

**A RESOLUTION CALLING A PUBLIC HEARING ON A LAND USE ORDINANCE  
TEXT AMENDMENT RELATED TO ESTABLISHING HOURS OF OPERATION  
FOR DRY CLEANING MACHINERY IN B-3 ZONING DISTRICTS**

**Resolution No.159 2003/2004**

**WHEREAS, the Carrboro Board of Aldermen seeks to provide ample opportunities for the public to consider modifications to existing policies and regulations; and**

**NOW, THEREFORE BE IT RESOLVED that the Board of Aldermen calls a public hearing on June 22, 2004 to consider adopting "An Ordinance Amending the Carrboro Land Use Ordinance Provisions Dealing With Noise."**

**BE IT FURTHER RESOLVED that the draft amendment is referred to Orange County for review per the Joint Planning Agreement and to the Town of Carrboro Planning Board for its recommendations.**

**This is the 18<sup>th</sup> day of May in the year 2004.**

May 3, 2004  
119 Fidelity Street #C1  
Carrboro, North Carolina

Mayor Nelson and the Board of Aldermen  
Town of Carrboro

Dear Mayor Nelson and Aldermen,

We urge you to appeal the Superior Court decision which overturned the October 15 Board of Adjustment ruling in favor of Village Square.

If the Town chooses to not appeal, then as of May 17 there will be no remaining zoning or legal impediments to the planned intensification of Hangers' central dry cleaning activities on Fidelity Street. Not only will Hangers then be able to invest the \$50,000 (as approved by the Town's May 2003 building permit) to install their 10 ton dry cleaning machine, they will be able to noisily operate it and its associated machinery 24 hours a day with absolutely no existing relevant Land Use Ordinance restrictions. Judge Barber's ruling has effectively rezoned the 127 Fidelity Street B-3 Neighborhood Business tract to M-1 Light Manufacturing (but without the minimal M-1 performance standards), so long as the industrial activity is concerned with dry cleaning.

We have accumulated overwhelming evidence (including several statements from Hangers' two top officers) that Hangers will open new counters in Durham and extend their machinery processing hours on Fidelity Street to evenings and weekends. Any changes in the LUO made to address this issue must be made before these developments become the new status quo. Judge Barber's ruling indicates that any LUO changes must be completely explicit.

Most importantly: **We urgently request that you approve the enclosed statement of intent in the form of a Board resolution as soon as possible.** This resolution would indicate that your Board intends to give our neighborhood a minimal amount of protection by adding a specific provision to the LUO restricting the regular processing hours of dry cleaning plants in B-3 districts to weekday business hours. (No business at this location has ever regularly operated outside weekday business hours, including Hangers since 2000.) Since time is short, we are asking for as little as possible: Even with an amortization clause, this change would probably not take effect for several years. It would never constrain the current level of Hangers' operations. But if Hangers is explicitly informed of your Board's willingness to see that the intent of the B-3 district is eventually enforced, then hopefully they will use their Chapel Hill building permit and move their Raleigh machine to their equally large (and

commercially zoned) Elliott Road location as part of their 15 year plan. It is unfair enough that we will have to continue to endure the higher and longer noise levels during weekday hours needed to clean clothes from parts of 3 other counties. For our long-standing evening and weekend quietude to be ruined by further increased operations would be unconscionable.

When we approached your Board for help nearly a year ago, we were told that we had to go to the Board of Adjustment first. We spent over 500 hours and nearly \$3000 preparing our case last year. The Town spent far more than the \$400 we paid in fees. The situation regarding the B-3 district, the history of this tract, and Hangers Cleaners' current and future operations is complex. Before any decision discussions began, the most basic factual and legal testimony and questioning on October 15 totalled nearly 3 hours. Therefore we urge you to give a great deal of weight to the will of our community as expressed by the sober 4 - 1 vote of the Board of Adjustment. Their proposed ban on excessive importation has been thrown out by Judge Barber. However, their determination that the *current* level of activity alone already exceeds the intent of two 1980-81 provisions of the B-3 district led to their ruling.

Last summer we warned Hangers that we would pursue amendments of the LUO if necessary. Hangers has repeatedly rejected or broken off negotiations. The critical issue has always been their insistence on retaining the right to operate on a 24/7 basis: On October 15 they risked the curtailment of their importation rights in order to preserve their 24/7 operating rights.

This week we request that discussions focus on the proposed resolution. Pending the results of tonight's meeting and discussions amongst ourselves later this week, on Tuesday May 11 we may request a roll call vote by your Board on the decision to appeal (or not). Therefore we ask that you instruct the Town Attorney tonight to begin to prepare an appeal, so that it can be filed by the Friday May 14 deadline if it is approved on Tuesday May 11.

Supporting details are contained in an accompanying letter from Professor Robert Proctor. The tight timeframe has not permitted a meeting by the Board of Directors of our homeowner's association for the consideration of this letter, since some of the members of our Board are out of town..

The signatures of the owners and/or residents of Village Square which we could obtain on short notice appear on the next page to this letter.

Enclosure: Proposed Board of Aldermen Resolution

Signature Page for May 4, 2004 Letter to the Board of Aldermen  
from Village Square Owners and/or Residents:

Bob Proctor, #C1, former member VSTHA Board  
Lori Hoyt #C3, former board member

Lillian #E2, homeowner, board member

Lolita R. Villani A-3 Home owner

Randy McLean G-3 Homeowner

Jennie Capparella F-1 Fidelity St

Liam Poyser, G-1

Neil Richards, G-1

Joergeline Dale 119 Fidelity, E-4

Ellen Perry 119A-5-

**Proposed Resolution for the Board of Aldermen**  
(enclosure to 5/3/04 letter from Village Square residents)

Whereas Section 15-153 of the Land Use Ordinance generally indicates that commercial uses are to be allowed in B-3 districts only when the use is in accordance with the neighborhood business objectives of the B-3 district,

Whereas none of the four businesses, including Hangers Cleaners, which have used the 127 Fidelity Street building for dry cleaning processing operations since 1987 has ever been observed by neighbors to operate processing machinery on a regularly scheduled basis outside of the hours of 7:00am to 5:00pm Monday - Friday,

Whereas it is reasonable to anticipate that the dry cleaning industry will further centralize its operations over the next 20 years, thereby increasing the likelihood of expanded operating hours at the 127 Fidelity plant in the future to process items from other counties,

Whereas the cooling machinery needed for large scale dry cleaning and pressing operations is inherently noisy and the increased hours of its operation would destroy the evening and weekend quietude which has been possessed by the surrounding residential properties since 1985,

Whereas the Land Use Ordinance currently has no performance standards or limits upon hours of operation for uses in B-3 districts,

Whereas there are no other protections for neighbors of centralized dry cleaning processing operations in B-3 districts of any kind in the Land Use Ordinance apart from those implied by passages cited in a potential appellate court case,

Whereas Hangers Cleaners has been waiting over one year for the resolution of Land Use Ordinance issues pertaining to the implementation of its May 2003 \$50,000 building permit for which it has obtained a total of 15 years of lease and lease options for 127 Fidelity Street and needs to know the intentions of the Town government as soon as possible,

This Board hereby states its intent to amend the Land Use Ordinance as soon as possible in such a way as to restrict the regularly scheduled operation of any machinery associated to the dry cleaning or pressing of items for hire in a B-3 Neighborhood Business district to the hours of 7:00am to 5:00pm Monday - Friday, to adopt an amortization amendment to make this limitation effective as soon as possible for existing special use permits, and to include only capital investments made prior to May 5, 2004 for the calculation of the amortization period.



**Please Add a New Section \* to Part II of Article XI**  
(Miscellaneous Supplementary Use Provisions)

**Section \*:**

**Dry Cleaning in a Neighborhood Business District:**

On all but twelve days of each year, the operation of any machinery associated to the cleaning or the pressing of garments for hire in any fashion under use category 16.000 in a B-3 district shall be limited to the hours of 7:00am to 5:00pm Monday through Friday.

**Please Add an Amortization Provision to Article VIII**  
(Nonconforming Situations)

**Section \*\*:**

**Effective Date for Section \*:**

For an existing 16.000 dry cleaning special use permit in a B-3 district, Section \* shall come into force after a period of time following May 5, 2005. The length of this period of time shall depend only upon the capital investments made in the property prior to May 5, 2005 by the dry cleaning business which was operating on the permitted tract on May 5, 2005.

Excerpt of draft minutes of the May 4, 2004 meeting of the Board of Aldermen

**HANGERS CLEANERS**

Jenny Capparella, a resident of Village Square, stated that Hangers Cleaners had told residents of her neighborhood that they would be running their new machinery 24 hours per day.

Bob Proctor, a resident of Village Square, asked that the Board appeal the Superior Court decision which overturned the October 15<sup>th</sup> Board of Adjustment ruling in favor of Village Square. He requested that the Board amend the land use ordinance to limit the hours of operation of dry cleaning businesses.

Mayor Nelson stated that the Board had declined the opportunity to pursue an appeal.

MOTION WAS MADE BY ALEX ZAFFRON AND SECONDED BY JACQUELYN GIST TO INSTRUCT STAFF DRAFT AN ORDINANCE THAT ACCOMPLISHES THE REQUEST BY THE VILLAGE SQUARE NEIGHBORS AND THAT THE NOISE ORDINANCE BE EXAMINED TO DETERMINE WHETHER ITS PROVISIONS WOULD HAVE AN AFFECT ON HANGER'S CLEANERS' HOURS OF OPERATION. VOTE: AFFIRMATIVE SIX, NEGATIVE ONE (NELSON)

The Board requested copies of the information from the Board of Adjustment's review of the Hangers Cleaners case.



AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE  
PROVISIONS DEALING WITH NOISE

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. Section 15-163, Noise, of the Carrboro Land Use Ordinance is amended by adding a new subsection (h) that reads as follows:

(h) The operation of dry cleaning machinery in the B-3 zoning district, including but not limited to steam boilers, vacuum units, steamers, dry cleaning machines, pressing machines and air compressors, shall not be permissible outside of the hours between 7:00 a.m. and 7:00 p.m. if and to the extent that such operation results in noise that is audible at the property line of the lot on which the business operating such machinery is located. Any business that is not in compliance with this provision shall be required to bring their dry cleaning operations into compliance within 90 days of the effective date of this ordinance.

Section 2. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 3. This ordinance shall become effective upon adoption.

Article II

MISCELLANEOUS OFFENSES

Section 5-11 Noise Generally

No person may authorize or cause the emission from any property or source under his control any noise that is both:

- (1) Sufficiently loud to frighten or pose a danger to the health of or seriously disturb any person who:
  - a. if the noise emanates from a source located on private premises, is located on other premises (including other dwelling units or rented premises located on the same tract of land), or (Amend. 4/27/82)
  - b. if the noise emanates from a street or other public property, is located on private property or the street or other public property, and
- (2) Louder, or of greater duration, or otherwise more disturbing than is reasonably necessary for the performance of some lawful public or private function, enterprise, operation, or activity.

Section 5-12 Particular Noise (Amend. 11/16/93)

The following are declared to be illustrations of noises prohibited under the foregoing section, and are hereby declared to be unlawful, but this list shall not be exhaustive:

- (1) The playing of any radio, television, tape recorder, phonograph, or similar electronic device or any musical instrument so as to disturb the comfort, quiet or repose of persons in any place of residence or so as to interfere substantially with the operations of any church, school, theater, library or other similar place of assembly.
- (2) The use of any drum, loudspeaker, or other amplification instrument or device for the purpose of attracting attention by the creation of noise to any performance, show, ale, display, advertisement of merchandise, or other commercial venture.
- (3) Any party or assembly of persons in a dwelling unit or on residential premises producing loud and raucous noise after 11:00 p.m. that tend to disturb the comfort, quiet, or repose of persons in other dwelling units or on other residential premise. The person in possession of the premises where such a part or assembly of persons takes place shall be deemed responsible for the emission of loud and raucous noises under this subdivision. (Amend. 4/27/82)
- (4) The operation or use of any of the following tools, machinery, or equipment, when such operation or use takes place (i) outside of a fully enclosed structure; and (ii) within 300 feet of a residentially occupied structure that is not in the

possession of the party responsible for the noise at issue; and (iii) after sunset on any day or before 7:00 a.m. on any day except Sunday and before 12:00 noon on Sunday. However, this prohibition shall not apply when work must take place on an emergency basis for health or safety reasons, or when work is undertaken within a public street right-of-way by (i) a utility pursuant to an encroachment agreement, (ii) the town, or (iii) the North Carolina Department of Transportation. (Amend. 1/16/2001)

(a) Earth moving or clearing power equipment.

(a) Chain saws, brush cutters, wood chippers, or similar power equipment.

(a) Power saws

(a) Power driven hammers or jackhammers.

- (5) The barking, howling, whining, crying, crowing, or other noise making of any animal that occurs essentially unabated for a period of at least five minutes on at least three occasions during the hours between 11:00 p.m. and 7:00 a.m. (Amend. 9/24/02)

#### Section 5-12.1 Motor Vehicle Noises (Amend. 11/16/93)

The following are illustrations of noises, produced in connection with the operation or use of motor vehicles, that are prohibited under Section 5-11 and are hereby declared to be unlawful, but this list shall not be exhaustive:

- (1) The blowing of a horn on any motor vehicle except when the horn is used as a warning device.
- (2) The operation of any motor vehicle without a muffler or with a muffler that is so defective or so designed that the vehicle emits an unusually loud noise.
- (3) The operation of any motor vehicle so as to create unnecessary and unusual noise through the screeching of tires or racing of engines.
- (4) The operation or use of a motor vehicle with amplified sound produced by a radio, tape player, compact disc player or other soundmaking device or instrument within the motor vehicle such that the sound is plainly audible at a distance of 100 feet or more from the motor vehicle.

#### Section 5-13 Discharge of Firearms and Air Rifles

(a) Subject to subsection (b), no person may discharge any pistol, rifle, shotgun, or other gun or any air pistol, slingshot or any like instrument used to eject a pellet or projectile within the town limits.

(b) Subsection (a) shall not apply to private citizens acting in justifiable defense of persons or property or pursuant to the lawful directions of a police officer nor to police officers acting in the lawful performance of their duties.

## Excerpt of Article XI of the Land Use Ordinance

**Section 15-163 Noise.**

(a) No 4.000, 9.400, or 2.150 classification use in any permissible business or PID district may generate noise that tends to have an annoying or disruptive effect upon (i) uses located outside the immediate space occupied by the 4.000 or 9.400 use if that use is one of several located on a lot, or (ii) uses located on adjacent lots. Noises that exceed the levels set forth below shall be deemed annoying or disruptive. Low frequency noises shall be considered annoying and disruptive if they exceed the decibel levels set forth below when measured without using an A-weighted filter, or if such noises generate a perceptible vibration within structures located beyond the boundaries referenced above. **(AMENDED 6/22/82; 10/20/92; 05/25/99)**

(b) Except as provided in subsection (f), the table set forth in subsection (e) establishes the maximum permissible noise levels for 4.000 classification uses in the M-1 and M-2 districts. Measurements shall be taken at the boundary line of the lot where the 4.000 classification use is located, and, as indicated, the maximum permissible noise levels vary according to the zoning of the lot adjacent to the lot on which the 4.000 classification use is located.

(c) A decibel is a measure of a unit of sound pressure. Since sound waves having the same decibel level "sound" louder or softer to the human ear depending upon the frequency of the sound wave in cycles per second (i.e., whether the pitch of the sound is high or low) an A-weighted filter constructed in accordance with the specifications of the American National Standards Institute, which automatically takes account of the varying effect on the human ear of different pitches, shall be used on any sound level meter taking measurements required by this section. And accordingly, all measurements are expressed in dB(A) to reflect the use of this A-weighted filter.

(d) The standards established in the table set forth in subsection (e) are expressed in terms of the Equivalent Sound Level (Leq), which must be calculated by taking 100 instantaneous A-weighted sound levels at ten second intervals (see Appendix F-1) and computing the Leq in accordance with the table set forth in Appendix F-2.

(e) **Table 1:** Maximum Permitted Sound Levels, dB(A), for 4.000 Uses **(AMENDED 10/20/92)**

Zoning of Lot Where 4.000 Use is Located	ZONING OF ADJACENT LOT ( re: 0.0002 Microbar)				
	Residential	PUD	B-1-G, B2, B-1-C, B3 B4, PF	M1	M2
TIME OF DAY OF OPERATIONS	7:00 AM- 7:00 PM	7:00 PM- 7:00 AM	ANYTIME	ANYTIME	ANYTIME
M-1	50	45	55	60	65
M-2	50	45	60	65	70

O/A	50	45	55	60	65
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**Table 2:** Maximum Permitted Sound Levels, dB(A), for 9.400 Uses  
(AMENDED 10/20/92)

ZONING OF LOT WHERE 9.400 USE IS LOCATED	ZONING OF ADJACENT LOT (re: 0.0002 Microbar)			
	RESIDENTIAL OR PUD	B-1-C, B2, CT, B-1-G, B3, B4, O, O/A	M1	M2
<b>B-1-G, B4 or B-3-T</b>	<b>50</b>	<b>55</b>	<b>60</b>	<b>70</b>
<b>M-1</b>	<b>50</b>	<b>55</b>	<b>60</b>	<b>70</b>
<b>M-2</b>	<b>50</b>	<b>60</b>	<b>65</b>	<b>70</b>

**Table 3:** Maximum Permitted Sound Levels, dB(A), for 2.150 Uses  
(AMENDED 04/15/97)

ZONING OF LOT WHERE 2.150 USE IS LOCATED	ZONING OF ADJACENT LOT (re: 0.0002 Microbar)			
	RESIDENTIAL OR PUD	B-1-C, B2, CT, B-1-G, B3, B4, O, O/A, PF	M1	M2
<b>B-1-C</b>	<b>50</b>	<b>55</b>	<b>60</b>	<b>70</b>

(f) Impact noises are sounds that occur intermittently rather than continuously. Impact noises generated by sources that do not operate more than one minute in any one hour period are permissible up to a level of 10 dbA in excess of the figure listed in subsection (e), except that this higher level of permissible noise shall not apply from 7:00 P.M. to 7:00 A.M. when the adjacent lot is zoned residential. The impact noise shall be measured using the fast response of the sound level meter.

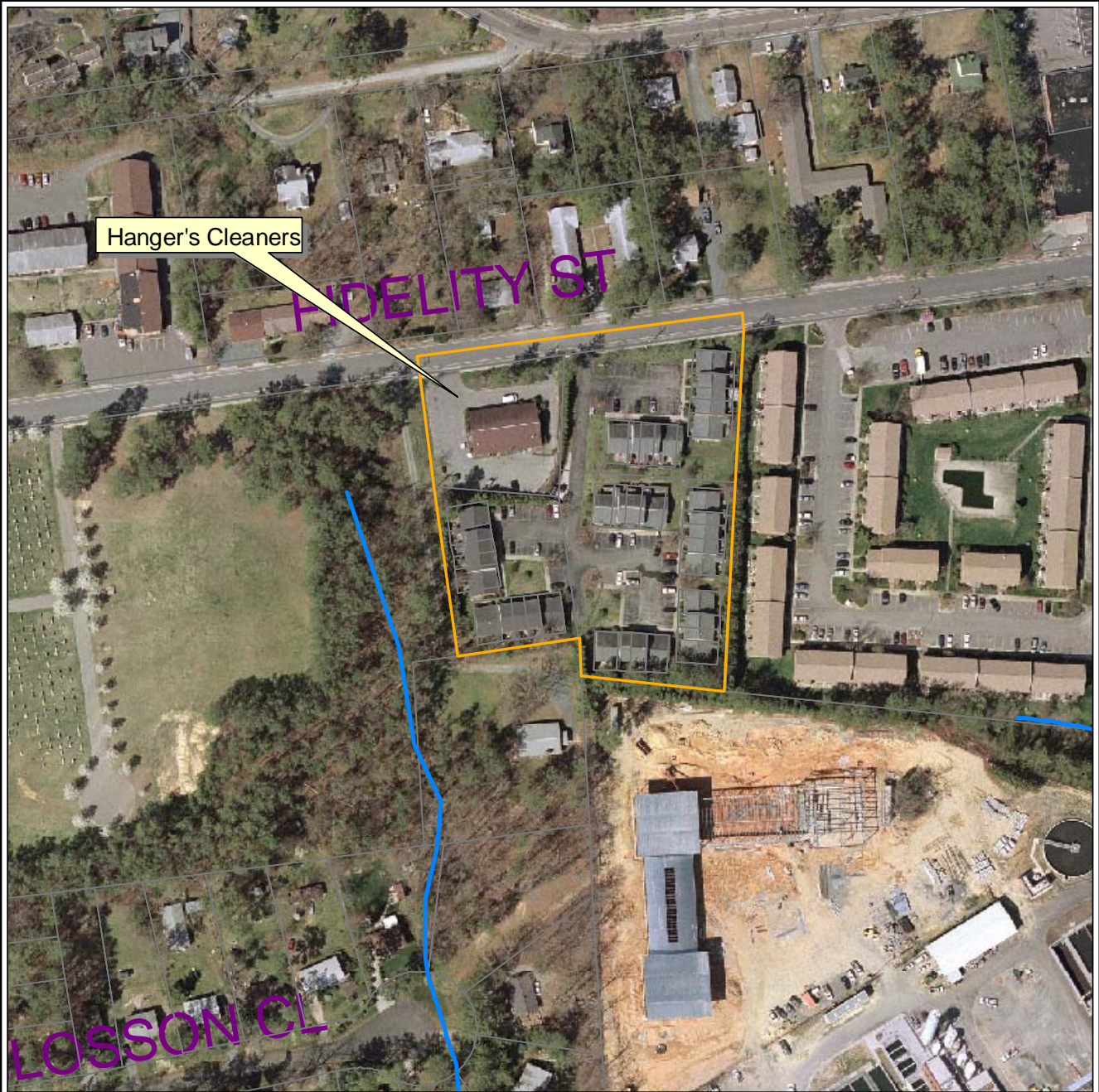
(g) Noise resulting from temporary construction activity that occurs between 7:00 A.M. and 7:00 P.M. shall be exempt from the requirements of this section.


## APPENDIX J


## NOISE LEVELS [dB(A)] FOR COMMON INDOOR/OUTDOOR SOUNDS

OUTDOOR SOUNDS	dB(A)	INDOOR SOUNDS
	110	Rock Band
Large, Passenger jet landing 370 feet away		
Large, passenger jet taking off 1000 feet away	100	
Gas lawn mower, 3 feet away		Inside subway train (NYC)
	90	
Diesel truck, 50 feet away		Food blender 3 feet away
Noisy urban area (day)	80	Garbage disposal 3 feet away
		Shouting - 3 feet away
747 taking off 1000 feet away	70	Vacuum cleaner 10 feet away
Commercial area		Normal speech 3 feet away
	60	
		Large business office
Quiet urban area (day)	50	Dishwasher, next room
Quiet urban area (night)	40	Small theatre/Large conference room
Quiet suburban area (night)		(background)
		Library
	30	
Quiet rural area (night)		Bedroom at night
		Concert hall (background)
	20	
		Broadcast and Recording Studio
	10	
		Threshold of hearing
	0	







  
160 0 160 Feet  
NC State Plane Coordinate System (NAD83)





TOWN OF CARRBORO  
301 W. Main St.  
Carrboro, NC 27510  
13 May 2006  
Tish McGhee, Planning Department  
919-771-1414


### Location of Hanger's Cleaners


 B3

 8816 old nc 86.shp

 Streams

 Carrboro City Limits

 Properties

 Street Names

THIS MAP IS NOT A CERTIFIED SURVEY AND IS FOR REFERENCE ONLY

The requestor must be aware of data conditions and ultimately bear responsibility for the appropriate use of the information with respect to possible errors, original map scale, collection methodology, currency of data, and other conditions specific to the data.