Town of Dallas Planning Board Meeting

Agenda

Thursday, February 13, 2020

To be held at Fire Station Community Room

following Board of Adjustment Meeting (starts at 6:30)

The following agenda is proposed:

1. Call to Order
2. Roll Call of Members Present; Declaring a quorum as present
3. Invocation or Moment of Silence
4. Pledge of Allegiance to the Flag
5. Announcements/Introductions
6. Approval of Agenda with Additions or Deletions
7. Approval of Minutes- December 19, 2019
8. New Business
   a) Petition for Text Amendment: Permitted Uses Chart
   b) Annexation Zoning Recommendation: McCall
   c) Annexation Zoning Recommendation: Routszong
   d) In Process: Sign Ordinance Updates
9. Adjournment

MINUTES

Town of Dallas

PLANNING BOARD

Meeting of December 19, 2019

The meeting was called to order at 6:30 PM by Chairman Curtis Wilson

The following members were present: Curtis Wilson- Chairman, Glenn Bratton- Co-Chair, Tim Farris, Alternate Gene Brown, and Alternate Reid Simms

Members absent: Eric Clemmer, John Beaty, John O'Daly, and David Jones

Also present: Tiffany Faro-Director of Development Services, Johnny Denton-Town Engineer

There was an invocation lead by Chairman Wilson and pledge of allegiance.

Approval of Agenda: A motion by Tim Farris was made and seconded by Glenn Bratton to approve the agenda for this meeting with the addition of agenda item 9A: Sign Ordinance Interpretation, and the motion was adopted unanimously.

Approval of Minutes: A motion by Tim Farris was made and seconded by Glenn Bratton to approve the agenda for this meeting with the correction to note Reid Simms as attending, and the motion was adopted unanimously.

Old Business:

1) Text Amendment: Conditional Zoning

Staff requested the adoption of a consistency statement in support of the Planning Board's November recommendation in favor of the conditional zoning text amendments, and offered a sample for the Planning Board's consideration. Glenn Bratton made a motion to recommend the conditional zoning text amendments with the following consistency statement:

> *The proposed text amendments to replace Parallel Conditional Use Districts with Conditional Zoning are consistent with the 2003 Land Use Plan's recommendation to ensure that the scale and design of commercial development is consistent with the unique small-town character of Dallas, and the goal to maintain and enhance the Town's aesthetic qualities and physical character, and is therefore deemed reasonable and in the public's best interest.*

This motion was seconded by Tim Farris, and approved by all.

2) Town of Dallas Street and Traffic Standards Policy

Staff introduced this agenda item- noting that this was a continuation of the discussion from November's meeting to discuss the TIA requirements being recommended in the proposed policy. Johnny Denton presented the recommendation to the Planning Board, noting that the policy was in general consistent with the language being adopted by many municipalities within Gaston County. After some discussion by the Board, Tim Farris made a motion to recommend the adoption of this policy, along with the associated text amendments required for its implementation, with the following consistency statement:

The proposed text amendment to adopt a Street and Traffic Standards Policy is consistent with the 2003 Land Use Plan's goal to provide safe and convenient mobility for Dallas residents of all ages, and is therefore deemed reasonable and in the public's best interest.

This motion was seconded by Glenn Bratton and approved unanimously.

New Business:

1) Request for Clarification: Sign Ordinance

Staff presented a request from Community First Bank to determine if the Board's interpretation of our current sign ordinances was in line with Staff's feedback on their submitted application. The application presented (and shown digitally to the Planning Board) intended to use the existing pole on-site from the former occupant, but instead switched the signage type from a pole sign to a monument sign configuration. In doing this, the sign footprint would be approx. 12' from the property line. Under staff's interpretation of Appendix D: Sign Regulations Schedule, signs for commercial uses are required to be located behind the property line and at least ten feet above ground level if located within 15 feet of a street right-of-way line. Since the monument sign would no longer be 10' above ground level, staff directed applicant that sign should be setback at least 15'. After discussion, Glenn Bratton made a motion in support of staff's interpretation of the current ordinances, noting to advise the applicant to shift the sign 3' on the pole to be off-centered in order to comply. Reid Simms seconded the motion, and it was approved by all. The Planning Board also noted that our current sign ordinances should be revised in the near future to offer more clarity.

Other Business and Adjournment:

Glenn Bratton made a motion to adjourn, seconded by Tim Farris, and approved unanimously.

Respectfully Submitted,

_____

Tiffany Faro, Development Services Director

Approved:

_____

Curtis Wilson, Chairman

TOWN OF DALLAS, NORTH CAROLINA

REQUEST FOR BOARD ACTION

DESCRIPTION: Petition for Text Amendment: Permitted Uses Chart

AGENDA ITEM NO. 8A MEETING DATE: 02/13/2020

BACKGROUND INFORMATION:

Bob Clayton has located his business, An American Woodshop, at 109 E Trade St, which is currently zoned B-3 Central Business.

Staff has advised Mr. Clayton that the manufacturing, servicing, processing, assembling, and fabricating of wood and wood products, including furniture, is not permitted within the B-3 zone.

Mr. Clayton is asking that the Planning Board consider recommending a text amendment that would allow the manufacturing of wood products within the B-3 zone.

While staff is not in favor of this use being permitted by-right as it is not at first glance consistent with the Town's Future Land Use Plan goal to maintain and promote a vibrant and healthy downtown for a variety of retail, commercial, residential, social, cultural, and institutional uses - there may be some situations where this use could be allowable and even desirable.

One example of this could be if there were a retail storefront, and the rear of the space planned to be used to make the items being sold within the store.

Staff recommendation of this requested text amendment is that this use be considered within B-3 upon conditional zoning approval- which would allow the Planning Board and Board of Alderman to request interior layout/plans, hours of operation, and SF of proposed manufacturing area before making a recommendation/decision at each planned location.

BOARD ACTION TAKEN:

Town of Dallas
210 N. Holland Street
Dallas, NC 28034
704-922-3176

Case# _____

Petition for Text Amendment

Name of Applicant Robert Clayton

Address of Applicant 109 E Trade ST Dallas NC

Contract Information: Telephone 704-860-3339 Email BClayton@countrysidetech.com

Requested Change(s) to Zoning or Subdivision Ordinance Text I would like to operate a small woodshop specializing in reclaimed local wood making home decor and interior/ext wood accent wall boards with small retail space

Specific Section(s) # Requested Change _____

We/I certify that all information provided in this application is accurate to the best of our/my knowledge, information, and belief. Furthermore, by signing this request, we/I agree to pay for advertising costs associated with this petition. We/I understand that this petition must be completed in full and the required fee paid for acceptance.

RCT2
Signature of Applicant

1-31-20
Date

Fee: $ _____plus advertising costs.

OFFICE USE ONLY

Accepted as complete: _____ Date_____

Action:

On_____ the Planning Board recommended that this petition be: Approved ☐
Denied ☐

On _____the Board of Aldermen held a Public Hearing concerning this request. By vote of the Board they: Approved ☐ Denied ☐

Print

APPENDIX C: PERMITTED USES CHART

	Residential							Office	Business					Industrial
	R-15	R-12	R-10	R-8	R-6	RMF	RMF-H	O&I-1	BC-1	B-1	B-2	B-3	B-3P	I-2
INDUSTRIAL/MANUFACTURING														
Wood and wood products, including furniture-manufacturing, servicing, processing, assembling, and fabricating														X
BUSINESS AND RETAIL														
Retail														
Dry goods stores									X	X	X	X	X	
Furniture stores									X	X	X	C	X	X
Hardware stores									X	X	X		X	X
Retail stores- other									X	X	X	C	C	X

(Ord. passed 9-10-2019)

TOWN OF DALLAS, NORTH CAROLINA

REQUEST FOR BOARD ACTION

DESCRIPTION: Annexation Request – 3565 Dallas High Shoals Hwy

AGENDA ITEM NO. 8B MEETING DATE: 02/13/2020

BACKGROUND INFORMATION:

Colleen T. McCall, owner PID#170097 (3565 Dallas High Shoals Hwy), is petitioning for annexation into the Town of Dallas in order to sell it for inclusion as part of a single family residential subdivision. This parcel is considered contiguous.

This 3.82 acre parcel is currently located outside of Town of Dallas zoning, but is adjacent to both R-5 and R-10 single family residential. The 2003 Future Land Use Plan highlights this specific parcel for Neighborhood and Community Business, but adjacent parcels are marked for new residential development.

The applicant is seeking to be annexed into Town limits as R-5 Single Family Residential, and is asking the Planning Board for their recommendation.

BOARD ACTION TAKEN:

TOWN OF DALLAS, NORTH CAROLINA

PETITION FOR ANNEXATION

PETITION NUMBER: _____ [x] Contiguous [ ] Non-Contiguous

DATE: _1/30/2020_____ **FEE: $100.00** *

** Petitioner understands there will be additional costs associated with this petition such as advertising, postage, etc. and agrees to pay these fees upon receipt of invoice(s).*

Current Property Use:_____Residential Single Family Home_____

Planned Property Use: Residential Single Family___ Requested Zoning:____R-5_____

To the Board of Aldermen of the Town of Dallas:

We, the undersigned owners of real property, respectfully request that the area described as _**3565 Dallas High Shoals**_____, DALLAS, NC 28034, further identified as parcel ID # _**3548413268**_____, be annexed to the Town of Dallas.

Name of petitioner/property owner: _Colleen T. McCall_____

Mailing Address of property owner: ___**P.O. Box 977 Dallas, NC 28034**_____

Email Address:_TKMCCALL@GMAIL.COM Phone Number:_704-400-9883_____

Attachments included with Petition:

1. Legal description (as noted in property deed)
2. Letter outlining reasons for annexation request
3. $100 Fee

Applicant Signature: Colleen T. McCall **Date:** 1/31/2020

Received By: _____ **Date:** 1/31/2020

January 30, 2020

Town of Dallas

Attn: Tiffany Faro

210 N. Holland Street

Dallas, NC 28034

RE: Annexation Petition for Parcel 3548413268

Good afternoon Tiffany,

The adjacent property was recently annexed and rezoning into the Town of Dallas. We would like to potentially include the subject property as part of the overall development and would need to annex and rezone to accomplish this.

Thank you in advance,

Colleen J. McCall

Colleen McCall

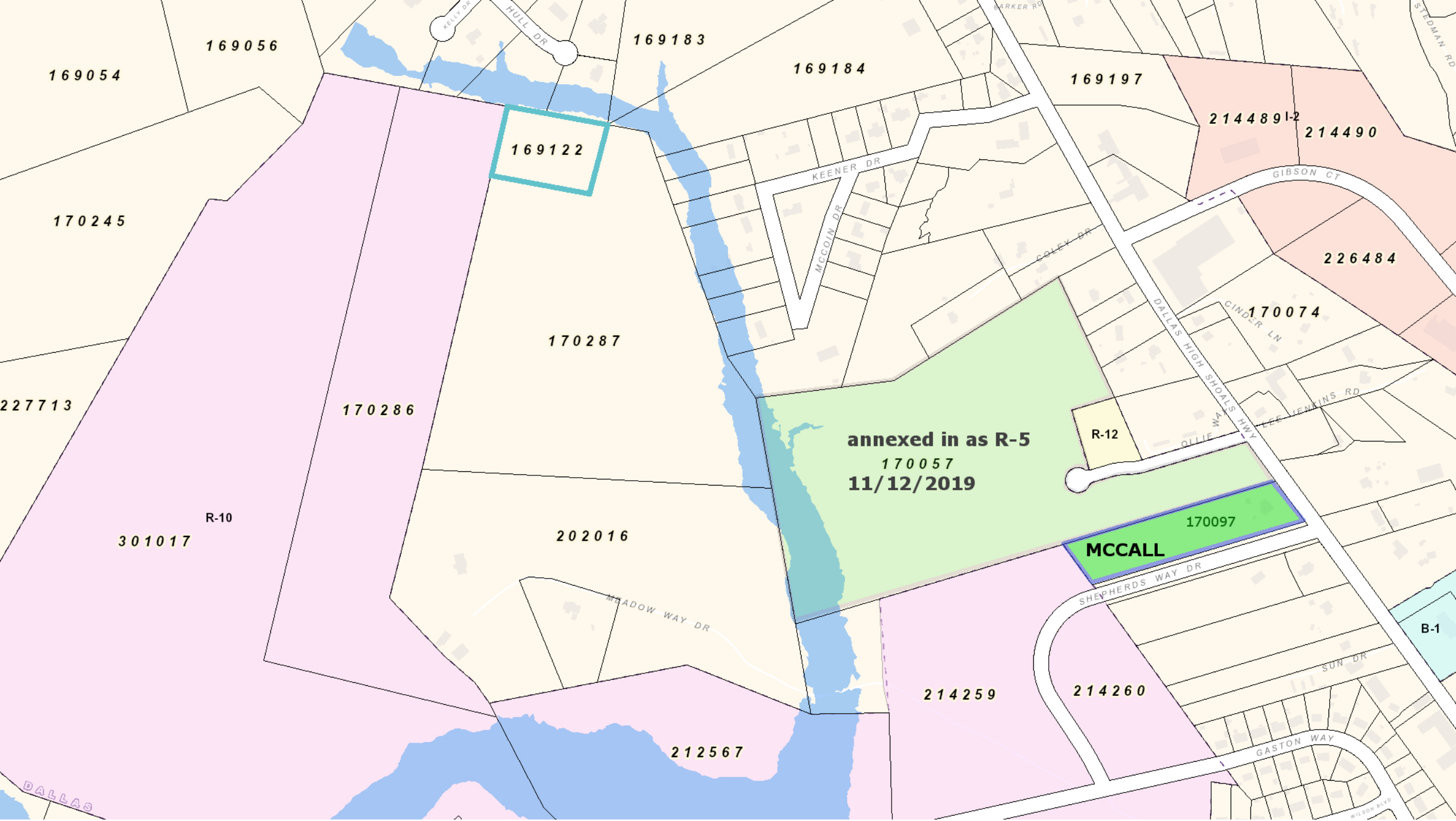
Thomas McCall

EXHIBIT A

BEGINNING at an existing iron pin set on the western margin of the right of way of the High Shoals-Dallas Road (N.C. Highway 155), said iron marking the northeasternmost corner of the property of Yallam; running': thence along a common boundary line with the lands of Yallam, Book 2910, Page 884, South 73 deg. 11 min.2 sec. West 886.09 feet to an existing iron marking the rear corner of 'Lot No.29 and Lot No.30; running thence along a common boundary with the lands of Finger, Book 1050, age 750, North 35 deg. 59 min. 4 sec. West 200.13 feet to an existing iron pin, a control corner; and running thence along a common boundary with the lands of Summey, 96-E-149, North 73 deg. 17 min. 51 sec. East 885.32 feet to an existing iron pin set on the western margin of the right of way of the High Shoals-Dallas Road; running thence along the western margin of said road right of way South 36 deg. 21 min. 38 sec. East 198.37 feet to the point and place of Beginning, containing 3.82 acres, more or less, according to a plat of survey by Robert T. Kelso, dated August 9, 1999.

Being a portion of Lot 28 and a portion of Lot 29 of the D. D. and L. d. Summey land shown on plat dated July 25, 1940 and recorded in Plat Book 5, page 92, Gaston County Registry.

UNOFFICIAL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HULL DR
KEENER DR
MCCOIN DR
COLEY DR
GIBSON CT
226484
170245
170287
170074
CINDER LN
DALLAS HIGH SHOALS HWY
LEE JENKINS RD
227713
170286
annexed in as R-5
170057
11/12/2019
R-12
170097
MCCALL
R-10
301017
202016
MEADOW WAY DR
SHEPHERDS WAY DR
B-1
SUN DR
214259
214260
212567
GASTON WAY
DALLAS

TOWN OF DALLAS, NORTH CAROLINA

REQUEST FOR BOARD ACTION

DESCRIPTION: Annexation Request – 1150 Meadow Way

AGENDA ITEM NO. 8C MEETING DATE: 02/13/2020

BACKGROUND INFORMATION:

Rosemary Routszong, on behalf of owner Marilyn S. Finger Irrevocable Trust, is petitioning for annexation of PID#202016, 170287, and 169122 (1150 Meadow Way), into the Town of Dallas in order to sell it for inclusion as part of a single family residential subdivision. This parcel is considered contiguous.

These parcels consist of 58.29 acres and are currently located outside of Town of Dallas zoning, but are adjacent to both R-5 and R-10 single family residential. The 2003 Future Land Use Plan highlights these specific parcels for new residential development.

The applicant is seeking to be annexed into Town limits as R-5 Single Family Residential, and is asking the Planning Board for their recommendation.

MANAGER RECOMMENDATION: Direct Staff to investigate the sufficiency of the application.

BOARD ACTION TAKEN:

DocuSign Envelope ID: 866C28AC-3BB9-42C6-97C7-82F14F0C5864

TOWN OF DALLAS, NORTH CAROLINA

PETITION FOR ANNEXATION

PETITION NUMBER: _____ [X] Contiguous [ ] Non-Contiguous

DATE: _1/30/2020_____ **FEE: $100.00** *

** Petitioner understands there will be additional costs associated with this petition such as advertising, postage, etc. and agrees to pay these fees upon receipt of invoice(s).*

Current Property Use:_____Residential Single Family Home_____

Planned Property Use: Residential Single Family___ Requested Zoning:____R-5_____

To the Board of Aldermen of the Town of Dallas:

We, the undersigned owners of real property, respectfully request that the area described as _**1150 Meadow Way**_____, DALLAS, NC 28034, further identified as parcel ID # _**3548210130**_____, be annexed to the Town of Dallas.

Name of petitioner/property owner: _Rosemary Routszong, Trustee for Marilyn S finger Irrevocable Trust_____ Mailing Address of property owner: ___**1150 Meadow Way Dallas, NC 28034**_____

Email Address:_rroutszong@att.net Phone Number:_704-674-2170_____

Attachments included with Petition:

1. Legal description (as noted in property deed)
2. Letter outlining reasons for annexation request
3. $100 Fee

Applicant Signature: DocuSigned by: Rose Routszong B824B154712E4FF... **Date:** 1/30/2020 | 8:14:00 PM CST

Received By: _____ **Date:** 1/31/2020

DocuSign Envelope ID: 866C28AC-3BB9-42C6-97C7-82F14F0C5864

TOWN OF DALLAS, NORTH CAROLINA

PETITION FOR ANNEXATION

PETITION NUMBER: _____ [x] Contiguous [ ] Non-Contiguous

DATE: _1/30/2020_____ **FEE: $100.00** *

** Petitioner understands there will be additional costs associated with this petition such as advertising, postage, etc. and agrees to pay these fees upon receipt of invoice(s).*

Current Property Use:_____Vacant Land_____

Planned Property Use: Residential Single Family___ Requested Zoning:____R-5_____

To the Board of Aldermen of the Town of Dallas:

We, the undersigned owners of real property, respectfully request that the area described as _**1150 Meadow Way**_____, DALLAS, NC 28034, further identified as parcel ID # _**3548220005**_____, be annexed to the Town of Dallas.

Name of petitioner/property owner: _Rosemary Routszong, Trustee for Marilyn S Finger Irrevocable Trust_____ Mailing Address of property owner: ___**1150 Meadow Way Dallas, NC 28034**_____

Email Address:_rroutszong@att.net Phone Number:_704-674-2170_____

Attachments included with Petition:

1. Legal description (as noted in property deed)
2. Letter outlining reasons for annexation request
3. $100 Fee

Applicant Signature: DocuSigned by: Rose Routszong B824B154712E4FF... **Date:** 1/30/2020 | 8:14:00 PM CST

Received By: _____ **Date:** 1/31/2020

DocuSign Envelope ID: 866C28AC-3BB9-42C6-97C7-82F14F0C5864

TOWN OF DALLAS, NORTH CAROLINA

PETITION FOR ANNEXATION

PETITION NUMBER: _____ [X] Contiguous [ ] Non-Contiguous

DATE: _1/30/2020_____ **FEE: $100.00** *

** Petitioner understands there will be additional costs associated with this petition such as advertising, postage, etc. and agrees to pay these fees upon receipt of invoice(s).*

Current Property Use:_____Vacant Land_____

Planned Property Use: Residential Single Family___ Requested Zoning:____R-5_____

To the Board of Aldermen of the Town of Dallas:

We, the undersigned owners of real property, respectfully request that the area described as _**1150 Meadow Way**_____, DALLAS, NC 28034, further identified as parcel ID # _**3548128821**_____, be annexed to the Town of Dallas.

Name of petitioner/property owner: _Rosemary Routszong, Trustee for Marilyn S Finger Irrevocable Trust_____ Mailing Address of property owner:

___**1150 Meadow Way Dallas, NC 28034**_____

Email Address:_rroutszong@att.net Phone Number:_704-674-2170_____

Attachments included with Petition:

1. Legal description (as noted in property deed)
2. Letter outlining reasons for annexation request
3. $100 Fee

Applicant Signature: DocuSigned by: Rose Routszong B824B154712E4FF... **Date:** 1/30/2020 | 8:14:00 PM CST

Received By: _____ **Date:** 1/31/2020

DocuSign Envelope ID: 866C28AC-3BB9-42C6-97C7-82F14F0C5864

January 30, 2020

Town of Dallas

Attn: Tiffany Faro

210 N. Holland Street

Dallas, NC 28034

RE: Annexation Petition for Parcel 3548210130,3548220005 and 3548128821

Good afternoon Tiffany,

The adjacent property was recently annexed and rezoned into the Town of Dallas. We would like to potentially include the subject property as part of the overall development and would need to annex and rezone to accomplish this.

Thank you in advance,

DocuSigned by:
Rose Routszong 1/30/2020 | 8:14:00 PM CST
B824B154712E4FF...

Rosemary Routszong

Trustee for Marilyn S Finger Irrevocable Trust

EXHIBIT A – LEGAL DESCRIPTION

TRACT ONE:

BEING THE FULL CONTENTS of Lot No. 25, Block "B", Map No. 2 of THORNBIRD MEADOWS, as shown on plat thereof recorded in the Office of the Register of Deeds for Gaston County, North Carolina, in Plat Book 40 at Page 41, to which plat reference is hereby made for a full and complete description of said lot by metes and bounds.

Being the identical property conveyed to Robert J. Finger and wife, Marilyn S. Finger by deed dated August 4, 1994 and recorded in Book 2393 at Page 111 in the Gaston County Registry.

The above described parcel is not the Grantor's principal residence.

TRACT TWO:

BEGINNING at an established iron pin which is the southeasternmost corner of Lot 26 of the THORNBIRD MEADOWS Subdivision as shown on plat recorded in Plat Book 40 at Page 41, said point of BEGINNING being the common rear corner of the property of Barnette as described in Deed Book 2111 at Page 516, and Rhyne, as described in Deed Book 1831 at Page 534, thence the following two new lines through the property of Marilyn S. Finger, as described in Deed Book 1770 at Page 635: (1) South 15 degrees 00 minutes 25 seconds West 284.17 feet to an iron pin; (2) North 79 degrees 53 minutes 45 seconds West 399.09 feet to an iron pin on the easternmost line of the property of William J. Summey, as described in those deeds recorded in Deed Book 1942 at Page 852 and 1946 at Page 708; thence with the common line of Summey, North 18 degrees 17 minutes 13 seconds East and passing over an existing iron at a white oak at 270.0 feet, a total distance of 283.15 feet, to a point on the southernmost line of Lot 25 of the Thornbird Meadows Subdivision, said point being South 79 degrees 57 minutes 15 seconds East 206.98 feet from the southwesternmost corner of Lot 25; thence continuing with a portion of the southernmost line of Lot 25 and Lot 26, South 79 degrees 57 minutes 15 seconds East 407.64 feet to the point of BEGINNING, containing 2.620 acres.

The above description was taken from an unrecorded map or plat prepared by John W. Lineberger, Registered Surveyor, dated October 1, 1992 entitled "Survey Made at the Request of Robert J. Finger, Jr."

Being the identical property conveyed to Robert J. Finger, Sr. and wife, Marilyn S. Finger by deed dated November 4, 1994 and recorded in Book 2507 at Page 719 in the Gaston County Registry.

The above described parcel is not the Grantor's principal residence.

TRACT THREE:

BEGINNING at a white oak situate in the southerly line of the lands of W. S. Thornburg , now or formerly, and runs thence South 79½ degrees East 363 feet to an iron; thence South 83 degrees East 222.65 feet to an iron; thence with Coley's line, now or formerly South 19½ degrees East 957 feet to an iron; thence South 37 degrees East 198½ feet to an iron; a common corner of Coley and G. C. Summey, now or formerly; thence South 9 degrees 30 minutes East 365 feet, more or less, to the northeast corner of a thirty (30) acre tract previously conveyed to Pearl Jenkins Summey by Deed from Ralph E. Summey, et ux; thence with the northerly line of said thirty (30) acre tract of Pearl Jenkins Summey, North 88 degrees West 1350 feet to an iron, the northwest corner of Pearl Jenkins Summey; thence North 14 degrees East 1476.4 feet, more or less, to the Beginning.

The same being thirty-six (36) acres of real property carved out of the northern portion of a sixty-six (66) acre tract formerly known as the G. C. Summey Property.

Being the identical property conveyed to Marilyn S. Finger by deeds recorded in Book 1462 at Page 762; Book 1510 at Page 252; and Book 1770 at Page 625 in the Gaston County Registry.

The above described parcel is not the Grantor's principal residence.

UNOFFICIAL

TRACT FOUR:

BEGINNING at an iron stake situate in the southerly line of G. C. Summey, now or formerly, and runs thence South 5 degrees East 462 feet to an iron stake; thence due West 311.1 feet to a poplar; thence North 63-1/4 degrees West 532.1 feet to an iron; thence South 73-3/4 degrees West 804.37 feet to an iron; thence North 35-1/2 degrees West 99 feet to an iron; thence North 49 degrees West 165 feet to an iron; thence North 43-1/2 degrees West 316.8 feet to an iron; thence North 14 degrees East 530 feet to an iron stake, a new corner; thence a new line South 88 degrees East 1350 feet to an iron; thence South 9 degrees 30 minutes East 915 feet to an iron; thence crossing a branch and running North 73-3/4 degrees East 349 feet to the Beginning, containing 30 acres, more or less, and being the southerly portion of a 66 acre tract formerly owned by G. C. Summey as will appear on a map of said 66 acre tract made by J. C. Burrell, County Surveyor, dated July 16, 1949.

Being the identical property as conveyed to Marilyn S. Finger by deeds recorded in Book 1388 at Page 98; Book 1388 at Page 184; Book 1420 at Page 555; and Book 1462 at Page 764, all in the Gaston County Registry.

The above described parcel is the Grantor's principal residence.

TRACT FIVE:

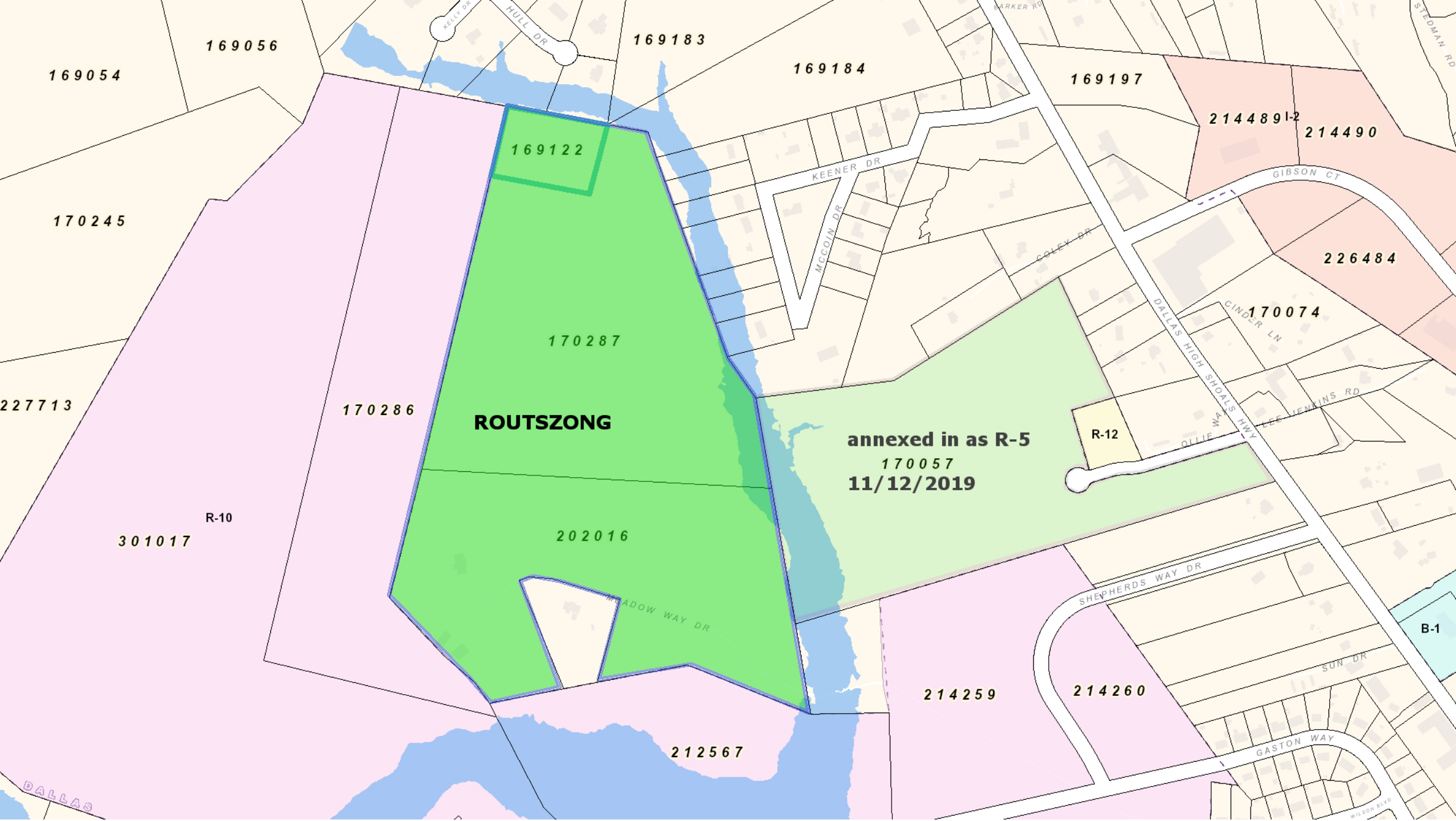
BEGINNING at an iron pin in the center of the new Lower Dallas Road, said iron pin being in the common boundary of the western margin of the Carrie Puett Lewis Property and the eastern margin of Lot No. 6 of the John C. Puett Estate Property as shown and described on Map No. 2 thereof, on a plat made by Hoke S. Heavner, Reg. Sur., dated Nov. 1951, and recorded in the Gaston County Registry in Plat Book 10 at Page 97; and runs thence South 88 degrees 18 minutes East 1795.85 feet to an iron pin, former northeast corner of Carrie Puett Lewis; thence South 10 degrees 45 minutes East 330 feet; thence South 74 degrees 45 minutes West 876.45 feet to an iron pin in the center of the new Lower Dallas Road; thence with the center of the new Lower Dallas Road to the point of Beginning.

This conveyance is made subject to all rights of way of record and to the Highway right of way.

Being the identical property as conveyed to Robert J. Finger and wife, Marilyn S. Finger by deed dated June 22, 1962 and recorded in Book 810 at Page 689 in the Gaston County Registry.

The above described parcel is not the Grantor's principal residence.

UNOFFICIAL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KELLY DR
HULL DR
KEENER DR
MCCOIN DR
COLEY DR
GIBSON CT
226484
170245
170287
170074
CINDER LN
227713
170286
ROUTSZONG
annexed in as R-5
170057
11/12/2019
R-12
DALLAS HIGH SHOALS HWY
LEE JENKINS RD
R-10
301017
202016
MEADOW WAY DR
SHEPHERDS WAY DR
B-1
214259
214260
SUN DR
GASTON WAY
212567
DALLAS

TOWN OF DALLAS, NORTH CAROLINA

REQUEST FOR BOARD ACTION

DESCRIPTION: Text Amendment- Sign Ordinances

AGENDA ITEM NO. 8D MEETING DATE: 02/13/2020

BACKGROUND INFORMATION:

Due to Dallas' growth and development recently, there has also been increased interest in signage to support both new and existing business in Town.

Many of the Town's current signage ordinances were last updated in 1972, and may have been adopted as part of a model ordinance structure instead of being customized for Dallas' specific needs.

In addition, there have been updates to signage legislation requiring signage ordinances to be "content-neutral", which is a shift from the current ordinance structure.

Staff is recommending that the Planning Board take a look at the current signage regulations in place, and consider making a recommendation for text amendment updates to these ordinances that specifically set a vision for the types of signage we would like to see- and where different signage types are most appropriate.

Various methods could be considered:
- allowing specific signage types and sizes within each zone
- allowing specific signage types and sizes based on adjacent ROW width
- uniform standards across all of Town

Staff has provided a draft of text updates to the ordinances for signage not requiring permits as a starting point, but is seeking input from the Planning Board before drafting additional changes.

BOARD ACTION TAKEN:

"Content Neutral" Land Use Regulation After Reed: Recent Developments in Signs, Adult Businesses, and Religious Uses

By Brian Connolly, Esq., Evan Seeman, Esq., and Noel Sterrett, Esq.

The authors will be presenting on the topics discussed in this article at the APA National Conference in the session titled "Planning and Zoning for First Amendment-Protected Land Uses" on Monday, May 8, 2017 at 4:15 p.m.

Brian J. Connolly is a planner and attorney in the Land Use, Real Estate, and Litigation practice groups at Otten Johnson Robinson Neff + Ragonetti, P.C. in Denver, Colorado. Evan J. Seeman is an attorney in the Real Estate + Development practice group at Robinson & Cole LLP in Hartford, Connecticut. Noel W. Sterrett is a partner focusing on civil rights litigation in the firm of Mauck & Baker, LLC in Chicago, Illinois.

Introduction

Regulating land uses in a content neutral manner satisfying First Amendment limitations became more difficult for local governments following the 2015 U.S. Supreme Court decision in *Reed v. Town of Gilbert*. In *Reed*, all nine Supreme Court justices agreed that the Town of Gilbert, Arizona's sign code failed the First Amendment's content neutrality requirement, although the justices came to that conclusion in different ways. Although signs were the focus of the Court's decision in *Reed*, the case's mandate regarding content neutrality has prompted local governments to reconsider zoning and land use regulation in other First Amendment-protected areas, such as adult businesses and religious uses.

At issue in *Reed*, Gilbert's zoning code distinguished among a variety of categories of signs. The Gilbert code provided different regulations for "political signs," "ideological signs," "qualifying event signs," "real estate signs," and others. Pastor Clyde Reed and Good News Community Church placed temporary signs in street right-of-ways advertising religious services, but Gilbert enforced its sign code against the church's temporary signs. The church filed a challenge to the Gilbert sign code. The Town's sign code was upheld on summary judgment by the federal district court, and the Ninth Circuit Court of Appeals affirmed.

In *Reed*, six justices agreed that the Town's sign code was facially content based; that is, the code improperly distinguished between types of noncommercial speech based on the particular subject matter of the speech. A majority of the Court found that distinctions between political, ideological, and event-based speech impermissibly regulated on the basis of the signs' content, which is prohibited under the Court's First Amendment doctrine. The Court subjected the code to the "strict scrutiny" standard of review, which required the Town to demonstrate a compelling governmental interest and narrow tailoring of the regulations to the governmental purpose. According to the majority, the Town failed to meet that standard, and thus the sign code was held invalid.

The result in *Reed* clarified several decades of constitutional law regarding content neutrality in speech regulations, and has put a much greater obligation on local governments to ensure that sign regulations and other regulations of speech are content neutral both on the face of the regulations and in the government's underlying purpose for the regulations.

As local governments go about updating their sign codes in response to *Reed*, they should remember to consider other areas of land use that receive First Amendment protection, including adult uses and religious uses. This article provides a brief overview of recent case law developments relating to signs, adult businesses, and religious land uses that local governments should study during any code update.

Egor's Dungeon, an adult business store in Chicago, Il.. Courtesy of APA Image Library Photographer: Carolyn Torma (2010)

Sign Regulation

With nearly two years of experience post-*Reed*, many local governments throughout the country are rewriting

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sign codes to ensure that they meet the rigorous standard set by *Reed*. Additionally, several cases from the lower courts have clarified some of the unanswered questions following *Reed*. Uniformly, the lower courts have invalidated content-based regulations of noncommercial speech, particularly those relating to political signs (*Marin v. Town of Southeast*; *Wagner v. City of Garfield Heights*; *Sweet Sage Café v. Town of North Redington Beach*). Conversely, the lower courts have upheld several examples of content-neutral time, place, and manner regulations, including restrictions on painted wall signs (*Peterson v. Village of Downers Grove*) and a New York City prohibition on illuminated signage extending more than 40 feet above curb level (*Vosse v. City of New York*). One of the federal courts of appeals, in a decision that may conflict with some of *Reed*'s holding, found that event-based sign regulations are permissible (*A.N.S.W.E.R. Coalition v. District of Columbia*). At least one lower court has looked unfavorably at specific exemptions for artwork (*Central Radio, Inc. v. City of Norfolk*), which at least suggests that artwork must be subject to the same regulations as all other noncommercial signs.

Additionally, most courts that have reviewed special billboard regulations have continued to apply the *Central Hudson* test for commercial speech regulations, which appears to be unaffected by *Reed*. However, two courts, in the cases of *Thomas v. Schroer* and *Auspro Enterprises v. Texas Department of Transportation*, have found that *Reed* prohibits the distinction between on- and off-premises signage, and the New Jersey Supreme Court recently found that a local prohibition on billboards violated the First Amendment (*E&J Equities, LLC v. Board of Adjustment*), although these cases are considered outliers. In addition, the California Court of Appeals, in a much-watched decision in *Lamar Central Outdoor, LLC v. City of Los Angeles*, ruled that the California Constitution allows local governments to distinguish between commercial and noncommercial speech in their regulations, and to maintain the off-premises/on-premises sign distinction that permits special regulation of billboards.

Adult Entertainment Uses and the Secondary Effects Doctrine

Adult entertainment is subject to First Amendment protection like the different forms of expression discussed above. Unlike those forms of expression, regulation of sexually oriented businesses in the zoning context appears largely unaffected by *Reed* and remains subject to the "secondary effects" doctrine established by the United State Supreme Court in two cases – *City of Renton v. Playtime Theatres, Inc.* (1986) and *City of Los Angeles v Alameda Books, Inc.* (2002). There is a presumption that local governments regulating this category of uses are not attempting to censor speech but are attempting instead to prevent the harmful effects that can result from such uses: crime, prostitution, spread of disease, drug use and trafficking, blight, and negative impacts to nearby properties and neighborhood. For this reason, regulations governing adult entertainment uses are almost always reviewed under intermediate (not strict) scrutiny and deemed content neutral. But the content neutral label is misleading, as these regulations are aimed specifically at sexually oriented businesses and apply to certain types of speech but not others. While this is the type of facial distinction one might expect to be subject to strict scrutiny judicial review, especially in *Reed*'s aftermath, adult entertainment is a beast unto its own.

> A MAJORITY OF THE COURT FOUND THAT DISTINCTIONS BETWEEN POLITICAL, IDEOLOGICAL, AND EVENT-BASED SPEECH IMPERMISSIBLY REGULATED ON THE BASIS OF THE SIGNS' CONTENT

Courts have continued to apply the secondary effects doctrine when considering challenges to zoning ordinances concerning sexually oriented businesses. The Fourth Circuit, in *Cricket Store 17, LLC v. City of Columbia* (2017), reviewed a First Amendment challenge to a Columbia, South Carolina zoning ordinance imposing restraints on adult entertainment uses (including a 700-foot dispersal requirement from "sensitive" uses such as religious institutions, schools, parks, and residences). Shortly after a sexually oriented retail store called Taboo opened, the City amended its zoning code, making Taboo's use illegal at its current location and requiring it to move within two years. The court upheld the ordinance and did not once reference *Reed*. The ordinance was found to satisfy the elements of the secondary effects doctrine, as legislative findings showed that it was content neutral since it targeted secondary effects rather than speech; the ordinance was supported by sufficient evidence to show that it was designed to eliminate secondary effects; and the zoning code left available alternative sites within Columbia where adult businesses could operate.

Cricket Store is notable for a couple reasons. First, because it states that a locality can rely on "whatever evidence" it "reasonably believe[s] to be relevant to the problem" confronting it. Expanding on this concept, the court explained that a locality need not perform its own studies to show the secondary effects that would result, but could rely on studies conducted by other communities. The legislative record surrounding Columbia's enactment of the ordinance included 2,200 pages

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with 46 judicial decisions, 27 studies on the impacts of sexually oriented businesses, and 19 summaries of reports about negative secondary effects. And, second, *Cricket Store* rejected Taboo's argument that the timing of the ordinance (less than a month after the store opened) could be used to show that the ordinance was content-based, even though the ordinance was prompted by and enacted in response to Taboo's opening.

The Seventh Circuit considered a zoning ordinance with similar timing issues, in *BBL, Inc. v. City of Angola* (2015). There, the ordinance was enacted just days after a restaurant had been purchased by a company that sought to convert it into a nude dancing establishment in Angola, Indiana. The court upheld the ordinance at a very preliminary stage and observed: "We don't think *Reed* upends established doctrine for evaluating regulation of businesses that offer sexually explicit entertainment, a category the Court has said occupies the outer fringes of First Amendment protection." Similar to *Cricket Store*, Angola's ordinance required that adult entertainment uses be located 750 feet from every residence and served to bar the nude dancing establishment.

Recently, the Third Circuit refused to apply the secondary effects doctrine in a case contesting the legality of federal statutes imposing certain requirements on producers of sexually explicit materials in an effort to combat child pornography. *Free Speech Coalition, Inc. v. United States* (3d Cir. 2016). Although the court specifically declined to address "the issue of whether the secondary effects doctrine survives *Reed*," it observed "that it is doubtful that *Reed* has overturned the *Renton* secondary effects doctrine." The federal statutes were subject to strict scrutiny and not intermediate scrutiny under the secondary effects doctrine, because, according to the court, the doctrine has been applied only to "brick-and-mortar purveyor[s] of adult sexually explicit conduct and a local government's attempt to regulate such business."

UNIFORMLY, THE LOWER COURTS HAVE INVALIDATED CONTENT-BASED REGULATIONS OF NONCOMMERCIAL SPEECH, PARTICULARLY THOSE RELATING TO POLITICAL SIGNS

It appears that it is more of the same when regulating adult entertainment uses. They are an "exception" to zoning codes' facial distinctions among First Amendment uses and remain subject to the secondary effects analysis, which is not a difficult threshold for local governments to meet. Most, if not nearly all, zoning ordinances regulating these uses will pass constitutional muster, because "[l]ocal governments are usually smart enough to invoke 'secondary effects' in their regulation of adult businesses." *BBL, Inc. v. City of Angola*. And local governments may even regulate such uses after they put shovel to dirt and are operational by using "whatever evidence" they can, even if the evidence shows secondary effects in other communities.

"Content Neutral" Zoning of Assembly Uses

Across the country many local governments still retain zoning codes, plans, and maps that reflect a bygone era when "churches" were the primary, if not only, religious assembly use in town. In bygone times churches were given the prime space in the heart of the community. Zoning maps that were drawn to correlate with existing uses often reflect this era, as "church" or institutional zones spot the downtown areas. Some codes still expressly regulate "churches" and, in application, lump all other religious assemblies, no matter how different they are, into the category of "churches." While such treatment has posed little to no problem for established churches, new and different religious groups have had significant problems with and raised serious objections to this one-size-fits-all approach. For example, why should a Maum meditation center for eight people have to comply with a local government's minimum acreage requirement for churches, often times requiring several acres? Why are there even minimum acreage requirements for all churches when some churches are only fifteen people strong?

Many localities have ditched the Christian nomenclature and opted to use the more generic "religious assemblies" or "places of worship." But as increased federal religious land use litigation shows, far too many of these codes still treat religious assemblies on less than equal terms

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Member Activities

Share your pictures with us!

We want to know what PLD members are up to! Did you see another PLD member at a networking event? Hold an exciting conference? Participate in a Habitat build? Join other PLD members in a 5K walk?

Whatever your story, send your pictures and captions to pld.newsletter@gmail.com and we will publish them in future newsletters.

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with non-religious assemblies in violation of federal law. The Religious Land Use & Institutionalized Persons Act, 42 U.S.C. 2000cc et seq., ("RLUIPA") was enacted in 2000 after nine hearings before both houses of Congress revealed that many communities were using individualized and discretionary zoning processes to exclude "new, small or unfamiliar" religious groups and were treating religious assemblies on less than equal terms with non-religious assembly uses like community centers, fraternal lodges, and theaters. Increasingly, local governments that have failed to heed this "super statute" have been made to pay the price, with reported damage and attorney fee awards to religious land use plaintiffs rising into the six and seven figure range.

Prudent governmental entities, however, are scrapping the "religious" qualifier altogether when it comes to regulating assembly uses. These jurisdictions are finding that the easiest way to avoid being sued for discriminating on the basis of religion is to stop discriminating on the basis of religion. In other words, they are regulating assembly uses without respect to the religious motivation behind, or religious content of, the assemblies. Instead, they regulate assemblies only according to more objective and legitimate zoning criteria, e.g. the size of the assembly or frequency of the assemblies. In doing so, they avoid what the Supreme Court described in the landmark case of *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) as regulating a practice or activity differently because of its religious motivation. Such discriminatory regulation triggers the strict scrutiny of the court—a legal test which is very difficult for local governments to pass.

Further, the Supreme Court has long held that religious worship services are a form of speech and association protected by the First Amendment. *Widmar v. Vincent* (1981). So too, it has considered the right of assembly equally important to and connected with the freedoms of speech. See *United Mine Workers of America, Dist. 12 v. Illinois State Bar Ass'n* (1967). As such, local governments should pay close attention to the Supreme Court's analysis of content based speech restrictions in *Reed* when they consider how they are regulating assembly uses.

In *Reed*, the Supreme Court clarified that a government regulation of speech is content based and subject to strict scrutiny if it "applies to particular speech because of the topic discussed or the idea or message expressed." This is true, the Court held, even if the government has an innocent or innocuous justification for the law. Though the Supreme Court has not yet taken a religious land use case, it is not a stretch to imagine that the unanimous Supreme Court that decided *Reed* would subject a zoning regulation that applies to particular assemblies because of the religious content or motivation behind the assemblies to the same strict scrutiny.

In order to significantly lessen the risk of religious land use litigation and liability under the Constitution or RLUIPA, local governments are strongly encouraged to do the following: (1) avoid and remove the use of "Christian" nomenclature and (2) regulate all assembly uses (religious and secular) the same and without reference to religious qualifiers – allow them in the same zones and subject to the same requirements, or prohibit them all from the same zones, with the caveat that a jurisdiction must provide some zones wherein religious assemblies are permitted as of right.

Conclusion and Additional Resources

First Amendment litigation is common, expensive, and risky. Local governments should contact an attorney experienced in First Amendment land use issues when considering changes to zoning amendments or individual applications relative to signs, adult businesses, or assembly uses.

Readers are encouraged to follow the Rocky Mountain Sign Law blog (rockymountainsignlaw.com) and the RLUIPA Defense blog (www.rluipa-defense.com) for regular updates on sign regulation, adult businesses, religious land uses, and other First Amendment issues relating to zoning, planning, and other areas of local government regulation. ♦

Congratulations!

*to PLD's **Chair-Elect Evan Seeman** & his wife Julia Zajac on the birth of their daughter,*

Georgina Lucia Seeman
b. Oct. 10, 2016
8 pounds, 11 ounces

A future PLDer in the making!

Coates' Canons Blog: Temporary Signs in the Right-of-Way

By Adam Lovelady

Article: https://canons.sog.unc.edu/temporary-signs-in-the-right-of-way/

This entry was posted on October 16, 2018 and is filed under Administration & Enforcement, Campaign Signs, Constitutional & Statutory Limitations, Constitutional Issues, Elections, General Local Government (Miscellaneous), Land Use & Code Enforcement, Ordinances & Police Powers, Streets & Parking, Zoning

It's that time of year again. Leaves are falling and campaign signs are rising. Along with the signs come the questions about the laws and limits for regulating campaign signs. This can be a confusing topic because of the ruling from the U.S. Supreme Court in *Reed v. Town of Gilbert* and because of the overlapping authority between local governments and the North Carolina Department of Transportation (NCDOT).

Legal issues affecting the regulation of campaign signs include:

- Free speech protections limiting the regulation of sign content;
- Differences between regulations on private property and regulations on public property; and
- Differences between regulations on state maintained rights-of-way and municipally maintained rights-of-way.

This blog describes the basic aspects of these legal issues with a focus on regulations in the public right-of-way.

Free Speech Issues

The U.S. Supreme court has ruled that regulations of signs that are based on what the signs say (content-based regulations) are subject to strict scrutiny—a standard that requires compelling government justification and will likely be struck down. In contrast, content-neutral regulations of the time, place, and manner of speech are subject to intermediate scrutiny and are more likely to survive judicial review. Regulation of commercial speech also is subject to intermediate judicial scrutiny.

In *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015), the U.S. Supreme Court made clear that categorizing noncommercial signs by the content of the message is content-based regulation subject to strict scrutiny. In that case the town's sign ordinance distinguished between campaign signs, ideological signs, and event-based signs, among other categories. Justice Thomas offered the following example: "If a sign informs its reader of the time and place a book club will discuss John Locke's Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke's followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke's theory of government." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2227 (2015). The Court found those categories to be unconstitutional content-based restrictions that could not survive strict scrutiny. I wrote more about the *Reed* decision here.

Following the *Reed* case, sign regulations need to treat noncommercial speech equally. So, if a sign regulation is going to permit temporary campaign signs, then it must equally permit temporary signs stating "Jesus Saves," "Anarchy Now," and "Save the Earth." Many local ordinances had (and still have) content-based distinctions that would not withstand constitutional challenge after *Reed*.

Content-neutral regulations that distinguish signs based on the characteristics of the sign generally survive judicial review under intermediate scrutiny. So, for example, reasonable regulations of the size or location of signs are generally acceptable. Distinctions among types of sign construction—monument signs, wall signs, temporary signs, and air-blown signs, for example—also are allowed generally. Such restrictions are based on the characteristics of the sign, not the content of the message. To be clear, these content-neutral regulations still must meet intermediate judicial scrutiny: The

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regulation must further a substantial governmental interest (such as public safety and community aesthetics), that governmental interest must be unrelated to limiting free expression, and the regulation must be no greater than necessary to support the governmental interest.

Even after *Reed*, commercial messages may still be distinguished from noncommercial messages. To be sure, that distinction formally is a content-based distinction, but courts applying the *Reed* decision have re-affirmed that regulations of commercial speech remain subject to intermediate scrutiny under the *Central Hudson* case (447 U.S. 557 (1980)). For application of *Central Hudson* after *Reed*, see for example *Lone Star Sec. & Video, Inc. v. City of Los Angeles,* 827 F.3d 1192 (9th Cir. 2016) and *Geft Outdoor LLC v. Consol. City of Indianapolis & Cty. of Marion, Indiana*, 187 F. Supp. 3d 1002 (S.D. Ind. 2016)(*appeal dismissed sub nom*). As such, a government might permit temporary noncommercial signs (campaign signs and others) but still restrict temporary commercial signs.

In addition to the differences between content-based, content-neutral, and commercial speech regulations, courts have held that regulations may differentiate between signs on private property and signs on public property. As Justice Thomas noted in his opinion for the Court in *Reed*, "on public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner." *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218, 2232(2015) (citing *Members of City Council of City of Los Angeles v. Taxpayers for Vincent,* 466 U.S. 789, 817(1984)). The discussion below first outlines considerations for temporary noncommercial signs on private property and then outlines additional considerations for temporary noncommercial signs on public rights-of-way.

Temporary Signs on Private Property

An ordinance or regulation may set reasonable content-neutral limits on noncommercial speech (including political signs) on private property. Such restrictions might include limits on the size, number, and location of temporary noncommercial signs.

Importantly, regulations of temporary noncommercial signs on private property must not be overly restrictive. The U.S. Supreme Court has noted the import of the residential signs because residential signs are inexpensive and convenient, they convey a message with a close connection to the speaker, and there are not adequate substitutes of expression if residents are completely prohibited from posting residential signs. In *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), the city ordinance prohibited homeowners from displaying signs on their property, with limited exceptions. A resident challenged the ordinance when she was prevented from posting a sign protesting the Gulf War. The Court struck down the city's ban of almost all residential signs, but allowed that the city can still address residential signs with reasonable regulations. Similarly in *Arlington County Republican Committee v. Arlington County*, 983 F.2d 587 (4th Cir. 1993), the Fourth Circuit Court of Appeals ruled that limiting property owners to only two campaign signs was overly restrictive.

Can a local government set a time limit on temporary noncommercial signs on private property? Durational limits that are not overly restrictive likely may be used, but local governments should be wary of the potential legal pitfalls. Even before *Reed* courts around the country struck down durational limits that were too short (routinely striking down sign codes that limited campaign signs to less than sixty days). This is a reminder that anytime the government is regulating noncommercial speech it must not be overly restrictive—especially as related to residential property and possible political speech.

The *Reed* decision did not directly address the question of durational limits for noncommercial signs, but did discuss it indirectly. Justice Thomas implies that a regulatory provision related to "whether and when an event is occurring" may be permissible if it permits "citizens to post signs on any topic whatsoever within a set period leading up to an election." 135 S. Ct. at 2231. Along that line of thinking, a local government could establish a set amount of time (for example, ninety days before an election until ten days after the election) and permit a greater amount of temporary noncommercial signage during that time period.

Note, though, that such preference for campaign season may lack the tailoring necessary to justify a sign regulation. If the additional signage is permitted during campaign season, then what is the justification to prohibit a resident from posting a temporary sign during the Easter season, or the summer solstice, or at the start of the school year? While prior caselaw and Justice Thomas' language in *Reed* indicates that time periods tied to campaign season may be permissible, there is

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some lack of clarity around this issue.

Temporary Signs in Public Rights-of-Way

As noted above, courts distinguish between regulations of signs on private property and regulations of signs on public property. This section explores statutory authority and Free Speech considerations for regulations of temporary signs in the public right-of-way in North Carolina.

Rules for NCDOT Rights-of-Way

The State of North Carolina has specific rules for signs in public rights-of-way controlled and maintained by the NC Department of Transportation. General Statute 136-32 outlines a general prohibition on posting signs on public highways and authorizes NCDOT to remove impermissible signs. The statute then sets forth the rules allowing for "political signs." Political signs are permitted in the NCDOT right-of-way during the time period from 30 days prior to the first date of "one-stop" early voting until the tenth day after the primary or election day. (Note that the regulation is for public rights-of-way, not private property, so the shorter time period is likely permissible.)

The statute gives specific parameters for placement of qualifying signs:

- No sign shall be permitted in the right-of-way of a fully controlled access highway.
- No sign shall be closer than three feet from the edge of the pavement of the road.
- No sign shall obscure motorist visibility at an intersection.
- No sign shall be higher than 42 inches above the edge of the pavement of the road.
- No sign shall be larger than 864 square inches.
- No sign shall obscure or replace another sign.

Notably, the individual placing the sign must obtain permission of the owner of the property fronting the right-of-way where the sign is erected, although there is no detail about the form or evidence of such permission.

NCDOT is authorized to remove noncompliant signs. It is a Class 3 misdemeanor for an unauthorized individual to steal, deface, vandalize, or unlawfully remove a political sign placed in compliance with the statute.

This NCDOT rule as written is subject to constitutional challenge under the *Reed* decision. The statute allows "political sign"—defined as "any sign that advocates for political action"—but not other noncommercial signs. This preferential treatment of one category of noncommercial speech is precisely the kind of content-based regulation that the Court struck down in *Reed*.

Local Rules for Municipal Rights-of-Way

Under General Statute 160A-296, North Carolina municipalities have broad authority over their public streets, including the power to regulate the use of the streets and the duty to keep the streets free from unnecessary obstructions. This authority includes the power to regulate signs in the right-of-way.

Moreover, the statute about NCDOT authority, 136-32(f), confirms that cities may use their police powers to adopt regulations of signs in the rights-of-way within their jurisdiction and maintained by the city.

A municipality may prohibit temporary signs in the municipal right-of-way, or permit them subject to certain even-handed, content-neutral restrictions. As with other restrictions, this may include limits on size, location, time-frame, and other content-neutral aspects. A municipality may permit noncommercial temporary signs in the right-of-way, but still restrict commercial temporary signs.

Rules for When There Is No Local Ordinance

If a municipality does not adopt an ordinance prohibiting or regulating the placement of signs in the right-of-way, then the NCDOT rules under G.S. 136-32 apply to municipal rights-of-way. That section does not specifically address enforcement,

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but presumably the municipality would handle enforcement.

There is a common question concerning municipal enforcement of the NCDOT rule: If the NCDOT rule runs afoul of the *Reed* decision, how should the municipality enforce the rule? Some take the stance that although the state law may be challenged as unconstitutional, it is the applicable rule until a court says otherwise or until the General Assembly chooses to amend the statute. That stance, though, leaves the municipality open to legal challenge—your town might be the one that winds up in court. Alternatively, a municipality could use its enforcement discretion and apply the NCDOT rule to noncommercial speech, not just political campaign signs. In practice, most of the temporary signs in the right-of-way during campaign season will be campaign signs. When enforcing the NCDOT rule, the zoning enforcement officer or city transportation staff could pick up any temporary commercial signs, but leave any temporary noncommercial signs such as signs with religious messages, non-campaign political messages, and other noncommercial messages.

Rules for State Roads in a Municipality

What about NCDOT roads within a municipality? G.S. 136-32(b) sets forth the provisions allowing placement of "political signs in the right-of-way of the State highway system." G.S. 136-32(f) makes clear that municipal rules, if adopted, apply to streets "located within the corporate limits of a municipality and maintained by the municipality." With that phrasing, it appears that NCDOT rules would apply to a state road in a municipality unless the municipality maintains the state road. That said, it may be possible for NCDOT to contract with a municipality to handle enforcement along NCDOT-maintained highways within the municipal boundary. G.S. 136-66.1 outlines the responsibilities for streets inside municipalities, including authority for a municipality to undertake certain maintenance and construction duties related to state roads within the municipality.

Summary

Regulation of campaign signs requires some attention to detail. Given the ruling of the U.S. Supreme Court in *Reed v. Town of Gilbert*, a government regulation must treat noncommercial speech equally. So, if a local or state government wants to permit campaign signs it must equally permit other noncommercial signs. Our courts have recognized the importance of residential signs, so officials must be careful not to over-regulate them. With regard to signs in the public rights-of-way in North Carolina, the applicable rules will depend upon the location of the road, the responsibility for maintaining the road, and whether the municipality has adopted local rules.

Links

- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_136/GS_136-32.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_160A/GS_160A-296.pdf

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(NEW) PURPOSE AND INTENT

This section provides content-neutral sign standards that allow legitimate signage for a variety of uses and activities while promoting signs that:

A. Reduce intrusions and protect property values;
B. Minimize undue distractions to the motoring public;
C. Protect the tourist industry by promoting a pleasing community image; and,
D. Enhance and strengthen economic stability.

These provisions apply to the display, construction, erection, alteration, location, and maintenance of all new and existing signs within the Town of Dallas.

§ 153.080 SIGNS NOT REQUIRING A PERMIT.

(A) The following signs shall not be required to have a permit issued from the administrator for their placement.

(B) Any such signs (except government signs **or those otherwise stated**) shall be located placed outside of a street right-of-way or required sight distance triangle.

(1) Any official or public notice or warning sign required by a valid or applicable Federal, state, or local law; by a public utility company; or by a court of competent jurisdiction, such as traffic regulating signs, directional signs, caution signs, no-parking signs, warning and trespass signs.

(2) Building marker signs that include the building name, date of construction, or historical data, with a maximum aggregate area of six square feet.

(3) On-premises decorative, seasonal, or corporate logo flags. Decorative, seasonal flags, or corporate logo flags (may include the company name, insignia or symbol) may be up to 16 square feet. **Limit of 1 per property.**

(4) Governmental signs, erected and maintained by or on behalf of the United States, North Carolina, Gaston County or the Town of Dallas for the purpose of regulating traffic or for civic purposes.

(5) On-premises public interest signs. Signs indicating vehicular entrances and exits, parking areas, one-way traffic, “no trespassing,” “no loitering,” ~~“help wanted, now hiring,”~~ etc. Such signs may be illuminated, shall not exceed four square feet in area and shall be located at the driveway entrance or where other instruction is required.

(6) Memorial signs, plaques or grave markers. ~~that are noncommercial in nature.~~

~~(7) Flags, pennants, insignia, or religious symbols of any nonprofit or not-for-profit organization or government, when not displayed as an advertising device or attraction feature for commercial purposes, including non-commercial signs.~~

(7) Four temporary signs of four (4) square feet or smaller may be located on any property within the Town of Dallas at any point in time.

a. No such sign may be placed on private property without permission of the owner. The property owner upon whose land the signs are placed will be responsible for any violations.

b. Sign height shall not exceed five feet.

c. No such sign shall obstruct the safe vision of motorists.

d. Sign shall be lighted or luminous, nor shall it have any flashing lights, moving or windblown parts.

e. Sign shall be in place no longer than 30 days.

(8) On-premises identification signs ~~for residential uses~~ that show the name and may also include the street address, with a maximum area of four square feet. Mailbox signs on mailboxes shall be limited to individual name(s) and the address of the property served by the mailbox.

(9) Incidental signs: on-premise signs which are displayed for the convenience of the general public. These include signs identifying visitor centers, public rest rooms; automobile inspection; hours of operation; credit cards accepted, etc. Such signs may not be illuminated and shall contain no other sign copy other than service information, trade names, and logos. Such signs shall be a maximum of four square feet apiece and are limited to two per property, shall be located on the property of the business to which the sign applies, and shall be located on private property, outside of the street right of way.

(10) Compliant Political Signs per NC G.S. 136-32:

a) Signs may be placed in the State or Town right-of-way during the period beginning on the 30th day before the beginning date of "one-stop" early voting under G.S. 163-227.2 and ending on the 10th day after the primary or election day.

(1) No sign shall be permitted in the right-of-way of a fully controlled access highway.

(2) No sign shall be closer than three feet from the edge of the pavement of the road.

(3) No sign shall obscure motorist visibility at an intersection.

(4) No sign shall be higher than 42 inches above the edge of the pavement of the road.

(5) No sign shall be larger than 864 square inches.

(6) No sign shall obscure or replace another sign.

b) Any political sign remaining in the right-of-way more than 30 days after the end of the period prescribed in this subsection shall be deemed unlawfully placed and abandoned property, and a person may remove and dispose of such political sign without penalty.

c) Before placing political signs, permission of any property owner of a residence, business, or religious institution fronting the right-of-way where a sign would be erected shall be obtained. The tenant or other person entitled to possession of the property fronting along the street right-of-way on which a sign is placed may remove such sign at any time.

i) Signs shall not be placed on right-or-way fronting public facilities (e.g. government office or operations center, post office, public cemetery, historic courthouse, public safety station, public library, public museum, public community center, public park, public school, etc.) except on election day where said public facility is a polling place and is placed in accordance with the rules of the Gaston County Board of Elections.

(10) Campaign, political and election signs, (adopted 05/10/16), provided that the following conditions are met:

(a) If placed within the street right-of-way:

1. Sign area shall not exceed five square feet;

2. Sign height shall not exceed 36 inches above the street level nearest to the sign; provided however, if sign is located within 12 feet of the point of intersection of the edges of pavement of two intersecting streets, no sign shall exceed 30 inches above the height of said street level.

3. Such sign shall not be put up more than 30 days before the election and must be removed within five days following the date of election. Signs for candidates in a runoff election may stay up until five days following the runoff election day.

4. No such sign shall be placed over any curb, street or highway median, street surface or sidewalk; or on any utility pole, government sign or signpost, bridge, tree, rock, fence, or guardrail; or within 15 feet of any fire hydrant.

5. No such sign shall be placed within two feet of any public street sign or highway sign.

6. Such signs are prohibited within the right-of-way of any fully controlled access highway.

7. The tenant or other person entitled to possession of the property fronting along the street right-of-way on which a sign is placed may remove such sign at any time.

8. Such signs shall not be placed on right-or-way fronting public facilities (e.g. government office or operations center, post office, public cemetery, historic courthouse, public safety station, public library, public museum, public community center, public park, public school, etc.) except on election day where said public facility is a polling place and is placed in accordance with the rules of the Gaston County Board of Elections.

9. Notwithstanding the forgoing, the town shall remove any such signs or group of signs the Zoning Administrator deems to be an obstruction to the safe vision of motorists or is deemed to be in violation of this section.

(b) If placed on private property, outside the street right-of-way;

1. Sign area shall not exceed 32 square feet.

2. No such sign may be placed on private property without permission of the owner. The property owner upon whose land the signs are placed will be responsible for any violations.

3. Sign height shall not exceed ten feet or 2.5 times the vertical dimension of the sign face, whichever is less.

4. No such sign shall obstruct the safe vision of motorists.

(c) Irrespective of location, no campaign or election sign shall be lighted or luminous, nor shall it have any flashing lights, moving or windblown parts.

(11) Temporary real estate signs advertising a specific property for sale, lease, rent or development, or "open houses" shall be located as follows:

~~(a) For sale, for lease, for rent signs.~~

~~1. One sign per street frontage advertising real estate "For Sale," "For Rent," "For Lease," or "For Development."~~

~~2. The maximum area of such sign shall be as follows: four square feet in a residential district.~~

~~3. Thirty-two square feet in area in all other districts.~~

~~4. Such allowances shall be followed provided that the sign is located on the property being advertised, and sign is located behind the street right-of-way line.~~

~~5. Up to eight off-premises temporary directional signs per residential development for the purpose of providing directions to multiple new dwellings for sale or lease; provided:~~

~~A. Each such sign is no larger than three square feet in size and four feet in height;~~

~~B. Is attached to its own support anchored in the ground; and~~

~~C. Signs are allowed only between 6:00 p.m. on Fridays and 6:00 p.m. on Sundays.~~

~~6. Two off-premises directional signs per residential dwelling for sale; provided that each off-premise sign is no larger than two square feet in size and two and a half feet in height, and is attached to its own support anchored in the ground.~~

~~(b) "Open House" signs:~~

~~1. No greater than four off-premises signs shall be allowed per open house event.~~

~~2. Such signs shall be in place from 6:00 p.m. on Fridays until 6:00 p.m. on Sundays only.~~

~~3. Open House signs shall not exceed three square feet in size and four feet in height.~~

~~4. No sign allowed under this subsection shall be illuminated.~~

~~(c) Any real estate sign located in the public right-of-way shall be deemed a violation of this ordinance and may be removed by the administrator and destroyed without notice.~~

~~(d) No signs shall be located within 15 feet of any fire hydrant.~~

(12) Construction/improvement signs (including financing signs and future development signs) are allowed under the following conditions:

(a) Signs located on lots of less than 1 acre ~~in conjunction with any residential use~~ shall not exceed four square feet each. Signs located on parcels of 1 acre or greater ~~in conjunction with all other uses~~ shall have a maximum area of 32 square feet each.

(b) One sign per premises shall be allowed, shall not be illuminated and shall appear only at the construction site and shall be removed within seven days after a certificate of occupancy for the advertised property has been issued.

~~(13) Subdivision/multi-family development/planned residential development identification signs shall be allowed under the following conditions:~~

~~(a) Such signs may be placed at each principal entrance to the development.~~

~~(b) Such signs shall not exceed 32 square feet in area apiece.~~

~~(c) Such signs may not be placed in a street median (i.e., in a street right-of-way).~~

~~(d) Such signs shall not consist of yard signs, flags, feather flags, etc. and shall be removed after the development is completed.~~

(14) On-premises temporary banners and signs ~~for nonresidential uses~~ located in nonresidential districts for promotional events or grand opening, provided that:

(a) For a continuous advertising period not to exceed 14 days, on-premises banners, balloons less than two feet in diameter, pennants, and flags (including "feather" flags), for special events (promotional sales, products, etc.) are permitted so long as said signs/objects are not located in a street right-of-way.

(b) Within any calendar year, any use may be permitted temporary signs of this nature for no greater than three, non-consecutive 14-day (two week) periods. No such banners, signs or balloons shall be placed on a roof, shall have a maximum area of 24 square feet and no more than three on-premises banners or signs shall be allowed during each advertising period.

(c) Off-premises signs and banners not to exceed 4 square feet for special events (promotional sales, products, etc.) are permitted on private property per 153.080 (B) (5).

(19)* MOVED ~~Special event signs for public, quasi-public or not-for-profit organizations. Such signs may be erected by organizations (e.g., schools, churches, etc.) without a permit under the following conditions:~~ On-premises temporary banners and signs ~~for nonresidential uses~~ located in residential districts for promotional events, provided that:

(a) The sign is in association with a special event (e.g., barbeque, rummage sale, fair, **fundraiser**, etc.).

(b) Such signs shall be non-illuminated and shall have a maximum area of **16** square feet.

~~(c) For scheduled events such as rummage sales, fund-raising events, fairs, festivals, barbeques, etc., on-premise signs only (including portable signs) shall be allowed.~~

(d) Such signs may be erected ~~14~~ **7** days prior to the event and shall be removed within ~~72~~ **24** hours of the termination of the event.

(e) Off-premises signs and banners not to exceed 4 square feet for special events (promotional sales, products, etc.) are permitted on private property per 153.080 (B) (5).

(15) Sandwich board signs: sandwich board signs shall be allowed provide the following requirements are met:

(a) The total area of the signboard shall not exceed ten **(10)** square feet per side.

(b) The sign shall have a maximum height of five **(5)** feet and a maximum width of two **(2)** feet.

(c) The sign must be constructed of materials that present a finished appearance. Rough-cut plywood and similar unfinished surfaces shall not be used for such signs.

(d) Signs may be placed in a sidewalk or within a street right-of-way (but outside a vehicular travel way) as long as they do not interfere with pedestrian or vehicular movement and circulation.

(e) Signs shall be removed by the end of the business day.

(16) ~~Commercial~~ signs placed in an athletic field and other outdoor space where such signs are intended to be visible by persons attending such events at such facilities.

(17) Holiday decorations, with no commercial messages. Such decorations may be placed outside of the street right-of-way and may be displayed between November 15 and January 15.

~~(18) Off-premises permanent directional signs for public, non-profit uses (churches, etc.) provided that:~~

~~(a) Such signs shall be permanent ground signs. Portable signs shall not be allowed.~~

~~(b) No greater than two directional signs per use shall be allowed, irrespective of location.~~

~~(c) No two directional signs shall be located within five linear feet of each other.~~

~~(d) All directional signs in this category shall be constructed of durable wood or non-reflective metal or plastic materials.~~

~~(e) Directional signs shall not be illuminated.~~

(20) Window signs, intended to be seen by pedestrians, motorists or customers from the outside of the building, from an adjoining street. This pertains to signs placed on the inside of glass windows and doors and does not include exterior wall signs which require permits.

(21) Vehicle signage when painted directly on a vehicle or attached magnetically.

~~(21) Yard sale/garage sale/estate sale/auction signs provided that:~~

~~(a) Such signs may not be illuminated, may be placed within 24 hours prior to the sale, and removed within 12 hours after the event.~~

~~(b) Each sign may have a maximum area of six square feet. Such signs may be placed on or off-premises. If off-premises, permission of the property owner is required.~~

~~(c) A maximum of three off-premises signs and one on-premises sign is allowed per yard sale.~~

~~(d) No such signs are allowed on telephone poles, sign poles, etc. These signs must be free standing (on their own supports). Notwithstanding the forgoing, the Town of Dallas shall remove any such signs or group of signs the Zoning Administrator deems to be an obstruction to the safe vision of motorists or is deemed to be in violation of this chapter.~~

§ 153.081 UNSAFE and UNPERMITTED SIGNS.

(A) Signs that are structurally unsafe and thereby endanger the public safety shall be removed unless they are repaired and made to otherwise comply with the requirements of this Code.

(B) No signs are allowed to be placed on telephone poles, sign poles, etc., or within the right of way unless specific permission has been granted by NCDOT or the Town of Dallas.

(C) Signs must be free standing (on their own supports).

(D) Notwithstanding the forgoing, the Town of Dallas shall remove any signs or group of signs the Zoning Administrator deems to be an obstruction to the safe vision of motorists or is deemed to be in violation of this chapter.

(E) If the Town of Dallas is not able to remove signage in violation, the owner of the sign, or the property upon which unpermitted signage is placed, shall be issued a Notice of Violation, and shall have 5 days to correct the violation. Failure to comply will be subject the owner to civil penalties of $100/day as outlined in 153.999.

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§ 153.083 SCHEDULE OF SIGN REGULATIONS.

Signs shall not be permitted in accordance with specified regulations set forth in Appendix D: Sign Regulations Schedule.

(Ord. passed 11-3-1970; Am. Ord. passed 7-3- 1972)

§ 153.084 ADVERTISING SIGNS.

The provisions of this subchapter shall apply to the following zones only: M O and I, Medical and Office Institutional; O and I-2, Office and Institutional; B-1, Neighborhood Business; B-2, Highway Business; B-3, Central Business; B-3P, Central Business District Perimeter; B-4, General Business; I-1 Light Industrial; I-2, General Industrial; I-2L, General Industrial Limited; and EI-1, Exclusive Industrial.

(Ord. passed 11-3-1970; Am. Ord. passed 7-3- 1972)

§ 153.085 SPECIAL SIGN REGULATIONS.

(A) A shopping center consisting of five or more businesses located in a unified building or group of buildings may have business and/or identification signs as permitted in the zone or district, except that the shopping center as a whole may have one detached sign per street front over and above the detached signs permitted for the business establishments in the shopping center.

(B) One temporary sign shall be permitted on the site of any construction work bearing the name of the building, the owner, and those furnishing services or materials used on such construction work.

(C) Real estate signs in residential zones advertising the sale, rental or lease of the premises on which such sign is located shall not exceed four square feet in area and shall be at least ten feet from any street right-of way line.

(D) No sign shall be erected or maintained at any location where by reason of its position, working, illumination, shape, symbol, color, form or character, it may obstruct, impair, obscure, interfere with the view of, or may be confused with, any authorized traffic-control sign, signal or device, or interfere with mislead, confuse or disrupt traffic.

(E) No sign having flashing, intermittent. or animated illumination shall be permitted within 75 feet of a street or highway intersection or within 300 feet of any residential zone unless the sign is not visible from such zone.

(F) No advertising sign shall be permitted in any area designated by the Board of Aldermen as one of scenic beauty or historical interest.

(G) A sign designated to be viewed from two directions shall be considered as one sign, provided that the two sign faces are parallel and not more than 42 inches apart.

(H) All detached business signs shall be limited to a height of 30 feet and shall not exceed 100 square feet in area.

(Ord. passed 11-3-1970; Am. Ord. passed 7-3- 1972)

§ 153.086 B-3: CENTRAL BUSINESS ZONE.

Signs in B-3: Central Business zones shall be regulated as follows:

(A) *Types of signs permitted:* Identification and/or business.

(B) *Permitted number of signs:* Two per use per street.

(C) *Permitted illumination:* Luminous.

(D) *Permitted location:* Anywhere on the property, but projecting not more than six inches into street right-of-way above the street sidewalk grade, in which case it may project 18 inches into the street right-of-way, A sign may project over the street right-of-way if said sign is attached to a canopy or similar appurtenance which extends over the right-of-way, but in no case shall project beyond the end of the canopy or appurtenance. Roof signs shall not be permitted

(Ord. passed 11-3-1970; Am. Ord. passed 7-3- 1972)

§ 153.087 B-2: HIGHWAY BUSINESS ZONE.

(A) *Types of signs permitted:* Outdoor advertising signs.

(B) *Size of signs:*

(1) Multi-tenant signs.

(2) The maximum size limitations shall apply to each side of a sign structure; and signs may be placed back-to-back, side-by-side or in V-type construction with not more than two displays to each facing, and such sign structure shall be considered as one sign.

(3) Side-by-side signs shall be structurally tied together to be considered as one sign structure.

(4) V-type and back-to-back signs will not be considered as one sign if located more than 15 feet apart at their nearest points.

(C) *Spacing of signs.*

(1) Signs may not be located in such a manner as to obscure, or physically interfere with the effectiveness of an official traffic sign, signal or device; obstruct or physically interfere with the driver's view of approaching, merging or intersecting traffic.

(2) No two sign structures shall be spaced less than 500 feet apart.

(3) No sign structure may be located adjacent to or within 500 feet of an interchange, intersection at grade or safety rest area. Said 500 feet to be measured along the highway from the beginning or ending of pavement widening at the exit from or entrance to the main traveled way.

(4) The foregoing provisions for the spacing of signs do not apply to sign structures separated by buildings or other obstructions in such a manner that only one sign facing located within the above spacing distances is visible from the highway at any one time.

(5) Official and on-premises signs and structures that are not lawfully maintained shall not be counted nor shall measurements be made from them for the purposes of determining compliance with spacing requirements.

(6) The minimum distance between sign structures shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply only to structures located on the same side of the highway.

(D) *Lighting of signs-restrictions:*

(1) Signs which contain, include or are illuminated by any flashing intermittent or moving light or lights are prohibited except those giving public service information, such as time, date, temperature, weather or similar information.

(2) Signs which are not effectively shielded as to prevent beams or rays of light from being directed at any portion of the travel ways of the highway and which are of such intensity or brilliance as to cause glare and to impair the vision of the driver of any motor vehicle or which otherwise interferes with any driver's operation of a motor vehicle are prohibited.

(3) No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device or signal.

(4) All such lighting shall be subject to any other provisions relating to lighting signs presently applicable to all highways under the jurisdiction of the State of North Carolina.

(5) Illumination shall not be added to non-conforming signs or signs conforming by virtue of the grandfather clause.

(E) *Location of signs near residential areas:* No sign structure shall be located within 75 feet to a residential structure or a residential zone boundary.

(F) *Height of sign above highway or grade level:* The top of a sign structure shall not be in excess of 40 feet in height above the highway or natural grade level, whichever is higher. However, an outdoor advertising sign may be extended to a height not to exceed 80 feet provided that the size of a sign exceeding 40 feet in height shall not be larger than 200 square feet in area.

(G) *On-premise signs:* The provisions of this section shall not apply to on-premise signs.

(Ord. passed 11-3-1970; Am. Ord. passed 7-3- 1972; Am. Ord. passed 7-19-1988)

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APPENDIX D: SIGN REGULATIONS SCHEDULE

Type of Use	*Type of Sign*	*Permitted Number of Signs*	*Maximum Area of Sign (Sq. Ft.)*	*Location*	*Permitted Illumination*
1 Single-family dwellings	Identification	1/dwelling unit	1½	A	None
2 Multi-family dwellings	Identification	1/building	3	B	None
3 Group housing projects	Identification	1/street front	6	B	None
4 Churches, schools, colleges, hospitals, community recreation centers, art galleries, museums, libraries, golf course country clubs, swimming clubs, parks, playgrounds, funeral homes	Identification	1/building	12	A	Lighted (N.M.)
5 Cemeteries	Identification	1/street front	12	B	Lighted (N.M.)
6 Nursing homes for chronic or convalescent patients, homes for the aged and infirm, day care centers, pre-school, day nurseries	Identification	1/establishment	12	B	Lighted (N.M.)
7 Commercial uses conducted in buildings or with buildings associated	Identification and/or business	No limit	Signs attached to buildings - no limit; signs detached from buildings - 100	C	Luminous
8 Commercial uses not conducted in or associated with buildings	Identification and/or business	1/establishment	100	D	Luminous
9 Industrial	Identification	No limit	One sq. ft. of street frontage at front of lot	D	Luminous

A Behind street right-of-way line.
B Behind required setback.
C One sign per establishment per street front may be detached from the building provided it is located behind the property line and at least ten feet above ground level if located within 15 feet of a street right-of-way line. Other signs shall be mounted on the building provided that no sign shall project

into street right-of-way unless it is at least ten feet above the street grade in which case it shall not be less than four feet behind the curb line, behind property line.

D Behind property line.

(Ord. passed 11-3-1970; Am. Ord. passed 7-3-1972)

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