To:	Caldwell County Board of Commissioners
From:	Caldwell County Planning Department
Re:	Caldwell County Zoning Ordinance Update – Text Amendment (TA) 26-01
Request:	Consideration of Amening Article XIII, Section 130 A of The Caldwell County Zoning Ordinance.

Background: Upon inspection of the current ordinances for Caldwell County, planning staff have observed issues that would hinder potential new development in the county and, if warranted, develop and recommend new policies to mitigate and negative impacts.

Caldwell County is looking to grow and develop new tax base. In return, this would provide more revenue and in essence provide better service to its citizens. To help spur this growth, current ordinances and policies for planning need to be updated or completely revamped. One such ordinance would be the section on Special Use Permits.

Special Use Permits as they are written require the applicant to go to the Planning Board for a recommendation. This recommendation would then be taken to the Board of Commissioners for approval or denial. Special Use permits are a quasi-judicial hearing meaning that the deciding board must hold an evidentiary hearing and make its decision based on the evidence in the record. Usually, this task is handled by the county or municipal Board of Adjustment.

Exhibits: Attached Exhibit A contains the recommended language for Section 130A, Special Use.

Proposed Solution: Amend Article XIII, Section 130A, Special Use, of the Caldwell County Zoning Ordinance. The amendment would rectify the redundancy of having two boards hearing a quasi-judicial hearing by:

1. The recommendation would now come from the Planning Director after reviewing the special use application.
2. The recommendation would then go to the Board of Adjustment for hearing and final decision making.
3. The new language would also make the ordinance compliant with current NCGS 160D statutes.

Recommendation: the Caldwell County Planning Department staff find the amendments to be reasonable and consistent with the findings and recommendations of the Caldwell County Comprehensive Plan.

Exhibit A

Section 130A. Special Uses

Special uses are those uses that require, because of their inherent nature, intensity, and external effects, special care in the control of their location, site design and methods of operation.

130A.1 Application Filing

Special Use applications shall be submitted to the Planning Director on forms available in the Planning Department. Incomplete applications shall not be fully evaluated until all necessary items outlined in the application have been submitted as prescribed.

130A.2 Hearing Notice

Notice of the hearing shall be provided in accordance with Article XI. Written notice shall also be mailed to the applicant.

130A.3 Staff Review/Report

The Planning Director shall review each proposed Special Use application in light of the Review Criteria of Article XI. Based on the results of those reviews, the Planning Director shall provide a report on the proposed special use to the Board of Adjustment.

130A.4 Planning Commission Hearing and Decision

After receiving the Planning Director's recommendation, the Board of Adjustment shall hold a hearing on the proposed Special Use. Following the hearing (at the same or subsequent meeting), the Board of Adjustment shall take action to approve, approve with modifications or deny the proposed Special Use. In order to approve any special use petition, a majority of the members of the Board of Adjustment must vote in favor of the petition. For the purposes of this section, vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the Board" for calculating the requisite majority.

130A.5 Review Criteria

Special Use applications shall be approved by the Board of Adjustment, upon demonstration by the applicant that they have found all of the following criteria have been met:

(a) The use does not materially danger the health or public safety;
(b) The use meets all required standards and conditions;

(c) The use will not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas; and
(d) The use will be in harmony with the area in which it is located and in general conformity with the Caldwell County Comprehensive Plan.

130A.6 Conditions of Approval

The Board of Adjustment may impose such reasonable and appropriate conditions, as it deems necessary (so long as the conditions do not conflict with existing state or federal law) to address the impacts of the proposed development on:

(a) surrounding property;
(b) the existing natural and man-made features of the site;
(c) offsite and on-site traffic flow;
(d) public utilities; and
(e) such other public services or goals of the Land Use and Transportation Plan that may be negatively impacted by the proposed development.

Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which Caldwell County does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the County, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.

130A.7 Quasi-judicial Hearing

The hearing in front of the Board of Adjustment to consider the Special Use shall be a quasi-judicial hearing and shall proceed as provided in Article XI of the Caldwell County Zoning Ordinance.

130A.8 Written Decision; Acceptance of Conditions

After the hearing has been closed, but not necessarily at the same meeting, the Board of Adjustment shall within a reasonable time make a written decision in accordance with Article XI of the Caldwell Count Zoning Ordinance. Should conditions be recommended or placed upon the approval a Special Use Permit, the applicant at the hearing, while under oath, shall acknowledge their consent to such conditions.

130A.9 Notice of Decision; Effective Date

Within 10 days after Board of Adjustment adopts its written decision, (i) copies of the decision shall be delivered by personal delivery, electronic mail or first-class mail to the applicant,

landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective and (ii) and shall be filed in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

130A.10 Withdrawal of Application

An applicant may withdraw the application at any time by written notice to the Planning Director. Any withdrawal of an application after the giving of the first public hearing notice shall be considered a denial of the application.

130A.11 Successive Applications

When the Board of Adjustment denies an application or the applicant withdraws an application after the first public hearing notice has been published in the newspaper, the Board of Adjustment shall not consider another application for the same or Special Use affecting the same property or a portion of it until the expiration of a 1-year period, extending from the date of denial by the Board of Adjustment or withdrawal by the applicant.
When the Board of Adjustment denies an application, the applicant may not submit another application for the same or similar Special Use affecting the same property, unless the applicant can demonstrate that either changes in the applicable ordinances or material changes in site conditions or conditions near the property would support new findings of facts and conclusions by the Board of Adjustment.

130A.12 Appeals

Any person aggrieved may appeal a final decision of the Board of Adjustment on Special Use matters to the Superior Court of the county where the property is located in accordance with Article XI and NCGS 160D-1402 and 160D-1405(d).

130A.13 Final Plan Approval

The Planning Director shall review all final Special Use plans for compliance with all requirements of this Land Development Code, conditions of approval and the Special Use plan presented to the Board of Adjustment prior to issuance of a building permit or other development permit. The Planning Director may require a final Special Use plan to be reviewed by the other departments if he finds that there are technical issues that should be addressed by other departments of the County.

130A.14 Minor Changes and Modifications

The Planning Director is authorized to approve minor changes in approved Special Use plans as long as they are in harmony with action of the decision-making body. The Planning Director shall not have the power to approve changes that constitute a modification of the approval. A modification shall require approval of the Board of

Adjustment and shall be handled as a new application. The Planning Director shall use the following criteria in determining whether the proposed action is a minor change or a modification:

(a) Any change in use shall be considered a modification.
(b) A change in the density of the overall development shall be considered a modification.

Changes in the density of the overall development include, but are not limited to:

(i) Any increase in intensity of use shall constitute a modification. An increase in intensity of use shall be considered to be an increase in usable floor area greater than 300 square feet, an increase in number of dwellings, or change in the type of dwelling or an increase in outside land area devoted to sales, displays or demonstrations; and

(ii) Any change in parking areas resulting in an increase or reduction of 5% or more in the number of spaces approved by the decision-making body shall constitute a modification. In no case shall the Planning Director reduce the minimum number of spaces below the minimum required by this zoning ordinance.