined in North Carolina case law that I have summarized above. Additionally, I recommend that the Town's Code of Ordinances be amended to include procedural provisions specifically addressing unlisted uses. Additionally, I recommend that the Use Table be reviewed annually by the Planning Board with recommendations given to the Town Council for adding additional uses, if any. This will help ensure that the listed uses in the Use Table reflect current trends in uses that are not currently being regulated by the Town.

This legal opinion is rendered in the name of, Sumrell Sugg, P.A. and may be relied upon by you as an opinion of counsel before any Court or any state or federal administrative agency. Please review this opinion and let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "David B. Baxter, Jr.", is written over a faint, illegible typed name.

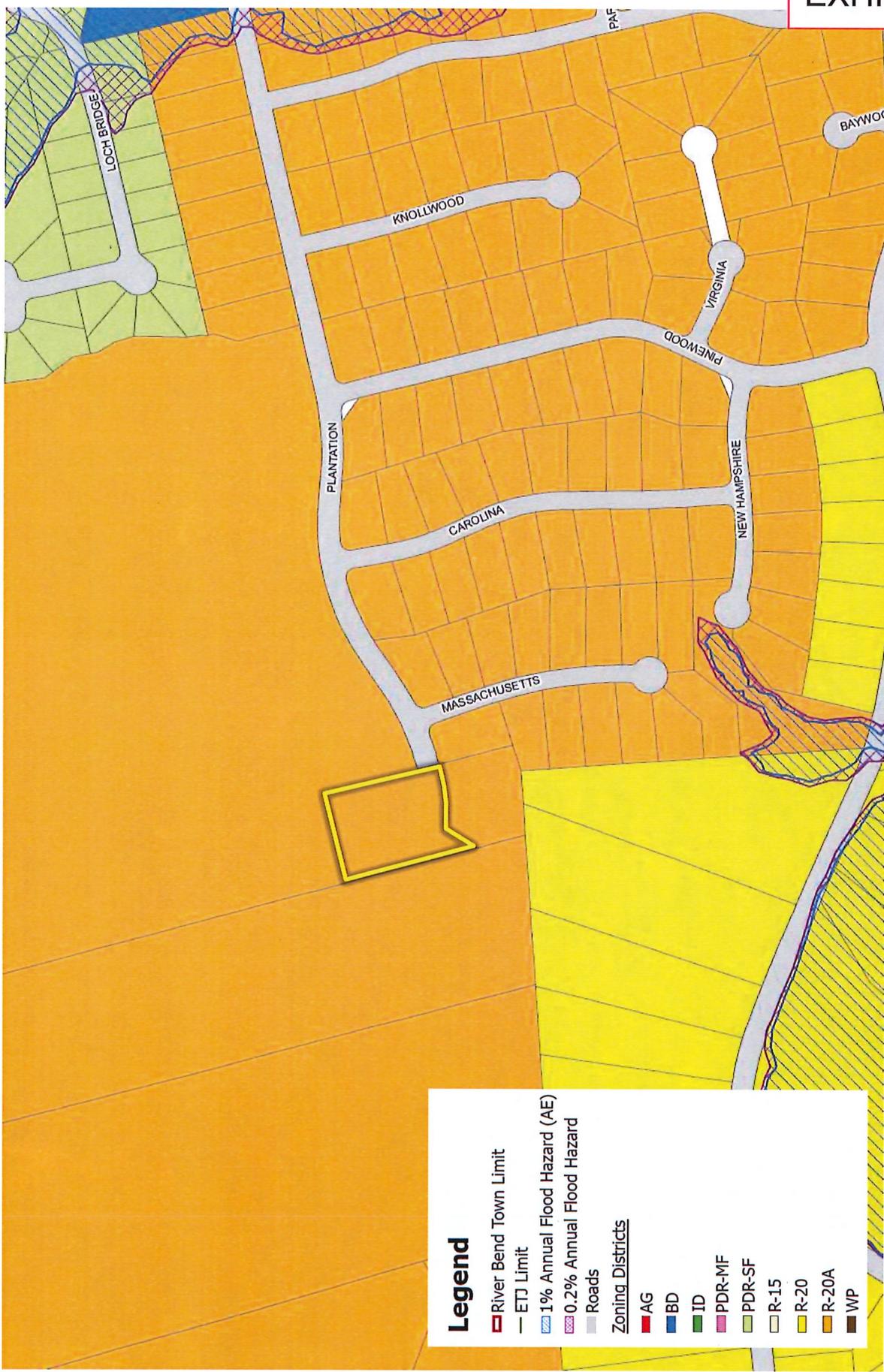
David B. Baxter, Jr.  
*Town Attorney*



1 inch = 316 feet

# Craven County GIS

Craven County does NOT warrant the information shown on this map and should be used ONLY for tax assessment purposes. Printed on June 15, 2022 at 4:43:06 PM



**Legend**

- - - River Bend Town Limit
- - - ETJ Limit
- ▨ 1% Annual Flood Hazard (AE)
- ▨ 0.2% Annual Flood Hazard
- ▬ Roads

**Zoning Districts**

- AG
- BD
- ID
- PDR-MF
- PDR-SF
- R-15
- R-20
- R-20A
- WP



**§ 15.02.122 REVIEW AND APPROVAL OF SPECIAL USES.**

- A.
1. The application forms for a special use permit shall be transferred along with required plans, plats and the like to the Planning Board by the Zoning Administrator 7 days before a regularly scheduled Planning Board meeting so that the application can be placed on the Board's agenda.
  2. At this meeting, the owner of the property for which the special use is sought or his agent shall appear.
- B. The Planning Board shall review the application for details, where applicable, of the site, situation, existing and proposed structures, architectural plans, neighboring land and water uses, proposed parking areas, driveway locations, highway access, traffic generation and circulation potential, drainage, waste disposal, water supply systems and the effects of the proposed use, structure, operation and potential changes in water quality, shoreland cover, natural beauty and wildlife habitat.
- C.
1. The Planning Board shall consider recommending conditions that may be placed in the granting of the special use permit by the Board of Adjustment.
  2. These conditions may include items such as landscaping, architectural design, type of construction, construction commencement and proposed completion dates, sureties, lighting, fencing, location, size and number of signs, water supply and waste disposal systems, performance standards, street dedication, certified survey maps, floodproofing, ground cover, sedimentation control from the project construction, terraces, stream bank protection, planting of buffer screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, yard sizes or additional parking.
- D. In addition, the Planning Board shall check for compliance of the requested special use with all other relevant provisions of this subchapter, such as lot dimensional requirements, building heights, parking and loading standards.
- E. The Planning Board shall consider the application at the first regular meeting of the Planning Board after receiving the completed application. Within 45 days after the meeting at which the application is considered, the Planning Board shall make its written recommendations and pass them on to the Board of Adjustment.
- F. The Zoning Administrator shall set a date and advertise for Board of Adjustment public hearing. The Board of Adjustment shall review the application and all recommendations from the Planning Board.
- G. The Board of Adjustment shall approve or deny the application following a public hearing provided for in division (F) above.
- H. After approval or conditional approval of the special use by the Board of Adjustment, the Board shall notify the Zoning Administrator of the approval. Notification shall be by a written letter signed by the Chairperson of the Board of Adjustment, and a copy of the approval letter shall be forwarded to the special use permit applicant and the Planning Board Chairperson.

Applicant/landowner must give written consent to conditions related to the special use permit to ensure enforceability.

I.

1. Rejection of an application for a special use permit shall be recorded in the minutes of the Board of Adjustment meeting during which the decision was made.
2. Notification of the rejection or denial of an application for a special use permit shall be a letter signed by the Chairperson of the Board of Adjustment.
3. The letter shall state reasons for denial and reference the specific sections or paragraphs in this chapter that would be violated if the special use were granted.
4. The denial letter shall be forwarded to the applicant by certified or registered mail and copies of the letter shall be forwarded to the Chairperson of the Planning Board and the Zoning Administrator.
5. One copy shall be retained in the files of the Board of Adjustment.

Penalty, see § 1.01.999

**§ 15.02.120 GENERAL REGULATIONS.**

- A. Permission may be granted by the Board of Adjustment for the establishment of uses listed as special uses (SU) in the district use regulation tables in this subchapter, after Planning Board review and recommendations and after a public hearing held by the Board of Adjustment. And further, that the Board of Adjustment finds that:
1. The proposed use does not affect adversely the general plans for the physical development of the town as embodied in these regulations or in any plan or portion thereof adopted by the Planning Board and/or the Town Council;
  2. The proposed use will not be contrary to the purposes stated in these regulations;
  3. The proposed use will not affect adversely the health and safety of residents and workers in the zoned area;
  4. The proposed use will not be detrimental to the use or development of adjacent properties or other neighborhood uses;
  5. The proposed use will not be affected adversely by the existing uses;
  6. The proposed use will be placed on a lot of sufficient size to satisfy the space requirements of the use;
  7. The proposed use will not constitute a nuisance or hazard because of number of persons who will attend or use these facilities, vehicular movement, noise or fume generation or type of physical activity;
  8. The standards set forth for each particular use for which a permit may be granted have been or will be met;
  9. The proposed use shall be subject to the minimum area, setback and other dimensional requirements of the zoning district in which it will be located; and
  10. The proposed use shall be subject to the off-street parking and service requirements of these regulations.
- B. The Board of Adjustment shall impose or require any additional restrictions and standards as may be necessary to protect the health and safety of workers and residents of the community, and to protect the value and use of property in the general neighborhood.
- C. Whenever the Board of Adjustment shall find, in the case of any permit granted pursuant to the provisions of these regulations, that any of the terms, conditions or restrictions upon which the permit was granted are not being complied with, the Board shall rescind and revoke the permit after giving due notice to all parties concerned.
- D. If construction of a use authorized by a special use permit does not begin within 6 months of the time the permit is issued, the permit shall be revoked.

Penalty, see § 1.01.999