



## MEMO

Date: October 5, 2015  
 To: Planning Board  
 From: Jason Burdette, Planning Director  
 Re: Davidson Planning Ordinance Proposed Text & Map Amendments, Staff Analysis

### 1. TEXT AMENDMENTS

#### TEXT CHANGES – PROPOSED AMENDMENTS

The following is a list of proposed text changes to the Town of Davidson Planning Ordinance (DPO). The reasons for each of the listed changes vary from inadvertent omissions to inconsistencies with new statewide legislation passed since the DPO was approved by the Board of Commissioners and came into effect on May 1, 2015. Proposals are organized by page number.

PROPOSED TEXT CHANGES				
PAGE	SECTION	TITLE	ISSUE	PROPOSED MODIFICATION
ALL CHAPTERS				
N/A	All	FIRE & POLICE	1. Because Fire & Police Station uses are not allowed in all Planning Areas, the town is limited in its ability to respond to increasing public safety demands. Adding this use allows the town to effectively locate and distribute public safety facilities, such as substations, throughout the entire service jurisdiction as needed.  2. The Fire & Police Station use terminology is not used consistently throughout the DPO and does not match how the definition reads. All entries should read "Fire & Police Station" as listed on page 16-11.	1. Add Fire & Police Station to all Planning Area Use Tables in Section 2.  2. Where necessary, change the terminology to read "Fire & Police Station" consistently across the DPO.
TEXT CHANGES			1. Old Text: N/A [Does not exist] New Text: Fire & Police Station (P) [Permitted]  2. Old Text: Fire Station, Police Station New Text: Fire & Police Station	

SECTION 2 – PLANNING AREAS				
2-20	T2-10	VILLAGE INFILL USE TABLE	Government Services is not listed as a Use, which limits the town's ability to locate its main facilities in a central location (e.g. public works, parks and recreation buildings are currently non-conforming uses).	Add Government Services as a Use within the Civic/Educational/Institutional Uses category.
TEXT CHANGES			Old Text: N/A [Does not exist] New Text: Government Services (P) [Permitted]	
2-21	T2-11	VILLAGE INFILL BUILDING TYPE TABLE	Institutional is not listed in the Building Type table, which limits the town's ability to locate its main facilities in a central location (e.g. public works, parks and recreation buildings are currently non-conforming uses).	Add Institutional to the Building Type table, along with the corresponding criteria: - Allowance: P (Permitted) - Design Review: R (Required) - Height Minimum: 2 stories - Height Maximum: 37 Feet <sup>3</sup>
TEXT CHANGES			Old Text: N/A [Does not exist] New Text: Government Services (P) [Permitted] (R) [Design Review Required] Height: Minimum 2 stories, Maximum 37 feet <sup>3</sup>	
2-29	T2-17	NEIGHBORHOOD CENTER 1	1. In drafting and revising the DPO, uses were inadvertently mixed between NC1 & NC2. Per the NC1 Description (2.2.6.A, 2-28), this planning area is intended to be more pedestrian-oriented in its form than NC2. The uses proposed to be removed are those that do not directly support this aim. 2. Concern exists that a Research Laboratory of unspecified size could be constructed in such a way as to inhibit this aim. 3. When revising the NC1-2 tables, Gasoline Service Station was inadvertently omitted from NC1 list and Car Wash was inadvertently retained despite the focus of NC1 being to foster pedestrian-oriented development. Concern exists that the inclusion of a Car Wash use as part of a Gasoline Service Station – utilizing additional land area – would work against the NC1 Planning Area's intent to foster pedestrian connectivity by	1. Remove <del>Residential Care Facility</del> *; Commercial, Secondary uses. 2. Change Research Laboratory to AR (define size limit as: 10,000 square feet in Ch. 3 Additional Requirements) 3. Add Gasoline Service Station, Additional Requirements (AR). 4. Remove Car Wash.  * The Residential Care Facility use was removed from this list based upon the 9/28/15 Planning Board feedback; therefore, the Residential Care Facility use will remain in Table 2-17, with Additional Requirements listed in Section 3 (see 3-10 below).

			encouraging compact development.	
TEXT CHANGES			Old Text: 1. Residential Care Facility (P) 2. Commercial, Secondary (P) 3. Research Laboratory (P) 4. Car Wash (AR) 5. N/A [Does not exist]  New Text: 1. N/A [Removed] 2. Residential Care Facility (AR) [Additional Requirements] 3. Research Laboratory (AR) 4. N/A [Removed] 5. Gasoline Service Station (AR)	
2-34	T2-21	NEIGHBORHOOD CENTER 2	In drafting and revising the DPO, uses were inadvertently mixed between NC1 & NC2. Research Laboratory was left off the NC2 list inadvertently. Per the NC2 Description (2.2.7.A, 2-33), this planning area is intended to host commercial activity and regional traffic. Therefore, a larger facility, as opposed to the NC1 AR limit, is appropriate here.	Add Research Laboratory (P) to the use Table.
TEXT CHANGES			Old Text: N/A [Does not exist]  New Text: Research Laboratory (P) [Permitted]	
2-39	T2-25	LAKESHORE	Per the recommended changes in NC1 (see entry 2-29 above), and similarity in planning area aims between NC1 and Lakeshore (pedestrian-oriented, compact building footprints), Research Laboratory should be changed here for consistency with NC1.	Change Research Laboratory to AR (define size limit as: 10,000 square feet in Ch. 3 Additional Requirements)
TEXT CHANGES			Old Text: Research Laboratory (P) [Permitted]  New Text: Research Laboratory (AR) [Additional Requirements]	
SECTION 3 – ADDITIONAL REQUIREMENTS				
3-9	(NEW) 3.2.26	PLACES OF ASSEMBLY	Per 16-19, Places of Assembly is currently not defined in the DPO and a definition is proposed. Therefore, the appropriate Additional Requirements (AR) must be included in Section 3 to accompany the definition.	Create new entry to define the Additional Requirements applicable to Places of Assembly.
TEXT CHANGES			Old Text: N/A [Does not exist]  New Text: All Places of Assembly shall be subject to the following restrictions which are also applicable to Elementary and Secondary Schools (see Section 3.2.16) and to Religious Institutions (see Section	

			<p>3.2.29):</p> <ol style="list-style-type: none"> <li>1. The size of the property used for a Place of Assembly, including all contiguous property and property located within 1,320 feet (1/4 mile) under common (or affiliated) ownership and having substantially similar uses, shall not exceed five acres.</li> <li>2. No point of the property used for a Place of Assembly shall be located nearer than 1,320 feet (1/4 mile) from any other substantially similar Place of Assembly.</li> <li>3. In circumstances where a Place of Assembly does not occupy the entire parcel of land under common ownership, the boundaries of property used for a Place of Assembly shall be the smallest area necessary to reasonably accommodate such use in conformity with the requirements of this Ordinance and other applicable laws and regulations.</li> </ol>	
3-10	(NEW) 3.2.30	RESIDENTIAL CARE FACILITY	Per the Planning Board recommendation on 9/28/15, Additional Requirements are proposed for Residential Care Facilities located in the Neighborhood Center 1 Planning Area (NC1). The goal of NC1 is to foster pedestrian connectivity by encouraging compact development. The Planning Board believed Residential Care Facilities were an appropriate use but that Additional Requirements would help to ensure that the specific building design (i.e. massing/size) would work to further NC1's aims for compact development.	Create new entry to define Residential Care Facility size requirements to not exceed 10,000 square feet when designated as (AR) Additional Requirements.
TEXT CHANGES			<p>Old Text: N/A [Does not exist]</p> <p>New Text: "3.2.30 Residential Care Facilities designated as (AR) Additional Requirements shall not exceed 10,000 square feet of building area. This requirement does not apply to Residential Care Facilities designated as (P) Permitted by-right."</p>	
3-10	(NEW) 3.2.31	RESEARCH LAB	Per 2-29, 2-39 (see above), a size limit is being added to the Additional Requirements (AR) section, where no Research Laboratory entry exists.	Create new entry to define Research Laboratory size requirements to not exceed 10,000 square feet when designated as (AR) Additional Requirements.
TEXT CHANGES			<p>Old Text: N/A [Does not exist]</p> <p>New Text: "3.2.31 Research Laboratories designated as (AR) Additional Requirements shall not exceed 10,000 square feet of building area. This requirement does not apply to Research Laboratories designated as (P) Permitted by-right."</p>	
3-11	3.2.31.2	SOLAR FARM	All instances of heritage tree, which is not defined in the DPO, should be changed to specimen tree, which is defined. This clarifies tree	Change all instances of "heritage" tree to "specimen" tree.

			protection and preservation requirements throughout the DPO.	
TEXT CHANGES			Old Text: Various – “...heritage tree...” New Text: Various – “...specimen tree...”	
SECTION 4 – SITE & BUILDING DESIGN STANDARDS				
4-5	4.3.2.A	STREET FRONTAGE	Heritage [e.g. specimen] tree preservation is addressed in 9.3.3; therefore, the reference to heritage trees can be removed.	Remove the reference to heritage tree and, as a result, change the title to Street Frontage.
TEXT CHANGES			Old Text: Street Frontage and Landscaping: Street trees and heritage trees should be preserved. New Text: Street Frontage: Street trees should be preserved.	
4-9	4.4.1.E.10	MATERIALS	The DPO Currently states that vinyl siding is prohibited, which is no longer a valid regulatory action afforded to local governments per NC Senate Bill 25 (SB 25, Session Law 2015-86), except where listed in the bill as expressly allowed (i.e. historic districts).	Change language to clarify where vinyl siding is prohibited and where it is discouraged.
TEXT CHANGES			Old Text: Vinyl siding is prohibited, except on attached house building types. New Text: Vinyl siding is prohibited on all building types except on Live/Work units reviewed under the residential building code, Detached House and Townhouse building types; however, it strongly is discouraged on these building types.	
4-12	4.5.2.F.1	DETACHED & ATTACHED HOUSE BUILDING TYPE	Per SB 25, garage bay width can no longer be reviewed for aesthetics (see 4-9 above).	Remove the second sentence: "The street-facing doors shall be no wider than 10 feet each."
TEXT CHANGES			Old Text: The street-facing doors shall be no wider than 10 feet each. New Text: N/A [Removed]	
4-13	4.5.3	TOWNHOUSE AND LIVE/WORK	Per SB 25 the Design Review Board can no longer review townhouses for aesthetics (see 4-9 above). Therefore, the third paragraph needs to be updated by adding "where applicable."	Revise the sentence to read: "All townhouse and live/work buildings are subject to the Individual Building process and Design Review Board approval, where applicable."
TEXT CHANGES			Old Text: All townhouse and live/work buildings are subject to the Individual Building process and Design Review Board approval. New Text: All townhouse and live/work buildings are subject to the Individual Building process and Design Review Board approval, where applicable.	
4-16	4.5.8.B.4	SIZE OF ACCESSORY STRUCTURE	Per SB 25, garage bay width can no longer be reviewed for aesthetics (see 4-9 above).	Remove item 4 regarding street-facing door width.

TEXT CHANGES			Old Text: 4. Street-facing doors on any accessory structure shall not exceed ten feet in width.  New Text: N/A [Removed]	
4-16	4.5.8.C.1	LOCATION OF ACCESSORY STRUCTURE	The Item 5. deck and fence references must be modified because the sentence specifies required location and setbacks from the principal structure for pool decks and fences; however, in some cases realizing these criteria is not possible and/or is in conflict with Meck. County regulations. Therefore, the sentence must be modified to address deck and fence location and setbacks in conformance with Meck. County regulations.	Modify the reference to deck and fence location and setbacks.
TEXT CHANGES			Old Text: The required deck and fence for an in-ground swimming pool shall be located no less than five feet from the side and rear property lines and no less than 10 feet from the principal structure or any other accessory structures on the site.  New Text: Pools must be located in the rear yard only. Pools must also be at least 5 feet from the property line. All pools must meet Mecklenburg County’s rules governing swimming pools.	
SECTION 9 – TREE PRESERVATION, LANDSCAPING, & SCREENING				
9-5	9.3.2.A.	REQUIRED PRESERVATION AREAS	1. Item 2. “Mature trees...” refers only to 12 inch caliper or greater trees, whereas the DPO defines two types of mature trees: Tree, Large Maturing (12” DBH) and Tree, Small Maturing (8” DBH). The current language does not afford sufficient protection to small maturing trees.  2. This section is missing a reference to specimen trees, which currently are not afforded protection unless located in open space or right-of-way areas.	1. Adjust mature trees reference to encompass both large and small maturing trees.  2. Add new Item 3. concerning specimen trees. The language shall read: “3. Specimen trees as defined by this ordinance.”
TEXT CHANGES			Old Text:  “2. Mature trees (those with a 12 inch caliper or greater at breast height) within the right-of-way or shading the street. (If the preservation of mature trees is in conflict with setback requirements, the Planning Director may grant exceptions on a case-by-case basis.)  3. N/A [Does not exist]  4. In any development [no change to following text]...”  New Text:  “2. Mature trees as defined by this ordinance within the right-of-way or shading the street. (If the preservation of mature trees is in conflict with setback requirements, the Planning Director may grant exceptions on a case-by-case basis.)	

			3. Specimen trees as defined by this ordinance.	
			4. In any development [no change to following text]..."	
9-6	9.3.3.3	TREE REMOVAL	All instances of heritage tree, which is not defined in the DPO, should be changed to specimen tree, which is defined. This clarifies tree protection and preservation requirements throughout the DPO.	Change all instances of "heritage" tree to "specimen" tree.
TEXT CHANGES			Old Text: Various – "...heritage tree..." New Text: Various – "...specimen tree..."	
SECTION 11 – SIGNS				
11-4	11.3.4.A	PLACEMENT	The phrase "behind sidewalk areas" is not clear.	Remove this phrase.
TEXT CHANGES			Old Text: Except as permitted specifically in this chapter, signs shall not be posted in the public right-of-way, on trees or utility poles, behind sidewalk areas, and shall be outside of required site triangles.  New Text: Except as permitted specifically in this chapter, signs shall not be posted in the public right-of-way, on trees or utility poles, and shall be outside of required site triangles.	
SECTION 13 – BOARDS & COMMISSIONS				
13-3	13.3.1.2	AUTHORITY & RESPONSIBILITY	The current DPO language does not clarify which signs will be reviewed.	Add phrase "affixed to a structure" between "signs" and "in" so the sentence reads: "Review and approve all signs affixed to a structure in the Local Historic District."
TEXT CHANGES			Old Text: 2. Review and approve all signs in the Local Historic District. New Text: 2. Review and approve all signs affixed to a structure in the Local Historic District.	
SECTION 14 – ADMINISTRATION PROCEDURES				
14-11	14.7.2.1	CONDITIONAL PLANNING AREA – PLANNING DIRECTOR DETERMINATION OF PROCESS	Per suggestions from the Planning Board and Board of Commissioners, the Conditional Planning Area process should be amended to include the option of additional joint-board work sessions where appropriate – including early in the process, as needed.	Modify the DPO language to include reference to joint-board work sessions and the iterative nature of the development review and approval process.
			Old Text: N/A [Does not exist]  New Text: [At the end of the paragraph] Both Conditional Planning Process A and Process B may entail joint work sessions with both the Planning Board and Board of Commissioners. The timing and number of work sessions shall be determined by the Planning Director. The development review and input process is an iterative process that involves multiple opportunities for staff and public comment (via board meetings, work sessions, public hearings, and public input sessions).	
SECTION 16 – DEFINITIONS				
16-6	16.3	DEFINITIONS, C	The current definition for	Amend the first sentence of the

			Commercial Communication Tower does not clearly speak to only commercial operations, which limits the town's ability to locate public safety communication facilities.	definition to read: "...and similar structures used only for commercial wireless communication."
TEXT CHANGES			<p>Old Text: A tower facility, either roof or ground mounted, that includes, but is not limited to, radio and television transmission towers or similar utilities, microwave towers, and cellular telephone communication towers and similar structures for wireless communication.</p> <p>New Text: A tower facility, either roof or ground mounted, that includes, but is not limited to, radio and television transmission towers or similar utilities, microwave towers, and cellular telephone communication towers and similar structures used only for commercial wireless communication.</p>	
16-10	16.3	DEFINITIONS, E	There are long-standing public safety communication issues in the Fisher Farm/Abersham area which limit the fire and police departments' ability to effectively respond to emergencies. The proposed text amendment will allow wireless communication tower facilities erected for public safety purposes in this planning area.	Change Essential Services 1, Class 1 to read: "...wireless telecommunications facilities (stealth only), public safety facilities, and public works facilities and supply yards. Free-standing wireless telecommunications facilities erected for public safety purposes are permitted."
TEXT CHANGES			<p>Old Text: Transmission lines (above and below ground) including electrical, natural gas, and water/waste water distribution lines; pumping stations, lift stations, telephone switching facilities (up to 200 square feet), and wireless telecommunication facilities (stealth only) and municipal public works facilities and supply yards..</p> <p>New Text: Transmission lines (above and below ground) including electrical, natural gas, and water/waste water distribution lines; pumping stations, lift stations, telephone switching facilities (up to 200 square feet), and wireless telecommunications facilities (stealth only), public safety facilities, and public works facilities and supply yards. Free-standing wireless telecommunications facilities erected on publicly-owned land primarily for public safety purposes are permitted.</p>	
16-12	16.3	DEFINITIONS, G	The current definition of Government Building is not comprehensive because it focuses only on buildings, not accounting for the range of services the town may offer in a variety of facilities. As a result, this limits the town's ability to locate its facilities in a central location (e.g. public works, parks and recreation buildings are currently non-conforming).	Change Government Building to Government Services.
TEXT CHANGES			<p>Old Text: Government Building: A building, use, or facility serving as a governmental agency, but not including a vehicle storage yard, correctional facility, sanitary landfill, solid waste transfer or disposal facility, wastewater treatment facility, educational or health institution,</p>	



			<p>university, group home, or housing for persons who are participating in work release programs or who have previously served and completed terms of imprisonment for violations of criminal laws.</p> <p>New Text: Government Services: A use or facility serving as a governmental agency, but not including a single-purpose vehicle storage yard, correctional facility, sanitary landfill, solid waste transfer or disposal facility, wastewater treatment facility, educational or health institution, university, group home, or housing for persons who are participating in work release programs or who have previously served and completed terms of imprisonment for violations of criminal laws.</p>	
16-19	16.3	DEFINITIONS, P	<p>“Places of Assembly” is not defined but must be included for compliance with the Religious Land Use and Institutionalized Persons Act, a federal statute that requires the town to treat churches on at least as favorable terms as it treats other “places of assembly.”</p>	Include Places of Assembly Definition.
TEXT CHANGES			<p>Old Text: N/A [Does not exist]</p> <p>New Text: Places of Assembly: A use of property which has two or more of the following characteristics:</p> <ol style="list-style-type: none"> <li>1. Attracts people at specific times thereby creating a potential for high traffic volume;</li> <li>2. Attracts people who are being dropped off at the property thereby creating a potential for high traffic volume and vehicle stacking;</li> <li>3. Results in a large number of vehicles parking off of the property, either on the public streets or in nearby parking areas not owned or controlled by the owner of the Place of Assembly;</li> <li>4. Is a nonresidential use that is permitted by right or through a vested right in one or more planning areas that are predominantly residential uses.</li> </ol> <p>In determining whether or not a use is a Place of Assembly, and therefore similarly situated to a church or school use, (i) religious uses and secular uses will not be differentiated, and (ii) exemption from payment of real property ad valorem taxes will not be a factor.</p> <p>Places of Assembly include but are not limited to:</p> <ol style="list-style-type: none"> <li>1. Elementary and Secondary School</li> <li>2. Religious Institutions</li> <li>3. Day care center</li> <li>4. Indoor recreational facilities</li> <li>5. Movie theaters</li> <li>6. Art, music, dance and drama schools</li> <li>7. Trade association or union meeting facilities</li> <li>8. Fraternal organizations</li> </ol>	

## 2. PUBLIC PLANS AND POLICIES

The proposed text changes are consistent with the existing policy and ordinance frameworks adopted by the town. Most changes involve the improved clarification of text. All proposed changes meet the

requirements set forth in Davidson Planning Ordinance 1.5.1 Implementation of Adopted Plans & Policies: “Any amendments to, or actions pursuant to, this ordinance should be consistent with these adopted plans and policies, as amended.”

### **3. PLANNING BOARD RECOMMENDATION**

At the September 28, 2015 meeting, the proposed text changes came before the board for a formal recommendation. The Planning Board voted 8-0 to approve all recommended changes except the removal of the Residential Care Facility from the Neighborhood Center 1 Planning Area (NC1). The board believed that this use could be permitted by-right in NC1 with Additional Requirements (AR). Based on the board’s recommendation, town staff conducted further research on residential care facilities that would work to fulfill NC1’s aim of compact, pedestrian-oriented design. The research was informed by local and regional precedent. Consequently, the Additional Requirements section for Residential Care Facilities has been modified as described in the table above.

### **4. STAFF RECOMMENDATION**

#### **TEXT CHANGES – PROPOSED AMENDMENTS**

The proposed changes aim to provide additional clarification pertaining to minor inconsistencies discovered in the ordinance text, and due to inconsistencies with new statewide legislation passed since the DPO was approved by the Board of Commissioners and came into effect on May 1, 2015. Specific explanations are provided in the table above. These changes are recommended for approval in order to accurately reflect the adopted Planning Area standards for each parcel.