



**MINUTES OF THE CITY OF BURLINGTON
CITY COUNCIL MEETING
SEPTEMBER 19, 2017**

The City Council of the City of Burlington held a regularly scheduled meeting in the Council Chamber, Municipal Building, 425 South Lexington Avenue, Burlington, N. C., 27215-1358, on September 19, 2017, at 7:00 p.m.

Mayor Ian Baltutis presided

Councilmembers Present: Mayor Ian Baltutis, Mayor Pro Tem Celo Faucette
Councilmembers Robert Ward, James Butler and Kathy Hykes

Councilmembers Absent: None

City Manager: Hardin Watkins, Present

City Attorney: David Huffman, Present

City Clerk: Renee M. Ward, Present

CALL TO ORDER: Mayor Ian Baltutis

INVOCATION: Councilmember Robert Ward

RECOGNITION: Council recognized City Engineer, Lanny Rhew for his years of service.

CODE OF ETHICS–DISCLOSING CONFLICTS OF INTEREST: City Clerk, Renee Ward

Councilmember Hykes stated she had a conflict of interest with Item H, Greenways and Bikeways Plan, due to her son being employed by Alta. She stated that even though he was not involved in this plan, she would like to be recused from voting on Item H.

Upon motion by Councilmember Ward, seconded by Mayor Pro Tem Faucette, it was resolved unanimously to recuse Councilmember Hykes from considering Item H.

APPROVAL OF MINUTES:

- August 14, 2017 – Work Session
- September 5, 2017 - City Council Meeting

Upon motion by Councilmember Butler, seconded by Councilmember Hykes, it was resolved unanimously to approve the above listed minutes.

ADD-ONS-CONSENT AGENDA:

- Item H – Greenways & Bikeways Plan
- Item I – Burlington Downtown Revitalization Project

Upon motion by Councilmember Ward, seconded by Mayor Pro Tem Faucette, it was resolved unanimously to approve the above listed add-ons.

ADOPTION OF AGENDA

Upon motion by Councilmember Butler, seconded by Councilmember Hykes, it was resolved unanimously to adopt the agenda with the above listed add-ons.

CONSENT AGENDA:

A. To adopt an Ordinance approving the following Traffic Commission recommendations:

- Request to reduce the speed limit on Ridgecrest Avenue between Crosby Drive and the northern cul-de-sac from 35 mph to 25 mph.
- Request to repeal the 50 mph speed limit on US 70, from the western corporate limit of Burlington, a point 0.38 mile west of SR 2748 (Springwood Church Road), eastward to Gibsonville corporate limit, a point 0.15 mile west of SR 2748 (Springwood Church Road).
- Request to enact a 45 mph speed limit on US 70 between a point 0.38 mile west of SR 2748 (Springwood Church Road) and a point 0.15 mile west of SR 2748 (Springwood Church Road).
- Request to enact a 45 mph speed limit on US 70 between a point 0.26 mile west of the Alamance County line and the Alamance County line.
- Request to enact a 45 mph speed limit on US 70 between the Guilford County line and a point 0.22 mile east of the Guilford County line.

Ordinance #17-22

AMENDMENT TO THE CITY OF BURLINGTON TRAFFIC ORDINANCE

BE IT ORDAINED by the City Council of the City of Burlington:

- Request to reduce the speed limit on Ridgecrest Avenue between Crosby Drive and the northern cul-de-sac from 35 MPH to 25 MPH.
- Request to repeal the 50 MPH speed limit on US 70, from the western corporate limit of Burlington, a point 0.38 mile west of SR 2748 (Springwood Church Road), eastward to Gibsonville corporate limit, a point 0.15 mile west of SR 2748 (Springwood Church Road).

- Request to enact a 45 MPH speed limit on US 70 between a point 0.38 mile west of SR 2748 (Springwood Church Road) and a point 0.15 mile west of SR 2748 (Springwood Church Road).
 - Request to enact a 45 MPH speed limit on US 70 between a point 0.26 mile west of the Alamance County Line and the Alamance County Line.
 - Request to enact a 45 MPH speed limit on US 70 between the Guilford County Line and a point 0.22 mile east of the Guilford County Line.
- A) That all ordinances or parts of ordinances inconsistent or in conflict with this ordinance are hereby repealed.
- B) That this ordinance shall take effect upon passage.

B. To adopt a Resolution authorizing the extension of lease of City-owned surplus property to American Tower Asset Sub, LLC.

Resolution #17-18

RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURLINGTON, NORTH CAROLINA, AUTHORIZING THE LEASE OF CITY-OWNED SURPLUS REAL PROPERTY TO AMERICAN TOWER ASSET SUB, LLC, IN ACCORDANCE WITH PROVISIONS OF NORTH CAROLINA GENERAL STATUTE 160A-272

WHEREAS, the City of Burlington has declared certain City-owned surplus real property, said property being more particularly described as follows:

BEING a portion of that real property owned by the City of Burlington and located at the corner of Hawkins Street and Lexington Avenue to American Tower Asset Sub, LLC for the purpose of providing cellular and wireless internet service and said property proposed to be leased being more particularly described as follows:

Lease Area

BEGINNING at an iron stake, said stake being a corner with Velna R. Newlin and Newlin Hardware Company, Inc. and lying South 32° 07' 20" East 100.30 feet from and iron stake, corner with Velna R. Newlin and Newlin Hardware Company Inc. in the south right-of-way line of Spring Street and running thence with the line of Newlin Hardware Company, Inc. North 53° 44' 10" East 216.34 feet to an iron stake, said stake being a corner with Electric Equipment Sales and Service, Inc.; thence with Electric Equipment Sales and Service, Inc., the following courses and distances: South 60° 13' East 40.84 feet to an iron stake; thence South 33° 19' 30" East 119.93 feet; thence South 32° 22' 10" East 92.03 feet to an iron stake in the west right-of-way line of Hawkins Street, thence with the west right-of-way line of Hawkins Street, South 14° 09' 40" East 103.36 feet to an iron stake at the intersection of the west right-of-way line of Hawkins Street and the north right-of-way of Lexington Avenue; thence with the North right-of-way of Lexington Avenue, South 55° 33' 50" West 207.64 feet to an iron stake, said stake being a corner with C.T. Holt and H. Graves Holt; thence with the line of the said Holt's, North 31°49' 10" West 205.85 feet to an iron stake, said

stake being a common corner with Velna R. Newlin and the said Holt's; thence with the line of Velna R. Newlin, North 31° 59' 50" West 133.17 feet to the BEGINNING, and being shown on City of Burlington Engineering Department Drawing No. 2489-78, dated December 20, 1978 and containing 1.825 Acres, more or less. See Deed Book 440, Page 785, Alamance County Register of Deeds.

Leased Site

The below-described property, lying in Burlington Township, Alamance, North Carolina, is a portion of the above-described Tract and is more particularly described as follows:

BEGINNING at a point in the North right-of-way line of North Lexington Avenue, said point lying south 55° 32' 52" West 74.08 feet from an iron stake at the intersection of the North right-of-way line of North Lexington Avenue and the West right-of-way line of Hawkins Street and running thence from said beginning point with the North right-of-way line of North Lexington Avenue South 55° 33' 52" West 133.48 feet to an iron stake, said stake being a corner with Robert J. Greeson as recorded in Deed Book 645, Page 516, Alamance County Register; thence with the line of said Robert J. Greeson North 31° 49' 10" West 95.09 feet to a point; thence a line across the lands of the City of Burlington the following courses and distances: North 55° 33' 52" East 90.56 feet to a point; thence South 34° 26' 08" East 25.44 feet to a point; thence North 85° 33' 52" East 44.55 feet to a point; thence South 34° 26' 08" East 47.27 feet to the BEGINNING and containing 11, 061 square feet as shown on that survey by George C. Love, Jr. entitled "Property of City of Burlington" dated April 3, 1994.

WHEREAS, the City Council of the City of Burlington, pursuant to North Carolina General Statute 160A-272, desires to extend the lease of said surplus real property to American Tower Asset Sub LLC, for a term of five (5) additional years and in consideration, therefore, the City shall receive a rental fee of Fifteen Thousand, Two-Hundred, and One dollars (\$15,201.00) per year to increase 3% annually for the additional five (5) years commencing on July 1, 2022, and expiring June 30, 2027. The City will continue to receive 50% of all collocation revenues.

WHEREAS, the proper notice has been given, in accordance with NCGS 160A-272, of the City of Burlington's intentions to execute an agreement to lease City-owned surplus real property; and,

WHEREAS, the City Council of the City of Burlington, at its regular meeting on Tuesday, September 19th, 2017, shall adopt a resolution authorizing the extension of the lease of the City-owned surplus property.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURLINGTON does hereby resolve that said surplus property shall be leased to American Tower Asset Sub LLC, as more particularly described above and in accordance with NCGS 160A-272.

AND IT IS FURTHER RESOLVED that this lease shall become effective upon the adoption of this resolution by the City Council of the City of Burlington and the execution of said lease by the Mayor and the City Clerk of the City of Burlington.

- C.** To adopt a Resolution setting a date of public hearing for October 3, 2017, to consider the Woodland Heights Apartments Phase III contiguous voluntary annexation.

Resolution #17-19

**RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION OF ANNEXATION
PURSUANT TO G.S. 160A-31**

WHEREAS, a petition requesting annexation of the contiguous area described herein has been received;
and

WHEREAS, certification by the City Clerk as to the sufficiency of the petition has been made.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Burlington, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held at the Municipal Building at 7:00pm on October 3, 2017.

Section 2. The area proposed for annexation is described as follows:

Woodland Heights Apartments Phase III Contiguous Voluntary Annexation

BEGINNING AT AN EXISTING ¼" BENT IRON PIPE IN THE NORTHERN RIGHT OF WAY OF PACE DRIVE, SAID CORNER ALSO BEING THE SOUTHEASTERN CORNER OF THE MEBANE WAREHOUSE, LLC PROPERTY; THENCE WITH THE EAST LINE OF THE MEBANE WAREHOUSE LLC. PROPERTY N 31°26'19" E FOR A DISTANCE OF 700.05 FEET TO AN EXISTING STONE, SAID STONE BEING A COMMON CORNER BETWEEN THE MEBANE WAREHOUSE LLC. PROPERTY AND THE KELLEY RADCLIFFE-SLADE PROPERTY; THENCE WITH THE SOUTHERN LINE OF THE KELLEY RADCLIFFE-SLADE PROPERTY S 85°07'52" E FOR A DISTANCE OF 133.93 FEET TO AN EXISTING ¾" IRON PIPE; THENCE S 85°24'49" E FOR A DISTANCE OF 27.77 FEET TO AN EXISTING IRON PIPE, SAID PIPE BEING A COMMON CORNER BETWEEN THE KELLEY RADCLIFFE-SLADE PROPERTY AND THE ANNETTE J. RADCLIFFE PROPERTY; THENCE WITH THE SOUTHERN LINE OF THE ANETTE J. RADCLIFFE PROPERTY S 85°23'53" E FOR A DISTANCE OF 105.18 FEET TO AN EXISTING ¾" IRON PIPE; THENCE S 86°49'32" E FOR A DISTANCE OF 373.78 FEET TO AN EXISTING ½" IRON PIPE, SAID PIPE BEING A COMMON CORNER BETWEEN THE ANNETTE J. RADCLIFFE PROPERTY AND THE KEVIN LAWS PROPERTY; THENCE WITH THE SOUTHERN LINE OF THE KEVIN LAWS PROPERTY S 86°48'52" E FOR A DISTANCE OF 195.25 FEET TO AN EXISTING ½" IRON PIPE, SAID PIPE BEING A COMMON CORNER BETWEEN THE KEVIN LAWS PROPERTY AND THE PARK VILLAGE SUBDIVISION PROPERTY; THENCE WITH THE WESTERN LINE OF THE PARK VILLAGE SUBDIVISION S 00°54'11" W FOR A DISTANCE OF 7.98 FEET TO AN EXISTING IRON PIPE; THENCE S 00°54'11" W FOR A DISTANCE OF 120.46 FEET TO AN EXISTING ½" IRON PIPE, SAID IRON PIPE BBEING A COMMON CORNER BETWEEN THE PARK VILLAGE SUBDIVISION PROPERTY AND THE WOODLAND HEIGHTS OF BURLINGTON, LLC PROPERTY; THENCE WITH THE WESTERN LINE OF THE WOODLAND HEIGHTS OF BURLINGTON, LLC. PROPERTY S 00°54'11" W FOR A DISTANCE OF 586.45 FEET TO AN EXISTING ½" BENT IRON PIPE; THENCE S 00°54'11" W FOR A DISTANCE OF 1.94 FEET TO AN EXISTING ½" IRON PIPE, SAID PIPE BEING IN THE NORTHERN RIGHT OF WAY LINE OF INTERSTATE 85 & 40; THENCE WITH THE NORTHERN RIGHT OF WAY LINE OF INTERSTATE 85 & 40 ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 5469.58 FEET AND A CHORD BEARING AND DISTANCE OF N 88°13'21" W FOR A DISTANCE OF 985.89 FEET TO AN EXISTING IRON REBAR WITH A CAP; THENCE CONTINUING WITH THE NOTHERN RIGHT OF WAY LINE N 83°13'58" W FOR A DISTANCE OF 106.31 FEET TO AN EXISTING IRON PIPE, THENCE LEAVING THE RIGHT OF WAY OF INTERSTATE 85 & 40 ALONG THE EASTERN RIGHT OF

WAY OF PACE DRIVE N 31°26'19" E FOR A DISTANCE OF 129.00 FEET TO THE POINT AND PLACE OF BEGINNING AND CONTAINING 17.909± ACRES.

SAVE AND EXCEPT THE FOLLOWING MORRIS CRAFTON, PACE DISTRIBUTING INC PROPERTY AS SHOWN IN DEED BOOK 4518, PAGE 2163. COMMENCING AT AN EXISTING IRON REBAR WITH A CAP, SAID REBAR BEING IN THE NOTHERN RIGHT OF WAY LINE OF INTERSTATE 85 & 40 AND ALSO BEING S 83°13'58" E FOR A DISTANCE OF 106.31 FEET FROM THE SOUTHWESTERN CORNER OF THE SUBJECT PROPERTY; THENCE FROM SAID POINT N 51°15'44" W FOR A DISTANCE OF 29.23 FEET TO THE POINT AND PLACE OF BEGINNING, SAID POINT BEING THE SOUTHEASTERN CORNER OF THE MORRIS CRAFTON & PACE DISTRIBUTING; THENCE FROM SAID POINT N 82°22'31" W FOR A DISTANCE OF 12.06 FEET TO A POINT; THENCE FROM SAID POINT N 07°20'57 w FOR A DISTANCE OF 12.06 FEET TO A POINT; THENCE S 83°44'45" E FOR A DISTANCE OF 34.32 FEET TO POINT; THENCE S 20°07'21" W FOR A DISTANCE OF 47.05 FEET TO THE POINT AND PLACE OF BEGINNING AND CONTAINING 0.024 ACRES.

THIS DESCRIPTION AS PER SURVEY FOR WOODLAND HEIGHTS OF BURLINGTON BY GREEN MOUNTAIN ENGINEERING, PLLC BEING THE SAME PROPERTY DESCRIBED IN BOOK 5025, PAGE 732 OF THE GUILFORD COUNTY REGISTER OF DEEDS.

Section 3. Notice of the public hearing shall be published in The Times News, a newspaper having general circulation in the City of Burlington, at least 10 days prior to the date of the public hearing.

D. To approve a 5% pay increase for City Attorney, David Huffman effective July 1, 2017.

E. Budget Amendment – 2018-13 – Police – RICO Appropriations

BA2018-13

Increase Revenues:

01317000-39999	Appropriated Fund Balance	\$37,000
----------------	---------------------------	----------

Increase Expenditures:

01354000-41900	Professional Services	\$20,000
01354000-43390	Equipment not Capitalized	7,000
01354000-44500	Maint & Service Contracts	10,000

F. Budget Amendment – 2018-14 – Animal Services – Donation

BA2018-14

Increase Revenues:

01004503-30104	Donations – Animal Shelter	\$ 1,500
----------------	----------------------------	----------

Increase Expenditures:

01052503-41401	Staff Training	\$ 1,500
----------------	----------------	----------

G. Budget Amendment – 2018-15 – Animal Services – Donation

BA2018-15

Increase Revenues:

01004503-30104	Donations –Animal Shelter	\$3,948
----------------	---------------------------	---------

Increase Expenditures:

01052503-43319	Medical Supplies	\$3,948
----------------	------------------	---------

H. To adopt the City of Burlington’s Greenways and Bikeways Plan.

Available here: <http://burlingtongreenwaysbikewaysplan.weebly.com/draft-plan.html>

I. To approve a Burlington Downtown Revitalization project, funded by the State of North Carolina, in the amount of \$50,000, to construct public restrooms in the vicinity of the Historic Depot.

Upon motion by Mayor Pro Tem Faucette, seconded by Councilmember Butler, it was resolved unanimously to approve the foregoing consent agenda.

PUBLIC HEARINGS:

ITEM 1: CITIZEN COMMENTS – CONSOLIDATED CAPER – COMMUNITY DEVELOPMENT PROGRAM YEAR 2016-17

Mayor Baltutis announced that a public hearing had been set to receive citizen comments on the Consolidated Annual Performance and Evaluation Report for the Community Development Program year 2016-2017.

Community Development Administrator Sonye Randolph asked Council for approval of the Consolidated Annual Performance and Evaluation Report (CAPER) for the Community Development Program 2016. She stated that the public hearing was publicized on September 6, 2017, and that the CAPER had been on display in the Planning and Community Development office.

Councilmember Hykes asked what the money for the Richmond Hill project was.

Ms. Randolph stated that the money for the Richmond Hill project was for site plan development and marketing uses for soft cost before the actual hard cost construction and development. She stated that there were issues with the stream near the site and that there had to be some site plan development work that was needed. She stated that the CDBG monies went for that use.

Mayor Pro Tem Faucette asked if the City would hold that money until the project began again.

Ms. Randolph stated that to her knowledge, it was not on hold, but that the City would continue to cover any cost that had to do with site plan development and that this money was specifically for the site and not for anything else.

The public hearing was opened and there were no comments.

Upon motion by Councilmember Ward, seconded by Councilmember Hykes, it was resolved unanimously to close the public hearing.

Upon motion by Councilmember Hykes, seconded by Mayor Pro Tem Faucette, it was resolved unanimously to submit the CAPER to the US Department of Housing and Urban Development.

ITEM 2: ADOPT FLOOD INSURANCE RATE MAPS (FIRMS) – ADOPT REVISED FLOOD DAMAGE PREVENTION ORDINANCE

Mayor Baltutis announced that a public hearing had been set to consider adopting the Flood Insurance Rate Maps (FIRMs) and the revised Flood Damage Prevention Ordinance.

Senior Civil Engineer David Bowman stated that the National Flood Insurance Program (NFIP) was a federal program that enabled property owners and participating communities to purchase insurance against potential flood damage. He stated that FEMA provided the technical flood hazard data in the form of flood insurance rate maps showing the potential flooding areas. He stated that it was up to the participating community to pass a Flood Damage Prevention Ordinance. Mr. Bowman stated that periodically FEMA would update hazard information and revised the flood insurance rate maps. He stated that those maps and the revised modeled ordinance would need to be adopted by the local participating communities. He asked Council to consider adopting the flood insurance rate maps and the revised ordinance.

City Attorney David Huffman stated that he had prepared substitute language, Section H of the ordinance that reads as follows:

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to N.C.G.S. §143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation shall be considered a separate offense. Additionally, any violation of this section shall subject violators to a civil penalty in the amount of five hundred dollars (\$500) per day. Violators shall pay the penalty to the City Tax Collector's office within ten (10) days of receipt. The failure of such violators to pay the civil penalty within the specified time shall subject such violators to a civil action to

collect all penalties and costs for said violation, and any civil penalty not timely paid shall carry an additional late payment penalty of one hundred dollars (\$100). Continuing violations shall subject violators to separate, distinct and successive civil penalties, Further, the City shall have available to it injunctive relief pursuant to N.C.G.S§1A-1, Rule 65, of the Federal Rules of Civil Procedure. Nothing herein contained shall prevent the City of Burlington from taking such other lawful action as is necessary to prevent or remedy any violation.

The public hearing was opened and there were no comments.

Upon motion by Mayor Pro Tem Faucette, seconded by Councilmember Butler, it was resolved unanimously to close the public hearing.

Mayor Pro Tem Faucette moved for the adoption of the following ordinance:

Ordinance #17-23

APPENDIX B - FLOOD DAMAGE PREVENTION ORDINANCE

Non-Coastal Regular Phase

FOOTNOTE(S):

--- (1) ---

Editor's note— Appendix B is derived from Ord. No. 06-38, enacted August 15, 2006, such ordinance being treated as a replacement of former app. B, arts. 1—6, which pertained to the National Flood Insurance Flood Damage Prevention Ordinance. For derivation of former app. B, please see the Code Comparative Table. Words appearing in brackets [] have been added by the editor for clarity; obvious misspellings have been corrected without comment. Amendments to Ord. No. 07-25 will be indicated by history notes in parentheses following the affected sections. Additionally, a system of numbering and lettering to distinguish articles, sections and subsections has been employed at the editor's discretion. It is the editor's intention to match as closely as possible the style of the previous appendix.

ARTICLE 1. - STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

Section A. - Statutory authorization.

Municipal: The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of Burlington, North Carolina, does ordain as follows:

Section B. - Findings of fact.

The flood prone areas within the jurisdiction of the City of Burlington are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

Section C. - Statement of purpose.

It is the purpose of this article to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

Section D. - Objectives.

The objectives of this ordinance are:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business losses and interruptions;
- (5) To minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (6) Minimize damage to private and public property due to flooding;
- (7) Make flood insurance available to the community through the National Flood Insurance Program;
- (8) Maintain the natural and beneficial functions of floodplains;
- (9) To help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (10) To ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

ARTICLE 2. - DEFINITIONS.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

Accessory Structure (Appurtenant Structure) means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

Addition (to an existing building) means an extension or increase in the floor area or height of a building or structure.

Alteration of a watercourse means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.

Area of Shallow Flooding means a designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of Special Flood Hazard. See "Special Flood Hazard Area (SFHA)."

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Base Flood means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal or State or other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard", establishes the "Regulatory Flood Protection Elevation".

Building. See "Structure."

Chemical Storage Facility means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Design Flood: See "Regulatory Flood Protection Elevation."

Development means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

Development Activity means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

Digital Flood Insurance Rate Map (DFIRM) means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Disposal means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

Elevated Building means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Encroachment means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing building and existing structure means any building and/or structure for which the "start of construction" commenced before April 4, 1981.

Existing Manufactured Home Park or Manufactured Home Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the original effective date of the floodplain management regulations adopted by the community.

Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

Flood Boundary and Floodway Map (FBFM) means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

Flood Insurance means the insurance coverage provided under the National Flood Insurance Program.

Flood Insurance Rate Map (FIRM) means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Flood Insurance Study (FIS) means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

Flood Prone Area. See "Floodplain."

Floodplain means any land area susceptible to being inundated by water from any source.

Floodplain Administrator is the individual appointed to administer and enforce the floodplain management regulations.

Floodplain Development Permit means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

Floodplain Management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain Management Regulations means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

Flood-resistant material means any building product [material, component or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Floodway encroachment analysis means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

Flood Zone means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

Freeboard means the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization on the watershed. The Base Flood Elevation plus the freeboard establishes the "Regulatory Flood Protection Elevation".

Functionally Dependent Facility means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hazardous Waste Management Facility means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Highest Adjacent Grade (HAG) means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

Historic Structure means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program"; or
- (d) Certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program"

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

Letter of Map Change (LOMC) means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- (a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (b) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (d) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light Duty Truck means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (c) Available with special features enabling off-street or off-highway operation and use.

Lowest Adjacent Grade (LAG) means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

Lowest Floor means lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured Home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured Home Park or Subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market Value means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

New Construction means structures for which the "start of construction" commenced on or after the effective date of the original version of the community's Flood Damage Prevention Ordinance and includes any subsequent improvements to such structures.

Non-Encroachment Area (NEA) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

Post-FIRM means construction or other development for which the "start of construction" occurred on or after the effective date of the initial Flood Insurance Rate Map for the area.

Pre-FIRM means construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map for the area.

Principally Above Ground means that at least 51% of the actual cash value of the structure is above ground.

Public Safety and/or Nuisance means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational Vehicle (RV) means a vehicle, which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (5) Is fully licensed and ready for highway use.

Reference Level is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone AE, A, A99, AH, or AO.

Regulatory Flood Protection Elevation means the "Base Flood Elevation" plus the "Freeboard". In "Special Flood Hazard Areas" where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

Remedy a Violation means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Salvage Yard means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

Solid Waste Disposal Facility means, as defined in NCGS 130A-290(a)(35), any facility involved in the disposal of solid waste.

Solid Waste Disposal Site means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

Special Flood Hazard Area (SFHA) means the land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year, as determined in Article 3, Section B of this ordinance.

Start of Construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

Substantial Damage means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement". Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Substantial Improvement means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (a) Any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,
- (b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Technical Bulletin and Technical Fact Sheet means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local

officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

Temperature Controlled means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

Variance is a grant of relief from the requirements of this ordinance.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

Water Surface Elevation (WSE) means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

ARTICLE 3. - GENERAL PROVISIONS

Section A. - Lands to which this ordinance applies.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including the Extra-Territorial Jurisdiction (ETJ) of the City of Burlington and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

Section B. - Basis for establishing the Special Flood Hazard Areas.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated November 17, 2017, developed as part of the FIS, which are adopted by reference and declared a part of this ordinance. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of the City of Burlington are also adopted by reference and declared a part of this ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 3 months.

Section C. - Establishment of Floodplain Development Permit.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with Article 3, Section B of this ordinance.

Section D. - Compliance.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

Section E. - Abrogation and greater restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section F. - Interpretation.

In the interpretation and application of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under State statutes.

Section G. - Warning and disclaimer of liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Burlington or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

Section H. - Penalties for violation.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to N.C.G.S. §143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation shall be considered a separate offense. Additionally, any violation of this section shall subject violators to a civil penalty in the amount of five hundred dollars (\$500) per day. Violators shall pay the penalty to the City Tax Collector's office within ten (10) days of receipt. The failure of such violators to pay the civil penalty within the specified time shall subject such violators to a civil action to collect all penalties and costs for said violation, and any civil penalty not timely paid shall carry an additional late payment penalty of one hundred dollars (\$100). Continuing violations shall subject violators to separate, distinct and successive civil penalties. Further, the City shall have available to it injunctive relief pursuant to N.C.G.S. §1A-1, Rule 65, of the Federal Rules of Civil Procedure. Nothing herein contained shall prevent the City of Burlington from taking such other lawful action as is necessary to prevent or remedy any violation.

ARTICLE 4. - ADMINISTRATION

Section A. - Designation of Floodplain Administrator.

The City Engineer, or his/her designated representative, hereinafter referred to as the "Floodplain Administrator," is hereby appointed to administer and implement the provisions of this ordinance. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

Section B. - Floodplain Development Application, Permit and Certification requirements.

- (1) *Application requirements.* Application for a Floodplain Development Permit shall be made to the floodplain administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:
 - (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 1. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
 2. The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Article 3, Section B, or a statement that the entire lot is within the Special Flood Hazard Area;
 3. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Article 3, Section B;

4. The boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;
 5. The Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C(11 & 12); or Article 5, Section D;
 6. The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
 7. Certification of the plot plan by a registered land surveyor or professional engineer.
- (b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
1. Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;
 2. Elevation in relation to NAVD 1988 to which any non-residential structure in Zone AE, A, AH, A99, or AO will be flood-proofed; and
 3. Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed;
- (c) If floodproofing, a Floodproofing Certificate (*FEMA Form 81-65*) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.
- (d) A Foundation Plan, drawn to scale,, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
1. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls);
 2. Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with Article 5, Section B(4)(d), when solid foundation perimeter walls are used in Zones A, AO, AE, AH, and A99;
- (e) Usage details of any enclosed areas below the regulatory flood protection elevation.
- (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
- (g) Copies of all other Local, State and Federal permits required prior to floodplain development permit issuance (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.)
- (h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure Article 5, Sections B(6 & 7) of this ordinance are met.
- (i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.
- (2) *Permit requirements.* The Floodplain Development Permit shall include, but not be limited to:
- (a) A complete description of all the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).
 - (b) The Special Flood Hazard Area determination for the proposed development per available data specified in Article 3, Section B.
 - (c) The regulatory flood protection elevation required for the reference level and all attendant utilities.
 - (d) The regulatory flood protection elevation required for the protection of all public utilities.
 - (e) All certification submittal requirements with timelines.

- f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, unless the requirements of Article 5, Section F have been met.
- (g) The flood openings requirements, if in Zones A, AO, AE, AH, or A99.
- (h) Limitations of below BFE enclosure uses (if applicable). (i.e., Parking, Building Access and Limited Storage only).

(3) *Certification requirements.*

- (a) *Elevation Certificates.* An Elevation Certificate (FEMA Form 086-0-33) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to NAVD 1988. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

An Elevation Certificate (FEMA Form 086-0-33) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

A final Finished Construction Elevation Certificate (*FEMA Form 086-0-33*) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

- (b) *Floodproofing Certificate.* If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data and plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of

Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.

- (c) If a manufactured home is placed within Zone A, AO, AE, AH, or A99 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required per Article 5, Section B(3).
 - (d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
 - (e) *Certification Exemptions.* The following structures, if located within Zone A, AO, AE, AH, or A99, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
 - 1. Recreational Vehicles meeting requirements of Article 5, Section B(6)(a);
 - 2. Temporary Structures meeting requirements of Article 5, Section B(7); and
 - 3. Accessory Structures less than 150 square feet meeting requirements of Article 5, Section B(8).
- (4) *Determinations for existing buildings and structures.*

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (a) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

Section C. - Duties and Responsibilities of the Floodplain Administrator.

The Floodplain Administrator shall perform, but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (2) Advise permittee that additional Federal or State permits (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and require that copies of such permits be provided and maintained on file with the floodplain development permit.
- (3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any

alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of F are met.
- (6) Obtain actual elevation (in relation to NAVD 88) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with Article 4, Section B(3).
- (7) Obtain actual elevation (in relation to NAVD 1988) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with Article 4, Section B(3).
- (8) Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with Article 4, Section B(3).
- (9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Article 4, Section B(3) and Article 5, Section B(2).
- (10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (11) When Base Flood Elevation (BFE) data has not been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section D(2)(b), in order to administer the provisions of this ordinance.
- (12) When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (13) When the lowest ground elevation of a parcel or structure in a Special Flood Hazard Area is above the Base Flood Elevation, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file.
- (14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.
- (15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (17) Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

- (18) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (19) Follow through with corrective procedures of Article 4, Section D.
- (20) Review, provide input, and make recommendations for variance requests.
- (21) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).

Section D. - Corrective Procedures.

- (1) *Violations to be Corrected:* When the floodplain administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (2) *Actions in Event of Failure to Take Corrective Action:* If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - (a) That the building or property is in violation of the Flood Damage Prevention Ordinance;
 - (b) That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,
 - (c) That following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.
- (3) *Order to Take Corrective Action:* If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one-hundred-eighty (180) calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.
- (4) *Appeal:* Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (5) *Failure to Comply with Order:* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

Section E. - Variance Procedures.

- (1) The City Council of the City of Burlington, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.
- (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- (3) Variances may be issued for:

- (a) the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (b) functionally dependant facilities if determined to meet the definition as stated in Article 2 of this ordinance, provided provisions of Article 4, Section E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages.
 - (c) any other type of development, provided it meets the requirements stated in this section.
- (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
- (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependant facility, where applicable;
 - (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (9) Conditions for Variances:
- (a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 - (b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
 - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- (d) Variances shall only be issued prior to development permit approval.
 - (e) Variances shall only be issued upon:
 - 1. A showing of good and sufficient cause;
 - 2. A determination that failure to grant the variance would result in exceptional hardship; and
 - 3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (10) A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.
- (a) The use serves a critical need in the community.
 - (b) No feasible location exists for the use outside the Special Flood Hazard Area.
 - (c) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
 - (d) The use complies with all other applicable Federal, State and local laws.
 - (e) The City of Burlington has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

ARTICLE 5. - PROVISIONS FOR FLOOD HAZARD REDUCTION.

Section A. - General Standards.

In all Special Flood Hazard Areas the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, etc.), hot water heaters, and electric outlets/switches.
 - (a) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
 - (b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.

- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
- (9) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Article 4, Section E(10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to Article 4, Section B(3) of this ordinance.
- (10) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (11) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (13) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (14) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (15) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.

Section B. - Specific Standards.

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Article 3, Section B, or Article 5, Section D, the following provisions, in addition to Article 5, Section A, are required:

- (1) *Residential Construction.* New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Article 2 of this ordinance.
- (2) *Non-Residential Construction.* New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Article 2 of this ordinance. Structures located in A, AE, AH, AO, and A99 Zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Article 5, Section I (2). A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Article 4, Section B(3), along with the operational plan and the inspection and maintenance plans.
- (3) *Manufactured Homes.*

- (a) New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Article 2 of this ordinance.
 - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
 - (c) All enclosures or skirting below the lowest floor shall meet the requirements of Article 5, Section B(4)(a), (b), and (c).
 - (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the floodplain administrator and the local Emergency Management coordinator.
- (4) *Elevated Buildings.* Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
- (a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
 - (b) Shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
 - (c) Shall include, in Zones A, AO, AE, AH, and A99, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria;
 - 1. A minimum of two flood openings on different sides of each enclosed area subject to flooding;
 - 2. The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 - 3. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - 4. The bottom of all required flood openings shall be no higher than one (1) foot above the higher of the interior or exterior adjacent grade;
 - 5. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 - 6. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.
- (5) *Additions/Improvements.*
- (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - 1. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - 2. A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing

structure and the addition and/or improvements must comply with the standards for new construction.

- (b) Additions to pre-FIRM or post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
 - (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - 1. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.
 - 2. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
 - (d) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a Insert number of years (One (1) year minimum is required) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the Insert number of years (One (1) year minimum is required) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. (The repetitive loss portion is OPTIONAL, but will be required for flood insurance policy holders to be eligible for Increased Cost of Compliance (ICC) benefits for repetitive losses.) If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:
 - 1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
 - 2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.
- (6) *Recreational Vehicles.* Recreational vehicles shall either:
- (a) Be on site for fewer than 180 consecutive days or be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
 - (b) Meet all the requirements for new construction.
- (7) *Temporary Non-Residential Structures.* Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval:
- (a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;
 - (b) The name, address, and phone number of the individual responsible for the removal of the temporary structure;
 - (c) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
 - (d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
 - (e) Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

- (8) *Accessory Structures.* When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 - (b) Accessory structures shall not be temperature-controlled;
 - (c) Accessory structures shall be designed to have low flood damage potential;
 - (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 - (e) Accessory structures shall be firmly anchored in accordance with Article 5, Section A(1);
 - (f) All service facilities such as electrical shall be installed in accordance with Article 5, Section A(4); and
 - (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with Article 5, Section B(4)(c)..

An accessory structure with a footprint less than 150 square feet or that is a minimal investment of \$3,000 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of Article 5, Section B (2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B(3).

- (9) *Tanks.* When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- (a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
 - (b) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;
 - (c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section B (2) of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.
 - (d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:
 - 1. At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
 - 2. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(10) *Other Development.*

- (a) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Article 5, Section F of this ordinance.

- (b) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.
- (c) Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.

Section C. - Reserved

Section D. - Standards for Floodplains without Established Base Flood Elevations.

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article 3, Section B, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to Article 5, Section A, shall apply:

- (1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) The BFE used in determining the regulatory flood protection elevation shall be determined based on one of the following criteria set in priority order:
 - (a) If Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Article 5, Sections A&B.
 - (b) When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Article 5, Sections B and F.
 - (c) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per Article 3, Section B to be utilized in implementing this ordinance.
 - (d) When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated to or above the regulatory flood protection elevation, as defined in Article 2

Section E. - Standards for Riverine Floodplains with BFE but without Established Floodways or Non-Encroachment Areas.

Along rivers and streams where BFE data is provided by FEMA but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (1) Standards of Article 5, Sections A and B; and
- (2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

Section F. - Floodways and Non-Encroachment Areas.

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article 3, Section B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Article 5, Sections A and B, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless: it has been demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the floodplain administrator prior to issuance of floodplain development permit, or a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.
- (2) If Article 5, Section F(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
 - (a) The anchoring and the elevation standards of Article 5, Section B(3); and
 - (b) The no encroachment standard of Article 5, Section F(1).

Section G. - Standards for Areas of Shallow Flooding (Zone AO).

Located within the Special Flood Hazard Areas established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Article 5, Sections A and B, all new construction and substantial improvements shall meet the following requirements:

- (1) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of two (2) feet, above the highest adjacent grade; or at least four feet above the highest adjacent grade if no depth number is specified.
- (2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Article 5, Section H(1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as per Article 4, Section B(3) and Article 5, Section B(2).
- (3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

Section H. - Standards for Areas of Shallow Flooding (Zone AO).

Located within the Special Flood Hazard Areas established in Article 3, Section B, are areas designated as shallow flooding areas. These areas are subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are one (1) to three (3) feet. Base Flood Elevations are derived from detailed hydraulic analyses are shown in this zone. In addition to Article 5, Sections A and B, all new construction and substantial improvements shall meet the following requirements:

- (1) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

Section I. - Unmapped Streams where Regulatory Flood Elevations or Floodways have not been provided.

The following governs setbacks for planned construction activities adjacent to small, unmapped streams. Provisions of the stormwater and floodplain ordinances overlap, and both ordinances may apply to development and/or construction along small unmapped streams.

The stormwater ordinance, adopted on May 31, 2007, requires compliance with the federal Phase II Stormwater regulations promulgated pursuant to the Federal Water Pollution Control Act of 1972.

Said stormwater ordinance provides for special setbacks from small unmapped streams if new development and/or construction activities will result in a disturbed area of one acre or more. Under the provisions of the stormwater ordinance, a thirty feet wide undisturbed buffer area shall be maintained along each side of small unmapped streams, and structures and/or impervious surfaces cannot be constructed for a perpendicular distance of twenty feet from the said buffer line.

For new development where the total area of disturbance is less than one acre and the drainage area for the creek or stream adjacent to the planned construction is greater than 25 acres, the following requirements shall apply:

- (1) No building or fill material shall be located closer to the centerline of the adjacent streambed than the distance determined by adding the distance "x" from Table A below to the average width of the streambed adjacent to the site.

TABLE A

Area of Drainage Basin (Acres)	Distance "X" (Feet)
25 to 100	15
101 to 200	20
201 to 400	25
400 to 640*	30

*Or limits of detailed flood study by FEMA

- (2) The lowest floor, including basement, of residential structures shall be elevated not less than two (2) feet above a reference elevation that is to be determined as follows:
 - a. The elevation of the lowest point where stormwater would overtop the curb, pavement, fill material, etc. above the nearest downstream culvert pipe, bridge, dam, etc. that crosses the adjacent stream shall be determined.
 - b. The reference elevation shall be the sum of the elevation determined in (a) above plus the amount of the change in elevation of the streambed between a point adjacent and perpendicular to the most downstream point of the proposed structure and the streambed at the downstream location used in (a) above.
- (3) The lowest floor, including basement, of nonresidential structures shall be elevated not less than two (2) feet above a reference elevation that is determined as follows, or together with attendant utility and sanitary facilities be flood proofed to this required elevation.
 - a. The elevation of the lowest point where stormwater would overtop the curb, pavement, fill material, etc. above the nearest downstream culvert pipe, bridge, dam, etc. that crosses the adjacent stream shall be determined.
 - b. The reference elevation shall be the sum of the elevation determined in (a) above plus the amount of the change in elevation of the streambed between a point adjacent and perpendicular to the most

downstream point of the proposed structure and the streambed at the downstream location used in (a) above.

- (4) This section shall not apply to streams, channels or drainage ways that serve as an outlet for drainage basins that have a drainage area upstream from the proposed site of less than twenty-five (25) acres.

(Ord. No. 08-10, § 2, 2-19-08)

Section J. - Exceptions.

Exceptions to the provisions of Section H may be granted provided the following conditions are met:

- (1) The proposed project involves the expansion of an existing building.
- (2) No part of the proposed expansion shall be closer to the adjacent streambed than the perpendicular distance between the closest point of the existing structure and the adjacent streambed.

(Ord. No. 08-10, § 2, 2-19-08)

ARTICLE 6. - LEGAL STATUS PROVISIONS

Section A. - Effect on Rights and Liabilities under the Existing Flood Damage Prevention Ordinance.

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted on April 4, 1981, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the City of Burlington enacted on April 4, 1981, as amended, which are not reenacted herein are repealed.

Section B. - Effect upon Outstanding Floodplain Development Permits.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

Section C. - Severability.

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

Section D. - Effective Date.

This ordinance shall become effective on November 17, 2017.

The foregoing ordinance was seconded by Councilmember Hykes, and after full discussion, the same was voted upon and declared duly adopted, no amendments having been offered and consent having been given to place the same upon its immediate passage. Councilmembers voting in favor of the motion to adopt the foregoing ordinance were Baltutis, Faucette, Ward, Butler and Hykes.

ITEM 3: REZONING – 1615 GREENWOOD TERRACE - SCHOOL

Mayor Baltutis announced that a public hearing had been set to consider an application to rezone from R-9 Residential District to CR Conditional Residential District for the use of an Elementary School, Middle School and High School. The property is located at 1615 Greenwood Terrace referenced as Alamance County tax identification number 123243.

Planning and Community Development Director Amy Nelson stated that this rezoning request had the recommendation of staff and the Technical Review Committee. The Planning and Zoning Commission recommended the request to Council unanimously and the Commission found that the rezoning will not adversely affect the adjoining property, is in keeping with land uses already in the area, and that it is consistent with the Comprehensive Land Use Plan. She stated that the plan for this project met all of requirements and that the school expansion was representative of the type of use that the Comprehensive Plan states was generally considered good for locating in neighborhoods. She stated that Mr. Chad Huffine was present to speak on the request.

Mr. Chad Huffine, Civil Engineer for the project stated that the project was presented to the area neighbors, a meeting was held at the school and questions had been entertained. He stated that there had been individual meetings with neighbors and they had addressed their questions or directed them to the appropriate staff members.

The public hearing was opened and there were no comments.

Upon motion by Councilmember Butler, seconded by Mayor Pro Tem Faucette, it was resolved unanimously to close the public hearing.

Councilmember Butler moved for the adoption of the following ordinance:

Ordinance #17-24

ORDINANCE TO AMEND OFFICIAL ZONING MAP (Rezone Property located at 1615 Greenwood Terrace.)

BE IT ORDAINED by the City Council of the City of Burlington, North Carolina:

Section 1. That the official zoning map, an element of the Burlington Zoning Ordinance, and the Comprehensive Land Use Plan are hereby amended by rezoning from R-9 Residential District to CR Conditional Residential District for the use of an Elementary School, Middle School and High School, subject to the conditional uses with limitations as set forth in Sections 2, 3 and 4 of this ordinance. The area is described as follows:

Property is located at 1615 Greenwood Terrace referenced as Alamance County tax identification number 123243.

Elementary School, Middle School and High School is hereby authorized subject to the following Use and Development Conditions:

Use Conditions

1. Elementary, Middle, High School and Gym structures in addition to supporting and surrounding parking, existing and future signage, athletic fields or other necessary infrastructure for future

development and future buildings associated with these uses shall be reviewable and approvable at the staff level for technical review and other associated City required approvals and permitting.

Development Conditions

1. All required parking, setbacks, landscaping and other applicable dimensional requirements shall be met per the plan in accordance with The City of Burlington Zoning Ordinance.

Section 3. This property will be perpetually bound to the uses authorized and subject to such conditions as imposed including site plans and other submissions, unless subsequently changed or amended as provided for in the City of Burlington Zoning Ordinance.

Section 4. Any violations or failure to accept any conditions and use limitations imposed herein shall be subject to the remedies provided in the City of Burlington Code of Ordinances and Zoning Ordinance.

Section 5. That all ordinances or parts of ordinances inconsistent or in conflict with this ordinance are hereby repealed.

Section 6. That this ordinance shall take effect upon passage.

The foregoing ordinance was seconded by Councilmember Ward, and after full discussion, the same was voted upon and declared duly adopted, no amendments having been offered and consent having been given to place the same upon its immediate passage. Councilmembers voting in favor of the motion to adopt the foregoing ordinance were Baltutis, Faucette, Ward, Butler and Hykes.

Upon motion by Councilmember Butler, seconded by Mayor Pro Tem Faucette, it was resolved unanimously to approve the following statement of consistency:

STATEMENT OF CONSISTENCY:

The City Council finds that the above amendment is consistent with the City of Burlington Comprehensive Land Use Plan and that this action is reasonable and in the public interest in that the amendment is compatible with existing land uses in the vicinity and reflects the changing land use patterns in the area.

**ITEM 4: REZONING – ALAMANCE ROAD - EXPANSION – BURLINGTON
ALAMANCE AIRPORT**

Mayor Baltutis announced that a public hearing had been set to consider an application to rezone from O&I Office and Institutional District and R-9 Residential District to CI Conditional Industrial District for the continued use and expansion of the Airport. The properties are located on the east side of Alamance Road and the north side of Rocklane Drive referenced as Alamance County tax identification numbers 120215 and 120216.

Planning and Community Development Director Amy Nelson stated that this rezoning request had the recommendation of staff and that the Planning and Zoning Commission recommended the request to Council unanimously. She stated that the Commission found that the rezoning would not adversely affect the adjoining property, was in keeping with land uses already in the area, and that it was consistent with the Comprehensive Land Use Plan. She stated that the airport was adding property for future needs and had become one of the main components of the area named the Carolina Corridor Commerce Park by our Comprehensive Plan.

Mr. Dan Danieley stated that this was the last two of seven parcels for future air operations center. He stated that these were the initial tracts of land and would total just under 60 acres which would get the development started.

Public hearing was opened and there were no comments.

Upon motion by Councilmember Ward, seconded by Mayor Pro Tem Faucette, it was resolved unanimously to close the public hearing.

Mayor Pro Tem Faucette moved for the adoption of the following ordinance:

Ordinance #17-25

ORDINANCE TO AMEND OFFICIAL ZONING MAP (Rezone properties are located on the east side of Alamance Road and the north side of Rocklane Drive.)

BE IT ORDAINED by the City Council of the City of Burlington, North Carolina:

Section 1. That the official zoning map, an element of the Burlington Zoning Ordinance, and the Comprehensive Land Use Plan are hereby amended by rezoning O&I Office and Institutional District and R-9 Residential District to CI Conditional Industrial District for the continued use and expansion of

the Airport, subject to the conditional uses with limitations as set forth in Sections 2, 3 and 4 of this ordinance.

The area is described as follows:

Property is located on the east side of Alamance Road and the north side of Rocklane Drive referenced as Alamance County tax identification number 120215 and 120216.

Section 2. That the rezoning from O&I Office and Institutional District and R-9 Residential District to CI Conditional Industrial for the continued use and expansion of the airport is hereby authorized subject to the following Use and Development Conditions:

Use Conditions

1. Public use airport and continued airport development.
2. Structures and equipment associated with airport operations.

Development Conditions

1. Landscaping
2. Future structures: hangars, terminal facilities, associated airport and aviation buildings.
3. All local, state and federal requirements will be adhered to throughout the project development process.
4. Development plans will be submitted to and reviewed by the City of Burlington Technical Review Committee.

Section 3. This property will be perpetually bound to the uses authorized and subject to such conditions as imposed including site plans and other submissions, unless subsequently changed or amended as provided for in the City of Burlington Zoning Ordinance.

Section 4. Any violations or failure to accept any conditions and use limitations imposed herein shall be subject to the remedies provided in the City of Burlington Code of Ordinances and Zoning Ordinance.

Section 5. That all ordinances or parts of ordinances inconsistent or in conflict with this ordinance are hereby repealed.

Section 6. That this ordinance shall take effect upon passage.

The foregoing ordinance was seconded by Councilmember Butler, and after full discussion, the same was voted upon and declared duly adopted, no amendments having been offered and consent having been given to place the same upon its immediate passage. Councilmembers voting in favor of the motion to adopt the foregoing ordinance were Baltutis, Faucette, Ward, Butler and Hykes.

Upon motion by Mayor Pro Tem Faucette, seconded by Councilmember Ward, it was resolved unanimously to approve the following statement of consistency:

STATEMENT OF CONSISTENCY:

The City Council finds that the above amendment is consistent with the City of Burlington Comprehensive Land Use Plan and that this action is reasonable and in the public interest in that the amendment is compatible with existing land uses in the vicinity and reflects the changing land use patterns in the area.

ITEM 5: REZONING – 1935 HANDORD ROAD – CHURCH DAY CARE

Mayor Baltutis announced that a public hearing had been set to consider an application to rezone from R-9 Residential District and I-1 Planned Industrial District to CR Conditional Residential District for the use of an existing Church with the addition of a Child Day Care with 70 children and an Elementary School with 35 students. The property is located at 1935 Hanford Road referenced as Alamance County tax identification number 132796.

Planning and Community Development Director Amy Nelson stated that this rezoning request had the recommendation of staff and the Technical Review Committee. She stated that the Planning and Zoning Commission recommended the request to Council by a vote of 4 to 1. The Commission found that the rezoning would not adversely affect the adjoining property, was in keeping with land uses already in the area, and that it was consistent with the Comprehensive Land Use Plan. She stated that there were a variety of uses in the area and that this rezoning should not cause any major impacts to those land uses. She stated that there would only be interior changes made, with no exterior construction. She stated that child day cares and schools were allowed by the ordinance through conditional zoning.

Rev. Kenny Godair stated that it had been their dream and vision to have a daycare and school to reach out into the community.

Public hearing was opened and the following citizens spoke:

- Mr. Jose Luis Alegria, 1024 Stokes Street, Burlington, spoke in favor of the rezoning.
- Mr. James Harris, 404 Dr. Pickett Road, Burlington, spoke in opposition of the rezoning.
- Mr. Jason Pickard, 1949 Hanford Road, Burlington, spoke in favor of the rezoning.
- Ms. Kathy Cole, 2426 Edgewood Avenue, spoke in opposition of the rezoning.

Upon motion by Mayor Pro Tem Faucette, seconded by Councilmember Butler, it was resolved unanimously to close the public hearing.

Mayor Pro Tem Faucette moved for the adoption of the following ordinance:

Ordinance #17-26

ORDINANCE TO AMEND OFFICIAL ZONING MAP (Rezone Property located at 1935 Handford Road.)

BE IT ORDAINED by the City Council of the City of Burlington, North Carolina:

Section 1. That the official zoning map, an element of the Burlington Zoning Ordinance, and the Comprehensive Land Use Plan are hereby amended by rezoning R-9 Residential District and I-1 Planned Industrial District to CR Conditional Residential District for the use of an existing Church with the addition of a Child Day Care with 70 children and an Elementary School with 35 students, subject to the conditional uses with limitations as set forth in Sections 2, 3 and 4 of this ordinance. The area is described as follows:

Property located at 1935 Hanford Road; referenced as Alamance County tax identification number 132796.

Section 2. That the rezoning from R-9 Residential District and I-1 Planned Industrial District to CR Conditional Residential District for the use of an existing Church with the addition of a Child Day Care with 70 children and an Elementary School with 35 students, is hereby authorized subject to the following Use and Development Conditions:

Use Conditions

1. Church - Seats 550
2. School - 35 Students + 3 Adults
3. Day Care – 70 students + 9 adults

Development Conditions

1. Landscaping, Parking, Signage will remain as is.
2. All activities will be inside the current structure. No additional structures will be added.
3. Any changes to the existing site - including new buildings, Family Life Center, or additional parking will be approved by the Technical Review Committee.

Section 3. This property will be perpetually bound to the uses authorized and subject to such conditions as imposed including site plans and other submissions, unless subsequently changed or amended as provided for in the City of Burlington Zoning Ordinance.

Section 4. Any violations or failure to accept any conditions and use limitations imposed herein shall be subject to the remedies provided in the City of Burlington Code of Ordinances and Zoning Ordinance.

Section 5. That all ordinances or parts of ordinances inconsistent or in conflict with this ordinance are hereby repealed.

Section 6. That this ordinance shall take effect upon passage.

The foregoing ordinance was seconded by Councilmember Hykes, and after full discussion, the same was voted upon and declared duly adopted, no amendments having been offered and consent having been given to place the same upon its immediate passage. Councilmembers voting in favor of the motion to adopt the foregoing ordinance were Baltutis, Faucette, Ward, Butler and Hykes.

Upon motion by Mayor Pro Tem Faucette, seconded by Councilmember Butler, it was resolved unanimously to approve the following statement of consistency:

STATEMENT OF CONSISTENCY:

The City Council finds that the above amendment is consistent with the City of Burlington Comprehensive Land Use Plan and that this action is reasonable and in the public interest in that the amendment is compatible with existing land uses in the vicinity and reflects the changing land use patterns in the area.

PUBLIC COMMENT PERIOD

Mr. Gene Cates spoke in reference to “ugly food” and that ugly food was unable to be sold in stores. He stated that they were getting calls from surrounding states to come pick up “ugly” fruits and vegetables that would not be sold in stores. Mr. Cates asked as they get this food they would like to go into areas of the City and give it away.

CITY COUNCIL COMMENT

Mayor Pro Tem Faucette thanked Mr. Lanny Rhew for his years of service to the City of Burlington and wished him a happy retirement.

Council recognized Police Chief Jeff Smythe for his recent appointment to the CALEA Commission (*The Commission on Accreditation for Law Enforcement*). Chief Smythe shared that CALEA was the formal accrediting body for police agencies in the United States and internationally. He stated that there were 18,000 police departments in American that are eligible to participate. He stated that there were 21 commissioners that set standards and rule on agencies getting accredited and that he was appointed to that governing body. He stated that the Burlington Police Department had been accredited for the past 29 years.

ADJOURN:

Upon motion by Councilmember Ward, seconded by Councilmember Butler, it was resolved unanimously to adjourn. (7:42PM)

Renee M. Ward

Renee M. Ward
City Clerk

September 19, 2017
City Council Meeting