

# **Town of Boone**

## **Unified Development Ordinance**



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**October 23, 1997**

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**January 1, 1998**

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**February 19, 2013**

**Planning & Inspections Department**  
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## **Article I            General Provisions**

### **Section 1.        Short Title**

**[a]**    This ordinance shall be known and may be cited as the Town of Boone Unified Development Ordinance.

### **Section 2.        Authority**

**[a]**    This ordinance is adopted pursuant to the authority contained in the following North Carolina General Statutes: Chapter 160A, Article 19; Chapter 143, Part 6, Article 21; Chapter 160A, Article 15; and, Chapter 113A, Article 4.

**[b]**    Whenever any provision of this ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, the ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

### **Section 3.        Jurisdiction**

**[a]**    This ordinance shall be effective throughout the town's planning jurisdiction. The town's planning jurisdiction comprises the area within the corporate boundaries of the town as well as the areas described in Ordinance 83-5 adopted by the Town Council on April 7, 1983 and Ordinance 92-03 adopted by the Town Council on September 3, 1992, which ordinance is recorded in book 0246, page 147 and 148 of the Watauga County Registry; and Ordinance 98-04 adopted by the Town Council on November 19, 1998, which ordinance is recorded in book 3, page 40-42, of the Watauga County Registry; and Ordinance 99-02 adopted by the Town Council on May 27, 1999, which ordinance is recorded in book 3, page 45-50, of the Watauga County Registry. Such planning jurisdiction may be modified from time to time in accordance with Section 160A-360 of the North Carolina General Statutes.

**[b]**    In addition to other locations required by law, a copy of a map showing the boundaries of the town's planning jurisdiction shall be available for public inspection in the Planning and Inspections Department.

### **Section 4.        Effective Date**

**[a]**    The provisions of this ordinance are hereby adopted and effective on this date, January 1, 1998.

**Section 5. Relationship to Existing Zoning, Subdivision and Soil Erosion and Sedimentation Control Ordinances**

**[a]** To the extent that the provisions of this ordinance are the same in substance as the previously adopted provisions that they replace in the town's zoning, subdivision, or soil erosion and sedimentation control ordinances, they shall be considered as continuations thereof and not as new enactment's unless otherwise specifically provided. In particular, a situation that did not constitute a lawful, nonconforming situation under the previously adopted zoning ordinance does not achieve lawful nonconforming status under this ordinance merely by the repeal of the zoning ordinance.

**Section 6. Relationship to Comprehensive Plan**

**[a]** It is the intention of the council that this ordinance implement the planning policies adopted by the council for the town and its extraterritorial planning area, as reflected in the comprehensive plan and other planning documents. While the council reaffirms its commitment that this ordinance and any amendment to it be in conformity with adopted planning policies, the council hereby expresses its intent that neither this ordinance nor any amendment to it may be challenged on the basis of any alleged nonconformity with any planning document.

**Section 7. No Use or Sale of Land or Buildings Except in Conformity With Ordinance Provisions**

**[a]** Subject to Article VIII of this ordinance (Nonconforming Situations), no person may use, occupy, or sell any land or buildings or authorize or permit the use, occupancy, or sale of land or buildings under his control except in accordance with all of the applicable provisions of this ordinance.

**[b]** For purposes of this section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on, or in that building or land.

**Section 8. Relationship to Fire Code, Water and Sewer Use Code and Other Pertinent Town Code Provisions**

**[a]** No construction may be undertaken pursuant to this ordinance until the permit holder or applicant has demonstrated compliance with all applicable Town Code provisions, including but not limited to the North Carolina State Building Code: Fire Prevention Code, as it may be amended from time to time, with all optional sections which have been adopted by the Town, and the Town's Water and Sewer Use Code, all of which are incorporated by reference herein. Any applicant for a zoning permit is hereby advised, but not required, to directly confer with all pertinent Town departments before submitting any proposed development application so as to avoid the unnecessary expenditure

of funds to plan a development which although generally compliant with the specific provisions of this ordinance, is prohibited by another such code.

### **Section 9. Fees**

**[a]** Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice and similar matters may be charged to applicants for zoning permits, sign permits, special use permits, subdivision plat approval, zoning amendments, variances and other administrative relief. The amount of fees charged shall be set forth in the town's budget or as established by resolution of the council filed in the office of the town clerk.

**[b]** Fees established in accordance with Subsection 8[a] shall be paid upon submission of a signed application or notice of appeal.

### **Section 10. Severability**

**[a]** It is hereby declared to be the intention of the council that the sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable, and if any such section, paragraph, sentence, clause, or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this ordinance since the same would have been enacted without the incorporation into this ordinance of such unconstitutional or invalid section, paragraph, sentence, clause or phrase.

### **Section 11. Computation of Time**

**[a]** Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday or legal holiday, that day shall be excluded. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded.

**[b]** Unless otherwise specifically provided, whenever a person has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served by mail, three days shall be added to the prescribed period.

### **Section 12. Miscellaneous**

**[a]** As used in this ordinance, words importing the masculine gender include the feminine and neuter.

**[b]** Words used in the singular in this ordinance include the plural and words used in the plural include the singular.

**Section 13     Reserved**

**Section 14.    Reserved**

## Article II Basic Definitions and Interpretations

### Section 15. Definitions of Basic Terms

**[a]** Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this chapter.

*Accessory Use:* (See Section 169).

*Administrator:* Person with the primary responsibility, as assigned by the Town Manager, for administering and enforcing this ordinance or that person's designee.

*Affordable Owner-Occupied Dwelling Unit:* An affordable owner-occupied dwelling unit is a dwelling unit, as that term is defined herein, which has been sold or will be offered for sale for a gross price at which the monthly gross principal and interest payment, in a mortgage financing 90% of the purchase price, amortized over a period of thirty years and calculated with interest at the legal rate, is no greater than twenty-five percent of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and, if sold, the purchaser of which is a family in need of housing protection.

*Affordable Owner-Occupied Housing Development:* An affordable owner-occupied housing development is one in which fifty-percent or more of the included dwelling units are, or upon completion of the development, will be, affordable owner-occupied dwelling units, as that phrase is defined herein.

*Affordable Rental Dwelling Unit:* An affordable rental dwelling unit is a dwelling unit, as that term is defined herein, for which the monthly gross rental payment is not greater than twenty-five percent of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and which is occupied by a family in need of housing protection.

*Affordable Rental Housing Project:* An affordable rental housing project is one in which fifty percent or more of the included dwelling units are, or upon completion of the project, will be, affordable rental dwelling units, as that phrase is defined herein.



*Agriculture, Livestock:* The use of land for the keeping, grazing, feeding, or breeding of livestock, including cattle, hogs, sheep, goats, and poultry, and also animal specialties such as horses, rabbits, bees, and fish and fur-bearing animals in captivity.

*Agriculture, Non-Livestock:* The use of land for the production of cash grains, field crops, vegetables, fruit and nuts, and for horticulture and floriculture.

*Alley:* A publicly dedicated and maintained right-of-way twenty (20) feet or less in width that provides only a secondary means of access to abutting property and is not intended for general traffic circulation.

*Alternative ADA Standards:* Standards for handicap accessibility that may be met when an historic structure is renovated. These alternative standards can only be implemented if the structure meets the historic structure definition.

*Antenna:* Any equipment or device designed to transmit or receive telecommunication signals.

*Architecturally Compatible:* A method or style of building in which two or more structures exist together harmoniously.

*Bed and Breakfast:* A private residence with one to three guest rooms (enclosed within one structure) where overnight accommodations and a morning meal are provided daily or weekly for compensation.

*Best Management Practices (BMP):* A structural or non structural management based practice used singularly or in combination to reduce non-point source inputs to receiving waters in order to achieve water quality protection goals.

*Bicycle:* A pedal-driven, human-powered vehicle with two wheels attached to a frame, one behind the other.

*Buffer Within Watershed Area:* An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channeled, and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

*Building:* A structure designed to be used as a place of occupancy, storage or shelter.

*Building, Accessory:* A minor building that is located on the same lot as a principal building and that is used incidentally to a principal building or that houses an accessory use.

*Building, Principal:* The primary building on a lot or a building that houses a principal use.

*Built-upon Area:* Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities, etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious).

*Cemetery:* Land used or intended to be used for the burial of the human dead and dedicated for cemetery purposes, including crematories, mausoleums, and mortuaries if operated in connection with and within the boundaries of such cemetery.

*Certificate of Occupancy/ Compliance:* A document issued by the Building Inspector certifying compliance with all applicable state and local laws, including all terms of an approved zoning permit, and authorizing occupancy of a building or structure.

*Church:* A structure in which persons regularly assemble for religious worship and which is maintained by a religious body organized to sustain public worship.

*Circulation Area:* That portion of the vehicle accommodation area used for access to parking or loading areas or other facilities on the lot. Essentially, driveways and other maneuvering areas comprise the circulation area.

*Clinic:* An establishment used for the medical or dental care, diagnosis, or treatment of sick, ailing, infirm or injured persons on an out-patient basis.

*Club:* An establishment operated by a corporation or association of persons for social, literary, political, educational, fraternal, or charitable purposes, but which is not operated for profit or to render a service which is customarily conducted as a business.

*College/University:* A degree granting establishment providing formal academic education and generally requiring for admission at least a high school diploma or equivalent academic training, including colleges, junior colleges, universities, technical institutes, seminaries and professional schools.

*Combination Use:* A use consisting of a combination on one lot of two or more principal uses separately listed in the Table of Permissible Uses. Under some circumstances, a second principal use may be regarded as accessory to the first, and thus a combination use is not established. In addition, when two or more separately owned or separately operated enterprises occupy the same lot, and all such enterprises fall within the same principal use classification, this shall not constitute a combination use.

*Convenience Store:* A retail business with primary emphasis placed on providing the public a convenient location to quickly purchase a variety of consumable products including gasoline.

*Council:* The governing body of the Town of Boone, consisting of a mayor and five [5] council members, as established in the Charter of the Town of Boone.

*Critical Area:* The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first) except within the Winkler's Creek Watershed where the limits of the Town of Boone Jurisdiction are the Critical Area; or one mile upstream from the intake located directly in the stream or river (run-of-the-river) or the ridge line of the watershed (whichever comes first). Local governments may extend the critical areas as needed. Major landmarks such as highways and property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

*Development:* The use or occupancy of any land or structure, or the construction, erection, alteration or moving of any structure.

*Dimensional Nonconformity:* A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

*Driveway:* That portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not part of the vehicle accommodation area.

*Dwelling:* Any building or structure that is or is intended to be used for living or sleeping by one or more human occupants.

*Dwelling, Single-Unit:* A detached dwelling consisting of a single dwelling unit only.

*Dwelling, Two-Unit:* A dwelling or combination of dwellings on a single lot consisting of two (2) dwelling units.

*Dwelling, Multi-Unit:* A dwelling or combination of dwellings on a single lot consisting of three (3) or more dwelling units.

*Dwelling Unit:* A room or group of rooms within a dwelling forming a single independent habitable unit containing independent kitchen, sanitary, and sleeping facilities; and provided such dwelling unit complies with Boone's Minimum Housing Code.

*Existing Development:* Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this ordinance based on at least one of the following criteria:

- a. substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project; or,
- b. having an outstanding valid building permit as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1); or,
- c. having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1).

*Existing Lot (Lot of Record):* A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

*Extraction of Earth Products:* The process of removal of natural deposits of mineral ores, soils, or other solid matter from their original location, not including processing of such material beyond incidental mechanical consolidation or sorting to facilitate transportation from the site.

*Extraterritorial Planning Area:* The portion of the town's planning jurisdiction that lies outside the corporate limits of the town.

*Family:* One or more individuals related by blood, marriage, or adoption, occupying a premises and living as a single, non-profit housekeeping unit, including domestic servants, live-in help. The following individuals shall be included in this definition:

- [a] a single person or married couple;
- [b] a single person or married couple's biological, foster or adopted child, a step-child, or other legal ward;
- [c] a single person or married couple's parents, siblings, and persons preceding or succeeding generation denoted by the prefixes of grand, great or great-great;
- [d] spouses of any persons named in the above groups;
- [e] cousins, who are defined to be relatives who are decedents from a common grandparent.

*Family Care Home:* A home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident persons with disabilities. For the purpose of this definition a "person with disabilities" is defined as a person with a temporary or permanent physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)b.

*Family Care Provider:* A person who provides care for a person with a degree of relationship as specified in the definition of family herein.

*Family in Need of Affordable Housing:* A family in need of housing protection is a family, as that term is defined herein, including persons living with each other in a "common law" or spousal relationship without the benefit of marriage, or as "domestic partners" with an aggregate current income and aggregate income for the previous twelve months equal to or less than the Area Median income, as established annually by the United States Department of Housing and Urban Development, and for which the head of the household is not claimed as a dependent on the federal tax return of any other person currently or in the most recently completed federal tax year, and for which any other adult occupant(s) is not and cannot be currently claimed as a dependent(s) for federal tax purposes by any person(s) not residing in the dwelling unit.

*Fraternity or Sorority Dwelling:* A dwelling or combination of dwellings on a single lot occupied by and maintained exclusively for college, university, or professional school students who are affiliated with a social, honorary, or professional organization recognized by the college, university, or professional school.

*Geological Hazard Indicator:* A condition or series of conditions which suggest or from which a reasonable inference may be drawn that a particular tract of land may have qualities of instability or danger which require further investigation and possible remediation. Such indicators may include, but are not limited to one or more of the following: fault zone cataclastic (broken) rocks; pre-existing landslide deposits; daylighting fracture sets; daylighting sedimentary layers (bedding), foliations (metamorphic layering), or other planar structures; thick soils (greater than 10 feet thick), zones of likely debris flow deposition.

*Geotechnical Engineer:* A North Carolina licensed engineer that has documented experience of at least five years in the full-time practice of geotechnical engineering including design and construction overview of site preparation and foundation installation of projects.

*Government Services:* The erection, construction, alteration, or maintenance by public utilities or governmental agencies of traffic distribution systems; water, sewage, steam, gas, electrical, or communication transmission or distribution systems; and storm water collection and distribution systems; including streets, sidewalks, street lights, bus passenger shelters, traffic signals, pipes, hydrants, pumping stations, wires, curb and gutter, catch basins, drains, or other similar equipment and accessories reasonably necessary for the provision of adequate service by such public utilities or governmental agencies, but not including buildings or other substantial above ground structures.

*Greenway:* A corridor of protected open space, usually located adjacent to natural features, that is managed for conservation and/or recreation purposes.

*Gross Floor Area:* The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

*Gross Land Area:* All the area within the boundaries of a lot as described in a fee simple deed.

*Habitable Floor:* Any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or any combination thereof. A floor used only for storage is not a habitable floor.

*Halfway House:* A home for not more than nine (9) persons who have demonstrated a tendency toward alcoholism, drug abuse, mental illness, or antisocial or criminal conduct, together with not more than two (2) persons providing supervision and other services to such persons, eleven (11) of whom live together as a single housekeeping unit.

*Hazardous Material:* Any substance listed as such in: SARA section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

*Height (of a structure or part thereof):* The vertical distance from the mean natural grade at the foundation to the highest portion of the structure, or part thereof.

*Height Limitation, Primary:* The maximum height allowed for any structure located at the minimum setback required for such structure, as shown in Section 200, Schedule of Land Use Intensity Ratios.

*Height Limitation, Secondary:* The absolute maximum height allowed for any structure, as shown in Section 200, Schedule of Land Use Intensity Ratios.

*Historic District:* An area which is deemed to be of special significance in terms of its history, prehistory, architecture, and/or culture, and which is deemed to possess integrity of design, setting, materials, feeling, and association.

*Historic Landmark:* A building, structure, site, area, or object deemed to be of special significance in terms of its history, prehistory, architecture, or culture and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

*Historic Structures:* Buildings or structures which have been

1. listed individually on the National Register of Historic Places,
2. located within a National Register Historic District and are certified as contributing to the district,
3. located in or contributing to a local historic district that has been certified by the National Park Service. (The State Historic Preservation Office and the National Park Service make these designations), or
4. listed individually by the Town of Boone's Historic Preservation Commission and certified by the Commission as meeting the criteria established for a local historic property designation.

*Home for Survivors of Domestic Violence:* A home that provides room and board, personal care and habilitation services in a family environment for persons and their children who have been aggrieved by acts of domestic violence and/or sexual assault.

*Home Occupation:* An occupation conducted as an accessory use of a dwelling unit, provided that:

- a. No person other than members of the resident family shall be engaged in such occupation;
- b. The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes, and not more than twenty-five percent (25%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation;
- c. No external evidence of the conduct of the home occupation shall be visible, other than a sign as permitted in Article XVIII;
- d. The home occupation shall not generate traffic volumes or parking area needs greater than would normally be expected in a residential neighborhood;
- e. No equipment or process shall be employed that will cause noise, vibration, odor, glare, or electrical or communication interference detectable to the normal senses off the lot; in the case of detached dwelling units, or outside the dwelling unit, in the case of attached dwelling units;
- f. The on premise sale and delivery of goods which are not the products of the home occupation are prohibited.

*Hotel or Motel:* A building or group of buildings containing ten (10) or more lodging units intended primarily for rental or lease to transients by the day or week, as distinguished from residence halls, in which occupancy is generally by residents rather than transients.

*Impervious Surface:* The surface area of land covered by buildings, parking and driveways which prevent or impede surface water absorption (i.e. concrete, asphalt, and gravel).

*Income-producing Structures:* Structures put into service as places of business, such as commercial, retail or rental use.

*Industrial Uses, Light:* The assembly, fabrication, finishing or packaging of goods and materials within fully enclosed structures utilizing processes which do not create visible emissions, odor, noise, or dust exceeding the limits prescribed by Article XI, Part II. The land area occupied by outdoor storage of goods or materials used in the processing operations or the products of such operations may not exceed twenty-five (25) percent of the floor area of all buildings on the lot.



*Industrial Uses, Heavy:* All Industrial Uses not classified as “Light Industrial Uses.” Heavy Industrial Uses include the assembly, fabrication, processing or refinement of raw materials outside of fully enclosed structures and/or involve processes which create visible emissions, odor, noise, or dust exceeding the limits prescribed by Article XI, Part II. Heavy Industrial Uses are not permitted within the Town’s zoning jurisdiction.

*Industrial Uses, Warehouses:* Storage of goods and materials within fully enclosed structures intended for wholesale distribution.

*Junkyard:* An establishment or place of business which is maintained, operated, or used for storing, keeping, buying or selling junk (which may include scrap metals, scrap materials, or other useless stuff), or the maintenance or operation of an automobile graveyard.

*Kenel:* Any lot on which four [4] or more domesticated animals more than four [4] months of age are housed, groomed, bred, boarded, trained, or sold.

*Landfill:* Any lot or premises on which is deposited solid waste material, including trash, construction debris, stumps, branches and limbs, garbage, and industrial waste.

*Landscaped Greenspace:* Landscaped Greenspace is a pedestrian oriented urban open space which includes manicured landscaping and other pedestrian oriented amenities (such as benches) which is at or near the same grade as the sidewalk or the street and is easily accessible to pedestrians.

*Large Scale Retail:* A retail business having a gross floor area of 25,000 square feet or more in which goods or merchandise is offered for sale to the general public or to members and in which services incidental to the sale of those goods may be provided.

*Licensed Engineer:* A person who is licensed as an engineer under the provisions of the North Carolina Engineering and Land Surveying Act.

*Licensed Geologist:* A person who is licensed as a geologist under the provisions of the Geologist Licensing Act of the State of North Carolina.

*Livability Space:* That part of total open space appropriately improved and, if necessary, located as outdoor living space and for aesthetic appeal, including natural areas, lawns and other landscaped areas, walkways, paved terraces and sitting areas, outdoor recreational areas, and landscaped portions of street right-of-way, but not including open space used for motorized vehicles, except for incidental service, maintenance, or emergency actions.

*Loading, Off-Street:* Space located outside of any street right-of-way or easement and designed to accommodate the temporary parking of vehicles used for bulk pickups and deliveries.

*Lodging Units:* A room or group of rooms forming a separate habitable unit used or intended to be used for living and sleeping purposes by one family only, without independent kitchen facilities; or a separate habitable unit, with or without independent kitchen facilities, occupied or intended to be occupied by transients on a rental or lease basis for periods of less than one week.

*Lot:* A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal entity for purposes of transfer of title.

- a. If a public body or any authority with the power of eminent domain condemns, purchases, or otherwise obtains fee simple title to or a lesser interest in a strip of land cutting across a parcel of land otherwise characterized as a lot by this definition, and the interest thus obtained or the road so created is such as effectively to prevent the use of this parcel as one lot, then the land on either side of this strip shall constitute a separate lot.
- b. Subject to Section 140 (nonconforming lots) the permit issuing authority and the owner of two or more contiguous lots may agree to regard the lot as one lot if necessary or convenient to comply with any of the requirements of this ordinance.

*Lot Area:* The total area circumscribed by the boundaries of a lot, except that: [i] when the legal instrument creating a lot shows the boundary of the lot extending into a public street right-of-way, then the lot boundary for purposes of computing the lot area shall be the street right-of-way line, or if the right-of-way line cannot be determined, a line running parallel to and 30 feet from the traveled portion of the street, and [ii] in a residential district, when a private road that serves more than three (3) dwelling units is located along any lot boundary, then the lot boundary for purposes of computing the lot area shall be the inside boundary of the traveled portion of that road.

*Lot Line:* A line that marks the boundary of a lot.

*Lot Front:* The lot line and yard area where the primary access is located. In the case of additional equally significant access points located on other lot lines, the lot line and yard area for that access shall also be deemed a front.

*Lot Line, Interior:* Any lot line that is not a street lot line; a lot line separating a lot from another lot.

*Lot, Width:* The horizontal distance between the side lot lines at the front building line measured parallel with the front lot line; or in the case of a lot fronting on a curved street, the straight line distance between the side lot lines measured from the building line.

*Major Traffic Corridor:* U.S. Routes 221, 321, 421 and North Carolina Routes 105, including 105 Extension and 105 By-Pass, and 194.

*Major Variance From Statewide Watershed Protection Rules:* A variance that results in any one or more of the following:

- a. the complete waiver of a watershed management requirement; and , or,
- b. the relaxation, by a factor of ten percent 10% or more, of any watershed management requirement that takes the form of a numerical standard.

*The state watershed protection rules provide local governments with latitude in defining what is to be considered a major variance in the locality. The Environmental Management Commission (EMC) will monitor the definitions adopted by localities, and will review all annual reports to determine how localities are utilizing the variance procedure. The EMC will consider amending the rules to include specific conditions applicable to a major variance in the future.*

*Maintenance and/or Storage Facility:* Land, building, or structure devoted primarily to the maintenance and/or storage of equipment and materials.

*Managing Agent:* An adult individual designated by the owner of a rental property for service of process and receiving notices and demands and to perform the obligation of the owner under this ordinance.

*Mobile Home:* A dwelling unit that [i] is not constructed in accordance with the standards set forth in the North Carolina State Building Code, and [ii] is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis, and [iii] exceeds forty (40) feet in length and eight (8) feet in width.

*Mobile Home, Class A:* A mobile home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and satisfies each of the following additional criteria:

- a. The home has a length not exceeding four (4) times its width;
- b. The pitch of the home's roof shall have a minimum vertical rise of one (1) foot for each five (5) feet of horizontal run, and the roof is finished with a type of shingle that is commonly used in standard residential construction.
- c. The exterior siding consists of wood, hardboard, or aluminum (vinyl covered or painted, but in no case exceeding the reflectivity of gloss white paint) comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction;
- d. A continuous permanent masonry foundation, not pierced except for required ventilation and access, is installed under the home; and,
- e. The tongue, axles, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy.

*Mobile Home, Class B:* A mobile home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. department of housing and Urban Development that were in effect at the time of construction but that does not satisfy the criteria necessary to qualify the house as a Class A mobile home.

*Mobile Home, Class C:* Any mobile home that does not meet the definition criteria of a Class A or Class B mobile home.

*Mobile (Manufactured) Home Park:* A residential use in which more than one (1) mobile home is located on a single lot.

*Modular Home:* A dwelling unit constructed in accordance with the standards set forth in the North Carolina State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a modular home may consist of two (2) sections transported to the site in a manner similar to a mobile home (except that the modular home meets the North Carolina State Building Code applicable to site built homes), or a series of panels or room sections transported on a truck and erected or joined together on the site.

*Motorcycle:* A motor vehicle with two wheels and a strong frame including mopeds, scooters, and powered pedal cycles.

*Multi-Family Residences for the Elderly:* Housing as defined pursuant to Section 151 (f) and other relevant sections of this ordinance for which the United States Department of Housing and Urban Development had determined that the housing is specifically designed for and occupied by elderly persons under a Federal, State or local government program, or it is occupied solely by persons who are 62 or older or it houses at least one person who is 55 or older in at least 80 percent of the occupied units, and adheres to a policy that demonstrates intent to house persons who are 55 or older.

*Nightclub:* An establishment, including discotheques, having a minimum entertainment floor area of fifteen hundred (1500) square feet and providing live entertainment and/or a permanent area for dancing which may serve food and/or alcoholic beverages. The entertainment floor area shall be composed of the wet-bar, dance floor and/or live entertainment stage area, and table area.

*Nonconforming Lot:* A lot existing at the effective date of this ordinance (and not created for the purposes of evading the restrictions of this ordinance) that does not meet the minimum area requirements of the district in which the lot is located.

*Nonconforming Project:* Any structure, development, or undertaking that is incomplete at the effective date of this ordinance and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.

*Nonconforming Situation:* A situation which occurs when, on the effective date of this ordinance, any existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this ordinance, or because land or buildings are used for purposes made unlawful by this ordinance.

*Nonconforming Use:* A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. (For example, a commercial office building in a residential district may be a nonconforming use). The term also refers to the activity that constitutes the use made of the property. (For example, all the activity associated with operating a retail clothing store in a residentially zoned area constitutes a nonconforming use).

*Non-income Producing Structures:* Structures, such as private homes, which do not generate income.

*Nursing Care Home:* A facility maintained for the purpose of providing intermediate nursing care and medical supervision at a lower level than that available in a hospital to not more than nine (9) persons.

*Nursing Care Institution:* An institutional facility maintained for the purpose of providing skilled nursing care and medical supervision at a lower level than that available in a hospital to more than (9) nine persons.

*Occupancy:* The status of an “occupant” as defined herein, to the dwelling unit which he or she “occupies,” as defined herein.

*Occupant:* Any person who, on a regular and recurrent basis, is present at a dwelling unit a substantial period of time. A person shall be presumed to be an occupant of a dwelling unit if his or her clothes or other daily living supplies such as items of personal hygiene are maintained at the dwelling unit. The absence of such items shall not prevent a finding that a person is an occupant. That a person regularly and recurrently lives in, sleeps at, or possesses another dwelling unit shall not prevent a finding that a person is an occupant.

*Occupy, occupies, occupied:* The relationship of a person classified as an “occupant,” as defined herein, to a dwelling unit, whether or not the person is in present possession of the dwelling unit.

*Open Air Market:* Any permanent or temporary display of goods in an open or partially open setting. Open air markets may include flea markets, outdoor craft shows, fruit and vegetable stands and itinerant merchant displays.

*Open space:* The total gross land area not covered by buildings, plus open exterior balconies and roof areas improved as livability space. Covered open space is usable open space closed to the sky but having at least two (2) clear unobstructed open or partially opened sides. Partially open space is construed as open fifty percent (50%) or more.

*Outdoor Display:* The display and sale of products outside of a fully enclosed structure including, but not limited to, garden supplies, clothing, toys, furniture, equipment, agricultural products, building and landscape materials, food and beverages.

*Outdoor Storage:* The storage of products outside of a fully enclosed structure which are not intended for sale directly from that location including, but not limited to, equipment, materials, containers, crates and palettes.

*Owner:* One or more persons in whom is vested all or part of the legal title to the property, or all or part of the beneficial ownership and a right to present use and enjoyment of the property.

*Parking Garage:* A structure used for automobile parking which is partially or wholly enclosed and includes any above-grade decks.

*Parking, Off-Street:* Space located outside of any street right-of-way or easement that is designed to accommodate the parking of motor vehicles.

*Parking Space:* A portion of the vehicle accommodation area set aside for the parking of one vehicle.

*Perennial Stream:* A well defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Ground water is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continual conveyance of water.

*Place of Assembly:* A place designed to accommodate the assembly of persons attending athletic events, musical performances, dramatic or terpsichorean performances, speeches or ceremonies, motion picture presentations and other entertainment events, including stadiums, coliseums, athletic centers, theaters, concert halls, amphitheaters, and arenas.

*Planned Residential Development:* A development constructed on a tract of at least five (5) acres under single ownership, planned and developed as an integral unit, and consisting of single-family detached residences combined with either two family residences or multi-family residences, or both, all developed in accordance with Section 178.

*Plat:* A map or plan of a parcel of land which is to be, or has been subdivided.

*Prime Designer:* An architect or engineer who oversees the entire development project from start to completion. This person is responsible for coordination of the work of all other professionals and must be able to certify that all requirements of the development plan approved by the Town of Boone are followed.

*Public Cultural Facility:* The use of land, buildings, or structures by a municipal or other governmental agency to provide cultural services directly to the general public, including public libraries and museums.

*Public Water Supply System:* Any water supply system furnishing potable water to ten (10) or more dwelling units or businesses or any combination thereof.

*Recreation Facility:* A facility providing indoor and outdoor recreational activities, including swimming pools, athletic fields, tennis courts, country clubs, health clubs, golf courses, riding stables, gymnasiums, amusement arcades, bowling alleys, indoor skating rinks, and pool halls.

*Recyclable Materials:* The term recyclable materials includes, but is not limited to, clear, green and brown container glass, aluminum cans, steel food cans, No. 1 and No. 2 plastic containers, newsprint with inserts, magazines, catalogs, phone books, junk mail, office ledger, and pasteboard.

*Recycling Container:* A receptacle which is equipped with a close-fitting lid used for the temporary storage of recyclable materials between scheduled pickups and approved by the Department of Public Works.

*Recycling Container Area:* An area designed pursuant to Section 91 of the Town Code to accommodate recycling containers.

*Repeat Violator:* Any owner, tenant or occupant of any land or structure, or part thereof, or other person who possesses a cognizable interest in the real or personal property in question, who participates in, assists, directs, causes, allows, maintains, or is otherwise responsible for any situation that is contrary to the requirements of this ordinance and who has been cited for having violated a provision of this ordinance within the previous thirty-six (36) months.

*Residence Hall:* A building or group of buildings containing in combination ten (10) or more lodging units intended primarily for rental or lease for periods of thirty (30) days or longer, provided, however, that temporary lodging units for guests of regular tenants may be provided, with the number of such units limited to not more than ten percent (10%) of the total number of lodging units.



*Ridgeline:* The crest or series of crests at the top or uppermost point of intersection between two opposite slopes or sides of a mountain.

*Riparian Zone:* A margin on each side of a perennial stream which extends from the edge of the stream in a direction generally perpendicular to the flow of the stream.

*Road:* All public or private ways used to provide motor vehicle access to three (3) or more lots.

*Rooming House:* A building or group of buildings containing in combination three (3) to nine (9) lodging units intended primarily for rental or lease for periods of longer than a week, with or without board.

*Secretary of the Interior's Standards for Historic Preservation:* Ten basic principles or standards that define how an historic property or structure shall be preserved that can be applied to most exteriors and interiors of historic properties.

*Setback:* The land area located between a property line or the established edge of a right-of-way, whichever is closer, and the closest wall of a building located on the property.

*Shelter for Homeless:* A short or long term shelter for persons who lack a fixed, regular and adequate nighttime residence with a minimum of two (2) non-occupant managers. Such shelter must be established and managed by a non-profit organization.

*Single Family Residence:* A single dwelling unit used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that is occupied for living purposes by a single family, as the term is defined.

*Site Specific Development Plan:* A plan which has been submitted to the town by a landowner that describes with certainty the type and intensity of a use for a specific parcel or parcels of property.

*Solid Waste Container:* A water-tight receptacles which is equipped with a close-fitting lid used for the temporary storage of solid wastes between scheduled pick-ups and approved by the Department of Public Works.

*Solid Waste Container Area:* An area designed pursuant to Section 91 of the Town Code to accommodate solid waste containers.

*Special Use:* A use of land, buildings, or structures that is identified in this ordinance as a use that because of its inherent nature, extent and external effects, requires special care in the control of its location, design, and methods of operating in order to ensure protection of the public health, safety, and welfare.

*Special Use Permit:* A permit issued by the Board of Adjustment that authorizes the recipient to make use of property in accordance with the requirements of this ordinance as well as any additional requirements imposed by the Board of Adjustment.

*Start of Construction:* Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure (including a modular home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a modular home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

*Steep Slope:* A slope of 30% or greater.

*Street:* A public street or a street with respect to which an offer of dedication has been made.

*Street, Arterial:* A major street in the town's street system that serves as an avenue for the circulation of traffic onto, out, or around the town and carries high volumes of traffic.

*Street, Collector:* A street whose principal function is to carry traffic between minor, local, and subcollector streets and arterial streets but that may also provide direct access to abutting properties. It serves or is designated to serve, directly or indirectly, more than one hundred (100) dwelling units and is designed to be used or is used to carry more than eight hundred (800) trips per day.

*Street, Cul-de-sac:* A street that terminates in a vehicular turnaround.

*Street, Local:* A street whose sole function is to provide access to abutting properties. It serves or is designed to serve at least ten (10) but not more than twenty five (25) dwelling units and is expected to or does handle between seventy five (75) and two hundred (200) trips per day.

*Street, Marginal Access:* A street that is parallel to and adjacent to an arterial street and that is designed to provide access to abutting properties so that these properties are somewhat sheltered from the effects of the through traffic on the arterial street and so that the flow of traffic on the arterial street is not impeded by direct driveway access from a large number of abutting properties.

*Street, Minor:* A street whose sole function is to provide access to abutting properties. It serves or is designed to serve not more than nine (9) dwelling units and is expected to or does handle up to seventy five (75) trips per day.

*Street, Private:* A street consisting of a private easement and a privately maintained roadway. The minimum right-of-way width of any private street shall be thirty (30) feet.

*Street, Subcollector:* A street whose principal function is to provide access to abutting properties but is also designed to be used to connect minor and local streets with collector or arterial streets. Including residences indirectly served through connecting streets, it serves or is designed to serve at least twenty six (26) but not more than one hundred (100) dwelling units and is expected to or does handle between two hundred (200) and eight hundred (800) trips per day.

*Streetline:* The line where the edge of the right-of-way of a street meets the abutting property.

*Structural Alteration:* Any change, except for repair or replacement, in the supporting members of a building such as, but not limited to, bearing walls, columns, beams, or girders.

*Structure:* Anything constructed or erected which requires location on the ground or attached to something having a fixed location on the ground.

*Subdivision:* The division of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition:

- a. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the minimum standards set forth in this ordinance.
- b. The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved.
- c. The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system corridors.
- d. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards set forth in this ordinance.

*Subdivision, Architecturally Integrated:* A subdivision in which approval is obtained not only for the division of land into lots but also for a configuration of principal buildings to be located on such lots. The plans for an architecturally integrated subdivision shall show the dimensions, height, and location of all such buildings to the extent necessary to comply with the purpose and intent of architecturally integrated subdivisions as set forth in Section 210.

*Subdivision, Major:* Any subdivision other than a minor subdivision.

*Subdivision, Minor:* A subdivision that does not involve any of the following: (i) the creation of more than a total of ten (10) lots; (ii) the creation of any new public streets; (iii) the extension of a public water or sewer system, or (iv) the installation of drainage improvements through one (1) or more lots to serve one (1) or more other lots.

*Surface Parking Area:* Off-street automobile parking area which is not enclosed within a building.

*Supply Yard:* A commercial establishment storing and offering for sale building supplies, steel supplies, coal, heavy equipment, feed and grain, and similar goods.

*Temporary Care Provider Dwelling:* A temporary dwelling for a family care provider or aged, infirmed or disabled family member cared for.

*Temporary Construction or Repair Dwelling:* A temporary dwelling exclusively used for a place of living and sleeping during construction or repair.

*Temporary Construction Trailer:* A temporary structure for office usage, storage of materials and tools, or security purposes incident to construction or development of the premises upon which the temporary construction trailer is located.

*Temporary Mobile Medical Unit:* An apparatus capable of moving or being moved readily from place to place for the purposes of performing specific medical care functions related to the diagnosis or treatment of illness through laboratory or testing services.

*Tenant:* A person, whether or not the legal owner of record, legally occupying or entitled to legally occupy a dwelling unit or portion thereof.

*Total Land Disturbance:* The total of land surface areas of the development site disturbed by any means (tree and vegetation cutting or removal, grading or any other soil disturbance including stream modification or septic field installation). Where trees are removed or cut in an area not contiguous to the main construction site by grading or other land disturbance, or by a connected cutting or removal of trees, the area disturbed will be considered the outermost drip line of the trees prior to their removal or cutting. The actual amount of land which must be disturbed in order to install an appropriate septic system, when a septic system must be installed, shall not be included in the calculation of the total land disturbance, to the extent the area disturbed is actually used for the installation and location of a septic system.

*Tourist Home:* A building or group of buildings containing one (1) to nine (9) lodging units intended for rental or lease primarily to transients for daily, weekly or monthly periods, with or without board, as distinguished from rooming houses, in which occupancy is generally by residents rather than transients.

*Town:* The Town of Boone.

*Transmitting and Receiving Tower:* A tower structure and antenna under fifty (50) feet in height, owned and operated by a federally licensed individual, partnership, or corporation, which serves only the needs of a single building or its occupants.

*Travel Trailer:* A structure that [i] is intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle) and [ii] is designed for temporary use as sleeping quarters but that does not satisfy one or more of the definition criteria of a mobile home.

*Townhouse:* A dwelling which is part of a multi-family housing development, which may be unconnected to other dwelling units, or connected to other dwelling units by means of common ceilings and floors, such as in a traditional apartment complex, or by means of common vertical surfaces, such as in a traditional row house development.

*Toxic Substance:* Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

*Use:* The activity or function that actually takes place or is intended to take place on a lot.

*Use, Accessory:* A use or structure that does not exceed sixteen hundred (1,600) square feet that exists on the same lot and constitutes only an incidental or insubstantial part of the principal use.

*Use, Principal:* The primary use and chief purpose of a lot or structure.

*Utility Facilities:* Any above-ground structures or facilities (other than buildings, unless such buildings are used as storage incidental to the operation of such structures or facilities) owned by a governmental entity, a nonprofit organization, a corporation, or any entity defined as a public utility for any purpose by North Carolina Statute and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas oil, or electronic signals. Excepted from this definition are utility lines and supporting structures such as electric power, telephone, telegraph, cable television, gas, water and sewer lines, and wires or pipes located within public right-of-way.

*Utility Facilities, Community or Regional:* All utility facilities other than neighborhood facilities.

*Utility Facilities, Neighborhood:* Utility facilities that are designed to serve the immediately surrounding neighborhood and that must, for reasons associated with the purpose of the utility in question, be located in or near the neighborhood where such facilities are proposed to be located.

*Variance:* A grant of permission by the Board of Adjustment that authorizes the recipient to do that which, according to the strict letter of this ordinance, he could not otherwise legally do.

*Vehicle Accommodation Area:* That portion of a lot that is used by vehicles for access, circulation, parking, and loading and unloading. It comprises the total of circulation areas, loading and unloading areas, and parking areas.

*Very Steep Slope:* A slope of 50% or greater.

*Vested Right or Zoning Vested Right:* The right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan.

*Veterinary Hospital or Clinic:* An establishment used for the care, grooming, diagnosis, and treatment of sick, ailing, infirm, or injured animals, and those animals in need of medical or surgical attention.

*Viewshed:* Land areas which are more than 100 feet above the nearest major traffic corridor, measured at right angles to the average contour from the center line of the traffic corridor, and upon which development as proposed can be seen during any season of the year from one of the major traffic corridors, as that term is defined, either during construction or at the time construction is completed. In making the determination whether the development as proposed can be seen and is therefore in the viewshed, planned landscape buffering shall not be considered. Land which is equidistant at its nearest borders from two major traffic corridors shall be considered in the viewshed if it is more than 100 feet above either major traffic corridor.

*Water Dependent Structure:* Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

*Watershed:* The entire land area contributing surface drainage to a specific point (e.g. the water supply intake.)

*Wholesale Sales:* A business in which goods or merchandise is offered for sale in quantity usually for resale.

*Wireless Telecommunication Tower:* Any tower or structure erected for the purpose of supporting, including but not limited to, one or more antennas designed to transmit or receive television, AM/FM radio, digital, microwave, cellular, telephone or similar forms of electronic communication.

*Zoning Permit:* A permit issued by the land use administrator that authorizes the recipient to make use of property in accordance with the requirements of this ordinance.

**Section 16. Reserved**

**Section 17. Reserved**

**Section 18. Reserved**

**Section 19. Reserved**

**Section 20. Reserved**





## Article III Administrative Mechanisms

### Part I Planning Commission

#### Section 21. Appointment and Terms of Planning Commission Members

**[a] Number of Members:** There shall be a Planning Commission consisting of thirteen (13) members.

**[b] Number of Town Members:** Number of ETJ Members: Eight (8) members of the Planning Commission shall reside within the Town. Five (5) members shall reside within the Town's extraterritorial planning area (hereafter "ETJ"). Should the Town's ETJ be expanded or the ratio of the population of the ETJ relative to the population of the Town increase or decrease, in accordance with N. C. Gen. Stat. §160A-362 and as specified herein, the Town will adjust the number of members from the ETJ in order to maintain proportional representation based on population for residents of the ETJ. There shall be at all times at least one representative of the ETJ on the Planning Commission. To the extent a qualified person can be found, one of the Town members shall be a resident of Boone and a full-time student of Appalachian State University.

**[c] Adjustment of Ratio of Town and ETJ Members:** Within six months of the publication of the decennial census information for the Town of Boone and Watauga County, conducted by the United States Census Bureau, the Administrator shall inform the Town Council of any change in the ratio of Town population to ETJ population which requires a modification in the number of Town and ETJ members. Thereafter, as positions open by resignation, removal for cause or absence, or expiration of term, the number of members shall be adjusted through the appointment process to achieve the required balance between Town and ETJ members. An ETJ position shall be created or the number of ETJ positions reduced on the Planning Commission when the population of the entire ETJ constitutes a full fraction of the Town's population divided by the total membership of the Planning Commission or when the population of the ETJ falls below a full fraction of the Town's population divided by the total membership of the Planning Commission, respectively.

**[d] Appointment of Members to the Planning Commission:** All Town members of the Planning Commission shall be appointed by the Town Council following the procedures of Section 35.01 of the Municipal Code. When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the resulting increased population requires that a new ETJ member be appointed, the Town

Council shall adopt a resolution requesting that the Watauga County Board of Commissions appoint a qualified person to serve as a member. Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Board of Commissioners. If the Board of Commissioners is unwilling to appoint either of the two applicants submitted by the Town Council, it may appoint a person of its own choosing. However, before appointing a new person to the Planning Commission, the Watauga County Board of Commissioners must hold a public hearing on the selection. Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The Watauga County Board of Commissioners shall select appointees only from those who apply at or before the public hearing and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize him- or herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and ordinances relating to the regulation of development within the Town planning jurisdiction, and who expresses a willingness to serve on the Planning Commission. The Commissioners shall make the appointment within forty-five days following the public hearing. If the Watauga County Board of Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ.

**[e]** Planning Commission members shall generally be appointed for four (4) year staggered terms, but members may continue to serve until their successors have been appointed. The Appalachian State University student member shall serve a term of one (1) year. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur only for the unexpired remainder of the term.

**[f]** Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

**[g]** Unless the Town Council takes specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal, a Planning Commission member shall be automatically removed for failure to attend three (3) consecutive regularly scheduled meetings or quarterly public hearings or for failure to attend fifty percent (50%) of the meetings within any twelve month period of the member's appointed service. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Commission. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are

due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Town Council may propose removal of a member for other good cause related to the performance of Commission duties or the member's eligibility to serve, but before removal on that basis, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

**[h]** If a resident member moves outside the Town or if an ETJ member moves outside the ETJ, that shall constitute a resignation from the Planning Commission, effective upon the date a replacement is appointed by the Council.

**[i]** A member of the Planning Commission may resign by notifying the Mayor, Town Manager, or Administrator.

## **Section 22. Meetings of the Planning Commission**

**[a]** The Planning Commission shall establish a regular meeting no less than quarterly, or more often as it shall determine or require, and at the request of the Council, Town Manager, or Administrator.

**[b]** Since the Commission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Articles IV, V, and VI. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

**[c]** The Planning Commission shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, "the law"). At a minimum, all meetings of the Planning Commission or any subcommittee, advisory group, or working group of the Commission, by whatever name or designation (hereafter referred to as a "subcommittee") shall require all of the following:

- [1] Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin board for that purpose in Town Hall, unless a longer notice is required by this ordinance or State law. If an agenda has been distributed to members of the Commission, it shall also be posted. An "official meeting" occurs whenever a regularly scheduled meeting of the Planning Commission or subcommittee occurs, whether or not a quorum is present, or when a majority of the Planning Commission or subcommittee meet, whether in person or by electronic means such as conference

call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business. "Deliberate" includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision. An "emergency meeting" is one that concerns generally unexpected circumstances which require the immediate consideration of the Planning Commission or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

- [2] A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.
- [3] Full and accurate minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or subcommittee.

**[d]** In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Planning Commission, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question.

**[e]** The agenda shall include only those matters within the responsibilities and powers of the Planning Commission as provided herein.

**[f]** The business of the Planning Commission or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Planning Commission or subcommittee shall be respectful to each other and shall avoid interrupting each other.

**[g]** Minutes of the Planning Commission or subcommittee shall be subject to revision and adoption by the group as a whole.

**[h]** Meetings of the Planning Commission or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.

**[i]** At any meeting of the Planning Commission or subcommittee, if the meeting is opened for public comment, any person wishing to address the body or subcommittee shall state his or her name and whether or not he or she is a resident of the town or ETJ.

- [1] If there is a signup sheet provided, speakers shall be recognized in the order in which they have signed up.
- [2] Unless a different time limit is adopted by the Planning Commission or subcommittee, no member of the public shall be allowed to speak for more than five minutes.
- [3] Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Planning Commission or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.
- [4] All persons addressing the Planning Commission or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

### **Section 23. Quorum and Voting**

**[a]** A quorum shall consist of seven (7) members.

**[b]** All actions or recommendations of the Planning Commission or subcommittee shall require the presence of a quorum and are only effective or adopted upon majority vote of the members present, following a motion and second. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Council, the committee, task force, or advisory body shall not only report the action or recommendation adopted, but the vote by which it was adopted. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.

**[c]** A roll call vote shall be taken upon the request of any member.

**[d]** ETJ members may vote on all matters considered by the Commission, regardless of the location of the property affected.

#### **Section 24. Planning Commission Officers**

**[a]** Unless the Town Council designates the Chair and Vice-Chair of the Planning Commission, it shall retain the power to choose its own Chair and Vice-Chair. The Planning Commission shall designate the Chair and Vice-Chair of any subcommittees. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms only.

**[b]** The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

#### **Section 25. Powers and Duties of Planning Commission**

**[a]** The Planning Commission may:

- [1] Make studies of the area within its jurisdiction and surrounding areas;
- [2] Determine objectives to be sought in the development of the study area;
- [3] Prepare and adopt plans for achieving these objectives;
- [4] Develop and recommend to the Council policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner. The Planning Commission shall not, however, have the power to “initiate” changes to this ordinance, as the term “initiate” is used in Article XXI, Section 379.
- [5] Advise the Council concerning the use and amendment of means for carrying out plans;
- [6] Make findings and recommendations to the Council concerning proposed zoning text and map amendments, as provided for and in compliance with Section 382.
- [7] Review and either approve or deny proposed minor subdivision requests when a portion of the land to be subdivided lies within a Designated Water Supply Watershed District, based upon application of Articles IV and XIII of this ordinance.
- [8] Perform any other related duties that the Council may direct.

**[b]** Limitations on Powers of the Planning Commission

- [1] No individual member of the Planning Commission shall purport to speak or act on behalf of the Commission without action by the Commission explicitly authorizing the member to speak or act on its behalf.
- [2] No individual member of the Planning Commission, nor the Planning Commission itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Commission to speak or act on its behalf.
- [3] Without an express grant of authority or explicit authorization by the Council, no individual member of the Planning Commission, nor the Commission itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.
- [4] The Planning Commission may not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Planning Commission on tasks assigned by the Town Council or it's designee.
- [5] The Planning Commission may create subcommittees or working groups within it's membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

**Section 26. Advisory Committees**

**[a]** From time to time the Council may appoint one or more individuals to help the Planning Commission carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the Council may appoint advisory committees to consider the thoroughfare plan, bikeway plans, community appearance plans, housing plans, economic development plans, etc. Such advisory committees shall be created and operate, unless otherwise designated by the Council, according to the procedures established under Municipal Code §§ 30.51, and 35.01, *et seq.*

**[b]** Members of such advisory committees shall sit as nonvoting members of the Planning Commission when such issues are being considered, and they shall be invited to lend their talents, energies, and expertise to the Planning Commission. However, all formal recommendations of the Planning Commission to the Council shall be made by the Planning Commission itself.



As with Commission members, unless the Council takes specific action to excuse the absences and reappoints an advisory committee member after being informed by the Administrator of the member's removal, an advisory committee member shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the meetings within any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the committee. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of committee duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

**[c]** Nothing in this section shall prevent the Council from establishing independent advisory groups, committees, or commissions to make recommendations on any issue directly to the Council.

**Section 27. Reserved**

**Section 28. Reserved**

## Part II Community Appearance Commission

### Section 29. Appointment and Terms of Community Appearance Commission Members

**[a]** There shall be a Community Appearance Commission consisting of seven (7) members. All members shall reside within the planning jurisdiction of the town and shall be appointed by the Council. To the extent qualified persons can be found, the majority of members shall have special training or experience in a design field such as architecture, landscape design, horticulture, city planning, or a closely related field.

**[b]** Community Appearance Commission members shall be appointed for three (3) year staggered terms, but members may continue to serve until their successors have been appointed. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur for the unexpired remainder of the term.

**[c]** Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

**[d]** Unless the Council takes specific action to excuse the absences and reappoints a member after being informed by the Administrator of the member's removal, a Community Appearance Commission member shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the meetings within any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Commission. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence would trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of Commission duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

**[e]** A member of the Community Appearance Commission may resign by notifying the Mayor, Town Manager, or Administrator.

### Section 30. Meetings of the Community Appearance Commission

**[a]** The Community Appearance Commission shall establish a regular meeting schedule and shall meet at least quarterly, or more often as it shall determine or require, and at the request of the Council, Town Manager, or Administrator.

**[b]** Since the Commission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Articles IV, V, and VI. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

**[c]** The Community Appearance Commission shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, “the law”). At a minimum, all meetings of the Community Appearance Commission or any subcommittee, advisory group, or working group, by whatever name or designation (hereafter referred to as a “subcommittee”) shall require all of the following:

- [1] Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin board for that purpose in Town Hall. If an agenda has been distributed to members of the Community Appearance Commission or subcommittee, it shall also be posted. An “official meeting” occurs whenever a regularly scheduled meeting of the Community Appearance Commission or subcommittee occurs, whether or not a quorum is present, or when a majority of the Community Appearance Commission meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business. “Deliberate” includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision. An “emergency meeting” is one that concerns generally unexpected circumstances which require the immediate consideration of the Community Appearance Commission or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.
- [2] A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.
- [3] Full and accurate minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Community Appearance Commission or subcommittee.

**[d]** In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Community Appearance Commission, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question.

**[e]** The agenda shall include only those matters within the responsibilities and powers of the Community Appearance Commission as provided herein.

**[f]** The business of the Community Appearance Commission or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Community Appearance Commission or subcommittee shall be respectful to each other and shall avoid interrupting each other.

**[g]** Minutes of the Community Appearance Commission or subcommittee shall be subject to revision and adoption by the group as a whole.

**[h]** Meetings of the Community Appearance Commission or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.

**[i]** At any meeting of the Community Appearance Commission or subcommittee, if the meeting is opened for public comment, any person wishing to address the Commission or subcommittee shall state his or her name and whether or not he or she is a resident of the town or ETJ.

- [1] If there is a signup sheet provided, speakers shall be recognized in the order in which they have signed up.
- [2] Unless a different time limit is adopted by the Commission or subcommittee, no member of the public shall be allowed to speak for more than five minutes.
- [3] Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Commission or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.
- [4] All persons addressing the Commission or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period

substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

### **Section 31. Quorum and Voting**

**[a]** A quorum shall consist of four (4) members.

**[b]** All actions or recommendations of the Community Appearance Commission or subcommittee shall require the presence of a quorum and are only effective or adopted upon majority vote of the members present, following a motion and second. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Council or Planning Commission, the Community Appearance Commission shall not only report the action or recommendation adopted, but the vote by which it was adopted. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.

**[c]** A roll call vote shall be taken upon the request of any member.

### **Section 32. Community Appearance Commission Officers**

**[a]** Unless the Town Council designates the Chair and Vice-Chair of the Community Appearance Commission, it shall retain the power to choose its own Chair and Vice-Chair. The Community Appearance Commission shall designate the Chair and Vice-Chair of any subcommittees. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms only.

**[b]** The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

### **Section 33. Powers and Duties of the Community Appearance Commission**

**[a]** The Community Appearance Commission may:

- [1] Make studies and recommend to the Council plans, goals, and objectives relating to the visual appearance, community beautification, landscape development, and redevelopment of the town's planning area.
- [2] Develop and recommend to the Council policies, ordinances, administrative procedures, and other means for carrying out plans for community beautification in a coordinated and efficient manner. The Community Appearance Commission shall not, however, have the power to “initiate” changes to this ordinance, as the term “initiate” is used in Article XXI, Section 379.
- [3] Respond to requests made by the Administrator for recommendations concerning the suitability of site landscaping for proposed special use permits.
- [4] Upon request of the Administrator, review and approve or reject requests for approval of alternative means to address the Commercial Development Appearance Standards of Article XXII, in accordance with Section 399, as well as when such approval is a condition adopted by the Board of Adjustment in connection with the issuance of a special use permit or one adopted by the Council in a conditional zoning determination.
- [5] Perform any other duty assigned by the Council which is authorized pursuant to N.C. Gen. Stat. § 160A-452.

**[b]** Limitations on Powers of the Community Appearance Commission

- [1] No individual member of the Commission shall purport to speak or act on behalf of the Commission without action by the Commission explicitly authorizing the member to speak or act on its behalf.
- [2] No individual member of the Commission, nor the Commission itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Commission to speak or act on its behalf.
- [3] Without an express grant of authority or explicit authorization by the Council, no individual member of the Commission, nor the Commission itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.
- [4] The Community Appearance Commission may not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate

the Town Council will appoint a group(s) to advise the Community Appearance Commission on tasks assigned by the Town Council or its designee.

- [5] The Community Appearance Commission may create subcommittees or working groups within its membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

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## Part III Historic Preservation Commission

### Section 34. Organization of Historic Preservation Commission

#### [a] Appointment and Terms of Historic Preservation Members

- [1] There shall be a Historic Preservation Commission consisting of seven members, all appointed by the Town Council. All members must be residents of the Town's planning jurisdiction, with no fewer than five members residents of the Town and up to two members residents of the Town's extraterritorial planning area (hereafter "ETJ"). Two Town Council members shall serve on the Commission. At least four (4) of the members of the Commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields, and to the extent persons may be found with the stated qualifications, the Town Council shall seek to appoint two persons with significant experience or knowledge in historic preservation, one person with significant experience or knowledge in building construction, and one person with significant experience or knowledge in architecture. The required special interest, experience or education for four members, and the specialized experience or knowledge to meet these goals may be held by a Town Council member or any other member of the Commission.
- [2] Other than Town Council Members, Historic Preservation Commission members shall be appointed for three (3) year staggered terms, but members may continue to serve until their successors have been appointed. Town Council members shall be appointed for one (1) year terms. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur only for the unexpired remainder of the term. Except for Town Council members who may serve as many terms as appointed, members may be appointed to no more than two successive terms, but a former member may be reappointed following a one-year period of non-membership.
- [3] Unless the Town Council takes specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal, an Historic Preservation Commission member shall be automatically removed for failure to attend three (3) consecutive regularly scheduled meetings or for failure to attend fifty percent (50%) of the meetings within any twelve month period of the member's appointed service. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted



in the calculations toward automatic removal from the Commission. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Town Council may propose removal of a member for other good cause related to the performance of Commission duties, but before removal on that basis, the member shall be given an opportunity to appear before Town Council to address the issues involved.

- [4] If a resident member moves outside the town of if an ETJ member moves outside the planning jurisdiction that shall constitute a resignation from the Historic Preservation Commission, effective upon the date a replacement is appointed by the Council.
- [5] A member of the Historic Preservation Commission may resign by notifying the Mayor, Town Manager, or Administrator.

**[b]** Meetings of the Historic Preservation Commission

- [1] The Historic Preservation Commission shall establish a regular meeting schedule, no less than quarterly, or more often as it shall determine or require, and at the request of the Council, Town Manager, or Administrator.
- [2] The Commission shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas. When exercising authority over any individual property in accordance with Article XXIII, Sections 404(a) and 407 of this Ordinance, it shall conduct itself in a quasi-judicial manner. At all times it shall conduct its meetings in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, "the law"). At a minimum, all meetings of the Historic Preservation Commission or any subcommittee, advisory group, or working group of the Commission, by whatever name or designation (hereafter referred to as a "subcommittee") shall require all of the following:
  - [A] Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin board for that purpose in Town Hall, unless a longer notice is required by

this ordinance or State law. If an agenda has been distributed to members of the Commission, it shall also be posted. An “official meeting” occurs whenever a regularly scheduled meeting of the Historic Preservation Commission or subcommittee occurs, whether or not a quorum is present, or when a majority of the Historic Preservation Commission or subcommittee meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business. “Deliberate” includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision. An “emergency meeting” is one that concerns generally unexpected circumstances which require the immediate consideration of the Historic Preservation Commission or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

- [B] A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.
  - [C] Full and accurate minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or subcommittee.
- [3] In the absence of the chair, the vice-chair shall conduct any meeting of the Historic Preservation Commission, and in the absence of both officers, the Mayor may designate a person to act as chair for the meeting in question.
  - [4] The agenda shall include only those matters within the responsibilities and powers of the Historic Preservation Commission as provided herein.
  - [5] The business of the Historic Preservation Commission or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the chair, and members of the Historic Preservation Commission or subcommittee shall be respectful to each other and shall avoid interrupting each other.
  - [6] Minutes of the Historic Preservation Commission or subcommittee shall be subject to revision and adoption by the group as a whole.

- [7] Meetings of the Historic Preservation Commission or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.
- [8] At any meeting of the Historic Preservation Commission or subcommittee, if the meeting is opened for public comment, any person wishing to address the body or subcommittee shall state his or her name and whether or not he or she is a resident of the town or ETJ.
- [A] If there is a signup sheet provided, speakers shall be recognized in the order in which they have signed up.
- [B] Unless a different time limit is adopted by the Historic Preservation Commission or subcommittee, no member of the public shall be allowed to speak for more than five minutes.
- [C] Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Historic Preservation Commission or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.
- [D] All persons addressing the Historic Preservation Commission or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

**[c]** Quorum and Voting

- [1] A quorum shall consist of four (4) members.
- [2] All actions or recommendations of the Historic Preservation Commission or subcommittee shall require the presence of a quorum and are only effective or adopted upon majority vote of the members present, following a motion and second. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Town Council, the committee, task force, or advisory body shall not only report the action or recommendation adopted, but the vote by which it was adopted. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.
- [3] A roll call vote shall be taken upon the request of any member.
- [4] All members may vote on all matters considered by the Commission, regardless of the location of the property.

**[d]** Historic Preservation Commission Officers

- [1] Unless the Town Council designates the Chair and Vice-Chair of the Historic Preservation Commission, it shall retain the power to choose its own Chair and Vice-Chair. The Historic Preservation Commission shall designate the Chair and Vice-Chair of any subcommittees. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms only.
- [2] The Chair and Vice-chair may take part in all deliberations and vote on all issues.

**Section 35. Powers and Duties of Historic Preservation Commission**

**[a]** The Historic Preservation Commission shall, in accordance with the procedures of Article XXIII of this Ordinance, have the following powers:

- [1] Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance;

- [2] Recommend to the Town Council areas to be designated by ordinance as "Historic Districts;" modification of Historic District boundaries; and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks."
- [3] Recommend to the Town Council criteria and procedures for the protection and preservation of Historic Districts and Landmarks;
- [4] Recommend to the Town Council that designation of any area as an Historic District or part thereof, or designation of any building, structure, site, area, or object as a Landmark, be revoked or removed for cause;
- [5] Conduct educational programs with respect to historic properties and districts within its jurisdiction, including but not limited to programs of recognition for significant historic properties, and programs to educate property owners of possible tax benefits associated with historic designation;
- [6] Cooperate with the State, federal, and local governments in pursuance of the preservation and protection of areas and properties deemed to be of special significance in terms of their history, prehistory, architecture and /or culture, and contract, when authorized by the Town Council, with the State of North Carolina or the United States of America, or any agency of either for that purpose;
- [7] Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof, provided that no member, employee or agent of the Commission may enter any private building or structure without the express consent of the owner or occupant thereof;
- [8] Prepare and recommend the official adoption of a preservation element as part of the municipality's comprehensive plan;
- [9] Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, and identify and propose preservation alternatives to owners; and
- [10] Perform any other related duties that the Council may direct.

**[b]** Limitations on Powers of the Historic Preservation Commission

- [1] No individual member of the Historic Preservation Commission shall purport to speak or act on behalf of the Commission without action by the Commission explicitly authorizing the member to speak or act on its behalf.
- [2] No individual member of the Historic Preservation Commission, nor the Historic Preservation Commission itself, shall purport to speak or act on behalf of the Town without action by the Town Council explicitly authorizing the member or empowering or authorizing the Commission to speak or act on its behalf.
- [3] Without an express grant of authority or explicit authorization by the Town Council, no individual member of the Historic Preservation Commission, nor the Commission itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.
- [4] The Historic Preservation Commission may not create committees, subcommittees, advisory groups or working groups, by whatever name denominated, without the explicit approval of the Town Council.

## Part IV Tree Board

### Section 36. Appointment and Terms of Tree Board Members

**[a] Number of Members:** There shall be a Tree Board consisting of five members. All members shall reside within the planning jurisdiction of the Town.

- [1] To the extent qualified persons can be found, the members shall have special training or experience in arboriculture, horticulture, architecture, or landscape design.
- [2] If during a protracted period of time during for which a position is advertised no qualified person applies, then any interested person may be appointed.
  - a. Ninety (90) days shall be considered a “protracted period of time” for purposes of this section.

**[b]** Tree Board members shall be appointed for two [2] year staggered terms, but members may continue to serve until their successors have been appointed. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur for the unexpired remainder of the term.

**[c]** Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

**[d]** Unless the Council takes specific action to excuse the absences and reappoints a member after being informed by the Administrator of the member's removal, a Tree Board member shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the meetings within any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. The Administrator shall notify in writing any member for whom one more absence would trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of Board duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

**[e]** A member of the Tree Board may resign by notifying the Mayor, Town Manager, or Administrator.

### **Section 37. Meetings of the Tree Board**

**[a]** The Tree Board shall meet as it deems necessary or desirable, no less than quarterly (in order to meet the requirements of Tree City USA) and more often as it shall determine or require, and at the request of the Council, Town Manager, or Administrator.

**[b]** Since the Board has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Articles IV, V, and VI. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

**[c]** The Tree Board shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, “the law”). At a minimum, all meetings of the Tree Board or any subcommittee, advisory group, or working group, by whatever name or designation (hereafter referred to as a “subcommittee”) shall require all of the following:

- [1] Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin board for that purpose in Town Hall. If an agenda has been distributed to members of the Tree Board or subcommittee, it shall also be posted. An “official meeting” occurs whenever a regularly scheduled meeting of the Tree Board or subcommittee occurs, whether or not a quorum is present, or when a majority of the Tree Board meets, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business. “Deliberate” includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision. An “emergency meeting” is one that concerns generally unexpected circumstances which require the immediate consideration of the Tree Board or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.
- [2] A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.
- [3] Full and accurate minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Tree Board or subcommittee.



**[d]** In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Tree Board, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question.

**[e]** The agenda shall include only those matters within the responsibilities and powers of the Tree Board, as provided herein.

**[f]** The business of the Tree Board or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Tree Board or subcommittee shall be respectful to each other and shall avoid interrupting each other.

**[g]** Minutes of the Tree Board or subcommittee shall be subject to revision and adoption by the group as a whole.

**[h]** Meetings of the Tree Board or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.

**[i]** At any meeting of the Tree Board or subcommittee, if the meeting is opened for public comment, any person wishing to address the body or subcommittee shall state his or her name and whether or not he or she is a resident of the town or ETJ.

- [1] If there is a signup sheet provided, speakers shall be recognized in the order in which they have signed up.
- [2] Unless a different time limit is adopted by the Tree Board or subcommittee, no member of the public shall be allowed to speak for more than five minutes.
- [3] Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Tree Board or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.
- [4] All persons addressing the Tree Board or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period

substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

### **Section 38. Quorum and Voting**

**[a]** A quorum shall consist of three (3) members.

**[b]** All actions or recommendations of the Tree Board or subcommittee shall require the presence of a quorum and are only effective or adopted upon majority vote of the members present, following a motion and second. In the case of a divided vote on any question on which the Tree Board is required to act, the record shall include the vote of each member. When such action is to be reported to the Council, Community Appearance Commission or Planning Commission, the Tree Board shall not only report the action or recommendation adopted, but the vote by which it was adopted. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Board, and the members of the Board can hear the member.

**[c]** A roll call vote shall be taken upon the request of any member.

### **Section 39. Tree Board Officers**

**[a]** Unless the Town Council designates the Chair and Vice-Chair of the Tree Board, it shall retain the power to choose its own Chair and Vice-Chair. The Tree Board shall designate the Chair and Vice-Chair of any subcommittees. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for re-appointment. Vacancies in these offices shall be filled for the unexpired terms only. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for re-appointment. Vacancies in these offices may be filled for the unexpired terms by the Council.

**[b]** The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

### **Section 40. Powers and Duties of the Tree Board**

**[a]** The Tree Board may:

- [1] Make studies and recommend to the Council plans, goals, and objectives relating to the urban forest of the town.
- [2] Develop and recommend to the Council policies, ordinances, administrative procedures, plans and other means for maintaining the town's urban forest program. The Tree Board, shall not, however, have the power to “initiate” changes to this ordinance, as the term “initiate” is used in Article XXI, Section 379.
- [3] Develop public education programs which inform the public on matters concerning the betterment of trees and related resources.
- [4] Coordinate and/or conduct special projects for the betterment of the urban forest.

**[b] Limitations on Powers of the Tree Board**

- [1] No individual member of the Board shall purport to speak or act on behalf of the Board without action by the Board explicitly authorizing the member to speak or act on its behalf.
- [2] No individual member of the Board, nor the Board itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Board to speak or act on its behalf.
- [3] Without an express grant of authority or explicit authorization by the Council, no individual member of the Board, nor the Board itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.
- [4] The Tree Board may not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Tree Board on tasks assigned by the Town Council or it’s designee.
- [5] The Tree Board may create subcommittees or working groups within it’s membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

**Section 41. Reserved**

**Section 42. Reserved**

## Part V Board of Adjustment

### Section 43. Appointment and Terms of the Board of Adjustment

**[a] Number of Members:** There shall be a Board of Adjustment consisting of eight (8) regular members and eight (8) alternates. Alternates shall serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. Each alternate, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

**[b] Number of Town Members; Number of ETJ Members:** Five (5) regular members of the Board of Adjustment and five (5) alternates shall reside within the Town (hereafter, "resident members"). Three (3) regular members and three (3) alternates shall reside within the Town's ETJ. Should the Town's ETJ be expanded or the ratio of the population of the ETJ relative to the population of the Town increase or decrease, in accordance with N. C. Gen. Stat. §160A-362 and as specified herein, the Town will adjust the number of members from the ETJ in order to maintain proportional representation based on population for residents of the ETJ relative to the Town. However, the resident members may never number fewer than five (5) regular members and five (5) alternates, so if necessary to maintain proportionality, the full size of the board shall be increased. There shall be at all times at least one representative of the ETJ on the Board of Adjustment.

**[c] Adjustment of Ratio of Town and ETJ Members:** Within six months of the publication of the decennial census information for the Town of Boone and Watauga County, conducted by the United States Census Bureau, the Administrator shall inform the Town Council of any change in the ratio of Town population to ETJ population which requires a modification in the number of Town and ETJ members. Thereafter, as positions open by resignation, removal for cause or absence, or expiration of term, the number of members shall be adjusted through the appointment process to achieve the required balance between Town and ETJ members. An ETJ position shall be created or the number of ETJ positions reduced on the Board of Adjustment when the population of the entire ETJ constitutes a full fraction of the Town's population divided by the total membership of the Board of Adjustment or when the population of the ETJ falls below a full fraction of the Town's population divided by the total membership of the Board of Adjustment, respectively.

**[d] Appointment of Members to the Board of Adjustment:** All Town members of the Board of Adjustment shall be appointed by the Town Council following the procedures of Section 35.01 of the Municipal Code. When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the increased population

requires that a new ETJ member be appointed, the Town Council shall adopt a resolution requesting that the Watauga County Board of Commissioners appoint a qualified person as a member. Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Board of Commissioners. If the Board of Commissioners is unwilling to appoint either of the two applicants submitted by the Town Council, it may appoint a person of its own choosing. However, before appointing a new person to the Board of Adjustment, the Watauga County Board of Commissioners must hold a public hearing on the selection. Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The Watauga County Board of Commissioners shall select appointees only from those who apply at or before the public hearing and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize him- or herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and ordinances relating to the regulation of development within the Town planning jurisdiction, who agrees to apply in good faith the Town's Unified Development Ordinance and Comprehensive Plan, and who expresses a willingness to serve on the Board of Adjustment. The Commissioners shall make the appointment within forty-five days following the public hearing. If, despite good faith efforts, enough qualified residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the Watauga County Board of Commissioners may appoint other residents of the county (including residents of the town) to fill these seats who are otherwise qualified. If the Watauga County Board of Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ.

**[e] Avoidance of Conflicts of Interest:** In making appointments to the Board of Adjustment, both the Town Council and the Watauga County Board of Commissioners shall consider the employment of current board members and alternates, and their spouses, and shall strive to create such employment diversity upon the board so as to minimize the likelihood that a conflict of interest with regard to a particular case will prevent the Board of Adjustment from assembling a full board of eight (8) members to hear the case. Therefore, in order to be considered for appointment to the Board, an applicant must provide the Town or County with information concerning his or her employment and that of his or her spouse, if any.

**[f]** Regular members and alternates shall be appointed for three (3) year staggered terms, but both may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only.

**[g]** Members may be reappointed to successive terms without limitation.

**[h]** Unless the Town Council takes specific action to excuse the absences and reappoints a member after being informed by the Administrator of the member's removal, Regular Board of Adjustment members shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the regular meetings in any twelve month period. Absences due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced. Alternate members shall likewise be removed for failure to attend or participate in three (3) consecutive meetings for which the member's attendance is requested. The Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Town Council may propose removal of a member for any other good cause related to the performance of Board duties, but before removal on that basis, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

**[i]** If a regular or alternate resident member moves outside the Town, or if an ETJ regular or alternate member moves outside the ETJ, that shall constitute a resignation from the board.

**[j]** A resident member alternate may sit only in lieu of a regular resident member and an ETJ alternate may sit only in lieu of the regular ETJ member. When so seated, alternates shall have the same powers and duties as the regular member they replace.

**[k]** A member of the Board of Adjustment may resign by notifying the Mayor, Town Manager, or Administrator.

#### **Section 44. Meetings of the Board of Adjustment**

**[a]** At a time which it establishes, the Board of Adjustment shall conduct a monthly meeting to be held so long as there are items for its consideration, and it may schedule additional meetings ("special meetings"), as necessary, so long as all notice requirements of Sections 118(c) and 119 are met.

**[b]** The Board of Adjustment may conduct its meetings in accordance with its duly adopted rules of procedures so long as they are not inconsistent with the provisions of this ordinance or State law, and the Board shall comply with the requirements of Article VI.

**[c]** The Board of Adjustment and any subcommittee, advisory group, or working group, by whatever name or designation (hereafter referred to as a

“subcommittee”) shall operate in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. At a minimum, all meetings of the Board of Adjustment or any subcommittee shall require all of the following:

- [1] A meeting which is open to the public, except as to closed session conducted in accordance with the law for the reasons authorized by the law.
- [2] Full and accurate minutes of the meeting, a copy of which shall be provided, once approved by the Board, to the Town Clerk.

**[d]** At any meeting of the Board of Adjustment, when the meeting is opened for public testimony, any person wishing to address the Board shall state his or her name.

- [1] If there is a signup sheet provided for speakers, speakers shall be recognized in the order in which they have signed up.
- [2] All persons addressing the Board of Adjustment shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situations where there is a risk of harm to any person present, providing such person(s) the opportunity to alter their behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

#### **Section 45. Quorum**

**[a]** A quorum for the Board of Adjustment shall consist of seven (7) members in cases involving property located in whole or in part in the ETJ. A quorum for the Board of Adjustment shall consist of five (5) members in cases involving property located wholly within the Town’s corporate limits. A quorum is necessary for the board to take official action.

**[b]** A member who has withdrawn from the meeting without being excused as provided in Section 46 shall be counted as present for purposes of determining whether a quorum is present.

#### **Section 46. Voting**

**[a]** The concurring vote of four fifths of the board members hearing and deciding a case or issue shall be necessary to reverse any order, requirement,

decision, or determination of the administrator or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance including the issuance or modification of a special-use permit, or to grant any variance. All other actions of the board shall be taken by majority vote. For 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 calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

**[b]** Once a member is physically present at a board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with Subsection 46 [c] or has been allowed to withdraw from the meeting in accordance with Subsection 46 [d].

**[c]** A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate an affected person's rights to an impartial decision maker. If an objection is raised to a member's participation and that member does not request recusal, the remaining members shall by majority vote rule on the objection. Impermissible conflicts include, but are not limited to:

- [1] Prior to hearing the matter, a member has a fixed opinion concerning the subject matter of the hearing that is not susceptible to change.
- [2] A member has had an undisclosed *ex parte* communications concerning the case before the Board of Adjustment.
- [3] A member has a close familial, business, or other associational relationship with a person who will be affected by the outcome of a decision by the Board of Adjustment.
- [4] A member has a direct or indirect financial interest in the outcome of the matter before the Board of Adjustment.

**[d]** A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.

**[e]** Except as authorized in subsection [c] above, a motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.

**[f]** A roll call vote shall be taken upon the request of any member.

**[g]** Both ETJ and resident members may participate and vote on all matters coming before the board involving property located in whole or in part in the



ETJ. On all other matters coming before the board, only resident members may participate and vote.

#### **Section 47. Board of Adjustment Officers**

**[a]** Unless the Town Council designates the Chair and Vice-Chair of the Board of Adjustment, it shall retain the power to choose its own Chair and Vice-Chair, but both must be resident members of the Board. The Board of Adjustment shall designate the Chair and Vice-Chair of any subcommittee. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment. Vacancies in these offices shall be filled for the unexpired terms by the Town Council.

**[b]** The Chair or any member temporarily acting as Chair may administer oaths to witnesses coming before the board.

**[c]** The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

#### **Section 48. Powers and Duties of Board of Adjustment**

**[a]** The Board of Adjustment shall hear and decide:

- [1] Appeals from any order, decision, requirement, or determination made by the Administrator, as provided in Section 106.
- [2] Applications for special-use permits, as provided in Section 61.
- [3] Applications for variances, as provided in Section 107.
- [4] Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines, as provided in Section 109.
- [5] Any other matter the board is required to act upon by any other town ordinance.

**[b]** The Board of Adjustment may subpoena witnesses and compel the production of evidence.

**[c]** Limitations on the Powers of the Board of Adjustment

- [1] No individual member of the Board shall purport to speak or act on behalf of the Board without action by the Board or authorization in the Board's duly adopted Rules of Procedure explicitly authorizing the member to speak or act on its behalf.

- [2] No individual member of the Board, nor the Board itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Board to speak or act on its behalf.
- [3] Without an express grant of authority or explicit authorization by the Council, no individual member of the Board, nor the Board itself, may direct staff members of the Town to take action requiring the expenditure of Town funds.
- [4] The Board of Adjustment may not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Board of Adjustment on tasks assigned by the Town Council or it's designee.
- [5] The Board of Adjustment may create subcommittees or working groups within it's membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

#### **Section 49. Appeals**

**[a]** Every decision of the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the Watauga County Clerk of Superior Court within 30 days of the last of the relevant following dates:

- [1] If a permit is issued or variance granted, the date the decision is filed with the Watauga County Register of Deeds;
- [2] If the application is denied or is not to be recorded with the Register of Deeds, the date the decision is filed in the office of the Administrator; or
- [3] The date a written copy of the decision is delivered to the applicant and every aggrieved party who has filed a written request for such copy with the secretary or Chair of the Board at the time of its hearing of the case. Note: The decision of the Board may be delivered to the applicant or aggrieved party who has duly requested a copy either by personal service or by registered mail or certified mail, return receipt requested, at the address provided by the applicant or aggrieved party.

#### **Section 50. Reserved**

## Part VI Land Use Administrator and Planning Director

### Section 51. Land Use Administrator

**[a]** Except as otherwise specifically provided, primary responsibility for administering and enforcing this ordinance may be assigned by the Town Manager to one or more individuals. The person or persons to whom these functions are assigned shall be referred to in this ordinance as the “land-use administrator” or “administrator”. The term “staff” or “Planning and Inspections staff” is sometimes used interchangeably with the term “administrator”.

**[b]** When enforcing this ordinance, the council recognizes that there may be instances where the administrator should be given the authority to approve limited deviations to some provisions of the ordinance. The administrator may approve a deviation only after the applicant has submitted documentation to demonstrate that one of the following conditions exists:

[1] A surveying error has occurred that has created a situation in which the applicant is unable to comply with the requirements of the ordinance.

[2] The configuration of the lot and location of existing structures is such that the applicant is unable to comply with the requirements of the ordinance and that the deviation being requested will not have a detrimental effect upon any adjacent property owner.

[3] Due to unique circumstances related to the development being proposed, the applicant is able to demonstrate that strict compliance with the ordinance will not be in the best interests of the town and that the deviation being requested will not have a detrimental effect upon any adjacent property owner.

[4] The applicant has agreed to take measures that would ameliorate the effects of the deviation and the owners of all property located within 150 feet have agreed in writing to the deviation being requested.

**[c]** A request for deviation shall be made before the permit is issued. Deviations may only be approved to the extent authorized below to the following provisions of the ordinance:

[1] Deviations from the requirements of Section 200. Schedule of Land Use Intensity Regulations, provided the deviation shall not exceed ten percent (10%) of any requirements.

[2] Deviations from the setback requirements of Section 206. Accessory Building Setback Requirements provided the deviation shall not exceed ten percent (10%) of any requirements.

**[d]** The authority given to the administrator to grant such deviations shall be construed to be permissive and not mandatory. The decision of the administrator, as to whether or not to grant a deviation, shall constitute the final decision of the town and is not appealable. In the event a deviation is not approved, the applicant shall have the right to request a variance from the Board of Adjustment.

**Section 52. Planning Director**

**[a]** The Planning Director is the administrative head of the Planning and Inspections Department. As provided for in Sections 93 and 94 the Planning Director is authorized to approve major and minor subdivision final plats.

**Section 53. Reserved**

## Part VII Town Council

### Section 54. The Town Council

**[a]** In considering proposed changes in the text of this ordinance or in the zoning map, the council acts in its legislative capacity and must proceed in accordance with the requirements of Article XXI.

**[b]** Unless otherwise specifically provided in this ordinance, in considering amendments to this ordinance or the zoning map, the council shall follow the regular, voting, and other requirements as set forth in other provisions of the town code, the town charter, or general law.

**Section 55. Reserved**

**Section 56. Reserved**

**Section 57. Reserved**

**Section 58. Reserved**

**Section 59. Reserved**

**Section 60. Reserved**

## **Article IV      Permits and Final Plat Approval**

### **Part I      Zoning and Special Use Permits**

#### **Section 61.    Permits Required**

**[a]** Subject to Section 321 (Purpose), the use made of property may not be substantially changed (see Section 171), substantial clearing, grading, or excavation may not be commenced, and buildings or other substantial structures may not be constructed, erected, moved or substantially altered except in accordance with and pursuant to one of the following permits:

- [1] A zoning permit or certificate of zoning compliance issued by the Administrator.
- [2] A special use permit issued by the Board of Adjustment.

**[b]** Zoning permits, special use permits, and sign permits, as well as the building and grading permits needed to construct a proposed development in accordance with such permits, will be issued under this ordinance only when a review of the application submitted, including the plans contained therein (such as the grading, soil erosion or drainage plans), indicates that the development or activity will comply with the provisions of this ordinance if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, and except as otherwise provided in Section 80, all development shall occur strictly in accordance with such approved plans and applications.

**[c]** Physical improvements to land to be subdivided may not be commenced except in accordance with a special use permit issued by the Board of Adjustment for major subdivisions or after final plat approval by the Planning Director for minor subdivisions (see Part II of this article).

**[d]** All permits shall be issued in the name of the applicant (except that applications submitted by an agent shall be issued in the name of the principal), shall identify the property involved and the proposed use, shall incorporate by reference the plans submitted, and shall contain any special conditions or requirements lawfully imposed by the permit issuing authority.

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**Section 62. No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled**

**[a]** Issuance of a zoning or special use permit authorizes the recipient to commence the activity authorized by the permit (subject to obtaining a building permit) to commence work designed to construct, erect, move, or substantially alter buildings or other substantial structures or to make necessary improvements to a subdivision. However, except as provided in Sections 68, 76, and 77, the intended use may not be commenced, no building may be occupied, and in the case of subdivisions, no lots may be sold until all of the requirements of this ordinance and all additional requirements imposed pursuant to the issuance of a special use permit or conditional zoning district approval have been complied with. Even when the Board of Adjustment has concluded that an application complies with UDO requirements pursuant to Section 74 [a] [2], the Administrator shall retain the authority to withhold building or grading permits and withhold or revoke a certificate of occupancy which has been improvidently issued until all relevant requirements of the ordinance have been met.

**Section 63. Who May Submit Permit Applications**

**[a]** Applications for zoning, special use, sign permits, zoning vested right or minor subdivision plat approval will be accepted only from persons having the legal authority to take action in accordance with the permit or the minor subdivision plat approval. In general this means that applications should be made by the owners or lessees of property, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits under this ordinance, or the agents of such persons with proof of agency. When a person other than the owner of the property applies for a permit or approval which will permanently affect the property, the application must be accompanied by the written approval of the owner. No application may be accepted on behalf of a corporation or limited liability company unless it is registered and in good standing with the North Carolina Secretary of State.

**[b]** The Administrator may require an applicant to submit evidence of his authority to submit the application in accordance with Subsection [a].

**Section 64. Applications To Be Complete**

**[a]** An application is considered submitted when the application form provided by the Administrator is fully completed with information included or attached which enables the Administrator to discern what approval is being sought, it is signed by a person with lawful and established authority to submit the application, all required fees are paid, and it is delivered to the Administrator. An application will be evaluated against the ordinance provisions in effect at the time these requirements are met.

**[b]** An application is deemed withdrawn if the applicant does not fully respond to the Administrator's request(s) for the materials, plans, analyses, etc., needed to fully evaluate the application for its compliance with the UDO and all other pertinent adopted plans and codes of the Town, in accordance with the following schedule:

- [1] Within twenty business days of submission of an application, the Administrator shall direct a written list of all materials, plans, analyses, etc. (hereafter, "supplemental documentation"), required by the ordinance or needed by the Administrator or the reviewer in each other pertinent department, to evaluate the application for its compliance with the UDO and all other duly adopted requirements of the Town. Said list shall be hand delivered to the applicant or mailed by first class mail to the name and address of the applicant, as they are stated on the application. Receipt by the applicant shall be inferred three days after the date of mailing.
- [2] Following receipt of the written list, the applicant shall have thirty calendar days to provide all supplemental documentation requested by the Administrator, which shall be considered provided when they are actually delivered to the Administrator. If an applicant fails to provide all supplemental documentation by this time, the application shall be deemed withdrawn and no further consideration will be given to it.
- [3] Following the timely provision of all supplemental documentation by the applicant, the Administrator may request additional materials, plans, analysis, etc., using the same method as stated in sub-section [b][1], and the applicant shall again have thirty calendar days to provide all additional requested information or the application shall be deemed withdrawn. This process may be repeated until all materials needed by the Administrator or other department reviewer to evaluate the application's compliance with the requirements of the UDO and all other duly adopted requirements of the Town have been provided. However, there may be no more than a total of three requests for information by the Administrator with respect to any one application; the burden of submitting all materials needed for a full evaluation of an application at all times nevertheless remains upon the applicant. At each stage of a series of requests by the Administrator, should an applicant fail to provide all requested information, the application shall be deemed withdrawn and no further consideration will be given to it.



**[c]** An application for a zoning, special use, zoning vested right or sign permit must be completed to the satisfaction of the Administrator and all requested supplemental documentation provided in accordance with subparagraph [b] before the permit issuing authority is required to consider the application. However, with respect to applications for which the Board of Adjustment is the permit issuing authority, unless the application has been deemed withdrawn pursuant to subparagraph [b], should the applicant demand that the application be scheduled for consideration before the Board of Adjustment, it shall be so scheduled, and the Board of Adjustment shall decide whether the application is complete.

**[d]** Subject to Subsection [e], an application is complete when it contains all of the information that is necessary for the permit issuing authority to decide whether or not the development, if completed as proposed, will comply with all of the requirements of this ordinance and all other duly adopted requirements of the Town.

**[e]** In this ordinance, detailed or technical design requirements and construction specifications relating to various types of improvements (streets, sidewalks, etc.) are set forth in one or more appendices to this ordinance. It is not always necessary that the application contain the type of detailed construction drawings that would be necessary to determine compliance with these appendices, so long as the plans provide sufficient information, in the judgment of the Administrator, to allow the permit issuing authority to evaluate the application in the light of the substantive requirements set forth in the text of this ordinance and all other duly adopted requirements of the Town.

However, whenever this ordinance requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these appendices, then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the Administrator. Failure to observe this requirement may result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in Article VII.

**[f]** The presumption established by this ordinance is that all of the information set forth in Appendix A is necessary to satisfy the requirements of this section. However, it is recognized that each development is unique, and therefore the permit issuing authority may allow less information or require more information to be submitted according to the needs of the particular case. For applications submitted to the Town Council or Board of Adjustment, the applicant may rely in the first instance on the recommendations of the Administrator as to whether more or less information than that set forth in Appendix A should be submitted.

**[g]** In addition to the information included in Appendix A, certain projects may by, virtue of size, location or configuration of access points to the public road system, be required to have a traffic impact analysis performed. In those instances where a traffic impact analysis is requested by the Administrator, the study must be completed and submitted in order for the application to be considered. A traffic impact analysis may be required when any of the following conditions exist:

The project proposes to have an access to the public road system within one hundred (100) feet of the STOP bar of any traffic control signal; OR

The project proposes to have an access to the public road system within two hundred (200) feet of the STOP bar of any traffic control signal and based upon Institute of Transportation Engineers (ITE) trip generation rates is projected to generate eighty (80) exiting trips during any one hour period of any day: OR

The project proposes to have access to any public road at a location where sight distance in both directions along the road is less than five hundred (500) feet: OR

The project proposes access onto a public road that does not have paved width of at least eighteen (18) feet; OR

The project proposes access to a public road that currently operates at a level of service of D or less and based upon ITE trip generation rates is projected to generate one thousand five hundred (1500) weekday trips. (The Planning and Inspections Department has a listing of roads currently operating at a level of service D or less).

**[h]** The Administrator shall make every effort to develop application forms, instructional sheets, checklists, or other techniques or devices to assist applicants in understanding the application requirements and the form and type of information that must be submitted. In classes of cases where a minimal amount of information is necessary to enable the Administrator to determine compliance with this ordinance and all other duly adopted requirements of the Town, the Administrator shall develop standard forms that will expedite the submission of the necessary plans and other required information.

## **Section 65. Staff Consultation Before Formal Application**

**[a]** To minimize development planning costs, avoid misunderstandings or misinterpretation, and ensure compliance with the requirements of this ordinance, pre application consultation between the developer and staff is encouraged.

**[b]** The Administrator shall meet with the developer as soon as conveniently possible to review the proposed plan.

**Section 66. Staff Consultation After Application Submitted**

**[a]** Upon receipt of an application and all supplemental documentation and materials, for the Administrator shall review the application and confer with the applicant regarding staff's interpretation of the applicable requirements of this ordinance, that the applicant has submitted all of the information that the applicant intends to submit, and that the application represents precisely and completely what the applicant proposes to do.

**[b]** Except in cases in which the applicant demands, in accordance with Section 64 [c], that the application be transmitted to the Board of Adjustment even when all supplemental documentation and materials have not been provided by the applicant and the application has not been deemed withdrawn because the time to submit requested documentation and materials has expired, if the application is for a special use permit or zoning vested right, the Administrator shall place the application on the agenda of the appropriate board or commission as soon as feasible after the applicant has provided all information requested by the Administrator pursuant to Section 64 and after the applicant indicates that the application is as complete as the applicant intends to make it. However, as provided in Section 71, if the Administrator believes that the application is incomplete, the Administrator shall recommend to the appropriate board or commission that the application be denied on that basis, and shall provide detailed information to the appropriate board or commission as to the elements, supplemental documentation or materials which the Administrator believes are lacking.

**Section 67. Zoning Permits**

**[a]** Within thirty days following the submission of an application for a zoning permit and all duly requested supplemental documentation and materials, the Administrator shall issue the zoning permit the Administrator concludes that:

- [1] The requested permit is not within the Administrator's jurisdiction according to the Table of Permissible Uses, or
- [2] If completed as proposed in the application, the development will not comply with one or more requirements of this ordinance and all other duly adopted requirements of the Town (not including those requirements concerning which a variance has been granted or those the applicant is not required to comply with under the circumstances specified in Article VIII, Nonconforming Situations).

**Section 68. Authorizing Use or Occupancy Before Completion of Development Under Zoning Permit**

**[a]** In cases when, because of weather conditions or other factors beyond the control of the zoning permit recipient (exclusive of financial hardship), it would be unreasonable to require the zoning permit recipient to comply with all of the requirements of this ordinance prior to commencing the intended use of the property or occupying any buildings, the Administrator may authorize the commencement of the intended use or the occupancy of buildings (insofar as the requirements of this ordinance are concerned) if the permit recipient provides a performance bond or other security satisfactory to the Administrator to ensure that all of the requirements of this ordinance will be fulfilled within a reasonable period (not to exceed twelve (12) months) determined by the Administrator.

**Section 69. Special Use Permits**

**[a]** The Board of Adjustment shall issue a requested special use permit unless it concludes, based upon the information submitted at the hearing, that:

- [1] The requested permit is not within its jurisdiction according to the Table of Permissible Uses, or
- [2] The application is incomplete, or
- [3] If completed as proposed in the application, the development will not comply with one or more requirements of this ordinance (not including those the applicant is not required to comply with under the circumstances specified in Article VIII, Nonconforming Situations), or
- [4] If it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:
  - [a] Will materially endanger the public health or safety, or
  - [b] Will substantially injure the value of adjoining or abutting property, or
  - [c] Will not be in harmony with the area in which it is to be located, or
  - [d] Will not be in general conformity with the comprehensive plan, thoroughfare plan, or other plan officially adopted by the council.

**Section 70. Burden of Presenting Evidence; Burden of Persuasion**

**[a]** The burden of presenting a complete application (as described in Section 64) to the Board of Adjustment shall be upon the applicant and the fact that the Administrator believes the application is complete or the applicant has submitted all supplemental documentation or materials to the Administrator shall not bind the Board to conclude that the application is complete, the Board itself being the final arbiter of whether an application is complete or incomplete. However, unless the board informs the applicant at the hearing in what way the application is incomplete and offers the applicant an opportunity to complete the application (either at that meeting or at a continuation hearing), the application shall be presumed to be complete.

**[b]** The burden of presenting evidence to the Board of Adjustment sufficient to lead it to conclude that the application should be approved or denied for any reasons stated in Subdivisions 69 shall be upon the party or parties urging this position, unless the information presented by the applicant in his application and at the public hearing is sufficient to justify a reasonable conclusion that a reason exists to so deny the application. In making its decision the Board of Adjustment may formally or implicitly make credibility determinations retarding the testimony of an applicant and its witnesses, and where the Board has concluded that the testimony of a particular witness is incredible or otherwise unreliable, it is not bound to accept that testimony and may reject it.

**[c]** The burden of persuasion on the issue of whether the development, if completed as proposed, will comply with the requirements of this ordinance remains at all times on the applicant.

**Section 71. Recommendations on Special Use Permit Applications**

**[a]** When presented to the Board of Adjustment at the hearing, the application for a special use permit shall be accompanied by a report setting the Administrator's analysis of the application, including any supplemental documentation or materials which have not been submitted which the Administrator believes must be evaluated in order to determine the proposed development's compliance with the requirements of the proposed development's compliance with the requirements of the UDO and all other duly adopted requirements of the Town, as well as any other staff recommendations for conditions to be imposed by the Board of Adjustment.

**[b]** If the staff proposes a finding or conclusion that the application fails to comply with Section 64 or any other requirement of this ordinance, it shall identify the requirement in question and specifically state supporting reasons for the proposed findings or conclusions.

**Section 72. Reserved****Section 73. Reserved**

**Section 74. Board of Adjustment Action on Special Use Permits**

**[a]** In considering whether to approve an application for a special use permit, the Board of Adjustment shall proceed according to the following format:

- [1] The board shall consider whether the application is complete. If the board concludes that the application is incomplete and the applicant refuses to provide the necessary information, the application shall be denied. A motion to this effect shall specify either the particular type of information lacking or the particular requirement with respect to which the application is incomplete. A motion to this effect, concurred in by two members of the board, shall constitute the board's finding on this issue. If such a motion is not made and concurred in by at least two members, this shall constitute an affirmative finding that the application is complete.
- [2] The board shall consider whether the application complies with all of the applicable requirements of this ordinance. If a motion to this effect passes by the necessary four fifths vote, the board need not make further findings concerning such requirements. If such a motion fails to receive the necessary four fifths vote or is not made, then a motion shall be made that the application be found not in compliance with one or more of the requirements of this ordinance. Such a motion shall specify the particular requirements the application fails to meet. A separate vote may be taken with respect to each requirement not met by the application, and the vote of the number of members equal to more than one fifth of the board membership (excluding vacant seats) in favor of such a motion shall be sufficient to constitute such motion a finding of the board. It shall be conclusively presumed that the application complies with all requirements not found by the board to be unsatisfied through this process. As provided for in Subsection 69 [b], if the board concludes that the application fails to meet one or more of the requirements of this ordinance, the application shall be denied.
- [3] If the board concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in Subsection 69 [c]. Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion. Such a motion shall be adopted by an affirmative vote of two (2) members.

**Section 75. Additional Requirements on Special Use Permits**

**[a]** Subject to Subsection [b], in granting a special use permit, the Board of Adjustment, may attach to the permit such reasonable requirements in addition to those specified in this ordinance as will ensure that the development in its proposed location:

- [1] Will not endanger the public health or safety,
- [2] Will not injure the value of adjoining or abutting property,
- [3] Will be in harmony with the area in which it is located, and
- [4] Will be in conformity with the comprehensive plan, thoroughfare plan, or other plan officially adopted by the council.

**[b]** The permit issuing board may not attach additional conditions that modify or alter the specific requirements set forth in this ordinance unless the development in question presents extraordinary circumstances that justify the modification from the specified requirements.

**[c]** Without limiting the foregoing, the permit issuing board may attach to a permit a condition limiting the permit to a specified duration.

**[d]** All additional conditions or requirements shall be entered on the permit.

**[e]** All additional conditions or requirements authorized by this section are enforceable in the same manner and to the same extent as any other applicable requirement of this ordinance.

**[f]** A vote may be taken on application conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in Subsections 69 [b] or [c].

**Section 76. Authorizing Use, Occupancy, or Sale Before Completion of Development Under Special Use Permits**

**[a]** In cases when, because of weather conditions or other factors beyond the control of the special use permit recipient (exclusive of financial hardship), it would be unreasonable to require the permit recipient to comply with all of the requirements of this ordinance before commencing the intended use of the property or occupying any buildings or selling any lots in a subdivision, the permit issuing board may authorize the commencement of the intended use or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this ordinance are concerned) if the permit recipient provides a performance bond or other security satisfactory to the board to ensure that all of these requirements will be fulfilled within a reasonable period not to exceed twelve (12) months.

**[b]** When the permit issuing board imposes additional requirements upon the permit recipient in accordance with Section 75 or when the developer proposes in the plans submitted to install amenities beyond those required by this ordinance, the board may authorize the permittee to commence the intended use of the property or to occupy any building or to sell any subdivision lots before the additional requirements are fulfilled or the amenities installed if it specifies a date by which or a schedule according to which such requirements must be met or each amenity installed and if it concludes that compliance will be ensured as the result of any one or more of the following:

- [1] A performance bond or other security satisfactory to the board is furnished,
- [2] A condition is imposed establishing an automatic expiration date on the permit, thereby ensuring that the permit recipient's compliance will be reviewed when application for renewal is made,
- [3] The nature of the requirements or amenities is such that sufficient assurance of compliance is given by Section 132 (Penalties and Remedies For Violations) and Section 133 (Permit Revocation).

**[c]** With respect to subdivisions in which the developer is selling only undeveloped lots, the council may authorize final plat approval and the sale of lots before all the requirements of this ordinance are fulfilled if the sub divider provides a performance bond or other security satisfactory to the council to ensure that all of these requirements will be fulfilled within not more than twelve (12) months after final plat approval. This surety may be in the form of a surety bond, cash escrow or letter of credit. For any specific project the type of performance guarantee from the range specified shall be at the election of the developer.

### **Section 77. Completing Developments in Phases**

**[a]** If a development is constructed in phases or stages in accordance with this section, then, subject to Subsection [c], the provisions of Section 62 (No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled) and Section 76 (exceptions to Section 62) shall apply to each phase as if it were the entire development.

**[b]** As a prerequisite for taking advantage of the provisions of Subsection [a], the developer shall submit plans that clearly show the various phases or stages of the proposed development and the requirements of this ordinance that will be satisfied with respect to each phase or stage.



**[c]** If a development that is to be built in phases or stages includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or tennis courts in a residential development) then, as part of his application for development approval, the developer shall submit a proposed schedule for completion of such improvements. The schedule shall relate completion of such improvements to completion of one or more phases or stages of the entire development. Once a schedule has been approved and made part of the permit by the permit issuing authority, no land may be used, no buildings may be occupied, and no subdivision lots may be sold except in accordance with the schedule approved as part of the permit, provided that:

- [1] If the improvement is one required by this ordinance then the developer may utilize the provisions of Subsection 76 [a] or 76 [c],
- [2] If the improvement is an amenity not required by this ordinance or is provided in response to a condition imposed by the board, then the developer may utilize the provisions of Subsection 76 [b].

#### **Section 78. Expiration of Permits**

**[a]** Zoning and sign permits shall expire automatically if, within one year after the issuance of such permits:

- [1] The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use, or
- [2] Less than ten (10) percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development (see Section 77), this requirement shall apply only to the first phase.

**[b]** If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one year, then the permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 79.

**[c]** The permit issuing authority may extend for a period up to six months the date when a permit would otherwise expire pursuant to Subsections [a] or [b] if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to six months upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

**[d]** For purposes of this section, the permit is issued when the earlier of the following takes place:

- [1] A copy of the fully executed permit is delivered to the permit recipient, and delivery is accomplished when the permit is hand delivered or mailed to the permit applicant; or,
- [2] The zoning Administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions.

**[e]** Notwithstanding any of the provisions of Article VIII (Nonconforming Situations), this section shall be applicable to permits issued prior to the date this section becomes effective.

### **Section 79. Zoning Permit With Vested Rights**

**[a]** A zoning vested right shall be deemed established upon the valid approval of a site specific development plan, following notice and public hearing (see Article VI).

**[b]** For purposes of these regulations, a site specific development plan shall constitute any one of the following approvals:

- [1] A zoning permit granted by the Administrator following notice and public hearing before the Board of Adjustment,
- [2] A special use permit granted by the Board of Adjustment, or
- [3] A conditional district rezoning granted by the Town Council.

**[c]** A site specific development plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto. A zoning right that has been vested as provided for in this ordinance shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.

**[d]** Notwithstanding the provision of Subsection [c], the approval authority may provide that rights be vested for a period of time exceeding two (2) years but not exceeding five (5) years where warranted in light of all relevant circumstances, involving but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the approval authority at the time the site specific development plan is approved.

**[e]** The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type and intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to regulation by the city, including, but not limited to building, fire, plumbing, electrical and mechanical codes. Otherwise, applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this ordinance.

**[f]** A zoning vested right is not a personal right, but shall be attached to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

**[g]** A zoning right that has been vested as provide for in this ordinance shall terminate:

- [1] At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed, or
- [2] With written consent of the affected landowner, or
- [3] Upon findings by the reviewing board, by ordinance after notice and public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan, or
- [4] Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action, or
- [5] Upon findings by the Board of Adjustment or council, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan, or

- [6] Upon enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the approval authority modify the affected provisions, upon finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

**[h]** Nothing in this section is intended or shall be deemed to create any vested right other than those established pursuant to North Carolina G. S. 160A-385.1.

**[i]** In the event that North Carolina G. S. 160A-385.1 is repealed, this section shall be deemed repealed and the provisions hereof no longer effective.

**[j]** Any petition for voluntary annexation filed with the town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under G.S. 160A-385.1 or G.S. 153A-344.1. A statement that declares that no zoning vested right has been established under G.S. 160A-385.1 or G.S. 153A-344.1, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

#### **Section 80. Effect of Permit on Successors and Assigns**

**[a]** Zoning, special use and sign permits authorize the permittee to make use of land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof covered under a permit continues to be used for the purposes for which the permit was granted, then:

- [1] No person (including successors and assigns of the person who obtained the permit) may make use of the land or structures covered under such permit for the purposes authorized in the permit except in accordance with all the terms and requirements of that permit, and
- [2] The terms and requirements of the permit apply to and restrict the use of land or structures covered under the permit, not only with respect to all persons having any interest in the property at the time the permit was obtained, but also with respect to persons who subsequently obtain any interest in all or part of the covered property and wish to use it for or in connection with purposes other than those for which the permit was originally issued, so long as the persons who subsequently obtain any interest in the property had actual or record notice of the existence of the permit at the time they acquired their interest.

**Section 81. Amendments to and Modification of Permits**

**[a]** Insignificant deviations from zoning or special use permits are permissible and the Administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernable impact on neighboring properties, the general public, or those intended to occupy or use the proposed development. Insignificant deviations may not exceed ten percent (10%) of any measurable standard.

**[b]** Minor modifications to zoning or special use permits are permissible with the approval of the permit issuing authority. Minor modifications are those that do not significantly change the essential character of the use or activity that has been previously authorized. If such requests are required to be acted upon by the Board of Adjustment, new conditions may be imposed in accordance with Section 75. The applicant retains the right to reject such additional conditions by withdrawing his request for a modification and may then proceed in accordance with the previously issued permit.

**[c]** Major changes to zoning or special use permits will be processed as new applications. Major changes are those that significantly change the essential character of the use or activity that has been previously authorized.

**[d]** The Administrator shall determine whether amendments to and modifications of permits fall within the categories set forth above in subsections [a], [b], and [c]. The determination of the Administrator shall constitute the final decision of the town and is not appealable when the determination falls within category [b] or [c] above.

**[e]** A developer requesting approval of changes shall submit a written request for such a approval to the Administrator, and that request shall identify the changes. Approval of all changes must be given in writing.

**Section 82. Reconsideration of Board Action**

**[a]** Whenever the Board of Adjustment disapproves an application for a special use permit or a variance, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the respective board at a later time unless the applicant clearly demonstrates that:

- [1] Circumstances affecting the property that is the subject of the application have substantially changed, or

[2] New information is available that could not with reasonable diligence have been presented at a previous hearing. A request to be heard on this basis must be filed with the Administrator within the time period for an appeal to superior court (see Section 134). However, such a request does not extend the period within which an appeal must be taken.

**[b]** Notwithstanding Subsection [a], the Board of Adjustment may at any time consider a new application affecting the same property as an application previously denied. A new application is one that differs in some substantial way from the one previously considered.

### **Section 83. Applications to be Processed Expeditiously**

**[a]** Recognizing that inordinate delays in acting upon appeals or applications may impose unnecessary costs on the appellant or applicant, the town shall make every reasonable effort to process appeals and permit applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this ordinance and all other duly adopted requirements of the Town.

### **Section 84. Maintenance of Common Areas, Improvements, and Facilities**

**[a]** The recipient of any zoning, special use or sign permit, or his successor, shall be responsible for maintaining all common areas, improvements, or facilities required by this ordinance or any permit issued in accordance with its provisions, except those areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

**[b]** A developer may create a property owners association or similar legal entity to succeed to its responsibilities under this section, so long as such property owners association is established in such a manner that:

- [1] Provision for the creation of the association or similar legal entity is made before any lot in the development is sold or any building occupied,
- [2] The association or similar legal entity has clear legal authority to maintain and exercise control over the common areas and facilities that must be maintained under this section, and

- [3] The association or other similar legal entity has the power to compel distributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and upkeep of such common areas and facilities.

### **Section 85. Uses Previously Approved by Conditional Use Permit**

**[a]** Amendments and modifications to uses currently subject to the terms and conditions of a previously approved conditional use permit, except those issued with conditional use zoning approvals, will be processed subject to the provisions of Section 81 dealing amendments and modifications to special use permits.

### **Section 86. Project Design Professionals**

**[a]** In order to provide adequate coordination of the various design professionals on all new development projects and substantial improvements as defined in Section 304[e] every project, except for single family and two family projects of less than ½ acre or commercial site improvements that involve no more than 2,500 square feet of land disturbing activity, shall retain a prime designer (architect or engineer). All design professionals shall be licensed by, and in good standing with, the appropriate licensing board in the State of North Carolina.

**[b]** The prime designer shall be responsible for coordination of all design and construction monitoring activities related to the project. This shall include, but not be limited to, coordination of design, monitoring of construction and final certifications that the project was constructed in compliance with the approved design documents. The prime designer shall ensure that adequate consideration is given in the design preparation of recommendations made by professionals that performed preliminary exploration of site conditions.

**[c]** If a geotechnical engineer performs a subsurface investigation, that engineer shall review the plans and specifications prior to submittal to the Town. A report of this review shall be submitted to the Town along with the permit application.

**[d]** If retaining walls are required, the wall designer shall provide a statement that the report on the subsurface investigation was reviewed and recommendations incorporated into the design. The wall designer shall also require a geotechnical engineer to prepare a global slope stability analysis of the retaining walls.

**[e]** Prior to issuance of a certificate of occupancy the prime designer shall submit a certification that the project was constructed in accordance with the approved plans and specifications. In addition, certifications for retaining walls

and the drainage system must be provided by the engineers responsible for that component of the project.

**[f]** If problems with the project are encountered that may be related to the failure by a design professional to properly discharge his or her responsibilities, the Town shall initiate appropriate corrective action(s). These may include action by the Town Council to report the professional to the appropriate licensing board or directing the Town of Boone to refuse certifications regarding analysis of design or construction certification from the individual or firm.

**Section 87. Reserved**

**Section 88. Reserved**

**Section 89. Reserved**

**Section 90. Reserved**



## Part II Major and Minor Subdivisions

### Section 91. Regulation of Subdivisions

**[a]** Major subdivisions are subject to a two step process. Physical improvements to the land to be subdivided are authorized by a special use permit as provided for in Part I of Article IV of this ordinance, and sale of lots is permitted after final plat approval as provided for in Section 94. Minor subdivisions only require a one step process: final plat approval (in accordance with Section 93).

#### **[b]** Flood Damage Prevention

- [1] All subdivision proposals shall be consistent with the need to minimize flood damage.
- [2] All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- [3] All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- [4] All subdivision proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- [5] An applicant for a Special Use Permit authorizing a major subdivision and an applicant for minor subdivision final plat approval shall be informed by staff of the use and construction restrictions contained in Article XVII if any portion of the land to be subdivided lies within the Floodplain.
- [6] Final plat approval for any subdivision containing land that lies within a Special Flood Hazard are may not be given unless the plat shows all Special Flood Hazard Area boundaries and contains in clearly discernible print the following statement:

“Use of land within the Special Flood Hazard Area is substantially restricted by the Flood Damage Prevention Ordinance of the Town of Boone.”

- [7] A Special Use Permit for a major subdivision and final plat approval for any subdivision may not be given if:
- (i) It reasonably appears that the subdivision is designed to create residential building lots; and
  - (ii) It reasonably appears that one or more lots as described could not practicably be used as a residential building site because of the restrictions set forth in this article.

## **Section 92. No Subdivision Without Plat Approval**

**[a]** No person may subdivide his land except in accordance with all of the provisions of this ordinance. In particular, no person may subdivide his land unless and until a final plat of the subdivision has been approved in accordance with the provisions of Section 93 or Section 94 and recorded in the Watauga County Registry. Building permits required pursuant to the State Building Code may be denied for lots that have been illegally subdivided.

**[b]** The Watauga County Register of Deeds may not record a plat of any subdivision within the town's planning jurisdiction unless the plat has been approved in accordance with the provisions of this ordinance.

**[c]** The provisions of this Section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not been properly approved under Article IV or recorded with the register of deeds of Watauga County, provided the contract does all of the following:

- [1] Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.
- [2] Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.
- [3] Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to

close any earlier than five days after the delivery of a copy of the final recorded plat.

- [4] Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than 15 days after the delivery of the final recorded plat, during which 15-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

**[d]** The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision regulations or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction or residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the unified development ordinance and recorded with the register of deeds.

### **Section 93. Minor Subdivision Approval**

**[a]** The Planning Director shall approve or disapprove minor subdivision final plats in accordance with the provisions of this section.

**[b]** The applicant for minor subdivision plat approval, before complying with Subsection [c], shall submit a sketch plan to the Planning Director for a determination of whether the approval process authorized by this section can be and should be utilized. The Planning Director may require the applicant to submit whatever information is necessary to make this determination, including, but not limited to, a copy of the tax map showing the land being subdivided and all lots previously subdivided from that tract of land within the previous ten years.

**[c]** If the proposed minor subdivision plat is located in a designated Water Supply watershed, the Planning Commission shall review the plat and shall find that it either is or is not a minor subdivision and shall find that it either does or does not meet the requirements of this ordinance. Based upon said findings, the Planning Director or Planning Commission shall either approve, not approve, or approve conditionally the proposed minor subdivision.

**[d]** Applicants for minor subdivision approval shall submit to the Planning Director a copy of a plat conforming to the requirements set forth in Subsections 94 [b] and [c] (as well as five prints of such plat), and containing the endorsement set forth in Subsection 95 [d] [3], as well as the following certificates:

[1] Certificate of Ownership

I hereby certify that I am the owner of the property described heron, which property is within the subdivision regulation jurisdiction of the Town of Boone, and that I freely adopt this plan of subdivision.

\_\_\_\_\_

Date

\_\_\_\_\_

Owner

[2] Certificate of Approval

I hereby certify that the minor subdivision shown on this plat does not involve the creation of new public streets or any change in existing public streets, that the subdivision shown is in all respects in compliance with Chapter \_\_\_\_ of the Boone Town Code, and that therefore this plat has been approved by the Town of Boone planning director, subject to its being recorded in the Watauga County Registry within sixty (60) days of the date below.

\_\_\_\_\_

Date

\_\_\_\_\_

Planning Director

**[e]** The Planning Director shall take expeditious action on an application for minor subdivision plat approval as provided in Section 83. However, either the Planning Director or the applicant may at any time refer the application to the major subdivision approval process.

**[f]** Not more than a total of ten (10) lots may be created out of one tract using the minor subdivision plat approval process, regardless of whether the lots are created at one time or over an extended period of time.

**[g]** Subject to Subsection [e], the Planning Director shall approve the proposed subdivision unless the subdivision is not a minor subdivision as defined in Section 15 or the application or the proposed subdivision fails to comply with Subsection [f] or any other applicable requirement of this ordinance.

**[h]** If the subdivision is disapproved, the Planning Director shall promptly furnish the applicant with a written statement of the reasons for disapproval.

**[i]** Approval of any plat is contingent upon the plat being recorded within sixty (60) days after the date the Certificate of Approval is signed by the Planning Director or his designee.

#### **Section 94. Major Subdivision Approval Process**

**[a]** The Town Council shall approve or disapprove major subdivision final plats in accordance with the provisions of this section. No major subdivision final plat shall be approved until a special use permit has been authorized by the Board of Adjustment.

**[b]** The applicant for major subdivision final plat approval shall submit to the Administrator a final plat, drawn to scale and otherwise acceptable to the Watauga County Register of Deed's Office for recording purposes. When more than one sheet is required to include the entire subdivision, all sheets shall be made of the same size, and shall show appropriate match marks on each sheet and appropriate references to other sheets of the subdivision. All final plats shall have the dimension of 18 inches x 24 inches. The scale of the plat shall be at one (1) inch equals not more than one hundred (100) feet. The applicant shall also submit three prints of the plat.

**[c]** In addition to the appropriate endorsements, as provided in Section 95, the final plat shall contain the following information:

- [1] A vicinity map,
- [2] The title, date, location, true north point and name of the subdivision, which shall not duplicate the name of any existing subdivision recorded in the Watauga County Registry,
- [3] The name(s), addresses(es) and telephone number(s) of the owner(s), mortgagee(s), registered surveyor(s), land planner(s), architect(s), and professional engineer(s) responsible for the subdivision and the registration number(s) and seal(s) of the professional engineer(s) and registered surveyor(s),
- [4] Statement of intended use of lots,
- [5] The scale according to which the plat is drawn in feet per inch or scale ratio in words or figures or bar graph,
- [6] The right-of-way lines and easements of all streets and roads, and access right-of-way to state roads or town streets,
- [7] Lot lines and lot numbers showing bearings and distances. All dimensions should be to the nearest one hundredth (0.01) of a foot and angles to the nearest minute,

- [8] Nearest building setback lines, (including typical lot setback for all lots),
- [9] Relationship with floodway and flood plain as delineated by the county floodway boundary and flood insurance maps,
- [10] Sufficient data to determine readily, and reproduce on the ground, the location, bearing and length of every street line, lot line, boundary line, block line and building line, whether curved or straight,
- [11] A statement that individual lots have or have not been approved by the Appalachian District Health Department for well and septic tank use,
- [12] Reference to deed book and page number of recorded restrictive covenants,
- [13] Reference to the deed book and page number of the owner's deed for the property to be subdivided.
- [14] The exact boundary lines of the tract to be subdivided fully dimensioned by lengths and bearings, and the location of intersecting boundary lines of adjoining lands,
- [15] The plans for utility layouts, including sanitary sewers, storm sewers, water distribution lines, natural gas, telephone and electric service, illustrating connections to existing systems or plans for individual water supply systems and/or sewage disposal systems, lines sizes and location of fire hydrants, and manholes,
- [16] Street names,
- [17] The location and dimensions of all rights-of-way, utility or other easements, riding trails, natural buffers, pedestrian or bicycle paths, and areas to be dedicated to public use with the purpose of each stated,
- [18] Property lines, buildings, or other structures, water courses, railroads, bridges, culverts, storm drains on both the land to be subdivided and on the land immediately adjoining corporate limits, township boundaries and county lines,

- [19] Sufficient engineering data to determine readily and reproduce on the ground every straight or curved boundary line, street line, lot line, right-of-way line, easement line, and setback line, including dimensions, bearings or deflection angles, radii, central circles, and tangent distances for the center line of curved streets and curved property lines that are not the boundary of curved streets, with all dimensions measured to the nearest one tenth (1/10) of a foot and all angles to the nearest minute,
- [20] The accurate location and descriptions of all monuments, markers and control points,
- [21] The blocks numbered consecutively throughout the entire subdivision and lots numbered consecutively throughout each block,
- [22] The name and location of any property, within the subdivision or within any contiguous property, that is listed on or is eligible for listing on the US Department of Interior National Register of Historic Places; likewise any property that has been designated by local ordinance as a History Property pursuant to G.S. Chapter 160A, Article 19, Part 3B, likewise any property that has been designated by local ordinance as a Historic District pursuant to G.S. Chapter 160A, Article 19, Part 3A,
- [23] All or any of the additional information required by G.S. 47-30.

**[d]** If the proposed major subdivision plat is located in a designated Water Supply watershed, the Planning Commission shall review the plat and shall find that it does or does not meet the requirements of this ordinance. Such findings of the Planning Commission shall be forwarded to the Town Council and the Board of Adjustment.

**[e]** The Town Council shall approve the proposed plat unless it finds that the plat or the proposed subdivision fails to comply with one or more of the requirements of this ordinance or that the final plat differs substantially from the plans and specifications approved in conjunction with the special use permit that authorized the development of the subdivision.

**[f]** If the final plat is disapproved by the Town Council, the applicant shall be furnished with a written statement of the reasons for the disapproval.

**[g]** Approval of a final plat is contingent upon the plat being recorded within sixty (60) days after the approval certificate is signed by the Planning Director or his designee.

**Section 95. Endorsements on Major Subdivision Plats**

**[a]** All major subdivision plats shall contain the endorsements listed in Subdivisions [1], [2] and [3] herein.

**[b]** The endorsements listed in Subdivision [4] shall appear on plats of all major subdivisions which are not connected, nor will be connected to publicly owned and operated water supply and sewage disposal systems.

**[c]** The endorsements listed in Subdivision [5] shall appear on plats of major subdivisions which are located outside the corporate limits of the town but within the planning jurisdiction.

**[d]** The endorsements listed in Subdivision [6] shall appear on plats of the division of land within the jurisdiction of this ordinance, which do not constitute a subdivision as defined by this ordinance, but in order to facilitate recordation thereof by the Watauga County Registry, the Planning Director may place endorsements on the plat.

[1] Certificate of Approval

I hereby certify that all streets shown on this plat are within the Town of Boone's planning jurisdiction, all streets, utilities and other required improvements shown on this plat have been installed or completed or that their installation or completion (within twelve months after the date below has been assured by the posting of a performance bond or other sufficient surety, and that the subdivision shown on this plat is in all respects in compliance with Chapter \_\_\_\_\_ of the City Code, and therefore this plat has been approved by the Town Council of Boone, subject to its being recorded in the Watauga County Registry within sixty (60) days of the date below.

\_\_\_\_\_

Date

\_\_\_\_\_

Planning Director



[2] Certificate of Ownership and Dedication

I hereby certify that I am the owner of the property described hereon, which property is located in the subdivision regulation jurisdiction of the Town of Boone, that I hereby freely adopt this plan of subdivision and dedicate to public use all areas shown on this plat as streets, alleys, walks, parks, open space, and easements, except those specifically indicated as private, and that I will maintain all such areas until the offer of dedication is accepted by the appropriate public authority. All property shown on this plat as dedicated for a public use shall be deemed to be dedicated for any other public use authorized by law when such other use is approved by the Boone Town Council in the public interest.

_____	_____
Date	Owner
	_____
	(Notarized)

[3] Certificate of Survey and Accuracy

I hereby certify that this map (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (a deed description recorded in Book \_\_\_\_\_, Page \_\_\_\_\_ of the Watauga County Registry) (other); that the error of closure as calculated by latitudes and departures is 1: \_\_\_\_\_; that the boundaries not surveyed are shown as broken lines plotted from information found in Book \_\_\_\_\_, Page \_\_\_\_\_, and that this map was prepared in accordance with G.S. 47-30. Witness my original signature, registration number and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

Seal or Stamp	_____
	Registered Land Surveyor
(Notarized)	_____
	Registration Number

- [4] Certificate of Approval of Water Supply and Sewage Disposal System

I hereby certify that the water supply and sewage disposal systems installed or proposed for installation in \_\_\_\_\_ meet the necessary Watauga County public health requirements and are hereby approved.

\_\_\_\_\_  
Date County Health Officer or Authorized Representative

- [5] Division of Highways District Engineer Certificate

I certify that the public streets shown on this plat have been completed, or that a performance bond or other sufficient surety has been posted to guarantee their completion, in accordance with at least the minimum specifications and standards of the State Department of Transportation for acceptance of subdivision streets on the state highway system for maintenance.

\_\_\_\_\_  
Date District Engineer

- [6] Certificate of Approval for Recording or Re-recording Subdivisions Which are Not Regulated By the Existing Subdivision Regulations

This plat represents a re-survey of property as shown on a plat recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, and /or does not require approval of the Town Council of the Town of Boone for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
Date Planning Director

**Section 96. Plat Approval Not Acceptance of Dedication Offers**

**[a]** Approval of a plat does not constitute acceptance by the town of the offer of dedication of any streets, sidewalks, parks or other public facilities shown on a plat. However, the town may accept any such offer of dedication by resolution of the council or by actually exercising control over and maintaining such facilities.

**Section 97. Protection Against Defects**

**[a]** Whenever (pursuant to Section 76) occupancy, use or sale is allowed before the completion of all facilities or improvements intended for dedication, then the performance bond or the surety that is posted pursuant to Section 76 shall guarantee that any defects in such improvements or facilities that appear within one year after the dedication of such facilities or improvements is accepted shall be corrected by the developer.

**[b]** Whenever all public facilities or improvements intended for dedication are installed before occupancy, use, or sale is authorized, then the developer shall post a performance bond or other sufficient surety to guarantee that he will correct all defects in such utilities or improvements that occur within one year after the offer of dedication of such facilities or improvements is accepted.

**[c]** An engineer retained by the developer shall certify to the town that all facilities and improvements to be dedicated to the town have been constructed in accordance with the requirements of this ordinance. This certification shall be a condition precedent to acceptance by the town of the offer of dedication of such facilities or improvements.

**[d]** For purposes of this section, the term “defects” refers to any condition in publicly dedicated facilities or improvements that requires the town to make repairs in such facilities over and above the normal amount of maintenance that they would require. If such defects appear, the guaranty may be enforced regardless of whether the facilities or improvements were constructed in accordance with the requirements of this ordinance.

**Section 98. Maintenance of Dedicated Areas Until Acceptance**

**[a]** Subject to Subsection [b], all facilities and improvements with respect to which the owner makes an offer of dedication to public use shall be maintained by the owner until such offer of dedication is accepted by the appropriate public authority.

**[b]** The council may relieve the owner of the requirements of this section if it determines that a property owners association or other similar legal entity has been established for the development in accordance with Section 84 [b] and that this association has assumed and is capable of performing the obligation set forth in Subsection [a].

**Section 99. Reserved**

**Section 100. Reserved**

**Section 101. Reserved**

**Section 102. Reserved**

**Section 103. Reserved**

**Section 104. Reserved**

**Section 105. Reserved**



## Article V Appeals, Variances, Interpretations

### Section 106. Appeals

**[a]** An appeal from any final action, order, decision or determination of the administrator may be taken to the Board of Adjustment by any person aggrieved. An appeal is taken by filing with the administrator a written notice of appeal specifying the grounds therefore. A notice of appeal shall be considered filed with the administrator and the Board of Adjustment when delivered to the Planning and Inspections Department, and the date and time of filing shall be entered on the notice by staff.

- [1] A resident of a designated Neighborhood Conservation District who has filed an occupancy complaint against a property located within such district are considered an aggrieved person for the purposes of this ordinance.

**[b]** An appeal must be taken within thirty (30) days after the date of the receipt of the notice of the action, decision, order or determination appealed from. Unless established at an earlier date by a return receipt for a certified mail notice, the date of receipt shall be conclusively presumed as three days after the notice of the decision or order appealed from has been deposited in the United States mail by the administrator, with proper postage affixed, addressed in accordance with the provisions of Section 131(b). For purposes of an appeal of the penalties imposed, the date of the administrator's decision is the date of the notice of violation which contains the statement of the penalties to be assessed.

**[c]** Whenever an appeal is filed, the administrator shall forthwith transmit to the Board of Adjustment the written notice of appeal and all the papers constituting the record relating to the action, order, decision or determination appealed from.

**[d]** An appeal stays all actions by the administrator seeking enforcement of or compliance with the action, order, decision or determination appealed from, unless the administrator certifies to the Board of Adjustment that (because of facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property, or that because the situation appealed from is transitory in nature, an appeal would seriously interfere with enforcement of this Ordinance. In that case, enforcement proceedings shall not be stayed except by order of the Board of Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the administrator and all other persons who have qualified as parties under the

duly enacted Rules of Procedure of the Board of Adjustment. In situations subject to the provisions of Section 132(d), the certification and stay procedures of this section shall not apply with regard to the pursuit of criminal charges.

**[e]** The Board of Adjustment may reverse or affirm, wholly or in part, or may modify the action, order, decision or determination appealed from and shall make any order, decision or determination that in its opinion ought be made in the case before it, including as to the amount of the penalty imposed, which it may reduce if it determines that the appellant has acted in good faith, and that the failure of the appellant to correct a violation is the result of circumstances beyond the appellant's control, and it makes other findings which make the amount of the presumptive civil penalty unfair under the circumstances of the particular case. The Board of Adjustment shall conduct appeal hearings in compliance with its duly adopted Rules of Procedure.

### **Section 107. Variances**

**[a]** An application for a variance shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator in the Planning and Inspections Department. Applications shall be handled in the same manner as applications for special-use permits in conformity with the provisions of Sections 64, 65 and 71.

**[b]** A variance may be granted by the Board of Adjustment if it finds that strict enforcement of the ordinance regulations would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit and intent of the ordinance and the comprehensive plan will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it finds that:

- [1] There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance;
- [2] The hardship complained of is one suffered by the applicant rather than by neighbors or the general public;
- [3] The hardship relates to the applicant's property rather than to personal circumstances;
- [4] The hardship is peculiar to the applicant's property, rather than a hardship shared by the neighborhood or resulting from the existence of nonconforming situations in the vicinity;
- [5] The hardship is not the result of the applicant's own actions;

- [6] The variance will not substantially interfere with or injure the rights of others whose property would be affected by granting of the variance; and,
- [7] The variance will neither result in the extension of a nonconforming situation in violation of Article VIII nor authorize the initiation of a nonconforming use of land.

**[c]** In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties. In its consideration of applications for a variance, the board shall not use the existence of nonconformities in the vicinity as justification for the granting of variances.

**[d]** A variance may be issued for an indefinite duration or for a specified duration only.

**[e]** The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this ordinance.

**[f]** No change in permitted uses may be authorized by variance.

#### **Section 108. Additional Requirements for Variances within Water Supply Watersheds**

**[a]** The administrator shall notify in writing each local government having jurisdiction in the watershed as well as any entity using the watershed for water consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the administrator prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.

**[b]** If the application calls for the granting of a major variance, and if the Watershed Review Board decides in favor of granting the variance, the board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

- [1] The variance application;
- [2] The hearing notices;
- [3] The evidence presented;



- [4] Motions, offers of proof, objections to evidence, and rulings on them;
- [5] Proposed findings and exceptions; and,
- [6] The proposed decision, including all conditions proposed to be added to the permit.

**[c]** The preliminary record shall be sent to the Environmental Management Commission for its review as follows:

- [1] If the commission concludes from the preliminary record that the variance qualifies as a major variance and that [i] the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and [ii] the variance, if granted, will not result in a serious threat to the water supply, then the commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The commission shall prepare a commission decision and send it to the Watershed Review Board. If the commission approves the variance as proposed, the board shall prepare a final decision granting the proposed variance. If the commission approves the variance with conditions and stipulations, the board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.
- [2] If the commission concludes from the preliminary record that the variance qualifies as a major variance and that [i] the property owner can secure a reasonable return from or make a practical use of the property without the variance or [ii] the variance, if granted, will result in a serious threat to the water supply, then the commission shall deny approval of the variance as proposed. The commission shall prepare a commission decision and send it to the Watershed Review Board. The board shall prepare a final decision denying the variance as proposed.

**[d]** A record of all variances granted within water supply watersheds by the town shall be submitted the Environmental Management Commission on or before January 1st of the year following the granting of the variance.

### **Section 109. Interpretations**

**[a]** The zoning administrator is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the zoning administrator, they shall be handled as provided in Section 106.

**[b]** An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Administrator. The application shall contain sufficient information to enable the board to make the necessary interpretation.

**[c]** Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

- [1] Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams or railroads shall be construed to follow such centerlines;
- [2] Boundaries indicated as approximately following lot lines, corporate limits, or extraterritorial boundary lines, shall be construed as following such lines, limits or boundaries;
- [3] Boundaries indicated as following shorelines or the centerlines of streams, rivers, lakes, or other bodies of water shall be construed to follow such shorelines or centerlines, and in the event of change in the shoreline or centerline, the boundary shall be construed as moving with the actual shoreline or centerline;
- [4] Boundaries indicated as approximately following designated limits of areas of special flood hazard shall be construed as following such limits;
- [5] Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map;
- [6] Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

### **Section 110. Requests to be Heard Expeditiously**

**[a]** As provided in Section 82, the Board of Adjustment shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Article VI, and obtain the necessary information to make sound decisions.

### **Section 111. Burden of Proof in Appeals and Variances**

**[a]** When an appeal is taken to the Board of Adjustment in accordance with Section 106, the burden of proof and burden of persuasion shall be on the

party appealing the action, order, decision, or determination, but the administrator or his or her designee shall be present to participate in the hearing and to answer such questions as may be directed to him or her by members of the Board of Adjustment, or by any party duly participating in the hearing, in compliance with the duly adopted Rules of Procedure of the Board of Adjustment.

**[b]** The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in Subsection 107 [b], as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

### **Section 112. Board Action on Appeals and Variances**

**[a]** The Board of Adjustment shall decide any appeal before it in compliance with the procedures set out in its duly adopted Rules of Procedure.

**[b]** Before granting a variance, the board must take a separate vote and vote affirmatively (by a four fifths majority (see Section 46) on each of the seven required findings stated in Subsection 107 [b]. Insofar as practicable, a motion to make an affirmative finding on each of the requirements set forth in Subsection 109 [b] shall include a statement of the specific reasons or findings of fact supporting such motion.

**[c]** A motion to deny a variance may be made on the basis that any one or more of the seven criteria set forth in Subsection 107 [b] are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the board's decision if supported by more than one fifth of the board's membership (excluding vacant seats).

**[d]** If the variance is granted, the nature of the variance and any conditions attached thereto shall be entered on the face of any necessary zoning permit.

**Section 113. Reserved**

**Section 114. Reserved**

**Section 115. Reserved**

**Section 116. Reserved**

**Section 117. Reserved**

## **Article VI      Hearing Procedures for Appeals and Applications**

### **Section 118. Hearing Required on Appeals and Applications**

**[a]** Before making a decision on an appeal or an application for a variance, special-use permit, zoning vested right, or a petition from staff to revoke a special use permit, the Board of Adjustment shall hold a public hearing on the appeal or application.

**[b]** Subject to Subsection [c], the hearing shall be open to the public and all persons interested in the outcome of the appeal or the application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.

**[c]** The hearing board may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published unless a period of six (6) weeks or more elapses between hearing dates.

### **Section 119. Notice of Hearing**

**[a]** The administrator shall give notice of any hearing required by Section 118 as follows:

- [1] Notice shall be given to the appellant or applicant and any other person who makes a written request for such notice by mailing to such persons a written notice not later than ten (10) days before the hearing.
- [2] Notice shall be given to neighboring property owners by mailing a written notice not later than ten (10) days before the hearing to those persons who have listed for taxation real property any portion of which is located within one hundred fifty (150) feet of the lot that is the subject of the application or appeal. Notice shall also be given by prominently posting signs in the vicinity of the property that is the subject of the proposed action. Such signs shall be posted not less than seven (7) days prior to the hearing.

- [3] Notice shall be given to other potentially interested persons by publishing a notice one (1) time in a newspaper having a general circulation in the area not less than ten (10) nor more than twenty five (25) days prior to the date of the hearing. Notice for vested rights applications shall be given to other potentially interested persons by publishing a notice two (2) times in a newspaper having a general circulation in the area not less than ten (10) nor more than twenty-five (25) days prior to the date of the hearing.
- [4] The notice required by this section shall state the date, time, and place of hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

### **Section 120. Evidence**

**[a]** The provisions of this section apply to all hearings for which a notice is required by Section 118.

**[b]** All persons who intend to present evidence to the permit-issuing board, rather than arguments only, shall be sworn.

**[c]** All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (crucial findings) shall be based upon reliable evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.

### **Section 121. Modification of Application at Hearing**

**[a]** In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Adjustment, the applicant may agree to modify his application, including the plans and specifications submitted.

**[b]** Unless such modifications are so substantial or extensive that the board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to staff.

**Section 122. Record**

**[a]** A tape recording shall be made of all hearings required by Section 118, and such recordings shall be kept for at least two (2) years. Accurate minutes shall also be kept of all such proceedings, but a transcript need not be made.

**[b]** Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the town for at least two (2) years.

**Section 123. Written Decision**

**[a]** Any decision made by the Board of Adjustment regarding an appeal or variance or issuance or revocation of a special use permit shall be reduced to writing and served upon the applicant or appellant and all other persons who make a written request for a copy. A copy of the decision shall also be placed in the Planning and Inspections Department and, in case of an approved special use permit or variance, recorded at the Watauga County Registry.

**[b]** Any conditions attached to the issuance of a variance or special use permit shall be entered on the face of any necessary zoning permit.

**[c]** In addition to a statement of the board's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the board's findings and conclusions, as well as supporting reasons or facts, whenever this ordinance requires the same as a prerequisite to taking action.

**Section 124. Reserved****Section 125. Reserved****Section 126. Reserved****Section 127. Reserved**



## **Article VII      Enforcement and Review**

### **Section 128.    Violations**

**[a]** Whenever by the provisions of this ordinance, as duly interpreted and/or applied by the staff of the Town's Planning and Inspections Department, or the Boone Board of Adjustment, or the Boone Town Council, as the case may be, the performance, avoidance or cessation of any act is required, the performance of any act is prohibited, or whenever any regulation, condition, or limitation is imposed on the use of any land, or on the erection, alteration, or the use of a structure, a failure to comply with such provision, regulation, condition or limitation shall constitute a violation of this Ordinance.

### **Section 129.    Complaints Regarding Violations**

**[a]** Whenever the administrator receives a written, signed complaint from one or more persons alleging a violation of this ordinance, he shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.

**[b]** Investigations of possible occupancy violation may be initiated by the submission of a "Neighborhood Occupancy Concern" form, to be furnished by the administrator and signed by the person submitting the form. The person submitting the form may do so for him or herself, or may submit it as representative of a neighborhood organization or group from the neighborhood in question.

### **Section 130.    Persons Liable**

**[a]** The owner, tenant, or occupant of any land or structure, or part thereof, or other person who possesses a cognizable interest in the real or personal property in question, who participates in, assists, directs, causes, allows, maintains, or is otherwise responsible for any situation that is contrary to the requirements of this ordinance shall be liable for violations of this Ordinance.

**[b]** In order to avoid being charged with one of more penalties for an occupancy violation, the owner of rental property which is leased for a period of certain duration must:

- [1]** include a provision in the lease of the property which authorizes the owner to terminate the lease early if the tenants violate the occupancy or zoning rules of the Town; and



- [2] take prompt action to terminate the lease and/or tenancy of the tenants of the property when an occupancy violation has been confirmed by the administrator.

### **Section 131. Procedures Upon Discovery of Violations**

**[a]** If the administrator finds that any provision, regulation, condition or limitation of this ordinance is being or has been violated, unless the person to be charged the violation is a repeat violator of Article XVIII, Signs, he or she shall first attempt to contact the person(s) liable, by telephone or in person, to advise the person(s) liable of the violation, and to discuss what steps the person(s) liable will take to correct the violation. Other than in case of violation of the provisions, regulations, conditions or limitations created under Article XVIII, "Signs", when, in the sole judgment of the administrator, the violation can be corrected within five business days of this discussion, and the person liable expresses his or her intent to correct the violation within that time period, the administrator may suspend any further enforcement action, to allow the person(s) liable to correct the violation. In the case of violations of Article XVIII, except in the case of a repeat violator, when, in the sole judgment of the administrator, the violation can be corrected within twenty-four (24) hours of this discussion, and the person liable expresses his or her intent to correct the violation within that time period, the administrator may suspend any further enforcement action, to allow the person(s) liable to correct the violation. In circumstances where the violator is proceeding in good faith to remove the offending signs, but is unable to meet the aforementioned twenty-four (24) deadline due to practicalities of sign removal or other circumstances beyond the control of the violator, the administrator may afford the violator additional time.

**[b]** If the administrator finds that any provision of this ordinance is being or has been violated, and he or she is unable to contact the person(s) liable by telephone or in person because the person's telephone number is not listed in the local telephone directory reasonably accessible to staff and it cannot be obtained through directory assistance for Boone, and/or the person(s) whereabouts are unknown to the administrator, he shall deliver a written notice of by certified mail, return receipt requested, to the person(s) liable for such violation, addressed to the address on file at the office of the Watauga County Tax Administrator, in the case of the owner of real property in question, or to such other address as the person(s) liable has provided to the administrator, if any, or to the address of the real property in question, or to such other address as the administrator may reasonably believe will provide actual notice of the violation to the person(s) liable. The failure of the person liable to claim or accept a notice sent by certified mail, return receipt requested, from the administrator, shall not prevent further action under this article, but will be presumed to have been received three days after the notice is deposited in the United States Mail, with proper postage affixed, addressed in compliance with this paragraph.

**[c]** Other than in the case of provisions, regulations or limitations created under Article XVIII, "Signs", if the administrator finds that any provision, regulation, condition or limitation of this ordinance is being or has been violated, and he or she believes that the violation can not be corrected within five business days, or when the administrator, pursuant to subparagraph [a], above, has afforded the person(s) liable a five business day period to correct the violation, but the violation has not been fully corrected within that time period, he or she shall deliver a written notice of violation by hand delivery, or by certified mail, return receipt requested, to the person(s) liable for such violation, addressed to the address on file at the office of the Watauga County Tax Administrator, in the case of the owner of real property in question, or to such other address as the person(s) liable has provided to the administrator, if any, or to the address of the real property in question, or to such other address as the administrator may reasonably believe will provide actual notice of the violation to the person(s) liable. In the case of violations of Article XVIII, when the person(s) in question is (are) a repeat violator(s), or when, in the sole judgment of the administrator, the violation can not be corrected within twenty-four (24) hours of the discussion referred to in subparagraph [a] above, or when the administrator is unable to contact the person(s) liable, or when the administrator, pursuant to subparagraph [a], above, has afforded the person(s) liable a twenty-four (24) hour period to correct the violation, but the violation has not been fully corrected within that time period, he or she shall deliver a written notice of violation by hand delivery or by certified mail, return receipt requested, to the person(s) liable for such violation, addressed to the address on file at the office of the Watauga County Tax Administrator, in the case of owner of real property in question, or to such other address as the person(s) liable has provided to the administrator, if any, or to the address of the real property in question, or to such other address as the administrator may reasonably believe will provide actual notice of the violation to the person(s) liable. The failure of the person liable to claim or accept a notice sent by certified mail, return receipt requested, from the administrator, shall not prevent further action under this article, but will be presumed to have been received three days after the notice is deposited in the United States Mail, with proper postage affixed, addressed in compliance with this paragraph.

**[d]** Other than in the case of violations of provisions, regulations, conditions or limitations created under Article XVIII, "Signs," which shall impose penalties upon the person(s) liable, which begin accruing on the date of the notice of violation, in the notice of violation, the administrator may afford the person(s) liable a period of up to ten additional days from the date of the notice to discontinue the violation and up to thirty days from the date of the notice to correct the violation before penalties are imposed. The decision by the administrator as to whether such periods should be allowed and the length of the aforesaid periods which shall be allowed the person(s) liable shall be solely within the discretion of the administrator, but shall be based upon the

administrator's application of the relevant considerations, including the following:

- [1] The seriousness of the violation;
- [2] The damage which may occur by any delay in enforcement;
- [3] The effect of the violation, if any, on neighboring property owners or occupiers of neighboring property, or other citizens of the Town;
- [4] Whether or not the person(s) liable is a repeat violator;
- [5] Whether the violation can be discontinued within a period of ten days or less and corrected within a period of thirty days or less;
- [6] Whether the violation is of such nature that the person liable may circumvent enforcement of the ordinance by temporary correction of a violation followed by re-institution of the violation; and
- [7] Such other factors as the administrator determines reasonably require immediate enforcement, or conversely, allow some minimal delay in enforcement.

The foregoing factors are not exclusive, and the applicability of, or response to any one individual factor shall not bind the decision of the administrator, which should base his or her decision on a determination of what action is in the best interests of the Town.

**[e]** The notice of violation shall state the following:

- [1] The nature of the violation and paragraphs, sections or chapters of the ordinance which have been violated;
- [2] The amount of time, if any, within which the person(s) liable may correct the violation and avoid further enforcement action and penalty;
- [3] The steps the person(s) liable must take to correct the violation;
- [4] The date civil penalties, pursuant to Section 132 or Section 133 of this Article, as applicable, will begin to accrue and the amount of such penalties;
- [5] The action which the administrator intends to take if the violation is not corrected, including the initiation of criminal charges, if the initiation of criminal charges is anticipated or the administrator intends to seek the authority of the Boone Town Council to initiate criminal charges; and
- [6] The right of the person(s) liable to appeal the decision of the administrator to the Board of Adjustment.

**[f]** Notwithstanding the requirement of this section for a written notice of violation, when the administrator determines that a delay in enforcement would seriously threaten the effective enforcement of the Ordinance or that such delay may pose a danger to the public health, safety, or welfare, the administrator may undertake enforcement pursuant to Section 132 without prior written notice. In such cases the administrator shall send a notice of violation as soon as practicable.

### **Section 132. Penalties and Remedies for Violations**

**[a]** Except in the case of a Repeat Violator, in which case civil penalties are enhanced in accordance with Section 133, any act constituting a violation of this ordinance shall subject each person liable to a civil penalty per day in the amount specified in Section 132(a)(1), from the date the penalty is imposed until the date the violation is corrected or the date of a court's judgment, whichever is earlier, plus the court costs and attorney's fees incurred by the Town. If the person(s) liable fails to pay the penalty within ten days of the date upon which penalties are first imposed, as specified in the written notice of violation, upon action by the Town Council, the penalty may be recovered by the Town in a civil action in the nature of an action to collect a debt. A civil penalty may not be appealed to the Board of Adjustment if the person(s) liable does not appeal to the Board of Adjustment in compliance with the requirements of Section 106.

[1] Schedule of Civil Penalties:

Civil penalties for a violation of this Ordinance, other than for repeat violators, shall be as follows:

- a. Illegal Signs - \$100 per sign per day.
- b. Violation of Occupancy rules - \$200.00 per violation per day.
- c. Grading in a designated floodway - \$500.00 per day.
- d. Improperly pruning, removing or killing a protected tree or shrub - \$100.00 per inch in diameter for each tree and \$50.00 for each shrub, plus \$100.00 per day for each day from the deadline for corrective action for replacement plantings (ordered pursuant to Section 370(c)(5)) until corrective action is taken.
- e. Removal of a required buffer - \$500.00, plus \$100.00 per day until corrected.
- f. Violation of Part II, Soil Erosion and Sediment Control of Article XVI Grading, Soil Erosion and Sediment Control - \$1,000.00, plus \$100 per day until corrected.
- g. Illegal subdivision - \$1,000.00, plus \$100.00 per day until corrected.
- h. All other violations - \$100.00 per day.

**[b]** Although a properly filed appeal shall stay action by the Town to collect any civil penalty assessed, the penalty in question shall continue to accrue during the pendency of the appeal, and if the decision by the Board of Adjustment on appeal affirms the action, order, decision or determination by the administrator, unless the penalty is modified by the Board of Adjustment in compliance with Section 106(e), the amount of a penalty shall be calculated as though no appeal was filed.

**[c]** When authorized by the Town Council, this ordinance may also be enforced by any available equitable action or proceeding(s) instituted by the administrator or Town to prevent, restrain, correct or abate a violation of this ordinance.

**[d]** (Current Section 294(b)) Any person who knowingly or willfully violates any provision of Part II, Soil Erosion and Sediment Control of Article XVI Grading, Soil Erosion and Sediment Control of this Ordinance, or rule or order adopted or issued pursuant to this Ordinance or who knowingly or willfully initiates or continues a land disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed five thousand dollars (\$5,000.00).

**[e]** Any person who, being the owner or agent of the owner of any land located within the planning jurisdiction of the Town, subdivides his or her land in violation of this Ordinance, or transfers or sells land by reference to, exhibition of, or by any other use of a plat showing a subdivision of the land before the plat has been properly approved and recorded in the office of the Watauga County Register of Deeds, shall be guilty of a Class 1 misdemeanor. When authorized by the Town Council, the Town may bring an action for injunction against any person other than an innocent bona fide purchaser for value who has no actual or constructive knowledge of the violation, to void any subdivision, transfer, conveyance or sale of land which is undertaken in violation of this Ordinance. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from violation of this Ordinance.

**[f]** Unless a more stringent criminal penalty is prescribed for a particular violation of this ordinance, any person who violates the UDO shall be guilty of a Class 3 misdemeanor, pursuant to N.C. Gen. Stat. § 14-4 (a), punishable by a fine of up to \$500.00. The administrator shall institute criminal charges against such person with the authorization of the Town Council. However, whenever the administrator determines that there is an imminent threat of serious environmental damage that may be prevented by the institution of criminal charges, or that the immediate initiation of criminal charges may prevent the creation or continuation of a serious danger to the public health, safety, or welfare, in consultation with the Town Manager, the administrator

may initiate criminal charges without the prior authorization of the Town Council. Should such action be undertaken, the administrator shall inform the Town Council of such action as soon as practicable.

**[g]** In determining whether criminal charges should be undertaken with respect to a particular violation, the Town Council shall consider the following factors:

- [1] Whether the person who has committed the violation is a repeat violator;
- [2] Whether the person who has committed the violation has acted in intentional disregard of the Ordinance;
- [3] Whether there are factors outside the control of the person who has committed the violation which have prevented the person from expeditiously correcting the violation;
- [4] Whether the person who has committed the violation has stated an intention to undertake prompt correction action;
- [5] What damage to the interests sought to be protected by the Ordinance, if any, has occurred as a result of the violation;
- [6] Whether the violation is transitional in nature, making civil penalties ineffective in ensuring enforcement of the Ordinance, or for such other reason that makes civil penalties ineffective in ensuring enforcement of the ordinance; and
- [7] Whether some other reason is identified which will enhance the enforcement of the Ordinance by the pursuit of criminal charges in a particular case.

The foregoing factors are not exclusive, and the applicability of, or response to any individual factor(s) shall not bind the decision of the Town Council, which should base its decision on its determination of what action is in the best interests of the Town.

### **Section 133. Repeat Violators**

**[a]** When a person(s) liable is a Repeat Violator, as defined in Article II, the administrator shall state that fact in the notice of violation in addition to the other matters listed in Section 131.

**[b]** For any violation of this ordinance, a Repeat Violator shall be subject to a civil penalty of one thousand dollars (\$1,000.00), plus court costs and attorney's fees incurred by the Town. In addition, for the first repeat violation a Repeat Violator shall be subjected to a civil penalty per day of two hundred fifty percent of the amount designated in Section 132(a)(1) for the type of violation for each day from the day the penalty is imposed until the date the violation is corrected or the date of a court's judgment, whichever is earlier. For the second repeat violation and all additional repeat violations, a Repeat Violator shall be subjected to a civil penalty per day of five hundred percent of the

amount designated in Section 132(a)(1) for the type of violation for each day from the day the penalty is imposed until the date the violation is corrected or the date of a court's judgment, whichever is earlier. If the Repeat Violator fails to pay the penalty within ten days of the date upon which penalties are first imposed, as specified in the written notice of violation, upon action by the Town Council, the penalty may be recovered by the Town in a civil action in the nature of an action to collect a debt. A civil penalty may not be appealed to the Board of Adjustment if the Repeat Violator does not appeal to the Board of Adjustment in the form and within the time limit prescribed in Section 106.

### **Section 134. Permit Revocation**

**[a]** A zoning, sign, or special use permit may be revoked by the permit issuing authority (in accordance with the provisions of this section) if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of the ordinance, or any additional requirements lawfully imposed by the permit issuing board.

**[b]** Before a special use permit may be revoked, all of the notice and hearing and other requirements of Article VI shall be complied with. The notice shall inform the permit recipient of the alleged grounds for revocation.

[1] The burden of presenting evidence sufficient to authorize the permit issuing authority to conclude that a permit should be revoked for any of the reasons set forth in Subsection [a] shall be upon the party advocating that position. The burden of persuasion shall also be upon that party.

[2] A motion to revoke a permit shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.

**[c]** Before a zoning or sign permit may be revoked, the administrator shall give the permit recipient ten (10) days notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations. If the permit is revoked, the administrator shall provide to the permittee a written statement of the decision and the reasons therefore.

**[d]** No person may continue to make use of land or buildings in the manner authorized by any zoning, sign or special use permit after such permit has been revoked in accordance with this section.

### **Section 135. Judicial Review**

**[a]** Every decision of the Board of Adjustment shall be subject to review by the Superior Court of Watauga County by proceedings in the nature of certiorari.

**[b]** The petition for the writ of certiorari must be filed with the Watauga County Clerk of Superior Court within thirty (30) days after the later of the following occurrences:

- [1] A written copy of the board's decision (see Section 123) has been filed in the Planning and Inspections Department, or
- [2] A written copy of the board's decision (see Section 123) has been delivered by hand delivery or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

**[c]** A copy of the writ of certiorari shall be served upon the manager for the Town of Boone.

### **Section 136. Enforcement Concerning Violations in Floodway Overlay Zones**

**[a]** Whenever land disturbing activity is undertaken in violation of Article XVII Flood Damage Prevention, the administrator may order the work that is in violation to be immediately stopped. The stop order shall be in writing and directed to the person responsible for the violation(s). The order shall state the work to be stopped, the reasons for stoppage, and the conditions under which the work may be resumed. Pending the ruling on the appeal, no further work may take place in violation of a stop work order. Appeals of a stop work order shall be made as follows:

- [1] A written demand for a hearing must be delivered to Planning and Inspections Department within ten (10) days after receipt of a stop order notice.
- [2] Hearings held pursuant to this section shall be conducted by the Board of Adjustment at their next regularly scheduled meeting.
- [3] The Board of Adjustment shall render its final decision on any appeal no later than the second regularly scheduled board meeting.
- [4] The decision of the Board of Adjustment may be appealed in accordance with Section 114.

### **Section 137. Stop Work Orders**

**[a]** In addition to situations described in Section 136 as authorizing stop work orders, whenever the administrator determines that a person is engaged in doing work without a permit required by Section 61, or is doing work which constitutes, creates, or results in other violation of this Ordinance and that



irreparable injury will occur if the violation is not terminated immediately, the administrator may order the specific part of the work that constitutes, creates or results in a violation to be immediately stopped. Such stop work order shall be in writing, directed to the person doing the work and the owner of the property and a copy shall be posted on the property upon which the work has been undertaken.

### **Section 137A. Enforcement by Others**

**[a]** In addition to the remedies provided to the Town hereunder, other persons who have qualified as parties pursuant to the duly enacted Rules of Procedure of the Board of Adjustment may, after the exhaustion of their available administrative remedies, seek to enforce this Ordinance by injunction, mandamus or other appropriate legal action. This provision, however, is not intended to limit the rights of others which are created by North Carolina law to take action to protect their own property interests and rights.



## Article VIII Nonconforming Situations

### Section 138. Definitions

**[a]** Unless otherwise specifically provided for or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this article.

- [1] *Dimensional Nonconformity:* A nonconforming situation that occurs when the height, size or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.
- [2] *Effective Date of This Ordinance:* Whenever this article refers to the effective date of this ordinance, the reference shall be deemed to include the effective date of any amendments to this ordinance if the amendment, rather than this ordinance as originally adopted, creates a nonconforming situation.
- [3] *Expenditure:* A sum of money paid out in return for some benefit or to fulfill some obligation. The term also includes binding contractual commitments to make future expenditures, as well as any other substantial changes in position.
- [4] *Nonconforming Lot:* A lot existing at the effective date of this ordinance (and not created for the purposes of evading the restrictions of this ordinance) that does not meet the minimum area requirement of the district in which the lot is located.
- [5] *Nonconforming Project:* Any structure, development, or undertaking that is incomplete at the effective date of this ordinance and would be inconsistent with any regulation applicable to the district in which it is located if completed as proposed or planned.
- [6] *Nonconforming Sign:* A sign that, on the effective date of this ordinance does not conform to one or more of the regulations set forth in this ordinance, particularly Article XVIII, Signs.

- [7] *Nonconforming Use*: A nonconforming situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. (For example, a commercial office building in a residential district may be a nonconforming use). The term also refers to the activity that constitutes the use made of the property. (For example, all the activity associated with running a bakery in a residentially zoned area is a nonconforming use).
- [8] *Nonconforming Situation*: A situation that occurs when, on the effective date of this ordinance, an existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a nonconforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this ordinance, or because land or buildings are used for purposes made unlawful by this ordinance. Nonconforming signs shall not be regarded as nonconforming situations for purposes of this article but shall be governed by the provisions of Section 341.

### **Section 139. Continuation of Nonconforming Situations and Completion of Nonconforming Projects**

**[a]** Unless otherwise specifically provided in this ordinance and subject to the restrictions and qualifications set forth in Sections 143 through 145, nonconforming situations that were otherwise lawful on the effective date of this ordinance may be continued.

**[b]** Nonconforming projects may be completed only in accordance with the provisions of Section 145.

### **Section 140. Nonconforming Lots**

**[a]** When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum set forth in Section 200, then the lot may be used as proposed just as if it were conforming. However, no use that requires a greater lot size than the established minimum lot size for a particular zone is permissible on a nonconforming lot.

**[b]** When the use proposed for a nonconforming lot is one that is conforming in all other respects but the applicable setback requirements (Section 200) cannot be complied with, then the entity authorized by this ordinance to issue a permit for the proposed use (the administrator, Board of Adjustment or council) may allow deviations from applicable setback regulations if it finds that:

- [1] The property cannot reasonably be developed for the use proposed without such deviations,
- [2] These deviations are necessitated by the size or shape of the nonconforming lot, and
- [3] The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety.

**[c]** For purposes of Subsection [b], compliance with applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, mere financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

**[d]** This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structures upon it. A change in use of a developed nonconforming lot may be accomplished in accordance with Section 143.

**[e]** Subject to the following sentence, if, on the date this section becomes effective, an undeveloped nonconforming lot adjoins and has continuous frontage with one or more other undeveloped lots under the same ownership, then neither the owner of the nonconforming lot nor his successors in interest may take advantage of the provisions of this section. This subsection shall not apply to a nonconforming lot if a majority of the developed lots located on either side of the street where such lot is located and within five hundred (500) feet of such lot are also nonconforming. The intent of this subsection is to require nonconforming lots to be combined with other undeveloped lots to create conforming lots under the circumstances specified herein, but not to require such combination when that would be out of character with the way the neighborhood has previously been developed

**[f]** Where a nonconforming lot was created by public taking action or the result of a court order, the combination or recombination of lots as described in Subsection [e] shall not be required.

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**Section 141. Extension or Enlargement of Nonconforming Situations**

**[a]** Except as specifically provided in this section, no person may engage in any activity that causes an increase in the extent of nonconformity of a nonconforming situation. In particular, physical alteration of structures or the placement of new structures on open land is unlawful if such activity results in:

- [1] An increase in the total amount of space devoted to a nonconforming use, or
- [2] Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations or density requirements or other requirements such as parking requirements.

**[b]** Subject to Subsection [d], a nonconforming use may be extended throughout any portion of a completed building that, when the use was made nonconforming by this ordinance, was manifestly designed or arranged to accommodate such use. However, Subject to Section 145 (authorizing the completion of nonconforming projects in certain circumstances), a nonconforming use may not be extended to additional buildings or to land outside the original building.

**[c]** Subject to Section 145 (authorizing the completion of nonconforming projects in certain circumstances), a nonconforming use of open land may not be extended to cover more land than was occupied by that use when it became nonconforming, except that a use that involves the removal of natural materials from the lot (e.g., a sand pit) may be expanded to the boundaries of the lot where the use was established at the time it became nonconforming if ten percent (10%) or more of the earth products had already been removed on the effective date of this ordinance.

**[d]** The volume, intensity or frequency of use of property where a nonconforming situation exists may be increased and the equipment or processes used at a location where a nonconforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this section occur.

**[e]** Any structure used for single family residential purposes may be enlarged or replaced with a similar structure of a larger size, so long as the enlargement or replacement does not create new nonconformities or increase the extent of existing nonconformities with respect to such matters as setback and parking requirements, nor does it not compromise the health, safety and welfare of the residents. This paragraph is subject to the limitations stated in Section 144 (abandonment and discontinuance of nonconforming situations).

**[f]** Whenever: (i) there exists a lot with one or more structures on it, and (ii) a change in use that does not involve any enlargement of a structure is proposed for such lot, and (iii) the parking or loading requirements of Article XIX that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practically be used for parking or loading, then the proposed use shall not be regarded as resulting in an impermissible extension or enlargement of a nonconforming situation. However, the applicant shall be required to comply with all applicable parking and loading requirements that can be satisfied without acquiring additional land, and shall also be required to obtain satellite parking in accordance with Section 352 if: (i) parking requirements cannot be satisfied on the lot with respect to which the permit is required; and, (ii) such satellite parking is reasonably available. If such satellite parking is not reasonably available at the time the zoning or special use permit is granted, then the permit recipient shall be required to obtain it if and when it does become reasonably available. This requirement shall be a continuing condition of the permit.

#### **Section 142. Repair, Maintenance and Reconstruction**

**[a]** Minor repairs to and routine maintenance of property where nonconforming situations exist are permitted, encouraged, and do not require a zoning permit. Major repairs, maintenance, or renovation, i.e., work estimated to cost more than fifty percent (50%) of the appraised valuation of the structure to be renovated may be done only in accordance with a zoning permit issued pursuant to this section.

**[b]** If a structure located on a lot where a nonconforming situation exists is damaged to an extent that the costs of repair or replacement would exceed fifty percent (50%) of the appraised valuation of the damaged structure, then the damaged structure may be repaired or replaced only in accordance with a zoning permit issued pursuant to this section. This subsection does not apply to structures used for single family residential purposes, which structures may be reconstructed pursuant to a zoning permit just as they may be enlarged or replaced as provided in Subsection 141 [e].

**[c]** For the purposes of Subsections [a] and [b]:

- [1] The “cost” of renovation or repair or replacement shall mean the fair market value of the materials and services necessary to accomplish such renovation , repair or replacement.
- [2] The “cost” of renovation, repair or replacement shall mean the total cost of all such intended work, and no person may seek to avoid the intent of Subsections [a] or [b] by doing such work incrementally.

- [3] The “appraised valuation” shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or the valuation of a professionally recognized property appraiser.

**[d]** The administrator shall issue a permit authorized by this section if he finds that, in completing the renovation, repair or replacement work:

- [1] No violation of Section 141 will occur, and
- [2] The permittee will comply to the extent reasonably possible with all provisions of this ordinance applicable to the existing use (except that the permittee shall not lose his right to continue a nonconforming use).

Compliance with a requirement of this ordinance is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible.

### **Section 143. Change in Use of Property Where a Nonconforming Situation Exists**

**[a]** A change in use of property (where a nonconforming situation exists) that is sufficiently substantial to require a new zoning or special use permit in accordance with Section 61 may not be made except in accordance with Subsections [b] or [c]. However, this requirement shall not apply if only a sign permit is needed.

**[b]** If the intended change in use is to a principal use that is permissible in the district where the property is located, and all of the other requirements of this ordinance applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant lot. Once conformity with this ordinance is achieved, the property may not revert to its nonconforming status.

**[c]** If the intended change in use is to a principal use that is permissible in the district where the property is located, but all of the requirements of this ordinance applicable to that use cannot be reasonably complied with, the change is permissible if the entity authorized by this ordinance to issue a permit for that particular use (the administrator, Board of Adjustment, or council) issues a permit authorizing the change. This permit may be issued if the permit issuing authority finds, in addition to any other findings that may be required by this ordinance, that:



- [1] The intended change will not result in a violation of Section 141, and
- [2] All of the applicable requirements of this ordinance that can reasonably be complied with will be complied with. Compliance with a requirement of this ordinance is not reasonably possible if compliance cannot be achieved without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting such requirements as paved parking does not constitute grounds for finding that compliance is not reasonably possible. And in no case may an applicant be given permission pursuant to this subsection to construct a building or to add to an existing building if additional nonconformities would thereby be created.

#### **Section 144. Abandonment and Discontinuance of Nonconforming Situations**

**[a]** When a nonconforming use is discontinued for a period of one hundred eighty (180) days, in any twelve month period, the property involved may thereafter be used only for conforming purposes.

**[b]** Except as provided in Subsection [a], all work on any nonconforming project shall cease on the effective date of this ordinance, and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a zoning, special use or sign permit issued in accordance with this section by the individual or board authorized by this ordinance to issue permits for the type of development proposed. The permit issuing authority shall issue such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his position in some substantial way in reasonable reliance on the land use law as it existed before the effective date of this ordinance and thereby would be unreasonably prejudiced if not allowed to complete his project as proposed. In considering whether these findings may be made, the permit issuing authority shall be guided by the following, as well as other relevant considerations:

- [1] All expenditures made to obtain or pursuant to a validly issued and non revoked building, zoning, sign or special use permit shall be considered as evidence of reasonable reliance on the land use law that existed before this ordinance became effective.

**[c]** For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a nonconforming apartment building for one hundred eighty (180) days shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

**[d]** When a structure or operation made nonconforming by this ordinance is vacant or discontinued at the effective date of this ordinance, the one hundred eighty (180) day period for purposes of this section begins to run on the effective date of this ordinance.

#### **Section 145. Completion of Nonconforming Projects**

**[a]** All nonconforming projects on which construction was begun at least one hundred eighty (180) days before the effective date of this ordinance as well as all nonconforming projects that are at least ten (10) percent completed in terms of the total expected cost of the project on the effective date of this ordinance may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain non revoked and unexpired. If a development is designed to be completed in stages, this subsection shall apply only to the particular phase under construction.

**[b]** Except as provided in Subsection [a], all work on any nonconforming project shall cease on the effective date of this ordinance, and all permits previously issued for work on nonconforming projects may begin or may be continued only pursuant to a zoning, special use, conditional use, or sign permit issued in accordance with this section by the individual or board authorized by this ordinance to issue permits for the type of development proposed. The permit issuing authority shall issue such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations or otherwise changed his position in some substantial way in reasonable reliance on the land use law as it existed before the effective date of this ordinance and thereby would be unreasonably prejudiced if not allowed to complete his project as proposed. In considering whether these findings may be made, the permit issuing authority shall be guided by the following, as well as other relevant considerations:

- [1] All expenditures made to obtain or pursuant to a validly issued and non revoked building, zoning, sign, special use or conditional use permit shall be considered as evidence of reasonable reliance on the land use law that existed before this ordinance became effective.

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- [2] Except as provided in Subdivision [b][1], no expenditures made more than one hundred eighty (180) days before the effective date of this ordinance may be considered as evidence of reasonable reliance on the land use law that existed before this ordinance became effective. An expenditure is made at the time a party incurs a binding obligation to make that expenditure.
  - [3] To the extent that expenditures are recoverable with a reasonable effort, a party shall not be considered prejudiced by having made those expenditures. For example, a party shall not be considered prejudiced by having made some expenditure to acquire a potential development site if the property obtained is approximately as valuable under the new classification as it was under the old, for the expenditure can be recovered by a resale of the property.
  - [4] To the extent that a nonconforming project can be made conforming and that expenditures made or obligations incurred can be effectively utilized in the completion of a conforming project, a party shall not be considered prejudiced by having made such expenditures.
  - [5] An expenditure shall be considered substantial if it is significant both in dollar amount and in terms of (i) the total estimated cost of the proposed project, and (ii) the ordinary business practices of the developer.
  - [6] A person shall be considered to have acted in good faith if actual knowledge of a proposed change in the land use law affecting the proposed development site could not be attributed to him.
  - [7] Even though a person had actual knowledge of a proposed change in the land use law affecting a development site, the permit issuing authority may still find that he acted in good faith if he did not proceed with his plans in a deliberate attempt to circumvent the effects of the proposed ordinance. The permit issuing authority may find that the developer did not proceed in an attempt to undermine the proposed ordinance if it determines that (i) at the time the expenditures were made, either there was considerable doubt about whether any ordinance would ultimately be passed, or it was not clear that the proposed ordinance would prohibit the intended development, and (ii) the developer had legitimate business reasons for making expenditures.

**[c]** When it appears from the developer's plans or otherwise that a project was intended to be or reasonably could be completed in phases, stages, segments, or other discrete units, the developer shall be allowed to complete only those phases or segments with respect to which the developer can make the showing required under Subsection [b]. In addition to the matters and subject to the guidelines set forth in Subdivisions [1] through [6] of Subsection [b], the permit issuing authority shall, in determining whether a developer would be unreasonably prejudiced if not allowed to complete phases or segments of a nonconforming project, consider the following in addition to other relevant factors:

- [1] Whether any plans prepared or approved regarding uncompleted phases constitute conceptual plans only or construction drawings based upon detailed surveying , architectural, or engineering work.
- [2] Whether any improvements, such as streets or utilities, have been installed in phases not yet completed.
- [3] Whether utilities and other facilities installed in completed phases have been constructed in such a manner or location or such a scale, in anticipation of connection to or interrelationship with approved but uncompleted phases, that the investment in such utilities or other facilities cannot be recouped if such approved but uncompleted phases are constructed in conformity with existing regulations.

**[d]** The permit issuing authority shall not consider any application for the permit authorized by Subsection [b] that is submitted more than sixty (60) days after the effective date of this ordinance. The permit issuing authority may waive this requirement for good cause shown, but in no case may it extend the application deadline beyond one year.

**[e]** The administrator shall send copies of this section to the persons listed as owners for tax purposes (and developers, if different from the owners) of all properties in regard to which permits have been issued for nonconforming projects or in regard to which a nonconforming project is otherwise known to be in some stage of development. This notice shall be sent by certified mail not less than fifteen (15) days before the effective date of this ordinance.

**[f]** The permit issuing authority shall establish expedited procedures for hearing applications for permits under this section. These applications shall be heard, whenever possible, before the effective date of this ordinance, so that construction work is not needlessly interrupted.

**Section 146. Signs Made Non-Conforming**

Any sign that was conforming at the time it was erected, and that was made non-conforming as a result of annexation or extraterritorial jurisdiction or as a result of an amendment to the Ordinance, shall be eliminated or made to conform to this Ordinance within seven (7) years after the effective date of such annexation or extraterritorial jurisdiction or after the date such amendment was enacted.

**Section 147. Reserved**

**Section 148. Reserved**

**Section 149. Reserved**

**Section 150. Reserved**



## ARTICLE IX Zoning Districts and Zoning Map

### Part I Zoning Districts

#### Section 151. Residential Districts Established

**[a]** The following residential districts are hereby established: R-1, R-1A, RR, R-2, R-3, R-4, R-A, and MH. Each of these districts is designed and intended to secure for the persons who reside there a comfortable, healthy, safe, and pleasant environment in which to live, sheltered from incompatible and disruptive activities that properly belong in nonresidential districts. Other objectives of some of these districts are explained in the remainder of this section.

**[b]** The R-1 Single Family Residential District is established to provide a low-density living area consisting only of single-family dwelling units and other related uses necessary for a sound neighborhood. The regulations for this district are designed to stabilize and encourage a suitable living environment for family life.

**[c]** The R-1A Single-Family Residential with Accessory Apartment District is established to provide a low-density living area consisting of single-family homes with or without subordinate, accessory apartments. The regulations for this district are intended to maintain the essential character of a single-family neighborhood but allow for the establishment of accessory apartments which are clearly subordinate to the single-family home.

**[d]** The RR Residential Rehabilitation District is designed to recognize the need to preserve existing housing stock for low income occupants through rehabilitation efforts. Residential Rehabilitation Districts shall possess the following three characteristics:

- [1] The majority of the housing stock in the district shall have been constructed before the town adopted zoning regulations.
- [2] The area must qualify under U.S. Department of Housing and Urban Development standards as a blighted area.

- [3] The district must be a designated target area for which public money has been appropriated for the purpose of rehabilitating housing stock for low and moderate income persons. All existing non-conforming uses and uses with non-conforming features, within the Residential Rehabilitation District, shall comply with Sections 141 and 142 concerning nonconforming situations.

**[e]** The R-2 Two-Family Residential District is established to provide a medium density living area consisting of single-family and two-family dwellings, limited home occupations and other related uses necessary for a sound neighborhood.

**[f]** The R-3 Multiple-Family Residential District is established to provide a high density area consisting of three or more family dwelling units plus limited service use.

**[g]** The R-4 Two-Family/Mobile Home District is established to provide a medium density area consisting of two-family uses, and mobile homes on single lots.

**[h]** The R-A Residential/Agricultural District is established as a district in which the principal use of the land is for low density residential and agricultural purposes. These districts are intended to insure that residential development not having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at a sufficiently low density to provide a healthful environment.

**[i]** The MH Mobile Home Park District is established to encourage well planned, attractive land development in the town by providing fair standards and beneficial requirements for the siting, operation, and maintenance of mobile homes.

## **Section 152. Commercial Districts Established**

**[a]** The following commercial districts are hereby established: B-1, B-2, and B-3. These districts are created to accomplish the purposes and serve the objectives set forth in the remainder of this section.

**[b]** The B-1 Central Business District is intended to provide for the development of the commercial and service center for the town while maintaining its character, and to encourage appropriate residential uses in the central area of town, normally as part of mixed-use developments.

**[c]** The B-2 Neighborhood Business District is intended to provide for the development of low-density commercial and services that are accessible by pedestrians from surrounding neighborhoods, which serve the day to day convenience needs of surrounding neighborhoods, and are of such nature as to minimize conflicts with- the neighborhoods they serve.



**[d]** The B-3 General Business District is established to provide a wide range of consumer goods, convenience goods and personal services for the community and surrounding region.

**[e]** The O/I Office/Institutional District is established to provide a zoning district which promotes the development of moderately intensive commercial and institutional uses which are oriented toward the provision of services versus the sale of products.

**[f]** The U-1 University District is established to provide for university planning and expansion to occur consistent with overall community planning and expansion. The zone will provide a means by which the Planning Commission may review and coordinate plans of the university as they may affect the general health, safety, convenience and general welfare of the town.

### **Section 153. Manufacturing Districts Established**

**[a]** The following district is established primarily to accommodate enterprises engaged in the assembly, fabrication, finishing, packaging or warehousing of goods and materials: M-1.

**[b]** The M-1, Light Industrial District is established to provide for light industrial and warehouse uses as defined by Section 15 [a][62].

### **Section 154. Conditional Zoning Districts Established**

**[a]** Conditional zoning districts are zoning districts in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property. A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project.

**[b]** It is noted that a conditional zoning district (bearing the designation CD) corresponds to each of the primary districts authorized by Sections 151, 152 and 153 of this ordinance. Conditional zoning districts are designed to accommodate land uses where significant local or regional impacts may not be adequately controlled under the standards of a general zoning district. Conditional districts provide for the accommodation of such uses by reclassification of property into a unique zoning district, subject to specific conditions, which ensure compatibility of the intended use with the use and enjoyment of neighboring properties.

**[c]** The conditional zoning district classification will be considered only upon the request of the property owner seeking rezoning. If for any reason any condition imposed pursuant to these regulations is found to be illegal or invalid, or if the applicant should fail to construct an approved site specific development plan in accordance with any condition agreed upon in the rezoning process, the authorization of the conditional zoning district shall be null and void and of no effect and proceedings shall be instituted to rezone the property.

**[d]** Within a conditional zoning district, only those uses authorized as permitted or special uses in the primary zoning district with which the zoning district corresponds shall be permitted, and all other requirements of the corresponding district shall be met as minimum standards.

**[e]** The authorization of a conditional zoning district for any use which is permitted only as a special use in the zoning district which corresponds to the conditional zoning district shall preclude any requirement for obtaining a special use permit for any such use from the Board of Adjustment.

**[f]** Any conditional zoning district authorized in accordance with the provisions of this ordinance shall have vested rights pursuant to North Carolina G.S. 160A-385.1 for the period of time established pursuant to Section 79 of this ordinance.

#### **Section 155. Reserved**

#### **Section 156. Special Flood Hazard Area**

**[a]** The Special Flood Hazard Area district is established as an “overlay” district, meaning that the district is overlaid upon other districts and the land so encumbered may be used in a manner permitted in the underlying district only if and to the extent such use is also permitted in the applicable overlay district. The Special Flood Hazard Area is further described in Part I of Article XVII of this ordinance.

#### **Section 157. Watershed Districts**

**[a]** The watershed districts are established as “overlay” districts, meaning that these districts are overlaid upon other districts and the land so encumbered may be used in a manner permitted in the underlying district only if and to the extent such use is also permitted in the applicable overlay district.

**[b]** The following watershed districts are hereby established: WS-II-CA [Critical Area], WS-IV-CA [Critical Area], and WS-IV-PA [Protected Area]. The watershed districts are further described in Article XIII of this ordinance.

**Section 158. Corridor Districts**

**[a]** The corridor districts are established as “overlay” districts, meaning that these districts are overlaid upon other districts and the land so encumbered may be used in a manner permitted in the underlying district only if and to the extent such use is also permitted in the applicable overlay district.

**[b]** The purpose and intent for creating the corridor districts are:

- [1] To create a visually pleasing impression of land uses along the corridor.
- [2] To consider the unique qualities of the corridor, such as views and vistas and natural features which merit special consideration or protection.
- [3] To consider the value of the corridor as an entryway to the town which can influence the perception of visitors to the area and individuals or firms considering residence or investment in the community.
- [4] To consider transportation, including vehicular access, driveway limitations and traffic impact, while protecting the public investment and lengthening the time during which highways can continue to serve their functions, without expansion or relocation, by expediting the free flow of traffic and reducing the hazards arising from unnecessary points of ingress and egress and cluttered roadside development.

**[c]** The following corridor district[s] are hereby established, with the limits of each district being five hundred and fifty (550) feet on either side of the centerline of each of the following thoroughfares,

**US Hwy 421 East:** Beginning at the intersection of US Hwy 321 (Hardin Street) and extending east along the centerline of US Hwy 421 to the farthest extent of the town’s planning jurisdiction. This Corridor District includes both the old two lane portion of US Hwy 421 and the new four lane portion of US Hwy 421 located in the town’s extraterritorial jurisdiction.

**US Hwy 421 West:** Beginning at the intersection of Poplar Grove Connector and extending west along the centerline of US Hwy 421 to the farthest extent of the town’s planning jurisdiction.

**US Hwy 321:** Beginning at the intersection of US Hwy 421 (East King Street) and extending south along the centerline of US Hwy 321 to the farthest extent of the town’s planning jurisdiction.

**NC Hwy 105:** Beginning at the intersection of US Hwy 321 (Blowing Rock Road) and extending west along the centerline of NC Hwy 105 to the intersection of NC Hwy 105 Bypass (SR 1107).

**NC Hwy 105 Extension:** Beginning at the intersection of US 321 (Blowing Rock Road) and extending north along the centerline of NC Hwy 105 Extension to the intersection of US Hwy 421.

**NC Hwy 105 Bypass (SR1107):** Beginning at the intersection of NC Hwy 105 and extending north along the centerline of NC Hwy 105 Bypass to the farthest extent of the town's planning jurisdiction.

**NC Hwy 194:** Beginning at the intersection of US Hwy 421 (East King Street) and extending north along the centerline of NC Hwy 194 to the farthest extent of the town's planning jurisdiction.

The above noted boundaries will also be shown of the Official Zoning map.

**[d]** Site development requirements shall apply to all developments within the established corridor district with the exception of single-family residences. Existing development that proposes improvements equaling or exceeding one half or fifty percent (50%) of the existing value of the site and buildings shall conform to the requirements. Sites with existing structures to be utilized in a change-of-use situation shall meet all requirements of Subsection 158 [e] [1], listed below and shall meet all remaining requirements within this article as practical.

**[e]** The requirements for all properties are listed below.

- [1] Allowed Access: All lots recorded and shown on tax maps at the Watauga County Register of Deeds and Tax Office as of the effective date of this ordinance shall be permitted one driveway access. If projects are proposed that encompass more than one parcel as recorded at the date of adoption of this ordinance, they shall be permitted only one driveway access for the project. If any street(s) or road(s) other than the thoroughfare(s) protected by this ordinance is (are) available for access to any parcel, tract or development, access must be taken from the alternate street(s). If the alternate street access is not adequate to serve the parcel, tract or development, a single access point to the regulated thoroughfare may be allowed.

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- [2] Transition Tapers and Deceleration Lanes: These may be required for any driveway or development if the size of the development and/or traffic volume warrants, and shall be constructed in accordance with NCDOT standards. Transition tapers and deceleration lanes shall be required in accordance with standard engineering practices which analyze the results of the cumulative impacts of site distance, type of development and size of development.
- [3] Corner Clearance: No driveway, except single-family residential access, shall be allowed within one hundred fifty [150] feet of the centerline of an intersecting street.
- [4] Driveway Spacing: The distance between any two [2] drives shall be one hundred fifty [150] feet on the protected thoroughfare[s].
- [5] The driveway spacing requirement in Subsection 158 [e] [4] above shall be measured along the right-of-way line from the centerline of the driveway.
- [6] Subdivision Frontage: Any tract proposed for subdivision which borders the protected thoroughfare(s) shall provide sufficient frontage on another street [either pre-existing or created as part of the subdivision] for all lots created out of such tract so that direct access to lots does not need to be provided on the protected thoroughfare[s].
- [7] Access Driveways: To large scale developments [greater than 50,000 square feet of floor area] and fronting the protected thoroughfare[s] shall provide landscaped medians within the access driveway.
- [8] Access not Prohibited: Any parcel of record on the effective date of this ordinance that has been prohibited all vehicular access based on the provisions herein shall be allowed one (1) access point to its street frontage while meeting the intent of the technical requirements as is practical.
- [9] Loading, Storage and Service: To the extent that is practical, these areas shall be located on the side or in the rear and shall either be located or screened so as to not be seen from the protected thoroughfare[s] and adjacent residential uses.
- [10] Exterior Walls and Facades: New buildings shall avoid having featureless exterior walls and facades oriented to the view of the protected thoroughfare(s). Flat roofs are discouraged.

- [11] Mechanical and Service Equipment: To the extent that is practical, HVAC and similar types of incidental machinery or equipment shall be screened from view or located to be non-visible from the protected thoroughfare[s] and adjacent residential uses.
- [12] Coordination of Access: Access shall be provided and coordinated between adjoining properties for vehicles, pedestrians and bicycles. Pedestrian linkages must be in an acceptable form such as sidewalks, maintained gravel paths and paved walks.
- [13] Transit Shelters and Stops: All major developments (having greater than 50,000 square feet of gross floor area) shall provide transit shelters and stops as needed after consultation with local transit officials.

**[f]** No requirement of the corridor district shall repeal, modify or amend any federal or state law or regulation, but shall replace any specific regulation or ordinance provision pertaining to the specific requirement within this ordinance.

#### **Section 159. Neighborhood Conservation Districts**

**[a]** The Neighborhood Conservation Districts are established as “overlay” districts, meaning that these districts are overlaid upon other districts and the land so encumbered may be used in a manner permitted in the underlying district only if and to the extent such use is also permitted in the applicable overlay district.

**[b]** The purpose and intent for creating Neighborhood Conservation Districts is:

- [1] To promote public health, safety and welfare;
- [2] To stabilize and maintain a suitable low-density living environment for family life; and
- [3] To maintain and preserve the value of existing property.

**[c]** The following Neighborhood Conservation Districts are hereby established:

**Blanwood Drive:** The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Oak Street, Windy Drive, Horn in the West Drive and Skyview Drive.

**Forrest Hills Drive:** The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map.

**Grand Boulevard:** The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Grand Boulevard, Orchard Street and Iris Lane.

**Grandview Heights:** The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of West Grandview Heights, Russell Drive and Poplar Grove Road.

**Stadium Drive:** The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Hemlock Drive, Ferncliff Road, Tanglewood, Hawthorne Lane, Hope Drive, and Spring Street.

**Queen Street:** The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Queen Street, Gladys Street and Charles Street.

**[d]** The requirements of all rental property within Neighborhood Conservation Districts shall be as follows:

- [1] All tenants of rental property must complete and file a Residential Parking Registration Form with the administrator. Tenants must provide personal identification, vehicle registration, and proof of residency within a designated Neighborhood Conservation District.
- [2] Tenants meeting eligibility requirements will be issued parking stickers for their vehicle(s) for the appropriate neighborhood district which must be permanently attached to eligible vehicles. Annual renewal and nominal fees are required.
- [3] No more than two unrelated persons per dwelling unit will be issued parking stickers.
- [4] Owners of rental property residing more than (50) miles from Boone must designate in writing a local managing agent residing within Watauga County that will be responsible for all matters concerning occupancy of such rental property, and must provide the administrator with the agent's name, address and telephone number.
- [5] Owners or local managing agents of rental property must notify tenants of applicable Neighborhood Conservation District requirements.

### **Section 160. Viewshed Protection District**

**[a]** The Viewshed Protection District is established as an "overlay" district, meaning that this district is overlaid upon other districts and the land so encumbered may be used in a manner permitted in the underlying district only if and to the extent such use is also permitted in the applicable overlay district.

**[b]** The purpose and intent for creating the Viewshed Protection District is to preserve the scenic beauty and natural environment of Boone's hillside areas vital to preservation of a high quality of life and continued economic development. The district achieves this desired outcome by minimizing the visual impact of building construction and land development activities.

**[c]** Protection Map. The presumed boundaries of the Viewshed Protection District shall be depicted on a "Viewshed Map," which will be posted at the Town's Planning and Inspections Department and on the Town of Boone's website. This map shall show the areas of the Town's zoning jurisdiction which exceed the one hundred foot line which defines the lower most boundary of the viewshed. However, when an owner of property which is either partly or wholly above the depicted line files an application for development to take place within the presumed viewshed, the Administrator or his designee shall determine if the development, as proposed, can be seen during any season of the year from one of the major traffic corridors. If the Administrator determines that the property cannot be thus seen, the requirements of the overlay district shall not apply. In addition, the owner of property contained within the viewshed protection district may establish that the property to be developed is not within the viewshed by presenting sufficient information to the Administrator that the development, as proposed, can not be seen during any season of the year from one of the major traffic corridors, or by showing that the portion of the property to be developed is not more than 100 feet above the nearest major traffic corridor. Should the administrator determine that a portion of the property to be disturbed by the development is in the viewshed, when the owner contends it is not be in the viewshed as it is proposed to be developed, the Administrator's determination shall be considered an appealable determination which may be appealed to the Town of Boone Board of Adjustment in conformity with the procedures of UDO Section 106.

**[d]** The requirements for the development of properties wholly or partly within the Viewshed Protection District shall be as follows:

- [1] The maximum allowable land disturbance on property within the viewshed shall be as follows:
  - a. Property up to two acres in size shall be limited to three-quarters (3/4) of an acre of land disturbance. Therefore, a three-quarter (3/4) acre or smaller property in the viewshed is unrestricted by this section with regard to land disturbing activity.
  - b. The maximum allowable land disturbance for property in the viewshed which is larger than two acres shall be limited to three-quarters (3/4) of an acre for the first two acres, plus thirty percent of the additional property. For example, a tract of land of four acres can be developed with three-



quarters acre, or 32,670 square feet, of land disturbed based upon the first two acres, and an additional thirty percent (30%), or 26,136 square feet of land disturbed, based on the additional two acres. Therefore, a total of 58,806 feet can be disturbed in the development of the four acres, and this total amount of land disturbance may be consolidated in one area of the property. In this example, the land in one acre can be 100% disturbed, in a second acre, partly disturbed, and in the remaining two acres, undisturbed.

- c. Land disturbance of portions of a property below the viewshed are unrestricted by this section, but do not increase the amount of land disturbance which can take place on the portion of the property in the viewshed.
- [2] The intensity of development of property zoned RA within the viewshed shall be as established for the RA district in Article XII of the UDO. The intensity, including height limitations, of development of property in all other zoning districts within the viewshed shall be as established for the R-1 zoning district in Article XII of the UDO, but the exemption for single family homes contained in Section 200[a] shall not apply in the viewshed.
- [3] Property which has been developed before the effective date of this amendment will be affected as follows:
- a. When the intensity of the development does not exceed the limits established by Section [d][2], it may be increased in size up to 10% greater than the limits established by Section [d][2].
  - b. When the intensity of the development already exceeds the limits established by Section [d][2], additional development is permitted up to a size 10% greater than the existing structure, and likewise, an additional 10% of impervious surface may be created.
  - c. The limits on land disturbing activity created by Section [d][1] shall be calculated as if no development on the property has yet taken place. In other words, the Administrator shall exclude from the calculations of allowable land disturbance that portion of the property upon which an impervious surface exists at the time this amendment is effective. For example, if a house with a 2,000 square feet footprint and 2,000 square feet of driveway already exists on a three acre tract, and the owner wishes to construct an addition, the Administrator will first add the

square footage of the house's footprint and the square footage of the driveway to determine that there is already 4,000 square feet of impervious surface on the property. This existing square footage of impervious surface will be subtracted from the total land area of the property to calculate how much of the remaining property can be disturbed. In the example, the property will be viewed not as a three acre tract, but as a tract of two acres, plus 39,560 square feet (an acre = 43,560 square feet, minus 4,000 square feet of existing impervious surface). The amount of allowable land disturbance to put in the addition ends up being 44,538 square feet.

- [4] Persons developing property in the viewshed shall strive to reasonably site any structures to be developed on the property in such way as to minimize their visual impact from the major corridors. To this end, the Administrator may request a redesign of a site development plan to accomplish this goal.
- [5] Persons developing property in the viewshed shall strive to reasonably preserve and protect foliage and trees on the property, without placing the construction in danger, with a goal of minimizing the visual impact of the development from the major corridors.
- [6] All development in the viewshed shall include a plan for landscape buffering, using the techniques and vegetation authorized in Appendix B, in the line of sight from the major corridors, to reduce to the extent reasonably possible the visual impact of the development from the major corridors. Such plans, in the case of the construction of a single family home, need not be "formal" or prepared by a landscape professional, but must be in writing sufficiently detailed to allow the Administrator to know what is planned.
- [7] All development along ridgelines must be designed in an effort to reasonably minimize the visual impact of such development from the major corridors. To this end, the Administrator may require a redesign of a site development plan to accomplish this goal or may require specific landscape buffering, such as trees and other plant material, to be installed. This requirement by the Administrator shall be considered an appealable decision to the Board of Adjustment, and may be appealed in conformity with the procedures of UDO Section 106.

- [8] All requirements of the particular zoning district or development in the viewshed otherwise established by the UDO shall remain in full force and effect.

**Section 161. Historic Districts**

**[a]** The Town Council may designate and from time to time amend one or more historic districts within the Town's planning jurisdiction. Such districts are established as "overlay" districts, meaning that these districts are overlaid upon other districts and the land so encumbered may be used in a manner permitted in the underlying district only if and to the extent such use is also permitted in the applicable overlay district. Historic Districts shall be governed by the requirements of Article XXIII of this Ordinance.

## Part II Zoning Map

### Section 162. Official Zoning Map

**[a]** There shall be a map known and designated as the Official Zoning Map, which shall show the boundaries of all zoning districts within the town's planning jurisdiction. This map shall be drawn on acetate or other durable material from which prints can be made, shall be dated, and shall be kept in the Planning and Inspections Department.

**[b]** The Official Zoning Map dated June 21, 1979 is adopted and incorporated herein by reference. Amendments to this map shall be made and posted in accordance with Section 162.

**[c]** Should the Official Zoning Map be lost, destroyed, or damaged, the council may authorize by resolution to have a new map drawn on acetate or other durable material from which prints can be made. A new edition shall not change the zoning status of any property, but errors and omissions may be corrected. Such replacements shall be authenticated by the Town Clerk and shall bear the date of the authorizing resolution.

### Section 163. Amendments to Official Zoning Map

**[a]** Amendments to the Official Zoning Map are accomplished using the same procedures that apply to other amendments to this ordinance, as set forth in Article XXI.

**[b]** The administrator shall update the Official Zoning Map as soon as possible after amendments to it are adopted by the council. Upon entering any such amendment on the map, the administrator shall change the date of the map to indicate its latest revision. New prints of the updated map may then be issued.

**[c]** No unauthorized person may alter or modify the Official Zoning Map.

**[d]** The Planning and Inspections Department shall keep copies of superseded prints of the zoning map for historical reference.

### Section 164. Reserved

## Article X Permissible Uses

### Section 165. Table of Permissible Uses

The Table of Permissible Uses should be read in close conjunction with the definition of terms set forth in Section 15 and the other interpretive provisions set forth in this article.

Uses Description	R-1	R-1A	R-R	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
<b>1.0 RESIDENTIAL</b>														
<b>1.100 Single-Family Residences</b>														
1.110 Single-family detached, one dwelling unit per lot.														
1.111 Site built or modular structures	Z	Z	Z	Z	Z	Z	Z		Z	Z	Z	Z	Z	
1.112 Class "A" mobile home			Z	Z	Z	Z	Z	Z		Z	Z	Z	Z	
1.113 Class "B" mobile home						Z	Z	Z						
1.120 Single-family detached, more than one dwelling unit per lot														
1.121 Site built and modular structures					ZS	ZS								
1.122 Class A or B mobile homes (manufactured home park)								Z						
<b>1.200 Two-family Residences</b>														
1.210 Single family residence with accessory apartment		Z	Z	Z	Z	Z	Z		Z	Z	Z	Z	Z	
1.220 Duplex				Z	Z	Z	Z		Z	Z	Z	Z	Z	
<b>1.300 Multi-Family Residences*</b>														
1.310 Multi-family conversion*					ZS	ZS			ZS				Z	
1.320 Multi-family town homes*					ZS	ZS			ZS				Z	
1.330 Multi-family apartments*					ZS				ZS				Z	

Uses Description	R-1	R-1A	R	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
<b>1.400 Home emphasizing special services, treatment or supervision</b>														
1.410 Family Care Home	Z	Z	Z	Z	Z	Z	Z		Z	Z	Z	Z	Z	
1.420 Nursing Care Home			S	S	Z	S	S		Z		Z	Z	Z	
1.430 Home for Survivors of Domestic Violence	Z	Z		Z	Z		Z		Z			Z	Z	
<b>1.500 Miscellaneous, rooms for rent situations</b>														
1.510 Rooming houses, boarding houses					Z					S	S	Z	Z	
1.520 Tourist homes and other temporary rooms renting by the day or week					Z					Z	Z	Z		
1.530 Hotels, motels and other similar businesses or institutions providing overnight accommodations									S	Z		Z		
1.540 Fraternity or sorority dwellings					S								Z	
1.550 Bed and Breakfast Establishments	S	S		Z	Z	Z	Z							
<b>1.600 Home Occupations</b>	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	
<b>1.700 Planned residential developments</b>				S	S	S								
<b>2.0 SALES AND RENTAL OF GOODS, MERCHANDISE AND EQUIPMENT</b>														
<b>2.100 Commercial Retail</b>														
2.110 No storage or display of goods outside fully enclosed building										Z	Z	Z		

Uses Description	R-1	R-1A	R-R	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
2.120 Storage or display of goods outside fully enclosed building allowed												Z		
<b>2.200 Commercial Wholesale</b>														
2.210 No storage or display of goods outside fully enclosed building												ZS		Z
2.220 Storage or display of goods outside fully enclosed building allowed												ZS		Z
<b>2.300 Convenience stores</b>											S	Z		
<b>2.400 Large Scale Retail</b>												S		
<b>3.0 OFFICE, CLERICAL, RESEARCH AND SERVICES NOT PRIMARILY RELATED TO GOODS OR MERCHANDISE</b>														
<b>3.100 All operations conducted entirely within fully enclosed building</b>														
3.110 Operations designed to attract and serve customers and clients on the premises, such as the offices of attorneys, physicians, other professions, insurance and stock brokers, travel agents, government office buildings, etc.					ZS				Z	Z	Z	Z	Z	Z
3.120 Operations designed to attract little or no customer or client traffic other than employees of the entity operating the principal use					Z				Z	Z	Z	Z	Z	Z
3.130 Office or clinics of physicians or dentists with not more than 10,000 square feet of gross floor area					Z				Z	Z	Z	Z	Z	
<b>3.200 Operations conducted within or outside fully enclosed building</b>														

Uses Description	R-1	R-1A	R-R	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
3.210 Operations designed to attract and serve customers or clients on the premises									ZS	ZS	ZS	ZS		
3.220 Operations designed to attract little or no customer or client traffic other than the employees of the entity operating the principal use									ZS	ZS	ZS	ZS	Z	ZS
3.230 Banks with drive-in windows									Z	Z	Z	Z		
<b>4.0 INDUSTRIAL USES</b>														
<b>4.100 Light Industrial Uses</b>														
4.110 Majority of dollar volume of business done with walk-in trade												S		Z
4.120 Majority of dollar volume of business not done with walk-in trade												S		Z
<b>4.200 Heavy Industrial Uses</b>														
<b>4.300 Warehouses</b>												S		Z
<b>5.0 EDUCATIONAL, CULTURAL, RELIGIOUS, PHILANTHROPIC, SOCIAL, FRATERNAL USES</b>														
<b>5.100 Schools</b>														
5.110 Elementary or secondary (including associated grounds and athletic and other facilities)	S	S	S	S	S	S	S		S		S	S	Z	
5.120 Trade or vocational schools											S	S		S
5.130 Colleges, universities, community colleges, (including associated facilities such as dormitories, office buildings, athletic fields, etc.)	S	S		S	S	S	S		S				Z	



Uses Description	R-1	R-1A	R-R	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
5.200 Churches, synagogues, and temples, (including associated residential structures for religious personnel and associated buildings but not including elementary school or secondary school building)	ZS	ZS	ZS	ZS	ZS	ZS	ZS		Z	Z	Z	Z	Z	
5.300 Libraries, museums, art galleries, cultural centers, and similar uses (including associated educational and instructional activities)	S	S		S	S	S	S		Z	Z	Z	Z	Z	
5.400 Social, fraternal clubs and lodges, union halls, and similar uses				ZS			ZS			ZS	ZS	ZS	Z	
<b>6.0 RECREATION, AMUSEMENT, ENTERTAINMENT</b>														
6.100 Activity conducted entirely within building or substantial structure														
6.110 Bowling alleys, skating rinks, indoor tennis and squash courts, billiard and pool halls, indoor athletic and exercise facilities and similar uses										Z	ZS	Z	Z	
6.120 Movie theaters										Z	S	Z	Z	
6.130 Coliseums, stadiums, and all other facilities listed in the 6.100 classification designed to seat or accommodate simultaneously more than 1,000 people									S	S	S	S	Z	
6.140 Indoor shooting range												S		S
6.200 Activity conducted primarily outside enclosed buildings or structures														

Uses Description	R-1	R-1A	R-R	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
6.210 Privately owned outdoor recreational facilities such as golf and country clubs, swimming or tennis clubs, etc., not constructed pursuant to a permit authorizing the construction of some residential development	S	S	S	S	S	S	Z	S	S	S	S	S	Z	S
6.220 Publicly owned and operated outdoor recreational facilities such as athletic fields, golf courses, tennis courts, swimming pools, parks, and playgrounds etc., not constructed pursuant to a permit authorizing the construction of another use such as a school	S	S	S	S	S	S	S	Z	Z	Z	Z	Z	Z	Z
6.230 Town owned and operated passive outdoor recreation facilities such as, neighborhood parks, greenways, pocket parks and similar facilities	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
<b>7.0 INSTITUTIONAL RESIDENCE OR CARE FACILITIES</b>														
7.100 Hospital, clinic, other medical and mental health treatment facilities				S	S	S	S		Z		Z	Z	Z	
7.200 Nursing Care Institution and all other institutions which exceed the residency limits required for Use 1.400				S	S	S	S		Z		Z	Z	Z	
7.300 Shelter for Homeless				S					S	S	S	S	Z	Z
7.400 Halfway House				S					S	S	S	S	Z	

Uses Description	R-1	R-1A	R-R	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
<b>8.0 RESTAURANTS, BARS, NIGHT CLUBS</b>														
8.100 No substantial carry-out or delivery service, no drive-in service, no service or consumption outside fully enclosed structure										Z	Z	Z		
8.200 No substantial carry-out or delivery service, no drive-in service, service or consumption outside fully enclosed structure allowed										Z	S	Z		
8.300 Carry-out and delivery service, consumption outside fully enclosed structure allowed										S	S	Z		
8.400 Carry-out and delivery service, drive-in service, service or consumption outside fully enclosed structure allowed										S	S	Z		
<b>9.0 MOTOR VEHICLE-RELATED SALES AND SERVICE OPERATIONS</b>											Z	Z		
<b>10.0 STORAGE AND PARKING</b>														
10.100 Automobile parking garages or parking lots not located on a lot on which there is another principal use to which the parking lot is related					S				S	Z	S	Z	Z	
10.200 Storage of goods not related to sale or use of those goods on the same lot where they are stored														
10.210 All storage within completely enclosed structures												Z		Z
10.220 Storage inside or outside completely enclosed structures												S		Z

Uses Description	R-1	R-1A	R	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
10.300 Parking of vehicles or storage of equipment outside enclosed structures where vehicles or equipment are owned and used by the person making use of the lot														
10.310 Parking or storage is more than a minor and incidental part of the overall use			S		S	S			S	S	S	Z	Z	Z
10.320 Parking or storage is a minor and incidental part of the overall use and is accessory to a principal use which is itself permitted within the zoning district on which the parking or storage is located.	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
10.400 Parking of vehicles or storage of equipment outside enclosed structures where: (i) vehicles or equipment are owned and used by the person making use of lot, and (ii) parking or storage is more than a minor and incidental part of the overall use made of the lot									S	S	S	Z	Z	Z
11.0 SCRAP MATERIALS SALVAGE YARDS, JUNKYARDS, AUTOMOBILE GRAVEYARDS														S
12.0 SERVICES AND ENTERPRISES RELATED TO ANIMALS														
12.100 Veterinarian							S		Z			Z	Z	
12.200 Kennel							S					S		Z
13.0 EMERGENCY SERVICE OPERATIONS	S	S	S	S	S	S	S	S	Z	Z	Z	Z	Z	Z

Uses Description	R-1	R-1A	R-R	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
<b>14.0 AGRICULTURAL, SILVICULTURAL, MINING, QUARRYING OPERATIONS</b>														
<b>14.100 Agricultural operations, farming</b>														
14.110 Excluding livestock	Z	Z	Z	Z			Z					S		Z
14.120 Including livestock							Z							
<b>14.200 Mining or quarrying operations, including on-site sales of products</b>							S							S
<b>15.0 MISCELLANEOUS PUBLIC AND SEMI-PUBLIC FACILITIES</b>														
15.100 Post Office										Z	Z	Z	Z	S
15.200 Airport							S					S		
15.300 Municipal Solid Waste Landfill							S							S
<b>16.0 DRY CLEANER, LAUNDROMAT</b>										Z	Z	Z		
<b>17.0 UTILITY FACILITIES</b>														
17.100 Neighborhood	S	S	S	S	S	S	S	S	S	S	S	S	Z	Z
17.200 Community or regional	S	S	S	S	S	S	S	S	S	S	S	S	Z	Z
<b>18.0 TELECOMMUNICATION TOWERS AND RELATED STRUCTURES</b>														
18.100 Transmitting and receiving towers under 50 feet tall	S	S	S	S	S	S	Z	Z	Z	S	Z	Z	Z	Z
18.200 Wireless telecommunication towers							Z					S	Z	Z
18.300 Satellite receiving antennas less than one meter in diameter	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
18.400 Satellite receiving antennas less than two meters in diameter							Z		Z	Z	Z	Z	Z	Z

Uses Description	R-1	R-1A	R-R	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
<b>19.0 OPEN AIR MARKETS AND HORTICULTURAL SALES</b>														
19.100 Open air markets (farm and craft markets, flea markets, produce markets)							S			S		S		
19.200 Horticultural sales with outdoor display							Z				Z	Z		
19.300 Christmas tree farms							Z							
<b>20.0 FUNERAL HOME</b>					Z				Z	Z	Z	Z		
<b>21.0 CEMETERY</b>	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
<b>22.0 NURSERY SCHOOLS; DAY CARE CENTERS</b>				S	S	S	S		Z	Z	Z	Z	Z	
<b>23.0 TEMPORARY USE</b>														
23.100 Temporary Care Provider	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	
23.200 Temporary Construction or Repair Dwelling	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	
23.300 Temporary Construction Trailer	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
23.400 Temporary Mobile Medical Unit									Z			Z	Z	
23.500 Temporary Classroom									Z			Z	Z	
<b>24.0 TRANSPORTATION</b>														
24.100 Bus Terminals										Z	Z	Z	Z	Z
24.200 Trucking or freight terminals							S					S		Z
24.300 Local transit operations												S		Z
<b>25.0 COMMERCIAL GREENHOUSE OPERATIONS</b>														
25.100 No on-premises sales							Z					Z		Z
25.200 On-premise sales permitted							Z					Z		Z
<b>26.0 Certain Activities which pose Particular Concerns about Public Health, Safety or Welfare</b>														
26.100 Electronic & Internet Gaming Use												S		S
<b>27.0 GOVERNMENT USES</b>	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z

Uses Description	R-1	R-1A	R-R	R-2	R-3	R-4	R-A	MH	O/I	B-1	B-2	B-3	U-1	M-1
<b>28.0 SUBDIVISIONS</b>														
28.100 Major	S	S	S	S	S	S	S	S	S	S	S	S	Z	S
28.200 Minor	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
<b>29.0 COMBINATION USES</b>	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS	ZS	Z	ZS
29.100 Section 179 Mixed Uses										ZS	ZS	ZS		

\*Note: Multi-family residential uses are only allowed as a permitted use in B-1, B-2, and B-3 when proposed as part of a multi-use development project in compliance with Article 9, Section 179 (see Use Category 28.1)

**Section 166. Use of the Designations Z and S in the Table of Permissible Uses**

**[a]** Subject to Section 167, when used in conjunction with a particular use in the Table of Permissible Uses (Section 165), the letter “Z” means that the use is permissible in the indicated zone with a zoning permit issued by the administrator. The letter “S” means a special use permit must be obtained from the Board of Adjustment.

**[b]** When used in connection with residential uses (use classification 1.000), except for multi-family uses in B-1, B-2 and B-3 districts, the designation “ZS” means that such developments with twelve (12) or less dwelling units must be pursuant to a zoning permit and developments with thirteen (13) or more dwelling units require a special use permit.

**[c]** When used in connection with nonresidential uses, the designation “ZS” means that such developments require a zoning permit if the lot to be developed is less than one (1) acre in size and a special use permit if the lot is one (1) acre or larger in area.

**[d]** The use of the designation ZS for combination uses is explained in Section 172.

**[e]** Multi-family uses in the B-1, B-2 and B-3 districts are permitted by zoning permit if they meet the requirements of Section 179 and the lot to be developed is less than one (1) acre in size. If the lot is one (1) acre or more in size, such uses are permitted only by special use permit.

**Section 167. Board of Adjustment Jurisdiction Over Uses Otherwise Permissible With a Zoning Permit**

**[a]** The council recognizes the possibility that, within the broad framework of permissible uses categories, a use otherwise permissible with a zoning permit may have unforeseen negative impacts on public health, safety and welfare.

The council therefore authorizes the Board of Adjustment to exercise jurisdiction over uses otherwise permissible with a zoning permit if the administrator finds that the proposed use would have a substantial impact on neighboring properties or the general public. In the event such findings are made, the administrator will notify the applicant in writing that the application has been referred to the Board of Adjustment through the special use permitting process. In determining whether or not a permit should be issued, the Board of Adjustment shall follow the procedures for issuance of a special use permit. Any decision by the Board of Adjustment shall be recorded in the Watauga County Registry.

**[b]** The council authorizes the administrator to refer an application to the Board of Adjustment under the following circumstances:

- [1] When the existing (i) transportation network, (ii) utilities infrastructure, (iii) fire fighting capabilities or other essential town services, are not adequate to serve the development as proposed, or
- [2] The proposed use or construction involves (i) encroachment into the floodplain that may result in significant displacement of flood waters on adjacent properties, (ii) substantial cut or fill operations on slopes greater than 2H:1V, (iii) stormwater runoff which may negatively impact adjacent properties, (iv) encroachment into environmentally sensitive areas, or
- [3] The proposed use conflicts with (i) the comprehensive plan, (ii) thoroughfare plan, or (iii) other plan officially adopted by the council.

**[c]** Except for an application for conditional district rezoning, if an application is submitted for zoning approval and the site specific development plan or accompanying details of the plan are materially different from the site specific development plan or accompanying details presented to the Town Council in connection with an application for and allocation of vested rights to connect to the Town's water or sewer system, the Administrator must treat the application as an application for a special use permit. For purposes of this section, a "material" difference shall consist of any "minor modification", as that term is defined in Section 81[b], if the modification relates to a detail or characteristic of Town of Boone Unified Development Ordinance the application which was specifically discussed in the hearing before the Town Council, or any "major change" as that term is defined in Section 81[c]. The Administrator's determination that a difference is "material" may itself be appealed to the Board of Adjustment in accordance with the procedures of Section 106.

**[d]** The decision by the Administrator to refer an application to the Board of Adjustment pursuant to subsection [a] or [b] may be appealed to the Board of Adjustment in accordance with the procedures of Section 106.



**Section 168. Permissible Uses and Specific Exclusions**

**[a]** The presumption established by this ordinance is that most uses of land are permissible within at least one zoning district in the town's planning jurisdiction. Therefore, because the list of permissible uses set forth in Section 165 (Table of Permissible Uses) cannot be all inclusive, those uses that are listed shall be interpreted to include other uses that are similar in type and have similar impacts to the listed uses.

**[b]** Notwithstanding Subsection [a], all uses that are not listed in Section 165 (Table of Permissible Uses) are prohibited. Section 165 (Table of Permissible Uses) shall not be interpreted to allow a use in one zoning district when the use in question is more closely related to another specified use that is permissible only in another zoning district(s). Furthermore, a use which is not permitted as a principal use in a zoning district cannot be allowed even as an accessory use in that district unless it is accessory to a principal use that would be allowable in that district.

**Section 169. Accessory Uses**

**[a]** The Table of Permissible Uses (Section 165) classifies different principal uses according to their different impacts. Whenever an activity (which may or may not be listed as a principal use in this table) is conducted in conjunction with another principal use and the former use (i) constitutes only an incidental or insubstantial part of the total activity that takes place on a lot, or (ii) is commonly associated with the principal use and integrally related to it, then the former use may be regarded as accessory to the principal use and may be carried on underneath the umbrella of the permit issued for the principal use. For example, a swimming pool/tennis court complex is customarily associated with and integrally related to a residential subdivision or multi-family development and would be regarded as accessory to such principal uses, even though such facilities, if developed apart from a residential development, would require a special use permit.

**[b]** For purposes of interpreting Subsection [a]:

- [1] A use may be regarded as incidental or insubstantial if it is incidental or insubstantial in and of itself or in relation to the principal use.
- [2] To be "commonly associated" with a principal use it is not necessary for an accessory use to be connected with such principal use more times than not, but only that the association of such accessory use with such principal use takes place with sufficient frequency that there is common acceptance of their relatedness.

**[c]** Without limiting the generality of Subsections [a] and [b], the following activities, so long as they satisfy the general criteria set forth above, are specifically regarded as accessory to residential principal uses:

- [1] Offices or studios within an enclosed building and used by an occupant of a residence located on the same lot as such building to carry on administrative or artistic activities of a commercial nature, so long as such activities do not fall within the definition of a home occupation.
- [2] Hobbies or recreational activities of a noncommercial nature.
- [3] The renting out of one (1) or two (2) rooms within a single-family residence (which one or two rooms themselves do not constitute a separate dwelling unit) to not more than two (2) persons who are not part of the family that resides in the single-family dwelling. This provision however, does not supersede the limits and provisions of Section 174.
- [4] Yard sales or garage sales, so long as such sales are not conducted on the same lot for more than three (3) days (whether consecutive or not) during any ninety (90) day period.

**[d]** Without limiting the generality of Subsections [a] and [b], the following activities shall not be regarded as accessory to a residential principal use and are prohibited in residential districts:

- [1] Storage outside of a substantially enclosed structure of any motor vehicle that is neither licensed or operational.
- [2] Parking outside a substantially enclosed structure of more than four (4) motor vehicles between the front building line of the principal building and the street on any lot used for purposes that fall within the following principal use classifications: 1.100, 1.200, or 1.400.

**[e]** Accessory uses in development on lots or tracts of land with multiple zoning classifications. When a development plan is proposed for a lot, lots, tract or tracts of land with more than one zoning classification, accessory uses associated with the proposed principal use, whether mandatory or voluntary, must be wholly confined to those portions of the property with zoning designations which allow the principal use or which allow the accessory use as a principal use. For example, a proposal to build an apartment complex building on a lot which is zoned R-A in part and R-3 in part must situate all elements of the apartment building and all proposed or mandated accessory uses for the apartment building, such as parking, recreation space etc on the portion of the property zoned R-3. The R-A portion of the property may only be used for a principal use permitted in the R-A district, or for an accessory use which itself is an allowed principal use in the R-A district, or to meet the requirements of Section 200.

**Section 170. Permissible Uses Not Requiring Permits**

**[a]** Notwithstanding any other provisions of this ordinance, no zoning or special use permit is necessary for the following uses:

- [1] Streets.
- [2] Electric power, telephone, telegraph, cable television, gas, water and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right-of-way.
- [3] Neighborhood utility facilities located within a public right-of-way with the permission of the owner (state or town) of the right-of-way.

**Section 171. Change In Use**

**[a]** A substantial change in use of property occurs whenever the essential character or nature of the activity conducted on a lot changes. This occurs whenever:

- [1] The change involves a change from one principal use category to another.
- [2] If the original use is a combination use (28.0) the relative proportion of space devoted to the individual principal uses that comprise the combination use changes to such an extent that the parking requirements for the overall use are altered.
- [3] If the original use is a combination use, the mixture of types of individual principal uses that comprise the combination use changes.
- [4] If the original use is a planned residential development, the relative proportions of different types of dwelling units change.

**[b]** A mere change in the status of property from unoccupied to occupied or vice versa does not constitute a change in use. Whether a change in use occurs shall be determined by comparing the two active uses of the property without regard to any intervening period during which the property may have been unoccupied, unless the property has remained unoccupied for more than one hundred eighty (180) consecutive days or has been abandoned.

**[c]** A mere change in ownership of a business or enterprise or a change in the name shall not be regarded as a change in use.

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**Section 172. Combination Uses Other than Multi-Family Uses in Business Districts Authorized by Section 179.**

**[a]** When a combination use comprises two or more principal uses that require different types of permits (zoning or special use), then the permit authorizing the combination use shall be:

- [1] A special use permit if any of the principal uses combined requires a special use permit.
- [2] A zoning permit in all other cases.

This is indicated in the Table of Permissible Uses by the designation ZS in each of the columns adjacent to the 29.0 classification.

**[b]** When a combination use consists of a single-family detached residential subdivision that is not architecturally integrated (see Section 210) and two-family or multi-family uses, the total density permissible on the entire tract shall be determined by having the developer indicate on the plans the portion of the total lot that will be developed for each purpose and calculating the density for each portion as if it were a separate lot.

**[c]** When a combination use consists of a single-family detached, architecturally integrated subdivision and two-family or multi-family uses, then the total density permissible on the entire tract shall be determined by dividing the area of the tract by the minimum square footage per dwelling unit specified in Section 200.

**Section 173. More Specific Use Controls**

**[a]** Whenever a development could fall within more than one use classification in the Table of Permissible Uses (Section 165), the classification that most closely and most specifically describes the development applies. For example, a small doctor's office or clinic clearly falls within the 3.110 classification (office and service operations conducted entirely indoors and designed to attract customers or clients to the premises). However, classification 3.130, "office or clinics of physicians or dentists with not more than ten thousand (10,000) square feet of gross floor area" more specifically covers this use and therefore is applicable.

**Section 174. Residential Occupancy Controls**

**[a]** Any residential dwelling unit occupied by a group of more than two (2) persons who are not related by blood or marriage shall contain at least one (1) bedroom for each two (2) persons residing in the dwelling unit.

**[b]** Residential dwelling units which are occupied by a family shall be permitted as a principal use in all zoning districts and will not be limited to the number of persons in the family.

**[c]** Residential dwelling units which are occupied by zero to two (2) unrelated persons shall be permitted as a principal use in all zoning districts.

**[d]** Residential dwelling units which are occupied by three (3) to four (4) unrelated persons shall only be permitted as a principal use in the R-3, MH, B-3, U-1 and M-1 zoning districts and as a special use in the R-A, B-1, B-2, and O/I zoning districts.

**[e]** Residential dwelling units which are occupied by five (5) or more unrelated persons shall only be permitted as a principal use in the U-1 and M-1 zoning districts and as a special use in the R-3, B-1, B-2, B-3, and O/I zoning districts.

**[f]** The residential occupancy controls described in Subsections [b] through [e] above are illustrated in the following Table of Residential Occupancy:

Number Of Persons	Relationship	R-1	R-1A	R-R	R-2	R-3	R-4	R-A	M-H	O/I	B-1	B-2	B-3	U-1	M-1
Unlimited	Family	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
0 – 2	Unrelated Persons	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
3 – 4	Unrelated Persons					Z		S	Z	S	S	S	Z	Z	Z
5 +	Unrelated Persons					S				S	S	S	S	Z	Z

**[g]** Before any persons will be determined to be “cousins” and thereby included within the definition of “family” set forth in Article II, Section 15 [a] [41], such persons shall be required to deliver to the administrator the following documentation:

1. A copy of his or her birth certificates.
2. A copy of his or her parent’s birth certificate.

These birth certificates, when viewed together, must conclusively demonstrate that the persons claiming to be “cousins” are the decedents of a common grandparent.

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**Section 175. Supplementary Standards for Multi-Family Housing Development**

**[a]** The standards for multi-family housing development described in this section are required for all new multi-family projects. A “new multi-family project” includes all of the following:

- [1] New construction of multi-family units, whether such units constitute a new development or an expansion of an existing development;
- [2] Multi-family units created by a change in use of a portion or all of an existing development to multi-family use; and
- [3] Renovation or replacement of a portion or all of an existing multi-family development when the costs of renovation or replacement trigger the requirements of Section 143 for compliance with this ordinance.

**[b]** For purposes of this section, a “new multi-family project” shall not include multi-family units constructed as part of a mixed use building constructed pursuant to and in accordance with the requirements of Section 179, nor to multi-family units constructed as part of a mixed use project, as defined in Section 179, if it meets the following conditions:

- [1] The development is approved through a conditional B-3 district rezoning process; and
- [2] No phasing of construction is proposed or approved unless:
  - a. The commercial portions of the development will be constructed as part of the initial phase; or
  - b. All phases approved prior to the construction of the phase in which the commercial portions of the development are completed, together allow the construction of no more than one-third the number of multi-family units which are approved for the development as a whole; or
  - c. The applicant provides adequate assurances in the form of financial commitments which will guarantee that all commercial portions of the development will be completed within the approved vesting period, not longer than five years from the date of approval. For purposes of this alternative, by example only and not by way of exclusion, an irrevocable letter of credit from an appropriate financial institution in

favor of the Town in a sufficient amount to cover 125% of the projected costs of construction, said projection sealed by a North Carolina licensed engineer, is considered such a guarantee.

**[c]** Each new multi-family project development shall meet the following standards:

- [1] A townhome style design and a mixture of unit configuration and sizes per development shall be encouraged. No one type unit, as defined by the number of bedrooms, shall comprise more than 50% of the total units.
- [2] Parking shall be limited to a maximum of two spaces per unit and a clearly designated parking area for visitors. The square footage of the parking designated for visitors may not exceed ten percent of the total parking area. A minimum of 25% of units shall have a garage or carport. If freestanding, garages and carports shall be architecturally integrated with the development and be approved by the Community Appearance Commission. To the greatest extent practicable, parking shall be located behind or underneath proposed building(s).
- [3] The fee in lieu provisions contained in Section 243 shall not apply. All required sidewalks shall be installed.
- [4] A livability space ratio of .50 must be met for the development. Fifty percent of the required livability space shall be designated to a defined area exclusively for the use of ground floor units. This space must consist of a common yard with accompanying private outdoor space for each ground level unit, or individual yards contiguous with the unit served. Either configuration must provide direct access from all ground floor units. The remaining fifty percent of the required livability space shall be designated for the use of the development as a whole as recreation space and shall be located so as to provide for direct auditory, visual, and physical access from the living units served.
- [5] On-site property management or a property owners association (POA) shall be required.

**[d]** Each residential building in a new multi-family project development shall meet the following standards:

- [1] The maximum building height shall be 3 stories of occupied space and in no case shall the building exceed 50 feet in total height including the roof or the maximum in the particular zoning district, whichever is less. The height of a building shall be measured as the vertical distance measured from the mean elevation of the finished grade to the highest point of the building.
- [2] If a pitched roof is proposed, the pitched roof area may be used as attic or storage space. If a flat roof is proposed, 50% of the roof area must be used as livability space.
- [3] The front entrance of each unit on the first floor must be at ground level to the greatest extent practicable.

**[e]** Each unit shall meet the following standards:

- [1] The bedroom to bathroom ratio of each unit within the development shall be limited as follows:
  - a. Efficiency unit and 1 bedroom unit: 1 bathroom.
  - b. 2 bedroom unit: 1 or 2 bathrooms, with no less than one bathroom with common access.
  - c. 3 bedroom unit: 2 bathrooms with no less than one bathroom with common access.
  - d. 4 or more bedroom unit: 3 bathrooms with no less than two bathrooms with common access from a hall.
- [1] In every unit with two or more bedrooms, a designated master suite must be included and shall be at least 25% larger than every other bedroom and not less than 144 square feet excluding closet space.
- [2] Dedicated storage space of at least 50 square feet per unit must be provided for units without garages. Any storage space which is not within or attached to the building containing the units served by the space must be architecturally integrated with the development and approved by the Community Appearance Commission.
- [3] Occupancy of each unit shall be limited to two unrelated persons.

**Section 176. Reserved**

**Section 177. Reserved**



## Article XI      Supplementary Use Regulations

### Part I      General Provisions

#### Section 178. Planned Residential Developments

**[a]** Planned residential developments (PRD's) are permissible only on tracts of land of at least five acres located within an R-2, R-3, or R-4 zoning district.

**[b]** The overall density of a tract developed by a PRD shall be determined as provided in Section 200.

**[c]** Permissible types of residential uses within a PRD include single family detached dwellings (use classification 1.111), two family residences (1.200), and multi-family residences (1.300). At least fifty percent (50%) of the total number of dwelling units must be single family detached residences on lots of at least 6,000 square feet.

**[d]** A PRD shall be an architecturally integrated subdivision.

**[e]** To the extent practicable, the two family and multi-family portions of a PRD shall be developed more toward the interior rather than the periphery of the tract so that the single family detached residences border adjacent properties.

**[f]** In a PRD, the screening requirements that would normally apply where two family or multi-family development adjoins a single family development, shall not apply within the tract developed as a PRD, but all screening requirements shall apply between the tract so developed and adjacent lots.

#### Section 179. Mixed Use Districts Established

**[a]** Multi-family residential uses (use 1.300) are allowed in the B-1, B-2 and B-3 zoning districts when the following criteria are met. Objectives of this Section include: protecting and preserving the Town's limited business zones and primary corridors for commercial uses, while allowing appropriate housing opportunities; providing options for living, working, and shopping environments in close proximity to each other; facilitating more efficient use of land while minimizing potentially adverse impacts; and providing options for pedestrian-oriented lifestyles. For purposes of this Section, "commercial" shall include allowable uses from Use 2.0 Sales and Rentals of Goods, Merchandise and Equipment through 27.0 Government Uses except Use 10.0 Storage and Parking. To the extent this Section conflicts with other Articles of this Ordinance, this Section shall control.

**[b]** Multi-family residential uses, either as the result of new construction or conversion, are allowed in the Central Business District (B-1) only if the projects in which they are included meet all the following criteria:

- [1] Each project shall provide primary street level commercial land uses (i.e. retail, office, restaurant) of at least 50% of the square footage of the footprint of the development on the primary street level. For developments located on lots which abut more than one public street in the Central Business District, each additional street level floor shall provide commercial uses of at least 30% of that level's square footage. For purposes of this sub-section, the "primary street" shall be determined according to the following order: King Street, Howard Street, Depot Street, all other streets. For example, if a project is located on a lot that abuts both King Street and Howard Street, King Street shall be considered the "primary street" while for a project which abuts Howard Street and Depot Street, Howard Street shall be considered the "primary street" and so on.
- [2] The entire frontage of the primary street level of the building abutting the street shall provide commercial uses. Required entrances for ingress and egress to secondary uses are permitted along said frontage so long as they are no larger than necessary to meet building code and safety requirements for ingress and egress. Commercial uses on the non-primary street level(s) shall front on the non-primary street.
- [3] The entire primary street level floor of the building shall be constructed to commercial standards in accordance with North Carolina Building Code Group A, B, E or M.
- [4] New projects shall be at least two floors above the primary street level.
- [5] Buildings facades shall be oriented to each public street and shall have a primary entrance door facing each abutting public sidewalk.
- [6] A minimum of 60% of primary public street level facing building facade shall be comprised of transparent, non-reflective windows and 30% of non-primary street level facing building facades shall be comprised of transparent, non-reflective windows.
- [7] Surface parking shall be located away from each public street to the extent possible, and if practical, to the rear of the principal building.
- [8] Structured parking is permitted to the rear of the building or below the street level floor.

- [9] Building facades may be no further than 0'-0" from the established street setback line, except where necessary to provide landscaped courtyards, plazas, pocket parks, other pedestrian oriented amenities, or when there would be interference with public utilities.
  - [10] The minimum building footprint shall be 50% of the total gross square feet of the lot.
  - [11] Pedestrian weather protection such as awnings or canopies are encouraged along the public street but may be placed only in accordance with an encroachment agreement authorized by the Town Council.
- [c] Multi-family residential uses, either as the result of new construction or conversion, are allowed in the Neighborhood Business District (B-2) only if the projects in which they are included meet all the following criteria:
- [1] Each project shall provide street level commercial land uses (i.e. retail, office, restaurant) of at least 100% of the street-level floor square footage.
  - [2] Buildings facades shall be oriented to the public street and shall have a primary entrance door facing the public sidewalk.
  - [3] A minimum of 60% of the street facing street level building facade shall be comprised of transparent, non-reflective windows.
  - [4] Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.
  - [5] Structured parking is permitted but shall be located to the rear or below street-level commercial uses.
  - [6] Building facades may be no further than 0'-0" from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or when there would be interference with public utilities.
  - [7] Interior setbacks for all mixed use buildings shall be 10'-0" except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.

- [8] Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council. Such awnings or canopies count toward the Recreation Space requirements found in Section 204 of this Ordinance.
- [9] All development shall comply with the landscape standards set forth in Article XX except that Type "A" interior landscape buffers may be provided regardless of adjacent land use classifications.

**[d]** Multi-family residential uses, either as the result of new construction or conversion, are allowed in the General Business District (B-3) only if the projects in which they are included meet the following:

- [1] Multi-family uses wholly or partially on property zoned B-3 General Business within the Corridor Districts.
- [A] Mixed Use Building(s):
- i. Each building shall fully consist of street level commercial uses (i.e. retail, office, and restaurant).
  - ii. A minimum of 60% of the street level building façade facing the Corridor shall be comprised of transparent, non-reflective windows.
  - iii. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line. Structured parking is permitted but shall be located to the rear or under street level commercial uses.
  - iv. Building facades may be no further than 10' from the street right-of-way line, except where necessary to preserve existing significant or historic trees which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or there would be interference with public utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.
  - v. Interior setbacks for all mixed use buildings shall be a minimum of 10' except where abutting a residential zoning district, in which case the interior setback shall at a minimum equal the required interior setback in the abutting residential district.

- vi. Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.
- [B] Single Use Building(s)
- i. Single use multi-family building(s) are only allowed as part of a mixed use project.
  - ii. A mixed use project shall meet the following criteria:
    - a. Each project shall fully consist of street level commercial uses (i.e. retail, office, and restaurant) of 100% of the street level gross floor area on every building which fronts a corridor protected by the Corridor District. In addition, at least 50% of the total gross floor area of all buildings located within the Corridor District shall fully consist of commercial uses. This requirement may be satisfied if the commercial floor area is distributed among buildings or within one building as long as the requirement set forth in Section 179 [d][1][B][i] above is met.
    - b. The street level floor of all buildings within the Corridor District shall be built to commercial standards in accordance with North Carolina Building Code Group A, B, E, or M.
    - c. A minimum of 60% of the street facing street level building façade of a building which fronts a protected corridor shall be comprised of transparent, non-reflective windows.
    - d. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.
    - e. Structured parking is permitted but shall be located to the rear or below the commercial uses.

- f. Building facades may be no further than 10' from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or there would be interference with public utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.
  - g. Interior setbacks for all mixed use buildings shall be 10' except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.
  - h. Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.
- [2] Multi-Family Uses wholly or partially on Property Zoned B-3 General Business Outside the Corridor District but Proximate to Major Streets.
- i. For the purposes of this Section “major street” refers to collector and arterial streets.
  - ii. “Proximate” shall mean any building wholly or partially within 200 feet of the centerline of a major street.
  - iii. Mixed Use Building(s)
    - a. Mixed use building(s) shall meet the same requirements as described in Section 179[d][1][A].
  - iv. Single Use Building(s)
    - a. Single use multi-family building(s) are only allowed as part of a mixed use project.
    - b. A mixed use project shall meet the following criteria:

1. Each project shall consist of street level commercial uses (i.e. retail, office, and restaurant) of 100% of the street level gross floor area on every building which fronts a major street. In addition, at least 25% of the total gross floor area of all buildings wholly or partially located within 200 feet of the centerline of a major street shall consist of commercial uses. This requirement may be satisfied if the commercial floor area is distributed among buildings or within one building.
2. For any floor containing a commercial use the entire floor shall be built to commercial standards in accordance with North Carolina Building Code Group A, B, E, or M.
3. A minimum of 60% of the major street facing street level façade of a building containing commercial use(s) shall be comprised of transparent, non-reflective windows.
4. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.
5. Structured parking is permitted but shall be located to the rear or below the commercial uses.
6. Building facades fronting the major street may be no further than 10' from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or there would be interference with public utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.
7. Interior setbacks shall be 10' except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.

8. Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.
- [3] Multi-Family Uses wholly or partially on property zoned B-3 General Business in all other areas.
    - [A] Multi-family uses not part of a mixed use development may be allowed if an applicant demonstrates that within  $\frac{1}{4}$  mile (1,320 feet) of the borders of the lot that is to be developed there exists commercial uses with gross floor area square footage equal to the gross floor area square footage of the proposed multi-family project. If this standard cannot be met then the proposed project must meet the requirements in Section 179[d][2] above.

## Section 180. Temporary Uses

### [a] General Regulations for Temporary Uses

- [1] All listed temporary uses are required to obtain a permit in compliance with the regulations of this Section.
- [2] Unless expressly permitted no sign may be erected in conjunction with a temporary use.
- [3] Only those improvements and modifications minimally necessary for the temporary use to function are permitted.
- [4] In the event the property owner fails to remove a temporary structure within the described time frames after the permit authorizing its use has been terminated, the Town may remove the said temporary structure at the expense of the owner, and may seek to recover through collection efforts or a civil action against the owner, the costs of removal, court costs and attorney fees.
- [5] A sight triangle ten (10) feet by seventy (70) feet must be observed at all intersections of driveways or streets with adjacent streets.
- [6] Temporary uses shall not be subject to the requirements of Section XXII Commercial Appearance Standards unless provided in this Section.
- [7] No required existing landscape buffer may be disturbed for any temporary use.



- [8] All temporary uses shall meet all applicable NC Building Codes.
- [9] Unless otherwise provided herein, the land use intensity ratios of Section 200 shall apply.

**[b]** Temporary Care Provider Dwelling: A temporary care provider dwelling may be permitted as a temporary use on a lot with Use 1.110 Single-family detached, one dwelling unit per lot, subject to the following conditions:

- [1] Occupancy of a temporary care provider dwelling shall be limited to the family care provider or the aged, infirmed or disabled persons requiring a substantial amount of personal care or attention based on a certified medical need.
- [2] The temporary care provider dwelling shall meet all minimum building spacing requirements set forth in Section 208.
- [3] The temporary care provider dwelling shall be placed on the lot in such manner that it meets all required setbacks.
- [4] No more than one accessory temporary care provider housing unit per lot shall be allowed.
- [5] Only Class A and B manufactured homes may be used as a temporary care provider dwelling.
- [6] The applicant must provide a certification by a qualified medical provider that the temporary care provider dwelling is needed to take care of a sick, elderly or disabled person who lives on the same lot who is in need of personal or medical attention.
- [7] The location, placement, and type of the temporary care provider dwelling must be selected so as to minimize any negative effects on adjacent properties.
- [8] A permit shall be valid for a period of 1 year. Applications for extensions for an additional 1 year period must be filed between 30 to 90 days prior to the expiration of the permit. For each new extension the applicant must demonstrate continuing compliance with this Section and a new certification in accordance with Section 180 [b] [6] must be submitted. The applicant can continue to apply for extensions so long as all other requirements of this Section are met.
- [9] Upon expiration of the permit or the cessation of the conditions giving rise to the permit, the temporary structure shall be removed from the property within 60 days.

**[c]** Temporary Construction or Repair Dwelling: A temporary construction or repair dwelling may be permitted as a temporary use while either a Use 1.111 (site built or modular structures) or 1.200 (two-family residences) is being constructed or repaired, subject to the following conditions:

- [1] Upon completion, the dwelling under construction or repair must be the principal residence of the owner of the lot.
- [2] Only Class A and B manufactured homes may be used as temporary construction or repair dwellings.
- [3] The permit may not be issued until the owner of the lot has received a building permit for the construction or repair of the non-temporary dwelling.
- [4] The temporary construction or repair dwelling shall be placed on the lot in such manner that it meets all required setbacks.
- [5] A permit shall be valid for a period of 1 year but may be extended for up to 2 consecutive 6 month periods upon an application filed no later than 30 days before the end of each permit period. Each extension shall require a finding by the Administrator that significant progress is being made in completing the construction or repair.
- [6] The temporary construction or repair dwelling shall be removed within 30 days upon:
  - [i] Expiration of the permit.
  - [ii] Expiration or lapse of the building permit for the dwelling under construction or repair.
  - [iii] Issuance of a certificate of occupancy or certificate of compliance, as appropriate, for the dwelling under construction or repair.

**[d]** Temporary Construction Trailer: A temporary construction trailer may be permitted as a temporary use for a temporary office, security shelter or shelter for materials or tools (but not for residential purposes or sales office) incident to construction or development of the premises upon which the temporary construction trailer is located subject to the following conditions:

- [1] Temporary construction trailers may only be located on a lot upon which a valid zoning or building permit has been issued.
- [2] A temporary construction trailer shall be located at least 10 feet away from all road rights-of-way and property lines.

- [3] A temporary construction trailer may not be used for residential purposes.
- [4] The permit shall be valid for 2 years from the date of issuance or for a maximum of 30 days after the issuance of a certificate of occupancy, whichever is less; provided however, if the project is multi-family or nonresidential in nature, the temporary use permit may be extended if the approved project is not yet completed and the applicant requests an extension within 90 days prior to the expiration of the permit period. Each such extension may be for 1 year. The applicant can continue to apply for extensions so long as all other requirements of this Section are met.

**[e]** Temporary Mobile Medical Unit: A temporary mobile medical unit may be permitted as a temporary recurring use accessory to an existing medical use subject to the following conditions:

- [1] A temporary mobile medical unit must be accessory to the principal medical use and related to the care provided by the principal medical use.
- [2] A temporary mobile medical unit must be located on the same lot as the principal medical use.
- [3] A temporary mobile medical unit may be recurring but shall be limited to one (1) 48-hour period per week.
- [4] A temporary mobile medical unit shall not encroach upon or disturb traffic movements and pedestrian circulation either within the site or on the adjacent streets and sidewalks.
- [5] A temporary mobile medical unit shall not be subject to Section 200 Schedule of Land Use Intensity Regulations or to Section 206 Accessory Building Setbacks. Setbacks for temporary mobile medical units shall be 10 feet from any street rights-of-way and 5 feet from any interior boundary.
- [6] Landscape buffers must be provided to the extent possible in the setback areas adjacent to the temporary mobile medical unit.
- [7] No building may be constructed in association with the temporary mobile medical unit, and none is authorized by a permit for a temporary mobile medical unit.

**[f]** Temporary Structures in Special Flood Hazard Area:

- [1] All temporary structures to be located in a Special Flood Hazard area are subject to the regulations in Section 303 [b] [7].

**[g]** Temporary Classroom: A temporary classroom may be permitted as a temporary use accessory to Use 5.100 (Schools) and Use 7.100 (Hospital, clinic, other medical and mental health treatment facilities) subject to the following conditions:

- [1] A temporary classroom must be accessory and related to the principal use on the lot.
- [2] A temporary classroom shall only be allowed at a density that does not exceed one temporary classroom for every 5 acres
- [3] The temporary classroom shall be placed on the lot in such manner that it meets all required setbacks.
- [4] The location, placement, and type of the temporary classroom must be selected so as to minimize any negative effects on adjacent properties.
- [5] A temporary classroom shall not be subject to Section 200 Schedule of Land Use Intensity Regulations.
- [6] Landscape buffers must be provided to the extent the temporary classroom is adjacent to properties not associated with the principal use for the lot for which the temporary classroom serves.
- [7] The permit shall be valid for 3 years from the date of issuance. The temporary use permit may be extended subject to the following conditions:
  - i. A one year extension is allowed if a building permit for an approved project for permanent construction which would replace the need for the temporary classroom has been issued prior to the expiration of the temporary permit; and
  - ii. The applicant requests an extension within 90 days prior to the expiration of the temporary permit period.

### **Section 181. Primary Residence with Accessory Apartment**

**[a]** A lot may be classified as a Primary Residence with Accessory Apartment (land use 1.210) and permitted as such only when one of the following standards is met:

- [1] The owner of the lot resides in the primary residence or the accessory apartment at least ninety percent of the year, a “year” understood and defined as the preceding twelve month period ending on the date of the application or any inquiry by the administrator. In situations in which an applicant seeks to initiate the use of a lot as a Primary Residence with Accessory Apartment and there has been no prior occupancy of either dwelling unit, the owner shall make a written declaration of the intention to reside in the primary residence or the accessory apartment at least ninety percent of the year, and the written declaration shall acknowledge that should the owner’s residency ever fall below ninety percent of any subsequent rolling twelve month period, the zoning permit shall be revoked and the right to use the property as a primary residence with accessory apartment shall cease. The Town shall retain the original declaration and acknowledgment, and a copy of each shall be provided to the owner.
- [2] The owner and all tenants of the lot comply with all registration and other requirements of Section 159[d], *above*, and for lots not located in a neighborhood conservation district, the owner also notifies all tenants of UDO occupancy limitations. In situations in which an applicant seeks to initiate the use of a lot as a Primary Residence with Accessory Apartment and there has been no prior occupancy of either dwelling unit, the owner shall make a written declaration of the intention to comply with all registration and other requirements of Section 159[d], *above*, and for lots not located in a neighborhood conservation district, to notify all tenants of UDO occupancy limitations. The written declaration shall acknowledge that should the owner or tenants fail to comply with all registration and other requirements of Section 159[d], *above*, or the requirements of this subsection, the zoning permit shall be revoked and the right to use the property as a primary residence with accessory apartment shall cease. An owner who does not reside on the lot for the period described in subsection [1], *above*, may only allow others to reside on the lot pursuant to a written lease and shall file a copy with the Town. The lease must include provisions that the tenant(s) must comply with the Town’s noise ordinance and the Town’s occupancy limitations and that violation of the Town’s noise ordinance or occupancy limitations shall be considered a material violation of the lease and shall result in the termination of the lease and tenancy.

**[b]** On a single lot, a Primary Residence with Accessory Apartment (land use 1.210) may have no more than one single family residence and one accessory apartment.

**[c]** The occupancy of an accessory apartment shall be limited to no more than 2 unrelated persons or 4 members of a family.

**[d]** The owner of a Primary Residence with Accessory Apartment shall provide adequate off-street parking in compliance with Section 346(e), *infra*, for the accessory apartment to the side or to the rear of the primary residence. In no case shall a front yard area be converted to parking or used to satisfy off-street parking requirements. For purposes of this section, the “front yard area,” “side” or “rear” of the primary residence shall be determined by the location of the street referenced in the physical address of the lot, with the portion of the primary residence closest to said street considered “the front” without regard to the orientation or main entrance of the primary residence.

**[e]** The accessory apartment shall not be served by a driveway separate from any driveway serving the primary residence.

**[f]** An attached accessory apartment shall be designed so that the appearance of the primary residence remains that of a single family dwelling. The accessory apartment entrance shall be located on the side or in the rear of the single family residence.

**[g]** An accessory apartment shall be clearly subordinate to the primary residence. The floor area of an attached accessory apartment may not be more than 50 (fifty) percent of the floor area of the primary residence and may never exceed eight hundred (800) square feet. The floor area of a detached accessory apartment may not be more than 50 (fifty) percent of the floor area of the primary residence and may never exceed six hundred (600) square feet.

**[h]** Detached accessory apartments are those which are not attached to the primary residence. A detached accessory apartment may be located over a garage, workshop, studio or similar structure or built as a free standing cottage. Every detached accessory apartment must be architecturally compatible with the primary residence, and certified as such by the Community Appearance Commission.

**[i]** A detached accessory apartment shall be located to the side or rear of the primary residence and its front most point may be no closer to the fronting street than the front most point of the primary residence.

**[j]** A two story detached accessory apartment may be allowed only when the primary residence is 1 ½ stories or more, and its architectural compatibility has been certified by the Community Appearance Commission.

**[k]** A Primary Residence with Accessory Apartment (land use 1.210) must comply with all applicable land use intensity ratios, and the exemption in Section 200 [a], *infra*, shall not apply.

**[1]** At any time when a lot classified and permitted as a Primary Residence with Accessory Apartment (land use 1.210) no longer complies with all applicable requirements of this section, the zoning permit allowing the use shall be revoked and the right to use the property as a Primary Residence with Accessory Apartment shall cease.

### **Section 182. Mining or Quarrying Operations, Including On Site Sale of Products**

**[a]** The mining or quarrying operations, including the on site sale of products (use 14.200) shall conform to the following requirements:

- [1] Permanent roads, defined as those to be used in excess of one year, within the excavation site shall be surfaced with a dust free material, such as soil cement, bituminous concrete, or Portland Cement concrete.
- [2] Roads other than permanent roads shall be treated with dust inhibitors which will reduce to a minimum the generation of dust from the road surfaces as a result of wind or vehicular action.
- [3] A security fence at least six (6) feet high shall be installed where the proposed extraction takes place within three hundred (300) feet of a dwelling, school, church, hospital, commercial or industrial building, public building, or public land.
- [4] Spoil piles and other accumulations of by products shall not be created to a height more than thirty five (35) feet above the original contour and shall be so graded that the vertical slope shall not exceed a forty five (45) degree angle.

### **Section 183. Fraternity or Sorority Dwellings**

**[a]** A fraternity or sorority dwelling (use 1.540) shall contain a minimum of two hundred fifty (250) square feet of floor area for each resident.

### **Section 184. Home Emphasizing Special Services, Treatment or Supervision**

**[a]** Separation Requirements

- [1] A Family Care Home (Use 1.410) shall not be located within five hundred feet of another Family Care Home (Use 1.410).
- [2] A Nursing Care Home (Use 1.420) and a Home for Survivors of Domestic Violence (Use 1.430) shall not be located within one-half (.5) mile of any other home emphasizing special services, treatment or supervision (Use 1.400).

**[b]** Buffer and Streetyard Requirements: A home emphasizing special services, treatment, or supervision (Use 1.400) shall meet the buffer and streetyard requirements as outlined in Article XVII.

**[c]** Supervision:

[1] A home emphasizing special services, treatment or supervision (Use 1.410) will provide adequate supervision in light of the number and needs of the residents and security concerns for the home.

**[d]** Additional requirements for a Home for Survivors of Domestic Violence:

[1] The home shall be operated by a non-profit organization recognized by the Internal Revenue Service and that is registered by the State of North Carolina.

[2] Staff shall be present at all times. In addition, staff shall be trained in emergency procedures (including CPR and first aid), safety plans and procedures used by the home.

[3] The organization operating the home must receive domestic violence funding from the North Carolina Department of Administration's Council for Women/Domestic Violence Commission.

[4] The home shall have a security plan which outlines all security measures taken by the home to assure the safety of the residents of the home and the neighborhood.

a. Before a Zoning Permit is issued this security plan shall be submitted to the Administrator and approved by the Town of Boone Police Department.

b. Before a Zoning Permit is issued the home's security measures shall be physically inspected by the Town of Boone Police Department to determine accuracy with the submitted security plan. After the initial inspection, each home shall be inspected annually by the Town of Boone Police Department.

c. Thirty (30) days prior to amending the approved security plan, the organization shall submit to the Administrator the proposed modifications which are subject to approval from the Boone Police Department.

d. The home shall be equipped with a monitored alarm system or an alternative measure that will ensure the immediate response of emergency services in the event of an emergency.



- [5] A Home for Survivors of Domestic Violence shall meet the buffer and streetyard requirement of Article XVII except that the Administrator is allowed flexibility in either increasing or decreasing the buffer and streetyard requirements in order to protect the residents of the home.
- [6] The overnight occupancy of the home shall be limited to no more than 13 persons.

**Section 185. Open Air Markets**

**[a]** Open air markets (use 19.0) shall contain a minimum gross land area of forty thousand (40,000) square feet and the area utilized for display shall not be in excess of forty percent (40%) of the total gross land area.

**[b]** All display areas shall be at least thirty five (35) feet from any street right of way line and the area between the display area and the street right of way shall contain an opaque screen, Type C in accordance with the screening requirements of Section 363.

**[c]** The open air market shall provide rest room facilities for merchants and customers.

**[d]** Any electric supply or installation shall conform with the requirements of the National Electric Code.

**Section 186. Parking As A Principal Use**

**[a]** Automobile parking garages or parking lots not located on a lot on which there is another principal use to which the parking lot is related (use 10.100) shall meet the parking lot landscaping requirements of Section 367.

**Section 187. Reserved**

**Section 188. Reserved**

**Section 189. Home Occupations**

**[a]** A Home Occupation may be conducted as an accessory use of a dwelling unit, provided that:

- [1] No person other than members of the resident family shall be engaged in such occupation,

- [2] The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes, and not more than twenty-five percent (25%) of the floor area of the dwelling unit shall be used in the conduct of the home occupation,
- [3] No external evidence of the conduct of the home occupation shall be visible, other than a sign as permitted in Article XVIII,
- [4] The home occupation shall not generate traffic volumes or parking area needs greater than would normally be expected in a residential neighborhood,
- [5] No equipment or process shall be employed that will cause noise, vibration, odor, glare, or electrical or communication interference detectable to the normal senses off the lot; in the case of detached dwelling units, or outside the dwelling unit, in the case of attached dwelling units, and
- [6] The on premise sale and delivery of goods which are not the products of the home occupation are prohibited.

### **Section 190. Adult Establishments**

**[a]** The purpose for creating the adult establishments use classification shall be to set forth the appropriate locations in which adult entertainment or sexually oriented businesses may be established within the town's zoning jurisdiction and to provide for certain development standards. Adult establishments, because of their very nature, are recognized as having serious objectionable characteristics, particularly when they are located near a residential zoning district or certain other districts which permit residential, eleemosynary, educational, or recreational uses. Studies have shown that lower property values and increased crime rates tend to accompany and are brought about by the concentration of adult establishments. The Town Council finds that regulation of these uses is necessary to ensure that these adverse effects do not contribute to the blighting of surrounding neighborhoods and to protect the integrity of the town's schools, churches, child care centers, and public parks and playgrounds which are typical areas in which juveniles congregate.

**[b]** The requirements of this section shall apply to all adult establishments as outlined in NC G.S. 14-202.10 and shall also apply to adult video stores and adult hotels and motels as defined in this ordinance.

**[c]** Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this section.

*Adult Establishment:* Any structure or use of land which meets the definition of adult establishment as outlined in NC G.S. 14-202.10, and including adult video stores and adult hotels and motels.

*Adult Video Store:* Any store which receives a majority of its gross income during any calendar month from the sale or rental of films, motion pictures, video cassettes or video reproductions, slides, computer media, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas" as defined in NC G.S. 14-202.10.

*Adult Hotel or Motel:* A hotel, motel, or similar commercial establishment that:

- a. Provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe "specified sexual activities" or "specified anatomical areas" as one of its principal business purposes, or
- b. Offers a sleeping room for rent for a period of time less than ten (10) hours, or
- c. Allows a tenant or occupant of a sleeping room to sub lease a sleeping room for a period of time less than ten (10) hours.

**[d]** Adult establishments shall be permitted subject to the following requirements:

- [1] Adult establishments shall be permitted in the following zoning districts:
  - a. Adult bookstores shall be permitted in the same zoning districts that permit bookstores.
  - b. Adult video stores shall be permitted in the same zoning districts that permit video stores.
  - c. Adult hotels and motels shall be permitted in the same zoning districts that permit hotels and motels.
  - d. Adult live entertainment business shall be permitted in the same zoning districts as the nearest type of corresponding non adult use, provided, however, if the adult live entertainment business is also a private club it shall be subject to the location standards for private clubs as set forth in Article X of this ordinance.

- e. Adult massage business shall be permitted in the B-1, B-2, B-3 and M-1 zoning districts, provided, however, no provision of this section shall apply to any bona fide therapeutic massage service provided by a licensed medical professional or other person certified by a state or nationally recognized organization, nor shall this section apply to any private or public fitness center or nonprofit community recreational fitness and service organization, either of which provides massage therapy as a service incidental to the operation of a fitness center.
  - f. Adult motion picture and adult mini motion picture theaters shall be permitted in the same zoning districts that permit motion picture theaters.
- [2] No lot containing an adult establishment shall be within one thousand (1000) feet of another lot containing an adult establishment. No lot on which an adult hotel or adult motel is located shall be within two thousand (2000) feet of another lot containing an adult establishment.
- [3] No adult establishment shall be located on any lot whose property line is within one thousand (1000) feet of the property line of a church, school, library, public park or playground, daycare center (except a home daycare center), or residential zone.
- The required distance shall be measured from the closest edge of the property occupied by an adult establishment to the closest edge of the property occupied by a protected use or another adult establishment. Provided, however, that when an adult establishment is located in a multi-tenant facility, the distance shall be measured from the closest edge of the portion of the facility occupied by such establishment.
- [4] No more than one adult establishment shall be located within the same structure or portion thereof.
- [5] Except for adult hotels and motels, no adult establishment may provide sleeping quarters.
- [6] No printed material, slide, video, photograph, written text, live show, or other visual presentation shall be visible, nor shall any live or recorded voices, music, or sounds be heard from outside the walls of the establishment.
- [7] All signage shall meet the standards of Article XVII. In addition, the following restrictions shall apply.

- a. No freestanding (detached) signs shall be permitted.
- b. Attached signage on all building faces shall not exceed eighty (80) square feet total. Provided, however, in no case shall signage cover more than ten (10) percent of the area of any building face.
- c. A sign plan showing the location and number of attached sign(s) must be submitted to the administrator prior to the issuance of any permits to verify compliance with this section.
- d. Promotional materials for advertising shall not be visible to the public from pedestrian sidewalks or walkways.

[8] The adult establishment must meet all other applicable provisions of this ordinance.

**[e]** The Board of Adjustment shall have no authority to modify or grant variances from the separation distance requirements imposed by Section 190 [d] [2] and [3].

**[f]** This section in no way limits, restricts, modifies or changes Chapter 12, of the Town of Boone Public Display Ordinance. Any use permitted under this section must comply in all respects with the Public Display Ordinance.

### **Section 191. Manufactured Home Park**

**[a]** Manufactured home parks (use 1.122) shall be developed in accordance with the following general requirements:

- [1] A manufactured home park shall have one (1) sign designating the park.
- [2] A manufactured home park may have a manufactured home as a designated office.
- [3] A manufactured home park may have material and equipment storage buildings for maintenance of the park. Said buildings shall be located a minimum of twenty five (25) feet from any residential units.
- [4] Each manufactured home shall be set up and installed in accordance with the state of North Carolina regulation for installation of manufactured homes adopted and published by the North Carolina Department of Insurance.
- [5] Each manufactured home foundation shall be fully enclosed with aluminum, vinyl or masonry materials.

- [6] All units within manufactured home parks must be constructed to HUD standards and contain the appropriate seals to verify this fact.

**[b]** The requirements for the manufactured home space shall be:

- [1] Each manufactured home space shall have a permanent site number sign that is clearly visible from the street and located on each power panel box serving the home.
- [2] Each manufactured home space shall have proper drainage to prevent accumulation of water.
- [3] Each manufactured home space shall have a solid ground surface where the home will be placed.
- [4] The following separation requirements are established for fire protection purposes and are designed to ensure the public health, safety and general welfare of individuals in manufactured home parks. Each manufactured home shall be located at least twenty (20) feet from any other manufactured home and at least twenty five (25) feet from any other building within the park, excluding storage buildings accessory to individual manufactured homes. Each home shall be at least twenty (20) feet from any property line or right-of-way. Each home shall be set back at least ten (10) feet from any private streets within the park. No structure or fence may be placed in the open area between the rear of the units.
- [5] Accessory storage buildings shall be located flush with the rear of the home, a minimum of five (5) feet from the principal home and no less than eight (8) feet from any adjoining home, unless otherwise approved by the town Fire Marshal.
- [6] There shall be an open area within the park provided by the owner and designated for recreational purposes. Said area shall comply with Section 204.
- [7] There shall be adequate space for off street parking of two (2) passenger cars at each home. Said spaces shall be located a minimum of four (4) feet from any unit.
- [8] There shall be front and rear steps for each manufactured home. If the resident elects to have decks, the home will be required to have steps until decks are completed.

**[c]** The streets in a manufactured home park shall meet the following requirements:

- [1] Streets within the manufactured home park shall be a minimum width of eighteen (18) feet and have a minimum easement width of thirty (30) feet.
- [2] Traffic control signs (i.e. stop, yield and speed signs) shall be placed throughout the manufactured home park where necessary, as specified by the administrator.
- [3] Each street shall have a permanent sign installed with a designated name identifying each street.
- [4] Streets and parking areas shall be maintained by the operator/manager of the manufactured home park.
- [5] Street lighting shall be provided throughout the manufactured home park.

**[d]** The utilities and solid waste disposal in a manufactured home park shall meet the following requirements:

- [1] The source of the water supply shall be through the municipal public water system.
- [2] A municipal sewage disposal system shall be provided in the manufactured home park.
- [3] There shall be a storage and disposal system for solid waste for the manufactured home park in order to alleviate health and pollution hazards. Bulk solid waste storage containers shall be provided on site. There shall be a minimum of one (1) ten (10) yard container for every twenty (20) residential units. These containers shall be distributed throughout the park as per the recommendations of the supervisor of sanitation, and screened in accordance with local regulations. It shall be the responsibility of the operator/manager of the manufactured home park to see that a municipal or private solid waste disposal service is provided to the residents of the manufactured home park on a weekly basis. This may or may not be at the expense of the residents.

**[e]** The buildings and grounds in manufactured home park shall meet the following requirements:

- [1] The grounds of the manufactured home park shall be free of debris, trash and litter.
- [2] Grounds, buildings and storage areas within the manufactured home park shall be maintained to prevent the infestation of rodents, flies, mosquitoes and other pests.

- [3] Grounds within the manufactured home park shall also be maintained to prevent the growth of ragweed, poison ivy, poison oak and other weeds.
- [4] All grounds within the manufactured home park shall have proper drainage to prevent the accumulation of water.
- [5] All recreational areas provided by the owner for the manufactured home park shall be maintained in a safe and sanitary manner by the operator/manager.
- [6] The operator/manager shall provide space on the grounds for mail service to the residents of the manufactured home park.

## **Section 192. Telecommunication Towers and Related Structures**

**[a]** The purpose of this section is to establish rules and standards for the location and construction of towers and antennas for commercial wireless communications. The intent of the section is to protect the health, safety and welfare of the citizens of the town, to encourage the location of towers in non residential areas, to encourage the joint use of new and existing tower sites and to minimize the adverse impact of commercial wireless communication towers.

**[b]** The following words, terms and phrases shall have the meaning indicated when used in this section.

*Antenna:* Any equipment or device designed to transmit or receive telecommunication signals. Satellite receiving antenna less than one (1) meter in diameter are permitted in any zoning district and satellite receiving antenna less than two meters in diameter are permitted in non-residential districts.

*Major Mountain Ridge:* A ridge with an elevation higher than three thousand (3000) feet above mean sea level and an elevation five hundred (500) feet or more above the elevation of an adjacent valley floor.

*Stealth Technology:* Man made trees, clock towers, bell steeples, light poles and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

*Transmitting and Receiving Tower:* A tower structure and antenna under fifty (50) feet in height, owned and operated by a federally licensed individual, which serves only the needs of a single building and its occupant, which shall be exempt from the requirements of this section.

*Tower Height:* The vertical distance measured from the ground to the upper most point of the tower, not including the antenna(s).

*Tower Site:* The real property that an applicant is required to have ownership of, leasehold interest in, or easement over.



*Vegetative Canopy:* Trees which create a roof like layer of spreading branches.

*Viewshed:* Those lands seen from a known location forming a visual composition, with foreground, middle ground, and background areas. Foreground is the area within one (1) mile of the known location close enough to a viewer so that individual plant types, smells, colors, and forms are extremely vivid.

*Wireless Telecommunication Tower:* Any tower or structure erected for the purpose of supporting, including, but not limited to, one or more antennas designed to transmit or receive television, AM/FM radio, digital, microwave, cellular, telephone or similar forms of electronic communication.

**[c]** It shall be unlawful for any person, corporation, partnership or other entity to erect any wireless communication towers without first obtaining a zoning permit from the administrator. A permit shall also be required for the erection of a replacement tower or the modification of an existing tower. Existing towers owned by government agencies and designed for non commercial emergency communications may be replaced with a tower equal in height to the replaced tower, however all other ordinance provisions are applicable.

**[d]** A completed wireless communication tower zoning permit application with all the supporting documentation identified in Subsection [e] shall be submitted to the administrator, including a site plan which contains the following information:

- [1] A vicinity map and a title block containing the name of the tower owner and/or property owner, scale, North arrow, latitude/longitude coordinates and surveyed ground elevation.
- [2] Exact boundary lines of the property containing the proposed tower construction, any associated guy wires and tower height. The boundary line corners shall be clearly marked on the site to allow for a field inspection by the administrator.
- [3] The tower design plan prepared by a professional engineer registered in the state of North Carolina, including engineer's signature, seal and address.
- [4] The foundation and base of the tower, the foundation for all the guy line anchors and support structures, all proposed buildings, and any other proposed improvements including access roads and utility connections within and to the proposed site.
- [5] A description of adjacent land use and all property owner names, deed book and page number and tax parcel number.

- [6] An elevation profile, drawn to scale, of all existing and proposed towers with any proposed lighting and antennas to be located on the property.
- [7] The zoning designation of the property and adjacent properties.

**[e]** The administrator shall approve or disapprove the permit based upon the receipt of a completed site plan as required in Subsection [d], and the following provisions:

- [1] The applicant shall identify all possible alternatives considered within the service area for the proposed tower and explain why the proposed tower is necessary and why existing towers or other structures cannot accommodate the proposed antenna(s).
- [2] Locating a tower on a major mountain ridge shall be considered as a last resort and justifying documentation shall be provided.
- [3] All towers located on any major mountain ridge shall be monopole and no taller than thirty (30) feet higher than the vegetation canopies immediately surrounding the base of the tower. Towers located on sites off the major mountain ridge(s) shall be no taller than one hundred (100) feet.
- [4] The proposed tower shall be designed and constructed for co-location of at least one other telecommunication antenna system if location is not on a major mountain ridge.
- [5] The applicant shall be required to provide documentation certifying compliance with all applicable federal and state regulations.
- [6] The applicant shall present to the administrator proof of either fee simple ownership, an option to purchase or lease, a recorded leasehold interest, or an easement, from the record owner of all property involved and any necessary rights-of-way to the tower site.
- [7] A sign identifying the owner(s) and operator(s) of the tower and an emergency telephone number shall be placed in a clearly visible location on the premises of the tower.
- [8] Tower sites shall comply with all other applicable regulations of this ordinance.
- [9] All towers shall be set back from any surrounding property lines by a distance equal to the height of the tower unless a professional engineer registered in the state of North Carolina certifies the fall zone of the tower and appurtenances will be within the setback area proposed.

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- [10] The tower shall be designed to meet the ANSI/EIA/TIA-222-E standards of a minimum one hundred (100) year return wind speed and a minimum one half (1/2) inch of solid radial ice. In no case shall the design wind speed be less than specified in Section 1609 of the North Carolina Building Code.
- [11] The tower and any other necessary buildings or structures shall be surrounded by a commercial grade chain link secure fence at least eight (8) feet in height, which may include no more than two (2) feet of barbed wire.
- [12] Lighting on towers shall not be permitted except as required by federal and state regulations. Towers shall be light gray or another earth tone (such as environmental green), except when specific colors and color patterns are required by federal or state regulations.
- [13] When a tower is proposed adjacent to a residential area the setback space is to be used as a buffer zone and shall be landscaped as described herein. Buffers shall consist of planting evergreen and/or deciduous trees spaced no more than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one half (1 1/2) inch caliper (trunk measured six (6) inches above grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet at maturity. In addition, a planting of low growing shrubs, and/or trees shall be placed at ten (10) foot intervals. Plantings within buffer zones shall be staggered unless prohibited by topography. The buffer zone shall not be in, and no planting shall be placed in the road right-of-way.
- [14] If a proposed tower site is within one mile of the Blue Ridge Parkway centerline and in the parkway viewshed, the applicant shall inform the National Park Service of the proposed tower siting. Park Service recommendations shall be given reasonable consideration and documentation of this consideration shall be provided to the administrator. The Park Service shall be afforded thirty (30) days to respond to the applicant's written intention to erect a tower. No response to the notification within the thirty day response period shall be considered as an affirmative of the site as proposed.
- [15] A permit issued pursuant to this ordinance expires six (6) months after the date of issuance if the work authorized has not commenced. If after commencement the work is discontinued for a period of twelve (12) months, the permit therefor immediately expires. No work authorized by a permit that has expired may thereafter be performed until a new permit has been obtained.

[16] The applicant shall provide the administrator with proof of general liability insurance in the minimum amount of one million dollars (\$1,000,000.)

[17] The application for a wireless communication tower zoning permit shall be accompanied by payment of a non refundable processing fee set by resolution of the Town Council.

**[f]** An appeal for review of any order, requirement, decision, or determination made by the administrator may be made to the Board of Adjustment. Such appeal shall be submitted in writing to the Board of Adjustment within ten (10) days of receipt of notice of order, requirement, decision or determination. The board shall decide the appeal based upon its findings of fact and the intent of the ordinance. The effect of this decision shall not be to vary the terms of the ordinance, but rather to interpret it.

**[g]** A request for a variance from the requirements of this section shall be submitted by the applicant in writing to the Board of Adjustment within ten (10) days of receipt of notice of an adverse decision by the administrator. The request shall be accompanied by:

- [1] Identification of any variance(s) to the ordinance, the reason(s) for seeking the variance(s) and any measures that are proposed to mitigate possible adverse effects of the ordinance, and
- [2] tax parcel numbers and names of all owners of residential dwellings, day care centers and schools within one hundred (100) feet of the tower site property line.

**[h]** The co-location of facilities and/or stealth technology shall be considered a mitigating factor to a variance request and may be justification for the request. A variance may be granted by the Board of Adjustment if it reaches the conclusions and findings listed in Subsection 107 [b]. The decision of the Board of Adjustment may also include conditions as described in Subsection 107 [c] [d] and [e].

**[i]** The denial of an appeal or variance by the Board of Adjustment, and the appeal from the decision of the board shall be in accordance with Sections 112, 113 and 114 of this ordinance.

**[j]** Any tower constructed under a permit pursuant to this ordinance shall be removed within one hundred eighty (180) days of the date which it ceases to be in active use, or upon notice from the ordinance administrator, whichever is more favorable to the permittee. Failure to do so subjects the permittee to the penalties set forth in Article VII.

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**Section 193. Manufacturing/Processing Performance Standards**

**[a] Visible Emissions.** In the B-3 and all PUD districts, no light industrial use is permitted that will produce visible emissions from a stationary source (including, but not limited to, a vent, stack, chimney, or combustion process). In the M-1 district, no light industrial use is permitted that will produce visible emissions from a stationary source that exceeds an average plume opacity of ten (10) percent.

- [1] The plume opacity of visible emissions from all light industrial uses shall be determined by the methods and procedures outlined in the Code of Federal Regulations, Title 40, Part 60 – “Standards of Performance for New Stationary Sources”.
- [2] All measurements will be taken at the point of emission.
- [3] Water vapor which is free of pollutants shall not be considered in measuring opacity.

**[b] Odors.** No light industrial use will emit any continuous, frequent or repetitive odor or odor causing substance or compound which is detectable beyond the lot line of the property on which the use is located.

- [1] For the purposes of establishing initial compliance with this section, the existence of an odor will be presumed when the lowest mean concentration of the odor causing substance or compound in the air exceeds published odor threshold values. In order to demonstrate initial compliance with this section, an odor assessment which accurately represents the concentrations of odor causing substances or compounds present at the property boundary may be required by the permit issuing authority. The assessment must adequately reflect the emission rates of the proposed use, source heights, receptor distance from the source and the effects of buildings, terrain features and other relevant environmental considerations.
- [2] For the purposes of maintaining continuous compliance with this section, odor assessments involving field sampling may be required by the administrator.
- [3] If the administrator receives odor complaints from two or more individuals within a 30-day period alleging that a use is in violation of this section, the administrator will perform a minimum of two site inspections on separate occasions. If the administrator concurs with the complainants that a use has caused continuous, frequent or repetitive odors, that use will be found to be in violation of this ordinance.

**[c] Air Pollution.**

- [1] Any 4.0 use classification that emits any “air contaminant” as defined in NC G.S. 143-213 (2) shall comply with applicable state standards concerning air pollution, as set forth in the North Carolina air pollution control law.
- [2] No zoning or special use permit may be issued with respect to any development covered by Subsection [a] until the North Carolina Division of Air Quality has certified to the permit issuing authority that the appropriate state permits have been received by the developer, or that the developer will be eligible to receive such permits and that the development is otherwise in compliance with applicable air pollution laws.

**[d] Electrical Disturbances or Interference**

- [1] No 4.0 use classification may create any electrical disturbance that adversely affects any operations or equipment other than those of the creator of such disturbance, or
- [2] Otherwise cause, create, or contribute to the interference with electronic signals (including television and radio broadcasting transmissions) to the extent that the operation of any equipment not owned by the creator of such disturbance is adversely affected.

**[e] Noise.** The sound level for all light industrial uses, measured beyond the lot line of the property on which the use is located, may not exceed 65 dbA between 6:00 a.m. and 10:00 p.m., or 45 dbA between 10:00 p.m. and 6:00 a.m. Measurements shall be a time-weighted average over any one-hour period. No one-hour time-weighted average may exceed the 65 or 45 dbA thresholds described in this paragraph.

- [1] For the purpose of this section, noise shall be defined as sound produced directly in connection with light industrial operations, including associated vehicular noise, and audible to the human ear.
- [2] Noise shall be measured with a sound level meter (set to the A-weighted scale) which complies with the standards set forth in the “American Standard Specification of General Purpose Sound Level Meters,” American National Standards Institute. (ANSI S1. 4-1961).

**[f] Dust.** No light industrial use shall create, or cause to be created, any dust which is detectable beyond the lot line of the property on which the use is located.

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**Section 194. Indoor Shooting Ranges**

**[a]** No indoor shooting range may be authorized or permitted under this section unless it also meets all requirements imposed by Section 130.01 of the Town of Boone Municipal Code.

**[b]** Noise. The sound level for all indoor shooting ranges must be controlled in such way that there is no sound emanating from any activities within the building in which the range is located that are audible to the human ear of a person of normal hearing at any border of the tax parcel upon which the range is located, as shown on the tax maps of the Watauga County Tax Administrator.

- [1] If the administrator receives noise complaints from two or more individuals within a 30-day period alleging that activities within the indoor shooting range are producing noise levels in violation of this section, the administrator will perform a minimum of two site inspections on separate occasions. If the administrator concurs with the complainants that the indoor use has caused or is causing continuous, frequent or repetitive noise, that the use will be found to be in violation of this ordinance.

**[c]** Odors. No indoor shooting range may emit any continuous, frequent or repetitive odor, or any odor-causing substance or compound which is detectable beyond the lot line of the property on which the use is located.

- [1] For the purposes of establishing initial compliance with this section, the existence of an odor will be presumed when the lowest mean concentration of the odor-causing substance or compound in the air exceeds published odor threshold values. In order to demonstrate initial compliance with this section, an odor assessment which accurately represents the concentrations of odor-causing substances or compounds present at the property boundary may be required by the permit issuing authority. The assessment must adequately reflect the emission rates of the proposed use, source heights, receptor distance from the source and the effects of buildings, terrain features and other relevant environmental considerations.
- [2] For the purposes of maintaining continuous compliance with this section, odor assessments involving field sampling may be required by the administrator even after a special use permit has been granted.
- [3] If the administrator receives odor complaints from two or more individuals within a 30-day period alleging that a use is in violation of this section, the administrator will perform a minimum of two site inspections on separate occasions. If the administrator concurs with the complainants that a use has caused continuous,

frequent or repetitive odors, that use will be found to be in violation of this ordinance.

**[d]** Construction Standards.

- [1] Any building in which an indoor shooting range is proposed or operated must meet accepted national standards for the design and construction of an indoor shooting range, and must be designed and constructed in such a way as to eliminate any significant risk of injury to a patron of the range, or a member of the public either inside or outside the range, during the normal operation and use of the range. Such design and construction in accordance with these standards must be certified by a professional architect and/or professional engineer, who must be licensed by the State of North Carolina and in good standing, and who must be experienced or specifically trained, and skilled, in the design and construction, respectively, of indoor shooting ranges.
- [2] An indoor shooting range must be constructed and maintained in such way that the structure will contain within the portion(s) of the building in which firearms are discharged, a fired projectile with the greatest structure-penetrating characteristics which is proposed to be fired within the range. Such construction in accordance with this standard must be certified by a professional architect and/or professional engineer, licensed by the State of North Carolina and in good standing, who is experienced or specifically trained, and skilled, in the construction of indoor shooting ranges.

**[e]** Emissions.

- [1] Any building in which an indoor shooting range is proposed or operated must be designed and constructed in such way that no lead or other toxic particulate will leave the structure itself or the portion(s) of the structure used for the discharge of firearms. Such design and construction in accordance with this standard must be certified by both a professional architect and professional engineer, each of whom must be licensed by the State of North Carolina and in good standing, and each of whom must be experienced or specifically trained, and skilled, in the design and construction, respectively, of toxin collection systems for indoor shooting ranges. In addition, the applicant for a special use permit must provide manufacturing information which affirmatively demonstrates that the toxin collection system(s) to be used will meet this standard.



- [2] For the purposes of maintaining continuous compliance with this section, emissions assessments involving field sampling at the owner's expense may be required by the administrator on repeated occasions and the owner of the property shall comply with any such requests. In addition, the administrator may, with or without advance notification and with such frequency as to insure that this standard is continuously met, obtain testing samples from inside and/or outside the indoor shooting range, to measure compliance. The owner and operator of an indoor shooting range must fully comply with requirements and recommendations of the manufacturer of the toxin collection system(s).

**[f]** When a shooting range is proposed for a particular property, other uses proposed for the same property or application should be closely scrutinized for compatibility, the Town ordinarily disfavoring the combination of an indoor shooting range and other activities designed to attract persons to the property other than those attending the shooting range.

**[g]** Violation of any of the provisions of this Section, once an indoor shooting range has been issued a special use permit and/or certificate of occupancy, if it involves regulations designed to protect the health or safety of the public, as determined by the Administrator, shall give rise to an immediate suspension of the special use permit and/or certificate of occupancy, and, following notice and an opportunity for a hearing in accordance with this ordinance, permanent revocation of the special use permit and/or certificate of occupancy.

**Section 195.            Supplementary Regulations for Large Scale Retail  
(Land Use 2.400)**

**[a]** Purpose: The purpose for creating the large scale retail land use classification (2.400) shall be to set forth the appropriate locations within the town's planning jurisdiction where large scale retail uses may be established and to provide for certain development standards which apply to the development of such uses. Specifically, this section has been established for the following reasons:

- [1] Very large scale retail uses, those exceeding 150,000 square feet, require a large amount of land to accommodate the both structural footprint and the associated parking these uses demand. Within the Town of Boone's Primary Growth Area, there are few parcels of land which can accommodate this type of use.
- [2] Large scale retail uses generate significant traffic impacts due to the automobile oriented nature of the use. In conjunction, these automobile oriented uses negatively impact air quality, water quality and levels of service on already congested roadways within Boone's planning jurisdiction.

- [3] Large scale retail uses create a significant impact on Boone's unique community character and sense of place as a high country small town.
  - [4] Large scale retail uses lack the flexibility for reuse increasing the potential of visual and economic blight which occurs in areas where these stores are vacated.
- [b]** Applicability: The requirements in this section apply to the following:
- [1] Any newly created large scale retail either by proposed expansion or new construction; and
  - [2] Any new large scale retail tenant within existing development.
- [c]** Large scale retail shall not exceed a gross floor area of 150,000 square feet.
- [d]** Large scale retail uses having a gross floor area ranging between 25,000 and 150,000 square feet shall provide a Community Impact Analysis. This assessment shall be prepared by an independent consultant, qualified by education and experience, chosen by the developer and approved by the Town, and shall include projected impacts on public services and infrastructure. The analysis shall be submitted for review by the permit issuing authority in conjunction with the required Special Use Permit Application. The permit issuing authority shall review the projected impacts determined by the analysis and may utilize the information in their deliberations concerning the issuance or denial of a Special Use permit in accordance with the provisions of Section 69 of this ordinance.
- [e]** Outdoor Display area associated with large scale retail use shall not exceed 10% of the gross floor area of the structure. All areas utilized for outdoor display shall be clearly indicated on all permit applications. Outdoor display must be located in areas specifically designed for outdoor sales and is prohibited in or on designated exterior walkways, parking areas, driveways, and landscape areas.

## **Section 196. Bed and Breakfast Establishments**

- [a]** The following regulations are for Land Use 1.550 Bed and Breakfast Establishments.
- [1] A maximum of fifty percent (50%) of the gross floor area of the dwelling unit may be used for the Bed and Breakfast establishment. Only the floor areas of the bedroom and bathroom areas used by the Bed and Breakfast guests shall be considered in floor area calculations.

- [2] The residence used for Bed and Breakfast establishments shall be occupied by the owner or managing agent during the time the Bed and Breakfast is open for business.
- [3] No display of goods, products, services, or other advertising shall be visible from outside the building.
- [4] Signage shall be limited to a single on premise sign, not to exceed four square feet.
- [5] No activities other than lodging, a morning meal, and an afternoon and/or evening refreshment shall be provided.
- [6] Activities shall be provided for overnight guests only.
- [7] A maximum of one non-resident of the dwelling may be employed on a full-time basis.
- [8] Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.
- [9] Parking
  - [a] Off street parking shall be provided at one space per guest room in addition to the parking requirements as set forth in Section 346 [e] for use 1.110.
  - [b] Parking shall be on the same lot on which the Bed and Breakfast establishment is located.
  - [c] Parking shall be located at the rear of the lot and screened with a Type A buffer from adjacent properties and from the street.
- [10] The length of stay of guests shall not exceed 14 days.
- [11] Bed and Breakfast establishments shall comply with N.C. Building Code requirements.

**Section 197. Supplementary Rules for Uses Involving Certain Activities which pose Particular Concerns about Public Health, Safety or Welfare.**

**[a] Electronic and Internet Gaming Uses.**

- [1] Application. The requirements of this section shall apply to all Electronic and Internet Gaming uses, as defined in this ordinance, whether conducted as a principal use or activity, or an accessory use or activity.

- [2] Definitions. Unless otherwise specifically provided herein, or unless clearly required by the context, the words and phrases used in this section shall have the following meaning indicated when used in this section.
- [A] Electronic and Internet Gaming Use. A use, whether principal or accessory, where person(s) utilize electronic machines, including but not limited to computers or gaming terminals, to conduct or participate in games of chance, including sweepstakes and gambling activities not prohibited under N.C. Gen. Stat. Chapter 14, Article 37, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds, including but not limited to Internet cafes, Internet sweepstakes, electronic gaming machines/operations or cybercafes, and excluding a business solely participating in a lottery approved by the State of North Carolina.
- [3] Requirements.
- [A] An Electronic and Internet Gaming use shall be permitted with a special use permit in the B-3 and M-1 zoning districts.
- [B] An Electronic and Internet Gaming use shall not be located on a lot which is within two thousand, six hundred and forty (2640) feet of another lot containing an Electronic and Internet Gaming use as measured from the closest edge of each lot to the other lot.
- [C] An Electronic and Internet Gaming use shall not be located on a lot which is within one thousand (1,000) feet from a lot upon which a church, school, library, public park, playground, or daycare center is located as measured from the closest edge of each lot to the other lot.
- [D] No Electronic and Internet Gaming use shall be located on any lot which is within one thousand (1000) feet from any residential district, as defined in Section 151, as measured from the closest edge of each lot to the other lot.
- [E] No more than one Electronic and Internet use may be located on the same lot.

- [F] No Electronic and Internet Gaming use may operate between the hours of 10:00 p.m. and 8:00 a.m.
- [G] No permits shall be issued for Electronic and Internet Gaming uses until all required privilege and other licenses are obtained and all required fees have been paid.
- [H] A certificate of occupancy shall not be issued until the Electronic and Internet Gaming use meets any applicable federal, State or County requirements, including any requirements of the Appalachian Regional Health Department.

### **Section 198. Transitional Zones.**

**[a]** Transitional zones are hereby established and may apply to the procedures and evidence required for development in any existing zoning districts. The land within a transitional zone may be used as permitted in the underlying district, but only pursuant to the procedures and standards applicable to these zones, as created under this section.

**[b]** Transitional zones attach to each R-1, R-1A, R-R, R-2, and R-A district, (hereinafter, “the protected district”) without regard to the current uses in that district. They are established for the purpose of creating special protections for residents of protected districts from the potential adverse impacts of certain potentially incompatible nearby development, based upon the legislative finding that the general requirements of this ordinance have not been sufficient to protect the residents of such protected districts from the adverse consequences of such developments and that the variety of circumstances which may need to be ameliorated in the face of such development are not amenable to a “one size fits all” approach.

**[c]** The size of the transitional zone varies with the type of development proposed nearby:

- [1] For a proposed large scale retail development, or a multi-family development containing ten units or more, the transitional zone is three hundred feet (300') from the boundary of the protected district as measured from all points along that boundary.
- [2] For a proposed small scale retail development within a B-1 district, temporary mobile medical units or a multi-family development containing fewer than five units, the transitional zone is seventy-five feet (75') from the boundary of the protected district as measured from all points along that boundary.

- [3] For a proposed small scale retail development other than within a B-1 district, a multi-family development containing between five units and nine units, and any other commercial development, the transitional zone is one-hundred-and-fifty feet (150') from the boundary of the protected district as measured from all points along that boundary.

**[d]** Whenever a permit is sought to authorize development within a transitional zone, and any part of any primary or accessory structure or use of the development will be located within the pertinent transitional zone, a special use permit is required. The Board of Adjustment may deny the application if the requirements of this section are not met, or it may place reasonable conditions on the development, in addition to such conditions as may otherwise be reasonably imposed, specifically designed to mitigate the potential impacts identified herein.

**[e]** In addition to all other requirements of this ordinance which pertain to the proposed development, including but not limited to those relating to the location and placement of structures, the type and quantity of landscape buffering, the type and location of lighting, and the size of setbacks, in order to meet the requirements of this section, the applicant must also show:

- [1] That the planned development will effectively and to the greatest degree reasonably possible, mitigate the impacts of the proposed development upon the protected district, including:
- [A] noise impacts;
  - [B] light impacts; and
  - [C] any other predictable negative effect, including:
    - (i) negative visual effects;
    - (ii) negative traffic effects; and
    - (iii) negative health effects.

**[f]** Because of the variable topography and characteristics of particular tracts of land within the Town's zoning jurisdiction, the solutions incorporated into the development plan by the applicant must be tailored to specifically address the characteristics of the particular location in relation to the protected district. Only if an applicant can demonstrate beyond a reasonable doubt that the normal requirements of the ordinance are themselves sufficient to protect the protected district may the application be approved without additional measures being incorporated into the site specific development plan.

## Article XII Intensity Regulations

### Section 199. Definitions

**[a]** Unless otherwise specifically provided for or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this article.

- [1] *Gross Land Area:* All the area within the boundaries of a lot as described in a fee simple deed.
- [2] *Lot Width:* The horizontal distance between the side lot lines at the front building line measured parallel with the front lot line; or in the case of a lot fronting on a curved street, the straight line distance between the side lot lines measured from the building line.
- [3] *Street Frontage Width:* The horizontal distance measured along a straight line connecting the points at which the street lot line abuts such street with interior lot lines and or street lot lines.
- [4] *Land Use Intensity Ratios:* A technique for regulating density in the form of a fraction, expressed in decimal form, with the minimum square footage as the numerator and the gross land area of the lot as the denominator.
- [5] *Floor Area:* The sum of the enclosed areas on all floors of a building measured from the outside faces of the exterior walls. It includes halls, lobbies, stairways, elevator shafts, enclosed porches and balconies and any below grade floor areas used for habitation or storage. It does not include open terraces, patios, atriums, balconies, carports, garages or any floor space in an accessory building.
- [6] *Open Space:* The total gross land area not covered by buildings, plus open exterior balconies and roof areas improved as livability space. Covered open space is usable open space closed to the sky but having at least two (2) clear unobstructed open or partially open sides. Partially open space is construed as open fifty percent (50%) or more.

- [7] *Livability Space*: The portion of total open space appropriately improved and located as outdoor living space and/or aesthetic appeal. It includes existing natural areas, lawns and other landscaped areas, walkways, paved terraces, sitting areas, outdoor recreational areas and the landscaped portion of street rights-of-way. Such space shall not include open space used for motorized vehicles, except incidental service, maintenance or emergency repair.
- [8] *Recreation Space*: The portion of total open space and livability space plus enclosed floor area, which is reserved and improved for the common recreational use of residents of multi-family developments and planned residential developments.
- [9] *Street Setback*: The land area between the established street right-of-way and the closest wall of a building located on the property.
- [10] *Interior Setback*: The land area between the interior lot line and the closest wall of a building located on the property.
- [11] *Height (of a structure or part thereof)*: The vertical distance from the mean natural grade at the foundation to the highest portion of the structure, or part thereof.
- [12] *Height Limitation, Primary*: The maximum height allowed for any structure located at the minimum setback required for such structure.
- [13] *Height Limitation, Secondary*: The absolute maximum height allowed for any structure.

## **Section 200. Schedule of Land Use Intensity Regulations**

**[a]** All lots in the following zones shall comply with the intensity regulations indicated in the following Land Use Intensity table. Unless otherwise provided in this ordinance, the land use intensity regulations for planned residential developments, and architecturally integrated subdivisions shall apply to the development as a whole and not to individual parts thereof. Single family residences (use 1.100) and lots to be developed as single family residences (use 1.100) are not required to comply with the maximum floor area ratio requirements.



<b>Zone</b>	<b>Min. Gross Land Area</b> (sq. ft.)	<b>Min. Lot Width</b> (ft.)	<b>Max. Floor Area Ratio</b> (FAR)	<b>Min. Open Space Ratio</b> (OSR)	<b>Min. Livability Space Ratio</b> (LSR)	<b>Min. Recreation Space Ratio</b> (RSR)	<b>Min. Street Setback</b> (ft.)	<b>Min. Interior Setback</b> (ft.)
<b>R-1</b>	8,000	70	.162	.77	.53	.032	20	14
<b>R-1A</b>	8,000	70	.162	.77	.53	.032	20	14
<b>RR</b>	6,000	70	.283	.74	.48	.042	20	13
<b>R-2</b>	6,000	70	.283	.74	.48	.042	20	13
<b>R-3</b>	5,000	80	.480	.72	.40	.062	20	13
<b>R-4</b>	6,000	70	.283	.74	.48	.042	20	13
<b>R-A</b> NO water & sewer	20,000	100	.100	.80	.65	.025	20	18
<b>R-A</b> Public water available	15,000	80	.100	.80	.65	.025	20	18
<b>R-A</b> Public water & sewer available	10,000	65	.100	.80	.65	.025	20	14
<b>MH</b>	87,120	none	.214	.76	.51	.039	20	20
<b>O/I</b>	10,000	100	.340	.71	.27	.032	20	17
<b>B-1*</b>	5,000	15	none	none	none	none	refer to 205 [b]	refer to 205[b]
<b>B-2*</b>	5,000	50	.264	.76	.27	.049	20	17
<b>B-3*</b>	5,000	50	.429	.71	.27	.062	20	17
<b>U-1</b> Refer to Section 209 [a]	None	none	.429	.71	.27	.039	10 Refer to Section 205 [g]	10 Refer to Section 205 [h]
<b>M-1</b>	17,000	80	.350	.65	.30	none	20	22

\*Multi-family uses in these districts are governed by Section 179.

**[b]** Where a lot is located in more than one zoning district, the appropriate land use intensity ratios shall be applied individually to each portion of the gross land area located within the different districts. However, the floor area permitted on that portion of the gross land area located within one district may be transferred to any portion of the lot's land area located in a district with a higher land use intensity ratio.

**Section 201. Gross Land Area**

**[a]** When a lot is located in more than one zoning district, the minimum square footage of the lot shall be the sum of the square footage derived by multiplying the minimum square footage required for each represented district by the proportion of the lot located within that district.

**[b]** In areas where portions of the lot have at least ten (10) percent of the land area with slopes greater than twenty (20) percent, the minimum square footage of the lot shall be reduced by one (1) percent for each percentage point of average slope within the steep slope portion.

**Section 202. Minimum Lot Widths**

**[a]** No lot may be created that is so narrow or otherwise so irregularly shaped that it would be impracticable to construct on it a building that:

- [1] Could be used for purposes that are permissible in that zoning district, and
- [2] Could satisfy any applicable setback requirements for that district.

**[b]** Where a lot fronts two (2) or more streets, the minimum lot width requirement shall be considered met if the lot width at the building line from any one of such streets meets the minimum lot width requirement.

**[c]** No lot created after the effective date of this ordinance that is less than the required width shall be entitled to a variance from any building setback requirement.

**Section 203. Minimum Street Frontage Widths**

**[a]** The minimum width of the frontage of a lot on a street shall be eighty (80) percent of the minimum lot width required for the lot. Easement areas shall be excluded from this requirement.

**[b]** Where a lot fronts on two (2) or more streets, the minimum street frontage width requirements shall be considered met if the frontage along any one of such streets meets the minimum street frontage width requirements.

**[c]** Where a lot fronts on a turning circle of a cul-de-sac or at a point of a street where the radius of the curvature of the right-of-way is less than ninety (90) feet, the minimum street frontage width requirement shall not apply.

**Section 204. Minimum Recreation Space**

**[a]** Recreation space is only required for multi family developments and manufactured home parks.

**[b]** In general, required recreation space shall have a least dimension of twenty five (25) feet, an average dimension of fifty (50) feet, and a minimum area of twenty five hundred (2500) square feet. Smaller dimensions are acceptable if:

- [1] Less than twenty five hundred (2500) square feet of recreation area is required, or
- [2] The recreation area is a suitably improved roof area or enclosed floor area, or
- [3] The anticipated needs of the residents require smaller facilities, such as tot lots or shuffle board courts, or
- [4] In the B-1 district, canopies are provided to cover the sidewalk.

**[c]** The dedication of a greenway easement may be used to satisfy the requirements for recreational space.

**[d]** Outdoor recreation area for common use should be located twenty (20) feet or more from any residential windows at the same general level.

### **Section 205. Building Setback Requirements**

**[a]** Subject to Sections 206 and 210 and the other provisions of this section, no portion of any building may be located on any lot closer to any lot line or to the street right-of-way line or centerline than is authorized in the land use intensity table.

- [1] If the street right-of-way line is readily determinable (by reference to a recorded map, set irons, or other means), the setback shall be measured from such right-of-way line. If the right-of-way line is not so determinable, the setback shall be measured from the street centerline. Whenever a lot fronts a street with a right-of-way of thirty (30) feet or less, the setback shall be measured from a line running parallel to the centerline at a distance of fifteen (15) feet from the centerline.
- [2] As used in this section, the term “lot boundary line” refers to lot boundaries other than those that abut streets.
- [3] As used in this section, the term “building” includes any substantial structure which by nature of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associated with a building. Without limiting the generality of the foregoing, the following structures shall be deemed to fall within this description:
  - a. Gas pumps and overhead canopies or roofs.

- b. Fences running along lot boundary adjacent to public street rights-of-way if such fences exceed nine feet in height and are substantially opaque.
- c. Retaining walls which exceed four feet in height.

[4] Flagpoles, bridges, transmission poles, cables, heat pumps, generators, air condition units and pad mounted transformers shall be exempt from building setback requirements, however, walk in coolers and refrigeration units must meet the requirements for accessory buildings.

**[b]** In the B-1 district, existing development may rebuild to existing building footprint lines, but cannot rebuild any closer to a street than the established existing building setback line as noted on the Official Existing Building Line Maps recorded with the Watauga County Registry in Deed Book 239, Pages 132-138 and also available for examination at the Planning and Inspections Department. Structures existing prior to February 25, 1993 that do not meet the required setbacks shall not be considered to have nonconforming features and shall be permitted to remodel, renovate and repair as normally provided for in this ordinance.

**[c]** In the B-1 district, the minimum street setback distance shall not apply to a projecting theater marquee, canopy or roof overhang supports as long as such supports do not go beyond the edge of the sidewalk. When the B-1 district abuts a district other than a U-1, the lot boundary setback shall be fifteen (15) feet. However, this exemption shall not obviate the need for an encroachment agreement, when otherwise required.

**[d]** In the B-2 and B-3 zoning districts, sideline to sideline construction may be permitted on one or more lots of at least one hundred (100) feet road frontage upon issuance of a special use permit in accordance with the provisions of Article IV and subject to the following conditions:

- [1] The building must be constructed in accordance with the regulations for the primary fire district as contained in the North Carolina State Building Code.
- [2] There shall be a deeded street or right-of-way, built to town standards, at both the front and the rear of the property.
- [3] Loading, unloading and refuse disposal access shall be from the street at the rear of the property.
- [4] Loading and parking shall be in compliance with Article XVIII of this ordinance.

**[e]** Whenever a lot in a nonresidential district has a common boundary line with a lot in a residential district, and the property line setback requirement applicable to the residential lot is greater than that applicable to the nonresidential lot, then the lot in the nonresidential district shall be required to observe the property line setback requirement applicable to the adjoining residential lot.

**[f]** Setback distances shall be measured from the property line or street right-of-way line to a point on the lot that is directly below the nearest extension of any part of the building that is substantially a part of the building itself and not a mere appendage to it (such as a flagpole, etc.).

**[g]** In the U-1 district, the minimum street setback of 10 feet shall apply only when development is proposed adjacent to Town maintained streets.

**[h]** In the U-1 district, the minimum interior setback shall be increased to 14 feet only when development is proposed adjacent to R-1 zoned property. Additional setback provisions in Section 205 [e] do not apply in the U-1 district. The minimum interior setback is zero feet only when development is proposed adjacent to B-1 zoned property.

### **Section 206. Accessory Building Setback Requirements**

**[a]** All accessory buildings shall meet the building setback requirement of fifteen (15) feet from the street right-of-way line and seven (7) feet from the lot boundary line. No accessory building may be further forward to the street setback line than the front most point of the principal structure.

**[b]** The maximum lot coverage of the accessory buildings shall not exceed twenty (20) percent of the lot.

### **Section 207. Building Height Limitations**

**[a]** For the purposes of this section:

[1] Except in the B-1 district in which height is measured in accordance with Section 207 [c], the height of a building shall be the vertical distance measured from the mean elevation of the finished grade to the highest point of the building.

[2] A point of access to a roof shall be the top of any parapet wall or the lowest point of a roof's surface, whichever is greater. Roofs with slopes greater than seventy five (75) percent are regarded as walls.

**[b]** Subject to the remaining provisions of this section, building height limitations in the various zoning districts shall be as follows:

Zone	Height Limitation (Feet)
R-1, R-1A, RR, R-2, R-4, RA	35
R-3	50 (primary) - 90 (secondary)
MH	35
O/I	67
B-1	40
B-2	35 (primary) – 40 (secondary)
B-3	44 (primary) – 67 (secondary)
U-1	Refer to Section 207 [h]

**[c]** In the R-3, B-2 and B-3 districts the height limitation may range between the primary height limitation in the table to the secondary height (which is the maximum for the district), subject to the provision that for each foot the height of the structure exceeds the primary height limitation, the boundary lot setback applicable to the structure shall increase by one (1) foot. In no case shall the height of a structure exceed the secondary height limitation established in the table.

- [1] In the B1 district the maximum building height shall be limited to forty (40) feet, as measured from the average elevation of the existing or proposed sidewalk along the primary street at the middle of the building elevation facing the street to the highest point of the building or structure. Where a property has street frontages on opposite sides the building height shall terminate at the midpoint of the lot with the same standard being applied to the opposite street frontage. Where a property does not border a primary street on any side, the maximum height shall be measured from the average finished ground elevation of the finished building. For the purpose of this section, the following are considered primary streets: King Street, Queen Street, Howard Street, Rivers Street, Water Street, Depot Street, Appalachian Street, Grand Boulevard, Poplar Grove Road, Straight Street, Bent Street, Orchard Street, and Wallace Circle.

**[d]** In all nonresidential zones and the R-3 zone, all structures located within one hundred (100) feet of an R-1 zoned property shall not exceed thirty five (35) feet in height.

**[e]** Where a multi-unit or nonresidential structure has a height in excess of twenty (20) feet and adjoins a single unit structure or district, the structure shall meet an additional setback of one and one half (1 ½) feet for each foot in height above twenty (20) feet.

**[f]** If a structure is located at an elevation of three thousand (3000) feet above mean sea level and five hundred (500) feet above the valley floor, in no case shall the height of such structure exceed forty (40) feet above the mean natural grade.

**[g]** The following features are exempt from the district height limitations set forth in Subsection [b], except that on a corner lot in any residential district no planting, structures, fence, wall or obstruction to vision more than three (3) feet in height measured from the street center line shall be placed or maintained within the triangular area formed by the intersection street lines and a straight line connecting points on said street lines each if which is twenty five (25) feet from the point of intersection.

- [1] Chimneys, accessory radio or television antennas, flagpoles, monuments or solar collectors provided that such features do not exceed fifteen (15) percent of the maximum height requirements.
- [2] Church spires, belfries, cupolas, domes, smokestacks, windmills, or observation towers, provided such structures do not exceed in height the horizontal distance from the structure to the nearest property line.
- [3] Utility transmission poles and cables.

**[h]** Building heights for structures internal to the main campus shall be generally limited only by the Town's fire fighting capability except for those structures located immediately adjacent to property in a non-University district. In this instance:

- [1] All buildings proposed within 100 feet of an R-1, R-1A, RR, R-2, R-4, or RA zoned property shall be limited to a maximum height of 35 feet.
- [2] All buildings proposed within 50 feet of an R-3, O/I, B-1, B-2, or B-3 zoned property shall be limited to the maximum height allowed in the adjoining district. Additional height restrictions in Section 207 [d] and [e] shall not apply in the U-1 district.

## **Section 208. Minimum Building Spacing**

**[a]** The minimum spacing between any two (2) buildings located on a single lot or in the U-1 district, which contain dwelling units, shall be the sum of the spacing distances required for the walls of each building or portion thereof as follows:

- [1] The required spacing between buildings for any wall containing windows shall be the horizontal distance equal to the minimum interior setback applicable to the lot or district in which it is located, plus one (1) additional foot for each foot the height of the building exceeds thirty five (35) feet.
- [2] The required spacing distance for a windowless wall shall be in accordance with the applicable building codes.

**[b]** Unless otherwise regulated by this ordinance, the spacing between structures or portions of structures not containing dwelling units shall be appropriate to the use of such structures or portions thereof. Spacing shall be related to fire protection requirements, the separation of spaces by fences, walls or vegetative screening, the location of parking and service areas, the exposure to nearby living quarters and similar considerations.

### **Section 209. Intensity Regulations for the U-1 District**

**[a]** University campus land will be considered as a whole for purposes of computing land use intensities. This provision does not apply to satellite tracts; however, land separated from the main campus only by a public street or thoroughfare will be deemed part of the main campus, and any land separated from the University's State Farm property only by a public street or thoroughfare will be deemed part of the State Farm property.

### **Section 210. Architecturally Integrated Subdivisions**

**[a]** In an architecturally integrated subdivision, the developer may create lots and construct buildings without regard to any minimum lot size, maximum floor area ratio for single family residences (use 1.100), lot width or setback restrictions except that:

- [1] Lot boundary setback requirements shall apply where and to the extent that the subdivided tract abuts land that is not part of the subdivision, and
- [2] Each lot must be of sufficient size and dimensions that it can support the structure proposed to be located on it, consistent with all other applicable requirements of this ordinance.

**[b]** The number of dwelling units in an architecturally integrated subdivision may not exceed the maximum intensity authorized for the tract under Section 200. The number of lots allowed in an architecturally integrated subdivision shall be calculated by dividing the project area by the minimum gross land area as shown in Section 200 [a]. For an architecturally integrated subdivision project that is composed of areas with different zoning designations, the number of units shall be determined for each zoning district. The maximum number of units for the project shall be the sum of the densities for each district. The units may be distributed throughout the project without regard to



the zoning district lines subject to meeting the requirements of subsection 210(a). Further, only uses authorized by Section 165 shall be permitted in each zoning district.

**[c]** To the extent reasonably practicable, in residential subdivisions the amount of land saved by creating lots that are smaller than the standards set forth in Section 200 shall be set aside as usable open space.

**[d]** The purpose of this section is to provide flexibility, consistent with the public health and safety and without increasing overall density, to the developer who subdivides property and constructs buildings on the lots created in accordance with a unified and coherent plan of development.

### **Section 211. Density On Lots Where Portion Dedicated to Town**

**[a]** Subject to the other provisions of this ordinance, if (i) any portion of a tract lies within an area designated on any officially adopted town plan as part of a proposed public park, greenway, or bikeway, and (ii) before the tract is developed, the owner of the tract, with the concurrence of the town, dedicates to the town that portion of the tract so designated, then, when the remainder of the tract is developed for residential purposes, the permissible density at which the remainder may be developed shall be calculated by regarding the dedicated portion of the original lot as if it were still part of the lot proposed for development.

**Section 212. Reserved**

**Section 213. Reserved**

**Section 214. Reserved**

**Section 215. Reserved**



## **Article XIII Watershed Protection**

### **Section 216. Purpose**

**[a]** It is the purpose of this article to protect the quality of drinking water for the Town of Boone by setting standards for the development that occurs within designated Public Water Supply Watershed areas. It is further intended that the establishment of watershed regulations reflect the protection of critical environmental areas and suitability of land for particular levels of development intensity in accordance with the Town of Boone Comprehensive Plan and the State of North Carolina's Water Supply Watershed Protection Rules.

### **Section 217. Adoption Date and Effective Date**

**[a]** The provisions in this article were originally adopted on May 27, 1993 and became effective on June 30, 1993. The authority for implementation of the Water Supply Watershed Regulations are in the North Carolina General Statutes Chapter 160A, Article 8, Section 174, General Ordinance Authorization and Chapter 143, Article 21, Watershed Protection Rules.

### **Section 218. Jurisdiction**

**[a]** The provisions of the article shall apply within the areas designated as a Public Water Supply Watershed by the North Carolina Environmental Management Commission and shall be defined and established on the map entitled, "Watershed Protection Map of Boone, North Carolina" ("The Watershed Map"), which is adopted simultaneously herewith. The watershed map and all explanatory matter contained thereon accompanies and is hereby made a part of this article.

### **Section 219. Exceptions to Applicability**

**[a]** Nothing contained herein shall repeal, modify, or amend any federal or state law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this article amend, modify, or restrict any provisions of the Code of Ordinances of the Town of Boone; however, the adoption of this article shall and does amend any and all ordinances, resolutions, and regulations in effect in the town at the time of the adoption of this article that may be construed to impair or reduce the effectiveness of this article or to conflict with any of its provisions.

**[b]** It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.

**[c]** Existing development, as defined in this article, is not subject to the requirements of this article. Expansions to structures classified as existing development must meet the requirements of this article, however, the built upon area of the existing development is not required to be included in the density calculations.

**[d]** A pre existing lot owned by an individual prior to the effective date of this ordinance, regardless of whether or not a vested right has been established, may be developed for single family residential purposes without being subject to the restrictions of this ordinance. However, this exemption is not applicable to multiple contiguous lots under single ownership.

#### **Section 220. Establishment of Watershed Review Boards**

**[a]** The Planning Commission shall act as the Watershed Review Board on all subdivision regulation matters. The Board of Adjustment shall act as the Watershed Review Board on all other matters regarding this ordinance.

#### **Section 221. Establishment of Watershed Areas**

**[a]** The purpose of this section is to list and describe the watershed areas herein adopted.

**[b]** For purposes of this article the town and its extraterritorial jurisdiction are hereby divided into the following areas, as appropriate:

- [1] WS-II-CA (Critical Area)
- [2] WS-IV-CA (Critical Area)
- [3] WS-IV-PA (Protected Area)

#### **Section 222. Watershed Areas Described**

**[a]** *WS-II Watershed Areas Critical Area (WS-II-CA):* In order to maintain a predominately undeveloped land use intensity pattern, single family residential uses shall be allowed at a maximum of one (1) dwelling unit per two (2) acres. All other residential and non residential development shall be allowed at a maximum six percent (6%) built upon area. New sludge application sites and landfills are specifically prohibited.

- [1] Allowed uses are:

- a. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990.
- b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- c. Residential development, including both single family and all other residential.
- d. Non residential development, excluding:
  1. The storage of toxic and hazardous materials unless a spill containment plan is implemented,
  2. Landfills, and
  3. Sites for land application of sludge/residuals or petroleum contaminated soils. New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises.

[2] Density and built upon limits:

- a. Single family residential development shall not exceed one (1) dwelling unit per two (2) acres on a project by project basis. No residential lot shall be less than two (2) acres, except within an approved cluster development.
- b. All other residential and non residential development shall not exceed six percent (6%) built upon area on a project by project basis. For the purpose of calculating built upon area, total project area shall include total acreage in the tract on which the project is to be developed.

**[b]** *WS-IV Watershed Areas Critical Area (WS-IV-CA):* In order to address a moderate to high land use intensity pattern, single family residential uses are allowed at a maximum of two (2) dwelling units per acre. All other residential and non residential development shall be allowed twenty-four percent (24%) built-upon area. New sludge application sites and landfills are specifically prohibited.

[1] Allowed uses are:

- a. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990.

- b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- c. Residential.
- d. Non residential development, excluding:
  - 1. The storage of toxic and hazardous materials unless a spill containment plan is implemented,
  - 2. Landfills, and
  - 3. Sites for land application of sludge/residuals or petroleum contaminated soils.

[2] Density and built upon limits:

- a. Single family residential development shall not exceed two (2) dwelling units per acre on a project by project basis. No residential lot shall be less than one half (1/2) acre, except within an approved cluster development.
- b. All other residential and non residential development shall not exceed twenty four percent (24%) built upon area on a project by project basis. For the purpose of calculating the built upon area, total project area shall include total acreage in the tract on which the project is to be developed.

**[c]** *WS-IV Watershed Areas Protected Area (WS-IV-PA)*: In order to address a moderate to high land use intensity pattern, single family residential uses shall develop at a maximum of two (2) dwelling units per acre. All other residential and non residential development shall be allowed at a maximum of twenty four percent (24%) built upon area.

[1] Uses allowed are:

- a. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
- b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- c. Residential development.
- d. Non residential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.

[2] Density and built upon limits:

- a. Single family residential development shall not exceed two (2) dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than one half (1/2) acre, except within an approved cluster development.
- b. All other residential and non residential development shall not exceed twenty four percent (24%) built upon area on a project by project basis. For the purpose of calculating built upon area, total project area shall include acreage in the tract on which the project is to be developed.

### **Section 223. Cluster Development**

**[a]** Clustering of development is allowed in all watershed areas under the following conditions:

- [1] Built upon area or stormwater control requirements of the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.
- [2] All built upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- [3] The remainder of the tract shall remain in a vegetated or natural state. Where the development has an incorporated property owners association, the title of the open space area shall be conveyed to the association for management. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

### **Section 224. Buffer Areas Required**

**[a]** A minimum thirty (30) foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial stream bank or shoreline stabilization is permitted.

**[b]** No new development is allowed in the buffer except for water dependent structures and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater Best Management Practices.

**Section 225. Rules Governing the Interpretation of Watershed Area Boundaries**

**[a]** The boundaries of the watershed areas are as shown on the Official Watershed Map. Where uncertainty exists, the administrator shall interpret the Watershed Map as to location of such boundaries. This decision may be appealed to the Board of Adjustment.

**Section 226. Existing Development**

**[a]** Any existing development as defined in this ordinance, may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this ordinance, however, the built upon area of the existing development is not required to be included in the density calculations.

**Section 227. Watershed Protection**

**[a]** Except where a single family residence is constructed on a lot deeded prior to the effective date of this ordinance, no building or built upon area shall be erected, moved, enlarged or structurally altered, nor shall any zoning or building permit be issued nor shall any change in the use of any building or land be made until a watershed protection permit has been issued by the administrator. No watershed protection permit shall be issued except in conformity with the provisions of this ordinance.

**[b]** Watershed protection permit applications shall be filed with the administrator. The application shall include a completed application form and supporting documentation deemed necessary by the administrator.

**[c]** Prior to issuance of a watershed protection permit, the administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance.

**[d]** A watershed protection permit shall expire if a zoning or building permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

**Section 228. Public Health, Safety, and General Welfare**

**[a]** All development shall be located, designed, and proposed so as to promote the public health, safety, and general welfare. All development shall comply with all required regulations and standards in this ordinance as well as conform with the general plans for the physical development of the town as embodied in this ordinance and in the comprehensive plan.



**Section 229. Reserved**

**Section 230. Reserved**



## Article XIV Streets and Sidewalks

### Section 231. Street Classification

**[a]** In all new subdivisions, streets that are dedicated to public use shall be classified as provided in Subsection [b].

- [1] The classification shall be based upon the projected volume of traffic to be carried by the street, stated in terms of the number of trips per day;
- [2] The number of dwelling units to be served by the street may be used as a useful indicator of the number of trips but is not conclusive;
- [3] Whenever a subdivision street continues an existing street that formerly terminated outside the subdivision or it is expected that a subdivision street will be continued beyond the subdivision at some future time, the classification of the street will be based upon the street in its entirety, both within and outside of the subdivision.

**[b]** The classification of streets dedicated to public use shall be as follows:

- [1] *Minor*: A street whose sole function is to provide access to abutting properties. It serves or is designed to serve not more than nine dwelling units and is expected to or does handle up to seventy five (75) trips per day.
- [2] *Local*: A street whose sole function is to provide access to abutting properties. It serves or is designed to serve at least ten (10) but no more than twenty five (25) dwelling units and is expected to or does handle between seventy five (75) and two hundred (200) trips per day.
- [3] *Cul-de-sac*: A street that terminates in a vehicular turnaround.

- [4] *Subcollector*: A street whose principal function is to provide access to abutting properties but is also designed to be used or is used to connect minor and local streets with collector or arterial streets. Including residences indirectly served through connecting streets, it serves or is designed to serve at least twenty six (26) but not more than one hundred (100) dwelling units and is expected to or does handle between two hundred (200) and eight hundred (800) trips per day.
- [5] *Collector*: A street whose principal function is to carry traffic between minor, local, and subcollector streets and arterial streets but that may also provide direct access to abutting properties. It serves or is designed to serve, directly or indirectly, more than one hundred (100) dwelling units and is designed to be used or is used to carry more than eight hundred (800) trips per day.
- [6] *Arterial*: A major street in the town's street system that serves as an avenue for the circulation of traffic into, out, or around the town and carries high volumes of traffic.
- [7] *Marginal Access Street*: A street that is parallel to and adjacent to an arterial street and that is designed to provide access to abutting properties so that these properties are somewhat sheltered from the effects of the through traffic on the arterial street and so that the flow of traffic on the arterial street is not impeded by direct driveway access from a large number of abutting properties.

**[c]** Private streets will be permitted to serve as access within residential developments, however, the dedication of public streets and other rights-of-way or easements may be required if they are indicated in official plans adopted by the Town Council. Public streets and or other rights-of-way or easements of public access over private streets will be required where the North Carolina Department of Transportation, or Public Works Commission determines that such access is necessary for promotion of public health, safety and welfare.

**[d]** The developer shall reserve a minimum thirty (30) feet right-of-way width along all private streets. The reserved area may not be used to satisfy lot area requirements or be included in any required yard space. Private streets may be utilized under the following conditions.

- [1] The developer shall record with the Watauga County Register of Deeds an instrument setting forth provisions for the establishment of a property owners association for the purpose of assessing dues for maintenance of the roads by the purchasers of the property which will be served by the roads within the development. The developer shall maintain the road at least until such time that the property owners association assumes maintenance.

- [2] A subdivision disclosure statement is provided as required by G.S. 136-102.6, which fully discloses the status, whether public or private, of the road upon which the lots front.

### **Section 232. Access to Lots**

**[a]** Every lot shall have access to it that is sufficient to afford a reasonable means of ingress and egress for emergency vehicles as well as for all those likely to need or desire access to the property in its intended use.

**[b]** A driveway that meets the requirements of sub-section [a] above may provide access to no more than two (2) lots. When a single driveway provides access to more than one lot, easement rights in favor of each of the lots that rely upon the driveway for access shall be provided. These rights may be by means of a document recorded in the public records of Watauga County or by means of a notation on the plat of the subdivision that is recorded. Every lot will be required to meet the minimum street frontage widths as required in Section 203.

### **Section 233. Access to Arterial Streets**

**[a]** Whenever a major subdivision that involves the creation of one or more new streets borders on or contains an existing proposed arterial street, no direct driveway access may be provided from the lots within this subdivision onto this street.

### **Section 234. Entrances to Streets**

**[a]** All driveway entrances and other openings onto streets within the town's planning jurisdiction shall be constructed so that:

- [1] Vehicles can enter and exit from the lot in question without posing any substantial danger to themselves, pedestrians, or vehicles traveling in abutting streets, and
- [2] Interference with the free and convenient flow of traffic in abutting or surrounding streets is minimized.

**[b]** All driveways shall conform to the Town of Boone Code, Chapter 98, or the North Carolina Department of Transportation Manual on Driveway Entrance Requirements, whichever is most restrictive.

**[c]** If a traffic impact analysis is performed and that analysis concludes that improvements are required to the transportation system; the applicant may be required to complete those improvements in connection with the project as a condition of issuing a permit. Unless an agreement is executed by the town in which the time for the improvement is specified the improvement shall be completed prior to issuance of a certificate of occupancy. The fact that the obligation to construct lies with the applicant does not preclude the town from entering into an agreement to participate if that will be in the interest of the town.

### **Section 235. Coordination with Surrounding Streets**

**[a]** The street system of a subdivision shall be coordinated with existing, proposed, and anticipated streets outside the subdivision or outside the portion of a single tract that is being divided into lots (hereinafter, “surrounding streets”) as provided in this section.

**[b]** Collector streets shall intersect with surrounding collector or arterial streets at safe and convenient locations.

**[c]** Subcollector, local, and minor residential streets shall connect with surrounding streets where necessary to permit the convenient movement of traffic between residential neighborhoods or to facilitate access to neighborhoods by emergency service vehicles or for other sufficient reasons, but connections shall not be permitted where the effect would be to encourage the use of such streets by substantial through traffic.

**[d]** Whenever connections to anticipated or proposed surrounding streets are required by this section, the street right-of-way shall be extended and the street developed to the property line of the subdivided property (or to the edge of the remaining undeveloped portion of a single tract) at the point where the connections to the anticipated or proposed street is expected. In addition, the permit issuing authority may require temporary turnarounds to be constructed at the end of such streets pending their extension when such turnarounds appear necessary to facilitate the flow of traffic or accommodate emergency vehicles. Notwithstanding the other provisions of this subsection, no temporary dead end street in excess of one thousand (1000) feet maybe created unless no other practicable alternative is available.

### **Section 236. Relationship of Streets to Topography**

**[a]** Streets shall be related appropriately to the topography. In particular, streets shall be designed to facilitate the drainage and storm water runoff objectives set forth in Article XVII, and street grades shall conform as closely as practicable to the original topography.

**[b]** As indicated in Section 237, the maximum grade at any one point on a street constructed without curb and gutter shall be fifteen percent (15%). On streets constructed with curb and gutter, the grades shall not exceed fifteen percent (15%) unless no other practicable alternative is available.

**Section 237. Street Width and Drainage Requirements in Subdivisions**

**[a]** Street rights-of-way are designed and developed to serve several functions: (i) to carry motor vehicle traffic, and in some cases allow on street parking; (ii) to provide a safe and convenient passageway for pedestrian traffic; and (iii) to serve as an important link in the town’s drainage system. In order to fulfill these objectives, all public streets shall be constructed to meet either the standards set forth in Subsection [b] or Subsection [c].

**[b]** The following classifications of streets may be constructed with four foot wide shoulders and drainage swales on either side in lieu of curb and gutter, so long as the street grade does not exceed a grade of fifteen percent (15%). Such streets shall be constructed to meet the criteria indicated in the table that follows as well as specifications referenced in Section 240.

Street Type	Minimum Right-of-Way Width (in feet)	Minimum Pavement Width (in feet)
Minor	45	18
Local	45	18
Private	30	18
Subcollector	50	20

**[c]** Except as otherwise provided in Subsection [b], all streets shall be constructed with curb and gutter and shall conform to the other requirements of this subsection. Only standard ninety (90) degree curb may be used, except that roll type curb shall be permitted along minor and local streets within residential subdivisions. Street pavement width shall be measured from curb face to curb face where ninety (90) degree curb is used, and from the center of the curb where roll type curb is used. The minimum paving width for local, subcollector and collector streets may be increased if deemed necessary by the permit issuing authority.

Street Type	Minimum Right-of-Way Width (in feet)	Minimum Pavement Width (in feet)
Minor	40	20
Local	40	20
Private	30	18
Subcollector	50	20
Collector	50	20

### Section 238. General Layout of Streets

**[a]** Subcollector, local and minor residential streets shall be curved whenever practicable to the extent necessary to avoid conformity of lot appearance.

**[b]** Cul-de-sacs and loop streets are encouraged so that through traffic on residential streets is minimized. Similarly, to the extent practicable, driveway access to collector streets shall be minimized to facilitate the free flow of traffic and avoid traffic hazards.

**[c]** All permanent dead end streets (as opposed to temporary dead end streets, see Subsection 235 [d]) shall be developed as cul-de-sacs in accordance with the standards set forth in Subsection [d]. Except where no other practicable alternative is available, such streets may not extend more than five hundred fifty (550) feet (measured to the center of the turnaround).

**[d]** The right-of-way of a cul-de-sac shall have a radius of fifty (50) feet. The radius of the paved portion of the turnaround (measured to the outer edge of the pavement) shall be thirty five (35) feet. Alternative cul-de-sac designs published in NCDOT's "Subdivision Roads - Minimum Construction Standards" will be considered by the permit issuing authority only in situations where, because of the physical characteristics of the site, the construction of a symmetrical "bulb" end design may not be in the public's best interest.

**[e]** Half streets (i.e., streets of less than the full required right-of-way and pavement width) shall not be permitted except where such streets, when combined with a similar street (developed previously or simultaneously) on property adjacent to the subdivision, creates or comprises a street that meets the right-of-way and pavement requirements of this ordinance.

**[f]** Streets shall be laid out so that residential blocks do not exceed eighteen hundred (1800) feet, unless no other practicable alternative is available.



**Section 239. Street Intersections**

**[a]** Streets shall intersect as nearly as possible at right angles, and no two streets may intersect at less than sixty (60) degrees. Not more than two streets shall intersect at any one point, unless the public works director certifies to the permit issuing authority that such an intersection can be constructed with no extraordinary danger to public safety.

**[b]** Whenever possible, proposed intersections along one side of a street shall coincide with existing or proposed intersections on the opposite side of such street. In any event, where a centerline offset (jog) occurs at an intersection, the distance between centerlines of the intersecting streets shall not be less than one hundred fifty feet.

**[c]** Except when no other alternative is practicable or legally possible, no two streets may intersect with any other street on the same side at a distance of less than four hundred (400) feet measured from centerline to centerline of the intersecting street. When the intersected street is an arterial, the distance between intersecting streets shall be at least one thousand (1000) feet.

**Section 240. Construction Standards and Specifications**

**[a]** All public streets shall be constructed in accordance with the design construction standards promulgated by the North Carolina Department of Transportation (NCDOT), unless a more restrictive standard is herein, in which case the more restrictive standard shall apply. A copy of the NCDOT standards shall be available for inspection in the Planning and Inspections Department.

**Section 241. Public Streets and Private Roads in Subdivisions**

**[a]** Except as otherwise provided in this section, all lots created after the effective date of this section shall abut a public street at least to the extent necessary to comply with the access requirement set forth in Section 232. For purposes of this subsection, the term “public street” includes a preexisting public street as well as a street created by the subdivider that meets the public street standards of this ordinance and is dedicated for public use. Unless the recorded plat of a subdivision clearly shows a street to be private, the recording of such a plat shall constitute an offer of dedication of such street.

**[b]** Architecturally integrated residential subdivisions containing twenty five (25) or more dwelling units may be developed with private roads that do not meet the public street standards of this ordinance as long as:

- [1] The proposed development will have direct access onto a public street or, if the tract has access to a public street only via a private road, such private road is improved to public street standards,
- [2] No road intended to be private is planned to be extended to serve property outside that development, and

- [3] The standards applicable to unsubdivided developments set forth in Sections 242 and 243 are complied with.

**[c]** Architecturally integrated subdivisions containing any number of dwelling units may be developed with private roads that do not meet the public street and sidewalk standards of this ordinance but that are not intended for dedication to the public so long as:

- [1] The proposed development will have direct access onto a public street or, if the tract has access to a public street only via a private road, such private road is improved to public street standards,
- [2] No road intended to be private is planned or expected to be extended to serve property outside the development, and
- [3] The subdivider demonstrates to the reasonable satisfaction of the council that the private roads will be properly maintained.

**[d]** No final plat that shows lots served by private roads may be recorded unless the final plat contains the following notations:

- [1] "Further subdivision of any lot shown on this plat as served by a private road may be prohibited by the Town of Boone Unified Development Ordinance."

**[e]** The recorded plat of any subdivision that includes a private road shall clearly state that such road is a private road. Further, the initial purchaser of a newly created lot served by a private road shall be furnished by the seller with a disclosure statement outlining the maintenance responsibilities for the road.

#### **Section 242. Road Requirements in Unsubdivided Developments**

**[a]** Within unsubdivided developments, all private roads and access ways shall be designed and constructed to facilitate the safe and convenient movement of motor vehicle and pedestrian traffic. Widths of roads, use of curb and gutter, and paving specifications shall be determined by the provisions of this ordinance dealing with parking (Article XIX) and drainage (Article XVII). To the extent not otherwise covered in the foregoing articles, and to the extent that the requirements set forth in this article for subdivision streets may be relevant to the roads in unsubdivided developments, the requirements of this article may be applied to satisfy the standard set forth in the first sentence of this subsection.

**[b]** Whenever a road in an unsubdivided development connects two or more subcollector, collector, or arterial streets in such a manner that any substantial volume of through traffic is likely to make use of this road, such road shall be constructed in accordance with the standards applicable to subdivision streets and shall be dedicated. In other cases when roads in unsubdivided developments within the town are constructed in accordance with the specifications for subdivision streets, the town may accept an offer of dedication of such streets.

### **Section 243. Pedestrian Circulation and Sidewalk Requirements.**

**[a]** Purpose. The purpose of this section is to provide minimum standards for the provision of sidewalks within the Town of Boone and the Town of Boone extraterritorial planning jurisdiction. The construction of sidewalks promotes public health, safety and welfare by providing improved pedestrian safety, expanded opportunities for recreational walking, easier access to goods and services, and reduces automobile dependency.

**[b]** When Sidewalks Must Be Constructed. Sidewalks shall be required for all new construction and in connection with improvements, renovations, additions or expansions to existing structures which fall into one of the following categories:

- [1] All new major subdivisions;
- [2] All new multi-family residential development;
- [3] All new office, institutional, commercial and industrial development;
- [4] Any combination of the uses as listed above;
- [5] All office, institutional, commercial, and industrial development improvements, renovations, additions or expansions if the cost of such improvements, renovations, additions or expansions exceeds fifty percent (50%) of the appraised valuation of the structure.
  - [a] The “appraised valuation” shall mean either the appraised valuation for property tax purposes, updated as necessary by the increase in the consumer price index since the date of the last valuation, or the valuation of a professionally recognized property appraiser.

**[c]** Design Requirements.

- [1] Sidewalks shall be required along the entire length of any portions of public streets which abut the development parcel.

- [2] Sidewalks will be constructed in accordance with the Roadway & Sidewalk Program Handbook for the Town of Boone. Any deviation from the requirements must be approved by the Administrator. Deviations may only be allowed when strict compliance with the Roadway & Sidewalk Program Handbook for the Town of Boone is impractical due to topography or because there exists site conditions beyond the applicant's control and not of the applicant's making.
- [3] Whenever curb and gutter construction is used on public streets, wheelchair ramps for persons with disabilities shall be provided at intersections and other major points of pedestrian flow. Sidewalks, wheelchair ramps, and depressed curbs shall be constructed in accordance with the published standards of the North Carolina Building Code, Volume I-C, Accessibility.
- [4] Sidewalk construction must be approved by the Director of Public Works or his designee prior to the issuance of a Certificate of Occupancy.
- [5] In all multi-family residential development, sidewalks shall be provided linking dwelling units with other dwelling units, the public street, and on site activity centers such as parking areas, laundry facilities, and recreational areas and facilities.

**[d]** Alternative Methods for Pedestrian Circulation: In circumstances when an alternative method of public pedestrian circulation has been identified in a duly adopted governmental alternative transportation plan, or where a proposed public greenway will connect to an existing public greenway the permit issuing authority may allow the installation of a public greenway instead of sidewalks. The following provisions shall apply for the approval of alternative methods for the provision of pedestrian circulation:

- [1] The developer with written authorization from the property owner shall submit a written request for an alternative method for pedestrian circulation to the administrator. The request shall specify the method proposed as a substitute for sidewalk installation. A site plan depicting the location and dimensions of the alternative method of pedestrian circulation and any other information deemed necessary by the administrator shall be included with the request.
- [2] All alternative methods will be constructed to meet Town of Boone standards and will require the dedication of an assignable permanent easement to the Town of Boone.

**[e]** Fee in Lieu

- [1] Except for development along a Primary Sidewalk Priority Route where there is contiguous sidewalk infrastructure in place (as shown on the Sidewalk Priorities Plan duly adopted by the Town), when a developer is required under Section 243(b) to construct a sidewalk, the developer may in lieu of such construction deposit funds into a sidewalk fund maintained by the Town of Boone. Fee-in-lieu is not an option when existing sidewalks are removed during the course of construction; in this case sidewalks must be replaced.
- [2] Procedures for Payment of Fee in Lieu
  - [a] The developer, with written authorization from the property owner, shall submit a written notification to the Administrator of the developer's intent to pay a fee in lieu of construction.
  - [b] The developer shall pay the fee prior to the issuance of a Certificate of Occupancy. The fee shall be a fixed amount per linear foot based on the rate calculated and published on a quarterly basis by the Town. The applicable fee shall be determined by the rate in effect on the date the development plan is approved.
  - [c] All funds collected in lieu of construction shall be in addition to all other sidewalk funding and shall be placed in a separate account to be used only for costs associated with new sidewalk construction as shown on the Sidewalk Priorities Plan duly adopted by the Town.

**[f]** Whenever the permit issuing authority finds that a means of pedestrian access is necessary from the subdivision to schools, parks, playgrounds, or other roads or facilities and that such access is not conveniently provided by sidewalks adjacent to the streets, the developer may be required to reserve an unobstructed easement of at least ten (10) feet in width to provide such access.

**Section 244. Street Names and House Numbers**

- [a]** Street names shall be assigned by the developer subject to the approval of the permit issuing authority. Proposed streets that are obviously in alignment with existing streets shall be given the same name. Newly created streets shall be given names that neither duplicate nor are phonetically similar to existing streets within the town's planning jurisdiction, regardless of the use of different suffixes (such as those set forth in Subsection [b]).
- [b]** Building numbers shall be assigned by the town.

**Section 245. Bridges**

**[a]** All bridges shall be constructed in accordance with the standards and specifications of the North Carolina Department of Transportation, except that bridges on roads not intended for public dedication may be approved if designed by a licensed architect or engineer.

**Section 246. Utilities**

**[a]** Utilities installed in public rights-of-way or along private roads shall conform to the requirements set forth in Article XV, Utilities.

**Section 247. Reserved****Section 248. Reserved****Section 249. Reserved****Section 250. Reserved****Section 251. Reserved****Section 252. Reserved****Section 253. Reserved****Section 254. Reserved**

## **Article XV      Utilities**

### **Section 255.    Utility Ownership and Easement Rights**

**[a]**    In any case in which a developer installs or causes the installation of water, sewer, electrical power, telephone, or cable television facilities and intends that such facilities shall be owned, operated, or maintained by a public utility or any entity other than the developer, the developer shall transfer to such utility or entity the necessary ownership or easement rights to enable the utility or entity to operate and maintain such facilities.

### **Section 256.    Lots Served by Governmentally Owned Water or Sewer Lines**

**[a]**    Whenever it is legally possible and practicable in terms of topography to connect a lot with a town water or sewer line by running a connecting line not more than two hundred (200) feet from the lot to such line, then no use requiring water or sewage disposal service may be made of such lot unless connection is made to such line.

**[b]**    Connection to such water or sewer line is not legally possible if, in order to make connection with such line by a connecting line that does not exceed two hundred (200) feet in length, it is necessary to run the connecting line over property not owned by the owner of the property to be served by the connection, and, after diligent effort, the easement necessary to run the connecting line cannot reasonably be obtained.

**[c]**    For purposes of this article, a lot is “served” by a town owned water or sewer line if connection is required by this section.

### **Section 257.    Sewage Disposal Facilities Required**

**[a]**    Every principal use and every lot within a subdivision shall be served by a sewage disposal system that is adequate to accommodate the reasonable needs of such use or subdivision lot and that complies with all applicable health regulations.

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**Section 258. Determining Compliance with Sewage Disposal Facilities Requirements**

**[a]** Primary responsibility for determining whether a proposed development will comply with the standard set forth in Section 257 often lies with an agency other than the town, and the developer must comply with the detailed standards and specifications of such other agency. Whenever any such agency requires detailed construction or design drawings before giving its official approval to the proposed sewage disposal system, the authority issuing a permit under this ordinance may rely upon a preliminary review by such agency of the basic design elements of the proposed sewage disposal system to determine compliance with Section 257. However, construction of such system may not be commenced until the detailed plans and specifications have been reviewed and any appropriate permits issued by such agency.

**Section 259. Water Supply System Required**

**[a]** Every principal use and every lot within a subdivision shall be served by a water supply system that is adequate to accommodate the reasonable needs of such use or subdivision lot and that complies with all applicable health regulations.

**Section 260. Determining Compliance with Water Supply System Requirements**

**[a]** Primary responsibility for determining whether a proposed development will comply with the standard set forth in Section 259 often lies with an agency other than the town, and the developer must comply with the detailed standards and specifications of such other agency. Whenever any such agency requires detailed construction or design drawings before giving its official approval to the proposed water supply system, the authority issuing a permit under this ordinance may rely upon a preliminary review by such agency of the basic design elements of the proposed water supply system to determine compliance with Section 259. However, construction of such system may not be commenced until the detailed plans and specifications have been reviewed and any appropriate permits issued by such agency.

**Section 261. Lighting Requirements**

**[a]** Subject to Subsection [b], all public streets, sidewalks, and other common areas or facilities in subdivisions created after the effective date of this ordinance shall be sufficiently illuminated to ensure the security of property and the safety of persons using streets, sidewalks, and other common areas or facilities.



**[b]** To the extent that fulfillment of the requirement established in Subsection [a] would normally require street lights installed along public streets, this requirement shall be applicable only to subdivisions located within the corporate limits of the town.

**[c]** All roads, driveways, sidewalks, parking lots, and other common areas and facilities in non subdivided developments shall be sufficiently illuminated to ensure the security of property and the safety of persons using such roads, driveways, sidewalks, parking lots, and other common areas and facilities.

**[d]** All entrances and exits in substantial buildings used for nonresidential purposes and in two family or multi family developments containing more than four (4) dwelling units shall be adequately lighted to ensure the safety of persons and the security of the buildings.

### **Section 262. Excessive Illumination**

**[a]** Lighting within any lot that unnecessarily illuminates any other lot and substantially interferes with the use or enjoyment of such other lot is prohibited. Lighting unnecessarily illuminates another lot if it clearly exceeds the standard set forth in Section 261 or if the standard set forth in Section 261 could reasonably be achieved in a manner that would not substantially interfere with the use or enjoyment of neighboring properties.

### **Section 263. Electric Power**

**[a]** Every principal use and every lot within a subdivision shall have available to it a source of electric power adequate to accommodate the reasonable needs of such use and every lot within such subdivision. Compliance with this requirement shall be determined as follows:

- [1] If the use is not a subdivision and is located on a lot that is served by an existing power line and the use can be served by a simple connection to such power line (as opposed to a more complex distribution system, such as would be required in an apartment complex or shopping center), then no further certification is needed.
- [2] If the use is a subdivision, or is not located on a lot served by an existing power line, or a substantial internal distribution system will be necessary, then the electric utility service provider must review the proposed plans and certify to the town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

### **Section 264. Telephone Service**

**[a]** Every principal use and every lot within a subdivision shall have available to it a telephone service cable adequate to accommodate the reasonable needs of such use and every lot within such subdivision. Compliance with this requirement shall be determined as follows:

- [1] If the use is not a subdivision and is located on a lot that is served by an existing telephone line and the use can be served by a simple connection to such telephone line (as opposed to a more complex distribution system, such as would be required in an apartment complex or shopping center), then no further certification is needed.
- [2] If the use is a subdivision, or is not located on a lot served by an existing telephone line, or a substantial internal distribution system will be necessary, then the telephone utility company must review the proposed plans and certify to the town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

### **Section 265. Underground Utilities**

**[a]** All electric power lines (not to include transformers or enclosures containing electrical equipment including, but not limited to, switches, meters, or capacitors which may be pad mounted), telephone, gas distribution, and cable television lines in subdivisions constructed after the effective date of this ordinance shall be placed underground in accordance with the specifications and policies of the respective utility service providers and located in accordance with the town's standard specifications for street design and construction.

**[b]** Whenever a non subdivided development is constructed in accordance with section 61, all electric power, telephone, gas distribution, and cable television lines installed to serve the development that are located on the development site outside of a previously existing public street right-of-way shall be placed underground in accordance with the specifications and policies of the respective utility companies. This section shall not apply to a change of use of a structure that is no larger than two thousand eight hundred (2, 800) square feet. The administrator may approve a deviation of the square footage requirement (not to exceed 10%) in accordance with the provisions of Section 51[b].

**Section 266. Utilities To Be Consistent With Internal and External Development**

**[a]** Whenever it can reasonably be anticipated that utility facilities constructed in one development will be extended to serve other adjacent or nearby developments, such utility facilities shall be located and constructed so that extensions can be made conveniently and without undue burden or expense or unnecessary duplication of service.

**[b]** All utility facilities shall be constructed in such a manner as to minimize interference with pedestrian or vehicular traffic and to facilitate maintenance without undue damage to improvements or facilities located within the development.

**Section 267. As - Built Drawings Required**

**[a]** Whenever a developer installs or causes to be installed any utility line in any public right-of-way, the developer shall, as soon as practicable after installation is complete, and before acceptance of any water, sewer or other utility line, furnish the town with a copy of a drawing that shows the exact location of such utility lines. Such drawings must be verified as accurate by the utility service provider. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing such development.

**Section 268. Fire Hydrants**

**[a]** Every development (subdivided or non subdivided) that is served by a public water system shall include a system of fire hydrants sufficient to provide adequate fire protection for the buildings located or intended to be located within such development.

**[b]** The presumption established by this ordinance is that to satisfy the standard set forth in Subsection [a], fire hydrants must be located so that all parts of every building within the development may be served by a hydrant. However, the fire chief may authorize or require a deviation from this standard if in his professional opinion another arrangement more satisfactorily complies with the standard set forth in Subsection [a].

**[c]** The fire department shall determine the precise location of all fire hydrants, subject to the other provisions of this section. In general, fire hydrants shall be placed six feet behind the curb line of publicly dedicated streets that have curb and gutter.

**[d]** The fire chief shall determine the design standards of all hydrants based on fire flow needs.

**[e]** Water lines that serve hydrants shall be at least six inch lines, and, unless no other practicable alternative is available, no such lines shall be dead end lines.

**Section 269. Solid Waste and Recycling Containers****[a] Solid Waste Containers**

- [1] Every development must provide solid waste areas and solid waste containers in compliance with the requirements of Section 91 of the Town Code.
- [2] All solid waste containers and solid waste container areas should be located as to minimize any negative impact on persons occupying the development site, neighboring properties, and public rights-of-way.
- [3] All solid waste container areas should be constructed according to specifications established by the Public Works Department to allow for collection without damage to the development site and the collection vehicle.
- [4] All solid waste container locations should be screened in accordance with the requirements of Section 363 [e] of this ordinance.

**[b] Recycling Containers**

- [1] Multi-Family Residences (Use 1.300) and any other development which is required to recycle should provide an area for the placement of recycling containers designed pursuant to Section 91 of the Town Code.
- [2] All recycling containers should be located as to minimize any negative impact on persons occupying the development site, neighboring properties, and public rights-of-way.
- [3] All recycling container areas should be constructed according to specifications established by the Department of Public Works to allow for collection without damages to the development site and the collection vehicle.
- [4] All recycling container areas should be screened in accordance with the requirements of Section 363 [e] of this ordinance.

**Section 270. Reserved****Section 271. Reserved****Section 272. Reserved**

## **Article XVI     Grading, Soil Erosion and Sediment Control**

### **Section 273.    Activities Affected**

**[a]** This article pertains to all land-disturbing activities conducted within the town's jurisdiction. It is the property owner's responsibility to ensure that provisions of this article are adhered to; including activities contracted for, or performed by those under their employ. The waiver of plan approval requirements due to the size of activity contemplated, does not relieve the property owner of responsibility for following the requirements contained herein, or in anyway limit their liability for the consequences of their land-disturbing activity under North Carolina state law or the administrative procedures and penalties outlined in this ordinance.

### **Section 274.    Plan Approval Required**

**[a]** Town review and approval of both a site specific "Grading Plan," and a site specific "Soil Erosion and Sediment Control Plan," is required when land-disturbing activity is proposed; with the exception of single family and two family projects of less than twenty one thousand, seven hundred eighty (21,780) square feet (0.5 acre) or commercial site improvements that involve no more than two thousand five hundred (2,500) square feet of land disturbing activity.

The following land-disturbing activities contemplated as part of the principal land-disturbing activity characterized above, should be included in the submission for grading and soil erosion plan approval, when not already covered by a valid existing plan approval:

- [1] Access and Haul Roads: Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity and are subject to the requirements of this ordinance which pertain to road building.

- [2] Borrow and Waste Areas: When the applicant conducting the land-disturbing activity is also the responsible party conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the Department of Human Resources, Division of Health Services, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the applicant conducting the land-disturbing activity is not the responsible party for obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

Approval of the “Grading Plan” and “Soil Erosion and Sediment Control Plan” shall be completed as part of the zoning approval process. “Grading Plans” will not be approved unless part of a development project submitted through the zoning approval process.

#### **Section 275. Administrative Procedures for Plan Approval**

**[a]** The “Grading Plan” and “Soil Erosion and Sediment Control Plan” along with all supporting calculations shall be submitted with the Zoning Permit application. The “Grading Plan” and “Soil Erosion Control Plan” with supporting calculations shall be designated collectively throughout this section as the Plan, or Plan(s).

- [1] The Plan(s) shall be prepared by, and shall bear the seal and signature of a licensed North Carolina professional engineer, landscape architect, surveyor, or architect competent to perform all aspects of the design.
- [2] The Soil Erosion and Sediment Control Plan approval application form shall be accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or their attorney in fact. The statement shall include the financially responsible person’s principal place of business, addresses (mailing and street), plus each land owner’s or their registered agent’s address.
- a. The administrator may require the property owner or the financially responsible party to provide a security deposit to ensure compliance with the soil erosion and sediment control provisions (Article XVI, Part II) of the ordinance.

1. The applicant may, prior to commencing any land-disturbing activity, be required to file with the town an improvement security in the form of an escrow account, surety bond, irrevocable letter of credit, or other undertaking satisfactory to the Town Attorney, in an amount deemed sufficient by the administrator, to cover all costs of protection or other improvements required to establish protective cover on the site in conformity with this ordinance. Such security shall remain in force until the improvements are completed in accordance with the approved plan and said improvements are finally inspected and approved.
2. Upon completion of improvements required by this ordinance, written notice thereof shall be given by the applicant to the administrator and the department shall cause an inspection of the improvements to be made and, if approved, shall within thirty (30) days of the date of notice authorize in writing the release of the security given provided that the improvements have been made in accordance with the approved plan and this ordinance.

**[b]** Supporting documentation shall be considered an integral part of the Plan(s) submittal. The applicant shall include general supporting documentation such as; location map, and written specifications governing work performance and materials, for either plan submitted. Although specific Plan(s) content will vary to meet the needs of particular site requirements, following is some typical forms of specific supporting documentation:

- [1] Grading Plan: Site specific soils investigation (if performed), detail drawings and cross-section of earthwork, construction details for retaining structures, and whatever other narrative statements necessary to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this ordinance. More specialized documentation may include such items as; design calculations for temporary excavation support, calculations for temporary surface water diversion, dewatering methods with provisions for handling extracted water, importation of fill material (quantity and type), description of rock excavation techniques (blasting) with protection or monitoring of neighboring properties and structures, etc.

- [2] Soil Erosion and Sediment Control Plan: Computations and assumptions sufficient to support the design of sediment control structures, erosion control practices, and velocity control measures. Construction details and sequencing for sedimentation and erosion control measures. Selected types of ground cover with their conditions and procedures for installation. Architectural and engineering drawings, and maps to convey this information. Whatever other narrative statements necessary to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this ordinance.

**[c]** The administrator shall review the Plan(s) for completeness and for compliance with the requirements of this ordinance. Incomplete or nonconforming Plan(s) will be returned to the applicant prior to review with an explanation of issues requiring resolution before plan review can be initiated.

**[d]** Approval or denial of the proposed Plan(s) shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal the decision of the administrator to the Board of Adjustment as provided in Article V of this ordinance. A condition of Plan(s) approval will be the right to physical inspection of the land-disturbing activity.

**[e]** Application for amendment of a Plan(s) in written and graphic form may be made at any time by repeating the filing process outlined above in Subsections [a] through [d]. Until such time as any amendment is approved by the administrator, it shall be unlawful to deviate from the approved Plan(s).

**[f]** In the enforcement of this ordinance staff may perform random independent inspections of the land-disturbing activity to ensure compliance with the approved Plan(s). Discovery of substandard and non-conforming work will invoke the procedures outlined in Section 277.

- [1] No person shall willfully resist, delay, or obstruct the Planning and Inspections Department, or its duly appointed agent, that is inspecting or attempting to inspect a land-disturbing activity.

### **Section 276. Compliance With Approved Plans**

**[a]** The property owner is responsible for ensuring that the land-disturbing activity is completed in accordance with the approved plan and specifications. The administrator shall require that a North Carolina registered professional engineer certify that the land-disturbing activity was completed in compliance with the approved Plan(s).



**Section 277. Stop Work Orders**

**[a]** Stop work orders shall be in writing and directed to the person responsible for the violations, and shall state the specific work to be stopped, the specific reasons for stoppage, and the conditions under which the work may be resumed. Appeals of a stop work order shall be made as prescribed in Article V, Section 106. Pending the ruling on the appeal, no further work may take place.

**[b]** Stop work orders may be issued by the Planning and Inspections Department on the following merits:

- [1] Land-disturbing activity is being undertaken in a manner which is in violation of this ordinance. The work in violation may be stopped immediately. Other portions of work impacted by the violation may also be stopped.
- [2] Substantial departure from the approved plan and specifications.
- [3] Refusal or failure to comply with the requirements of any applicable state law, local law, local ordinance, or local regulation.
- [4] Plan approvals granted on the basis of false statements or misrepresentations made by the property owner or their representatives during application.
- [5] Plan approvals mistakenly granted in violation of an applicable state law, local law, local ordinance, or local regulation may also be grounds for stopping work.

**Section 278. Definitions**

**[a]** As used in this article, unless the context clearly indicates otherwise, the following definitions apply:

- [1] *Accelerated Erosion* Any increase over the rate of natural erosion as a result of land-disturbing activities.
- [2] *Act*: The North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- [3] *Active Construction*: Activities which contribute directly to the completion of facilities contemplated or shown on the construction plans.
- [4] *Adequate Erosion Control Measure, Structure or Device*: Control of the soil material within the land area under responsible control of the persons conducting the land-disturbing activity.

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- [5] *Borrow*: Fill material which is required for on site construction and is obtained from other locations.
- [6] *Buffer Zone*: The strip of land adjacent to a lake or natural watercourse, the width of which is measured from the edge of the water to the nearest edge of the disturbed area, with the twenty five percent (25%) of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone twenty five (25) feet wide.
- [7] *Commission*: The North Carolina Sedimentation Control Commission.
- [8] *Department*: The North Carolina Department of Environment, Health and Natural Resources.
- [9] *District*: The Watauga Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.
- [10] *Energy Dissipater*: A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.
- [11] *Erosion*: The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
- [12] *Ground Cover*: Any natural vegetation growth or other material which renders the soil surface stable against accelerated erosion.
- [13] *Lake or Natural Watercourse*: Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.
- [14] *Land-Disturbing Activity*: Any use of the land by any person in residential, industrial, education, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.
- [15] *Local Government*: The Town of Boone, North Carolina.
- [16] *Natural Erosion*: The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

- [17] *Person:* Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- [18] *Person Responsible for the Violation:* As used in this ordinance, and North Carolina G.S. 113A-64, means:
- a. The developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; and/or
  - b. The landowner or person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has benefited from it or he has failed to comply with any provision of this ordinance, the Act, or any order adopted pursuant to this ordinance or the Act as imposes a duty upon him.
- [19] *Person Conducting Land Disturbing Activity:* Any person who may be held responsible for a violation unless expressly provided otherwise by the ordinance, the Act, or any order adopted pursuant to this ordinance or the Act.
- [20] *Phases of Land-Disturbing Activity:* Defined portions (area or implementation) of grading or soil erosion and sediment control measures that are required to be done in a specific sequence as part of the Plan(s).
- [21] *Plan(s):* The Grading Plan and/or Soil Erosion and Sedimentation Control Plan, and the supporting documentation for such plan.
- [22] *Sediment:* The solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.
- [23] *Sedimentation:* The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural water course.
- [24] *Siltation:* The sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.
- [25] *Storm Drainage Facilities:* The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

- [26] *Storm Water Runoff:* The direct runoff of water resulting from precipitation in any form.
- [27] *Ten Year Storm:* The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.
- [28] *Tract:* All contiguous land and bodies of water in one ownership, or contiguous land and bodies of water in diverse ownership being developed as a unit, although not necessarily all at one time.
- [29] *Types of Grading:* One of two types of grading, rough or fine.
- [30] *Uncovered:* The removal of ground cover from, on or above the soil surface.
- [31] *Undertaken:* The initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.
- [32] *Velocity:* The average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overbank flows are not to be included for the purpose of computing velocity of flow.
- [33] *Waste:* The surplus materials resulting from on site construction and disposed of at other locations.
- [34] *Working Days:* The days exclusive of Saturday, Sunday, and legal holidays during which weather or soil conditions permit land disturbing activity to be undertaken.

**Section 279. Reserved**

**Section 280. Reserved**

## Part I Grading

### Section 281. Grading Plan

**[a]** The grading plan shall define the existing site topography and the proposed elevations for all site improvements in sufficient detail to accurately plan and control earthwork construction. The grading plan shall be prepared to meet the grading performance standards contained in Section 284, and presented at a scale not smaller than 1 inch = 50 feet.

**[b]** The grading plan shall be prepared by and shall bear the seal and signature of a North Carolina licensed professional engineer, landscape architect, or architect competent to perform all aspects of design. Plans submitted for grading approval, and major and minor subdivisions submitted for approval, shall include detailed plans, specifications and supporting calculations for the construction of stormwater management installation. The design of drainage facilities shall be in accordance with Article XVII, Part II drainage and storm water management design standards.

**[c]** The applicant shall follow the administrative process for plan approval provided in Section 275, requiring three (3) copies of the grading plan, and two (2) copies of the supporting documentation for such plan, to be submitted to the Planning and Inspections Department.

**[d]** Grading plans shall contain sufficient information as specified herein, but not limited to the topographic survey (Section 282) and grading plan format (Section 283), to allow the administrator to determine if the requirements and intent of this ordinance as applied to the proposed development have been met.

**[e]** The construction sequence describing major work activities shall be listed on the plan. Grading that will be conducted in phases should be clearly indicated on the grading plan. Multiple grading plans may be necessary to adequately portray tracts with complex phasing or discontinuous areas of land-disturbing activity.

### Section 282. Topographic Survey

**[a]** The grading plan shall be based upon a topographic survey of the tract that includes detailed information of both natural and cultural physical features prior to development. In addition to showing physical features such as existing buildings, overhead and/or underground utilities, roadways, walks, water or drainage features, the plan should also indicate the location of existing vegetation, particularly significant trees being retained and protected (see Article XX, Section 370) and limits of vegetation if the tract is partially wooded.

**[b]** Survey information can be provided through submittal of a separate topographical survey, or included as part of the grading and utilities plans. This survey shall be produced by a registered land surveyor. Topographical maps prepared for the town or Watauga County are also acceptable providing that the maps reflect the current existing conditions of the tract and are certified as accurate by a registered land surveyor.

- [1] Contour lines shall be used to present the topography of the entire tract, including sufficient distance into adjoining properties to indicate continuity. The contour line interval should be selected to appropriately convey the topographic information for planning and controlling construction. Generally, a two (2) foot contour interval is sufficient. However, smaller intervals (0.5 - 1.0 ft.) may be used for flatter areas and larger intervals (5 - 10 ft.) for steeper terrain. Contour intervals may be no greater than ten (10) feet.

**[c]** It is important to acquire the following basic survey data for proper execution of the grading plan:

- [1] Boundary information (metes and bounds, legal description of the site if available), including all existing and proposed street right-of-ways.
- [2] Location of existing curbing, walks, grass, utility or planting strips, edge of pavement, roadway medians, if any, and their respective grades, widths, and alignments.
- [3] Location, size, and depths of all underground utilities when available, including; gas, electric, water, sanitary sewer, storm water drainage features, telephone, television cable, etc.
- [4] Location and approximate height above existing grade of overhead utility lines and poles for lighting, electric, telephone, cable television, etc.
- [5] Location and description of all recorded public or private utility easements, building setbacks, and drainage easements encumbering the tract.
- [6] Location of all natural features such as rock outcroppings, watersheds, streams, ponds, etc. on the lot or within one hundred (100) feet of the graded area. This information conveys the impact of the proposed development on the lot.
- [7] Location of any wells or septic fields within one hundred (100) feet of the graded area.

- [8] Location of existing structures such as buildings, retaining walls, fences, building foundations, underground storage tanks, etc. Reference of the setbacks of other buildings on adjacent properties and adjacent property lines.
- [9] Location of sufficient spot elevations on existing land surface to generate a topographic map of the entire tract.

### **Section 283. Grading Plan Format**

**[a]** The grading plan should show the existing and proposed shape of earth and surfaced areas. The method of portrayal should be well thought out, systematized, and clearly presented graphically. The following information shall be included in all grading plans submitted to the town for approval:

- [1] Contour lines shall be used to present the existing and proposed topography of the entire tract, including sufficient distance into adjoining properties to indicate continuity. The contour line interval should be selected to appropriately convey the topographic information for planning and controlling construction. Generally, a two (2) foot contour interval is sufficient. However, smaller intervals (0.5 -1.0 ft.) may be used for flatter areas and larger intervals (5 - 10 ft.) for steeper terrain. Contour intervals may be no greater than ten (10) feet.
- [2] Grades at corners of buildings, step landings, and first floor elevations.
- [3] Finished grades at the edges of surfaced areas and at such interior points as necessary to show the shaping of the area. A combination of proposed contours and spot evaluations may be used to convey this information.
- [4] Proposed roadway elevations by indicating proposed contours and spot elevations where necessary. Profiles, cross sections, and spot elevations are to be used to establish grading of paved areas such as roadways.
- [5] Top-of-curb grades at all connecting walks, curb returns, and all catch basin locations.
- [6] Spot elevations along swale lines, by using arrows to show direction of flow. Slope gradients should also be shown.
- [7] Top elevation of all storm and sanitary sewer manholes and other appurtenances.
- [8] Lawn and earth grades can be shown by proposed contours and by spot elevations where necessary.

- [9] The proposed location of stockpiled topsoil for future use in landscaped areas. To avoid root compaction the stockpile should be located outside root zones of the significant vegetation to be preserved.
- [10] The storage locations of construction materials outside the root zones of significant vegetation to be preserved to avoid root compaction.
- [11] The location of existing significant vegetation such as specimen trees or the canopy limits of wooded areas intended for preservation.
- [12] The elevations of any flood plains located on, or directly affecting a tract (i.e. drainage, sediment and erosion control considerations and/or watershed protection).

#### **Section 284. Grading Performance Standards**

**[a]** Any land disturbing activity that includes alteration of existing topographic slope grades shall conform to grading performance standards contained in Subsections [b] through [j].

**[b]** The grading plan and specifications controlling execution of land-disturbing activities shall adhere to the following standards unless superseded by a site specific subsurface investigation, report and recommendation performed by a registered professional engineer competent in geotechnical engineering.

- [1] Existing grade may remain, if natural vegetation undisturbed and slope(s) are unaffected by the planned site improvements.
- [2] Maximum cut grade shall be 2H:1V.
- [3] Maximum fill grade shall be 2H:1V.
- [4] Grades shall be sloped to drain surface water away from buildings, pavements, slopes and structures, and toward storm drainage facilities.

**[c]** Conventional seeding with native grasses and mulching are acceptable permanent erosion control measures for slopes flatter than 2H:1V, provided the grasses can be established and properly nourished to maturation.

**[d]** Site specific permanent erosion control and stabilization of slopes steeper than 2H:1V must be designed by a licensed professional engineer or landscape architect competent in such practice. Universally accepted armoring techniques and innovative approaches will be considered appropriate when properly detailed and specified.



**[e]** Notification of the administrator shall be made prior to starting grading for any slope steeper than 3H:1V.

**[f]** Cut and fill slopes that are steeper than 3H:1V shall have intermediate benches to control surface water runoff. These benches shall be a minimum of five (5) feet wide and sloped back from the crest of the lower slope, to form a drainage swale at the toe of the upper slope. The drainage swale invert shall divert surface water to the appropriate storm drainage facilities. The maximum change in elevation between these benches shall be twenty (20) feet. Slope stability considerations may require wider benches for steeper or taller slopes. If a site specific evaluation is performed and recommendations submitted by a licensed professional engineer with a specialization in sub-surface evaluations; the provisions of this sub-section may be modified or waived.

**[g]** Exposed and fill covered slope cuts in rock foundations or slopes greater than 5 feet and steeper than 1(H):1(V) should be properly investigated and designed by a North Carolina registered professional engineer or geologist competent in rock slope engineering. The grading plan should clearly indicate the depth, orientation, and method to accomplish a cut into rock formations.

**[h]** Retaining systems providing a cumulative vertical relief greater than five feet within a horizontal distance of 50 feet or less, including retaining walls or mechanically stabilized earth walls, shall be designed and constructed under the responsible charge of a North Carolina registered professional engineer. Testing and inspection reports shall verify:

1. Foundation support system is adequate for the intended site conditions;
2. Quality of construction materials conform with specifications;
3. Actual soil conditions are substantially and functionally similar to those anticipated in design, and;
4. Backfill materials and any drainage systems comply with plans and specifications.

The North Carolina licensed engineer will submit a separate summary report stating that the constructed retaining structures are in compliance with the intent of the design.

**[i]** Utilize a maximum 3H:1V slope within any temporary or permanent buffer zone adjacent to any lake or natural water course, tying into existing grades along the perimeter or property line of the tract. Landscape buffer areas shall be limited to a maximum 3H:1V slope unless otherwise approved by the administrator.

**[j]** Property boundary and field grading stakes sufficient to define the land-disturbing activity shall be established prior to starting, and maintained until earthwork construction is completed.

**Section 285. Special Requirements for Land Disturbing Activities Involving Steep Slopes**

**[a]** The purpose and intent for creating special measures for land development activities in areas requiring land disturbance of steep and very steep slopes is to facilitate the identification of land areas subject to possible slope failure and to require investigation and remediation of such conditions, if necessary, when such land is proposed to be developed.

**[b]** The following categories of steep slope are hereby established:

**Very Steep Slopes:** Slopes steeper than 50%.

**Steep Slopes:** Slopes between 30% and 50%.

**[c]** The requirements for land disturbing activities on **Very Steep Slopes** shall be as follows:

- [1] Plans for the development of any property must be accompanied by a site- specific geologic analysis of the very steep slope portion of the site to be disturbed by the proposed development plan, paid for by the applicant, and conducted by a North Carolina licensed geologist, to determine whether that plan can be developed on the site without jeopardizing slope stability on the site itself or on properties surrounding the site.
- [2] If the property is determined to be safe for development and requires remedial measures to ensure slope stability, a North Carolina registered professional engineer competent in geotechnical engineering must develop and present a plan to the Administrator that will preserve slope stability on the site during and after the completion of grading and construction for the site, as well as for surrounding properties to the extent that the contemplated development activities on the site affect surrounding properties.
- [3] No diversion or channelization of perennial streams on very steep slopes is permitted.
- [4] Culverting of perennial streams on very steep slopes shall be discouraged, and will be allowed only for necessary road crossings.
- [5] To prevent debris flow development and damage to slope stability, the riparian zone of perennial stream on very steep slopes must be left intact, which means that removal of trees, vegetation, soils, or disturbance of soils within this zone is prohibited. The riparian

zone shall extend from the edge of the existing stream for 35 feet from each edge of the stream.

- [6] The owner of any property whose development plan will include the disturbance of a Very Steep Slope, as determined by the Administrator, may challenge this determination by appeal to the Town of Boone Board of Adjustment, in conformity with the procedures of UDO Section 106.
- [7] Developers of property where the development plan requires land disturbing activity on Very Steep Slopes shall make reasonable efforts to preserve and protect features of the slope, such as trees and other plant material, which may help to stabilize the slope.

**[d]** Development of **Steep Slopes** or in areas where geological hazard indicators are present.

- [1] Whenever new development is proposed which involves land disturbing activity on a steep slope, as defined above, or if geological hazard indicators, as defined in Section 15 of the UDO, are observed on the land which will be disturbed by the development, the Administrator **may** require that the applicant obtain investigation(s) by a licensed geologist and/or licensed engineer, as appropriate, before allowing the development to proceed. If the Administrator requests such additional investigation(s), the Administrator shall designate in writing the geological hazard indicator observed. When the administrator requires an additional study, this requirement shall be considered an appealable order from the administrator, and it may be appealed to the Town of Boone Board of Adjustment, in conformity with the procedures of UDO Section 106.
- [2] If the property is determined to be safe for development and requires no remedial measures, no further studies will be required.
- [3] If the property is determined to be safe for development but requires remedial measures to ensure slope stability, a North Carolina registered professional engineer competent in geotechnical engineering must develop and present a plan to the Administrator that will preserve slope stability on the site during and after the completion of grading and construction for the site, as well as for surrounding properties to the extent that the contemplated development activities on the site affect surrounding properties.
- [4] No diversion or channelization of perennial streams will be permitted on steep slopes unless without such diversion or

channelization, a tract existing at the time of the adoption of this amendment is rendered unusable for any of the principal use(s) allowed within the zoning district.

- [5] Culverting of perennial streams on steep slopes shall be discouraged, and is allowed only for necessary road crossings.
  - [6] To prevent debris flow development and damage to slope stability, the riparian zone of perennial streams must be left intact, which means that removal of trees, vegetation, soils, or disturbance of soils within this zone is prohibited. The riparian zone shall extend from the edge of the existing stream for 35 feet from each edge of the stream.
  - [7] The owner of any property determined by the Administrator to be a Steep Slope may challenge this determination by appeal to the Town of Boone Board of Adjustment, in conformity with the procedures of UDO Section 106.
- [e] The Town shall have the option to employ and/or contract with an independent geologist and/or engineer to evaluate plans for development as necessary, whether such development is on a very steep slope, on a steep slope, or when the Administrator believes that the development presents geological hazards or geological hazard indicators which have not been adequately investigated by the applicant.

**Section 286. Reserved**

## Part II Soil Erosion and Sediment Control

### Section 287. Authority and Purpose

**[a]** The Town of Boone soil erosion and sediment control requirements are adopted pursuant to authority granted in the North Carolina Sedimentation Pollution Control Act of 1973. The purpose of this portion of the ordinance is to:

- [1] Regulate certain land-disturbing activities to control accelerated erosion and sedimentation in order that water pollution from sedimentation may be prevented, that the accelerated erosion and sedimentation of lakes and natural watercourses and damage to public and private property by sedimentation be prevented, and
- [2] Establish procedures through which these purposes can be fulfilled.

**[b]** The following land-disturbing activities are exempted from the requirements of this section:

- [1] Those done for the purpose of fighting fires.
- [2] Those done in the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards (with a properly approved Soil Erosion and Sediment Control Plan for this activity).
- [3] Those undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to: forage and sod crops, grain and feed crops, tobacco, cotton and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of all such animals; bees and apiary products, fur animals.
- [4] Those undertaken on forest land for the production and harvesting of timber and timber products when conducted in accordance with Forest Practices Guidelines (15NCAC 11.0101-.0209).
- [5] Activity undertaken by persons as defined in North Carolina G.S. 113A-52 (8) who are otherwise regulated by the provisions of the Mining Act of 1971, G.S. 74-46 through G.S. 74-68.

- [6] Land-disturbing activity over which the state by statute, has exclusive regulatory jurisdiction, which are those;
- a. Conducted by the state,
  - b. Conducted by the United States,
  - c. Conducted by persons having the power of eminent domain,
  - d. Conducted by a local government,
  - e. Licensed by the state or United States,
  - f. Funded in whole or in part by the state or United States.

Note that all road building activities require “Soil Erosion and Sediment Control Plan” approval, even those conducted by government authorities.

### **Section 288. Soil Erosion and Sediment Control Plan**

**[a]** The soil erosion and sediment control plan shall define the existing site topography and the proposed site conditions in sufficient detail to accurately plan and implement the planned erosion, sedimentation, and velocity control measures. The soil erosion and sediment control plan shall be prepared to meet the basic objectives, design standards, and performance standards for erosion control (Sections 289 to 291) in this Ordinance. The soil erosion and sediment control plan shall be presented at a scale not smaller than 1 inch = 50 feet.

**[b]** The soil erosion and sediment control plan shall be prepared by and shall bear the seal and signature of a licensed professional engineer, landscape architect, surveyor, or architect competent to perform all aspects of design. Plans submitted for soil erosion and sediment control approval, and minor and major subdivisions submitted for approval, shall include detailed plans, specifications and supporting calculations for the construction of stormwater management installation. The design of drainage facilities shall be in accordance with Article XVII, Part II drainage and storm water management design standards.

**[c]** The applicant shall follow the administrative process for plan approval provided in Section 275, requiring three (3) copies of the soil erosion and sediment control plan, and two (2) copies of the supporting documentation for such plan, be submitted to the Planning and Inspections Department.

**[d]** The soil erosion and sediment control plan should follow a format similar to the grading plan format (Section 283) and provide sufficient information as specified herein, to allow staff to determine if the requirements and intent of this ordinance as applied to the proposed development have been met.

**[e]** Soil erosion and sediment control measures that will be active, dormant, or removed during various phases of the land-disturbing activity should be clearly indicated on the soil erosion and sediment control plan. Multiple erosion and sediment control plans may be necessary to adequately portray the tracts with complex phasing or discontinuous areas of land-disturbing activity.

### **Section 289. Basic Erosion Control Objectives**

**[a]** Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

**[b]** On site areas which are subject to severe erosion, and off site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.

**[c]** All land disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

**[d]** All land disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

**[e]** Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

### **Section 290. Soil Erosion Control Design Standards**

**[a]** Any land disturbing activity that includes alteration of existing topographic slope grades or natural ground cover shall conform to the soil erosion and sediment control design standards in Subsections [b] through [d].

**[b]** Erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the ten (10) year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service, *National Engineering Field Manual for Conservation Practice*, the *North Carolina Erosion and Sediment Control Planning and Design Manual*, or other acceptable calculation procedures.

**[c]** Erosion and sediment control measures must accomplish the following mandatory standards when land-disturbing activity is undertaken on a tract:

[1] Containment: Installation of sufficient sedimentation and erosion control devices and practices to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction and upon completion of development.

[2] Buffer Zone: No land-disturbing activity shall be permitted in proximity to a lake or natural watercourse unless an undisturbed

buffer zone is provided along the margin of the watercourse. The buffer must be a minimum of twenty five (25) feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. If the slope perpendicular to the stream measured from the top of the stream bank is 3H:1V or steeper a detailed erosion control plan and calculations sufficient to support the proposed buffer width must be submitted for town review. A temporary and minimal disturbance may be permitted if the applicant submits documentation that there is no reasonable alternative. The temporary and minimal disturbance shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 50 linear feet of disturbance in each 1000 linear feet of buffer zone.

- [3] Ground Cover: Groundcover (temporary or permanent depending on phase of grading) that is sufficient to restrain erosion must be placed on all disturbed areas within 21 calendar days of completion of any phase of grading. Specifications for groundcover must be listed on the erosion control plan and should be consistent with the NCDENR *Erosion and Sedimentation Control Planning and Design Manual*.

**[d]** Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

### **Section 291. Soil Erosion Control Performance Standards**

**[a]** Any land disturbing activity that includes alteration of existing topographic slope grades or natural ground cover shall conform to the soil erosion and sediment control performance standards, in Subsection [b], for storm water exiting the tract. Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.

**[b]** The land-disturbing activity shall be planned and conducted such that the velocity of storm water runoff in the receiving watercourse at the point of discharge resulting from a ten (10) year storm while undertaken, and after development, shall not exceed the lesser of:



- [1] The maximum permissible velocity for earth lined (unprotected soils) channels as determined from the table below, or
- [2] The velocity in the receiving watercourse determined for the ten (10) year storm prior to development.

Should conditions (1) or (2) of this subsection not be met, the channel below the discharge point shall be designed and improvements constructed to withstand the expected velocity.

**[c]** This performance standard can be waived if it can be clearly demonstrated that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

Soil Types	Maximum Permissible Velocity for Earth - Lined Channels	
	Feet per second	Meters per second
Fine Sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

SOURCE: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels multiply allowable velocity by 0.95 for slightly sinuous, 0.9 for moderately sinuous channels, and 0.8 for highly sinuous channels.

**Section 292. Acceptable Erosion Control Management Measures**

**[a]** Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The town recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results by meeting the performance standards outlined above. Some alternatives are to:

- [1] Compensate for increased surface water runoff volume and velocity by including measures to promote infiltration of excess runoff from areas rendered impervious.
- [2] Reduce storm water discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections.
- [3] Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities at the point of discharge. These may range from simple rip rapped sections to complex structures.
- [4] Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion resistant lining.

**[b]** Most of the established “best” management practices for soil erosion and sediment control are detailed in the *North Carolina Erosion and Sediment Control Planning and Design Manual*.

**Section 293 Monitoring and Maintenance of Erosion Control Measures**

**[a]** During the development of a tract, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this ordinance, the Act, or any order adopted pursuant to this ordinance or the Act.

**[b]** During the development of a tract, the person conducting the land disturbing activity shall inspect all erosion and sediment control facilities and all stormwater management facilities including the discharge facility at least once every seven calendar days and within 24 hours after any storm event of greater than 0.5 inches of rain within a 24 hour period. These inspections shall determine the erosion control devices and stormwater facilities have not been damaged and are operating as designed. During this inspection the discharge from the site shall also be observed and a qualitative assessment of the discharge shall be made to determine clarity, presence of floating or suspended solids, presence of an oil sheen or other obvious indicators of stormwater pollution. If any evidence of deterioration of the system is present or there is evidence of any visible sedimentation outside the disturbed limits it shall be recorded and corrective measures taken. The applicant shall maintain a record of inspections, findings and any corrective action. This record shall be available on site for the Administrator.

**[c]** Whenever the town determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action to mitigate or eliminate the sedimentation.

**[d]** After site development, the land owner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road, street right-of-way, or easement and accepted for maintenance by a governmental agency.

#### **Section 294. Penalties**

**[a]** The procedure of notification and magnitude of penalty for any person in violation of Part II, Soil Erosion and Sediment Control of Article XVI Grading, Soil Erosion and Sediment Control, are provided in Article VII, Enforcement and Review, Section 132 of this ordinance.

**[b]** Any person who knowingly or willfully violates any provision of Part II, Soil Erosion and Sediment Control of Article XVI Grading, Soil Erosion and Sediment Control of this ordinance, or rule or order adopted or issued pursuant to this ordinance or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed five thousand dollars (\$5000.00).

#### **Section 295. Reserved**

**Section 296. Existing Uncovered Areas**

**[a]** All uncovered areas existing on the effective date of this ordinance which:

- [1] Resulted from land-disturbing activity,
- [2] Exceed one half contiguous acre,
- [3] Are subject to continued accelerated erosion, and
- [4] Are causing off site damage from sedimentation;

shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off site sedimentation.

**[b]** The town will serve upon the landowner a written notice of violation by registered or certified mail, return receipt requested, or other means. The notice will set forth the measures requiring compliance, and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.

**[c]** The town reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.

**[d]** These regulations shall not require ground cover on cleared land forming the future basin of a planned reservoir.

**Section 297. Reserved**

**Section 298. Reserved**

# Article XVII Flood Damage Prevention, Drainage, and Storm Water Management

## Part 1 Flood Damage Prevention

### Section 299. Statutory Authorization, Findings of Fact, Purpose and Objectives

#### [a] Statutory Authorization

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

#### [b] Findings of Fact

- [1] The flood prone areas within the jurisdiction of the Town of Boone are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- [2] These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

#### [c] Statement of Purpose

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

- [1] Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- [2] Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;

- [3] Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- [4] Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- [5] Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

**[d]** Objectives

The objectives of this Article are to:

- [1] Protect human life, safety, and health;
- [2] Minimize expenditure of public money for costly flood control projects;
- [3] Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- [4] Minimize prolonged business losses and interruptions;
- [5] Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- [6] Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- [7] Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

**Section 300. Definitions**

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

*Accessory Structure (Appurtenant Structure):* A structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like

qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

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

*Appeal:* A request for a review of the Floodplain Administrator's interpretation of any provision of this Article.

*Area of Special Flood Hazard* see "Special Flood Hazard Area (SFHA)"

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

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

*Basement:* Any area of the building having its floor subgrade (below ground level) on all sides.

*Building:* see "Structure".

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

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

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

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

*Encroachment:* The advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or

alter the flow capacity of a floodplain.

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

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

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

*Flood Insurance:* The insurance coverage provided under the National Flood Insurance Program.

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

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

*Flood Prone Area:* see “Floodplain”

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

*Floodplain:* Any land area susceptible to being inundated by water from any source.

*Floodplain Administrator:* The individual appointed by the Administrator to administer and enforce the floodplain management regulations.

*Floodplain Development Permit:* Any type of permit that is required in conformance with the provisions of this Article, prior to the commencement of



any development activity.

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

*Floodplain Management Regulations:* This Article and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes Federal, State or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

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

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

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

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

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

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

*Historic Structure:* Any structure that is:

- [1] Listed individually in the National Register of Historic Places (a listing

maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;

- [2] Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- [3] Individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- [4] Certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program”.

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

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

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

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

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

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

*Mean Sea Level:* For purposes of this Article, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

*New Construction:* Structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

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

*Post-FIRM:* Construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map.

*Pre-FIRM:* Construction or other development for which the “start of construction” occurred before the effective date of the initial Flood Insurance Rate Map.

*Principally Above Ground:* At least 51% of the actual cash value of the structure is above ground.

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

*Recreational Vehicle (RV):* A vehicle, which is:

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

*Reference Level:* The top of the lowest floor for structures within Special Flood

Hazard Areas designated as any Zone beginning with “A”.

*Regulatory Flood Protection Elevation:* The “Base Flood Elevation” plus the “Freeboard” of two feet. In “Special Flood Hazard Areas” where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

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

*Riverine:* Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

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

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

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

*Special Flood Hazard Area (SFHA):* The land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Section 301, [b] of this article.

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

start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

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

*Substantial Damage:* Damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”.

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

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

*Variance:* As defined in Article II, Section 15, a variance is a grant of permission by the Board of Adjustment that authorizes the recipient to do that which, according to the strict letter of this ordinance, he/she could not otherwise legally do.

*Violation:* The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sections 302 and 303 is presumed to be in violation until such time as that documentation is provided.

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

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

occur.

### **Section 301. General Provisions**

#### **[a] Lands to Which This Article Applies**

This Article shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs), of the Town of Boone.

- [1] The use of any land or structure within the Special Flood Hazard Area shall comply with the use regulations in the UDO applicable to the underlying zoning district as well any additional requirements imposed by this Article.

#### **[b] Basis for Establishing the Special Flood Hazard Areas**

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Watauga County dated December 3, 2009 which are adopted by reference and declared to be a part of this Article.

#### **[c] Establishment of Floodplain Development Permit**

A Floodplain Development Permit shall be required in conformance with the provisions of this Article prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Section 301 [b]of this Article.

#### **[d] Compliance**

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

#### **[e] Abrogation and Greater Restrictions**

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

#### **[f] Interpretation**

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

- [a] Considered as minimum requirements;
- [b] Liberally construed in favor of the governing body; and
- [c] Deemed neither to limit nor repeal any other powers granted under State statutes.

**[g] Warning and Disclaimer of Liability**

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

**[h] Penalties for Violation**

Violation of the provisions of this Article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this Article or fails to comply with any of its requirements shall, upon conviction thereof, shall be subject to the civil and criminal penalties as outlined in Section 132 of this ordinance. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Boone from taking such other lawful action as is necessary to prevent or remedy any violation

**Section 302. Administration**

**[a] Designation of Floodplain Administrator**

The administrator or his/her designee, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this Article.

**[b] Floodplain Development Application, Permit and Certification Requirements**

- [1] Application Requirements. Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

- [a] A site plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
- (i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
  - (ii) The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 301 [b] or a statement that the entire lot is within the Special Flood Hazard Area;
  - (iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 301 [b];
  - (iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in Section 301[b];
  - (v) The Base Flood Elevation (BFE) where provided as set forth in Section 301[b]; Section 302 [c]; or Section 303 [d];
  - (vi) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
  - (vii) The certification of the site plan by a registered land surveyor or professional engineer.
- [b] Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
- (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
  - (ii) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, or A will be floodproofed; and



- (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
- [c] If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- [d] A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this Article are met. These details include but are not limited to:
  - (i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
  - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Section 303, [b] [4] [c] when solid foundation perimeter walls are used in Zones A, AE.
- [e] Usage details of any enclosed areas below the lowest floor.
- [f] Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- [g] Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
- [h] Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Section 303 [b] [6] and [7] of this Article are met.
- [i] A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

- [2] Permit Requirements. The Floodplain Development Permit shall include, but not be limited to:
- [a] A description of the development to be permitted under the floodplain development permit.
  - [b] The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Section 301[b].
  - [c] The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.
  - [d] The Regulatory Flood Protection Elevation required for the protection of all public utilities.
  - [e] All certification submittal requirements with timelines.
  - [f] A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
  - [g] The flood openings requirements, if in Zones A, or AE.
  - [h] Limitations of below BFE enclosure uses (if applicable). (I.e., parking, building access and limited storage only).
- [3] Certification Requirements.
- [a] Elevation Certificates
    - (i) An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

- (ii) An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
  
- (iii) A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

[b] Floodproofing Certificate

If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean

sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

- [c] If a manufactured home is placed within Zone A, or AE, and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Section 303 [b][3][b].
- [d] If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- [e] Certification Exemptions. The following structures, if located within Zone A, or AE, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
  - (i) Recreational Vehicles meeting requirements of Section 303 [b][6][a];
  - (ii) Temporary Structures meeting requirements of Section 303[b][7]; and
  - (iii) Accessory Structures less than 150 square feet meeting requirements of Section 303 [b][8].

**[c] Duties and Responsibilities of the Floodplain Administrator**

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

- [1] Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this Article have been satisfied.
- [2] Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.
- [3] Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- [4] Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- [5] Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 303 [f] are met.
- [6] Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Section 302 [b][3].
- [7] Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Section 302 [b][3].
- [8] Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Section 302 [b][3].
- [9] When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Section 302 [b][3] and Section 303 [b][2].

- [10] Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Article. Such interpretations, like other decisions of the Administrator, may be appealed to the Board of Adjustment in accordance with the applicable provisions of this ordinance.
- [11] When Base Flood Elevation (BFE) data has not been provided in accordance with the provisions of Section 301 [b], obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Section 303 [d][2][b], in order to administer the provisions of this Article.
- [12] When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Section 301 [b], obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this Article.
- [13] When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
- [14] Permanently maintain all records that pertain to the administration of this Article and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- [15] Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

- [16] Issue stop-work orders as required in accordance with the procedures of Sections 136 and 137 of this ordinance. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Article, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- [17] Revoke floodplain development permits as required in accordance with procedures of Sections 134 and 135 of this ordinance. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- [18] Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- [19] Follow through with corrective procedures of Section 302 [d].
- [20] Review, provide input, and make recommendations for reasonable conditions should a variance request be granted.
- [21] Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with the provisions of Section 301 [b] of this Article, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- [22] Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

**[d] Corrective Procedures**

The Administrator shall follow the corrective procedures in accordance with Article VII of this ordinance.

**[e] Variance Procedures**

- [1] The Board of Adjustment shall hear and decide requests for variances from the requirements of this Article.
- [2] Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- [3] Variances may be issued for:
  - [a] The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
  - [b] Functionally dependent facilities if determined to meet the definition as stated in Section 300 of this Article, provided provisions of Section 302 [e][9][b], [c] and [e] have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
  - [c] Any other requirements of this Article type of development provided it meets the requirements of this Section.
- [4] In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Article, and:
  - [a] The danger that materials may be swept onto other lands to the injury of others;
  - [b] The danger to life and property due to flooding or erosion damage;
  - [c] The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;



- [d] The importance of the services provided by the proposed facility to the community;
  - [e] The necessity to the facility of a waterfront location as defined under Section 300 of this Article as a functionally dependent facility, where applicable;
  - [f] The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - [g] The compatibility of the proposed use with existing and anticipated development;
  - [h] The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - [i] The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - [j] The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - [k] The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- [5] A written report addressing each of the above factors shall be submitted with the application for a variance.
- [6] Upon consideration of the factors listed above and the purposes of this Article, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this Article.
- [7] Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

- [8] The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
- [9] Conditions for Variances:
- [a] Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
  - [b] Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
  - [c] Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - [d] Variances shall only be issued prior to development permit approval.
  - [e] Variances shall only be issued upon:
    - (i) a showing of good and sufficient cause;
    - (ii) a determination that failure to grant the variance would result in exceptional hardship; and
    - (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

### **Section 303. Provisions for Flood Hazard Reduction**

#### **[a] General Standards**

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

- [1] All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

- [2] All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- [3] All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- [4] Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
- [5] All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- [6] New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- [7] On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding. Similar to current 306 [b] [3] Any onsite sewage disposal system is located to avoid damage during flooding or interruption when evacuation is not necessary.
- [8] Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this Article, shall meet the requirements of “new construction” as contained in this Article.
- [9] Nothing in this Article shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this Article and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this Article.
- [10] New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in

Article 4, Section E(10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area floodplain only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Section 302 [b][3].

- [11] All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- [12] All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- [13] All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- [14] All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- [15] When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- [16] When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest Base Flood Elevation (BFE) shall apply.
- [17] No artificial obstruction may be located within any Floodway zone, except as provided for below. An artificial obstruction is any obstruction, other than a natural obstruction, that is capable of reducing the flood carrying capacity of a stream or may accumulate debris and thereby reduce the flood carrying capacity of a stream. A natural obstruction includes any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the Floodway Zone by a non human cause.
- [18] Any stream culverted on or before September 23, 1986, shall have a floodway of twenty (20) feet from the center of the culvert or to the limit of the mapped floodway as shown on the most recent

FIRM, whichever is greater.

**[b]** Specific Standards

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Section 301[b], or Section 303 [d], the following provisions, in addition to the provisions of Section 303[a], are required:

- [1] Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section 300 of this Article.
- [2] Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section 300 of this Article. Structures located in ZONE A, or AE Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 302 [b][3], along with the operational plan and the inspection and maintenance plan.
- [3] Manufactured Homes.
  - [a] New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Section 300 of this Article.
  - [b] Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the

chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

- [c] All enclosures or skirting below the lowest floor shall meet the requirements of Section 303 [b][4].
  - [d] An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.
- [4] Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
- [a] Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
  - [b] Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and FEMA recommends that flood resistant material be used all the way to the top of any enclosure below the lowest floor because mold and other damage can travel upwards beyond the high water elevation. To enforce this regulation to the top of the enclosure delete the words “at least to the Regulatory Flood Protect Elevation”.
  - [c] Shall include, in Zones A or AE flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
    - (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;

- (ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
- (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
- (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
- (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
- (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

[5] Additions/Improvements.

- [a] Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - (i) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
  - (ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- [b] Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
- [c] Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

- (i) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
  - (ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- [6] Recreational Vehicles. Recreational vehicles shall either:
  - [a] Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
  - [b] Permanently attached recreational vehicles are prohibited.
- [7] Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:
  - [a] a specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
  - [b] the name, address, and phone number of the individual responsible for the removal of the temporary structure;
  - [c] the time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
  - [d] a copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
  - [e] designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.
- [8] Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:



- [a] Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
- [b] Accessory structures shall not be temperature-controlled;
- [c] Accessory structures shall be designed to have low flood damage potential;
- [d] Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- [e] Accessory structures shall be firmly anchored in accordance with the provisions of Section 303 [a][1];
- [f] All service facilities such as electrical shall be installed in accordance with the provisions of Section 303 [a][4]; and
- [g] Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Section 303 [b][4][c].

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 302 [b][3].

(9) Subdivisions

- [a] All subdivision proposals shall be consistent with the need to minimize flood damage.
- [b] All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- [c] All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- [d] All subdivision proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including

Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

[e] An applicant for a Special Use Permit authorizing a major subdivision and an applicant for minor subdivision final plat approval shall be informed by the administrator of the use and construction restrictions contained in Article XVII if any portion of the land to be subdivided lies within the Floodplain.

[f] Final plat approval for any subdivision containing land that lies within a Special Flood Hazard area may not be given unless the plat shows all Special Flood Hazard Area boundaries and contains in clearly discernible print the following statement:

“Use of land within the Special Flood Hazard Area is substantially restricted by the Flood Damage Prevention Ordinance of the Town of Boone.”

[g] A Special Use Permit for a major subdivision and final plat approval for any subdivision may not be given if:

(i) It reasonably appears that the subdivision is designed to create residential building lots; and

(ii) It reasonable appears that one more lots as described could not practicably be used as a residential building site because of the restrictions set forth in this article.

[10] Permissible Uses Within the Special Flood Hazard Area

The following uses shall be permitted within the Special Flood Hazard Area provided they are permitted under Article X of the UDO and documentation is submitted to show they shall comply with the provisions of this Section:

[a] General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses.

[b] Lawns, gardens, play areas, and other similar uses.

[c] Golf courses, driving ranges, archery ranges, picnic grounds, parks, hiking, bicycle or horseback riding trails, open space and other similar private and public recreational uses.

**[d]** Standards for Floodplains Without Established Base Flood Elevations

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Section 301 [b], where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Section 303 [a], shall apply:

- [1] No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- [2] The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:
  - [a] When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this Article and shall be elevated or floodproofed in accordance with standards in Section 303 [a] and [b].
  - [b] When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Section 303 [b] and [f].
  - [c] All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with Section 301 [b] and utilized in implementing this Article.
  - [d] When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Section 300. All other applicable provisions of Section 303 [b] shall also apply.

**[e]** Standards for Riverine Floodplains with Base Flood Elevations but Without Established Floodways or Non-Encroachment Areas

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

- [1] Standards of Section 303 [a] and [b]; and
- [2] Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

**[f]** Floodways and Non-Encroachment Areas

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Section 301 [b]. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Section 303 [a] and [b], shall apply to all development within such areas:

- [1] No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
  - [a] It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
  - [b] A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.

- [2] If Section 303 [f][1] is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this article.
- [3] No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
  - [a] The anchoring and the elevation standards of Section 303 [b][3]

#### **Section 304. Legal Status Provisions**

##### **[a] Effect on Rights and Liabilities Under The Existing Flood Damage Prevention Ordinance**

This Article in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted June 1980 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of Town of Boone enacted June 1980, as amended, which are not reenacted herein are repealed.

***Municipal:*** The date of the initial Flood Damage Prevention Ordinance for Watauga County is June 10, 1980.

##### **[b] Effect Upon Outstanding Floodplain Development Permits**

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

##### **[c] Severability**

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

#### **Section 305. Reserved**

**Section 306. Reserved**

**Section 307. Reserved**

**Section 308. Reserved**

**Section 309. Reserved**

**Section 310. Reserved**

**Section 311. Reserved**

## Part II Drainage and Storm Water Management

### Section 312. Plan Approval Required

**[a]** Subject to the requirements of Article IV, Section 64 (Applications to be Complete) a Drainage Plan is required to be submitted with all applications for zoning permits, special use permits, zoning vested right or minor subdivision plat approval except in any of the following circumstances:

- [1] Construction of a single family or two family residence-Land use classification 1.110 or 1.200.
- [2] A Change of use of a structure that is no larger than two thousand eight hundred (2,800) square feet and does not involve more than two thousand five hundred (2,500) square feet of land disturbing activity. The administrator may approve a deviation of the structure square footage requirement (not to exceed 10%) in accordance with the provisions of Section 51[b].
- [3] Commercial site improvements that involve no more than two thousand five hundred (2,500) square feet of land disturbing activity.

**[b]** Drainage Plan shall refer to the drawings and technical documentation for planned site improvements necessary to fulfill both the Drainage and Storm Water Management requirements of this article. This shall include but not be limited to:

- [1] Location and topographic maps with the total drainage area delineated including both on site and off site areas and sufficient information to define all ridges, existing streams, drainage ways, wetland areas, existing springs, and water elevation of any proposed discharge point, and any additional information required to evaluate the existing and proposed drainage system.
- [2] Architectural and engineering drawings showing plan, profile and details of; piping, drainage structures, swales, and channels tying into a network of pre-existing man made or natural channels.
- [3] Written project specifications governing work performance and materials.
- [4] Computations and assumptions sufficient to support the design of; piping, drainage structures, retention/detention ponds, and permanent erosion control measures.

[5] Whatever other narrative statements necessary to adequately describe the proposed site improvements and the measures planned to comply with the requirements of this article.

**[c]** The Drainage Plan shall be prepared by and shall bear the seal and signature of a licensed professional engineer, or landscape architect, competent to perform all aspects of design.

**[d]** The Drainage Plan shall be prepared to meet the basic objectives and design standards for drainage and storm water management as described in Sections 315 and 316.

**[e]** The Drainage Plan shall show the existing site topography and proposed site drainage improvements in sufficient detail to facilitate plan review and construction. The Drainage Plan drawings shall be presented at a scale not smaller than 1 inch = 50 feet.

### **Section 313. Administrative Procedures for Drainage Plan Approval**

**[a]** Three (3) copies of the Drainage Plan shall be submitted to the Planning and Inspections Department for review.

**[b]** The administrator shall review the Drainage Plan for completeness and for compliance with the requirements of this ordinance. An incomplete or nonconforming drainage plan will be returned to the applicant prior to review with an explanation of issues requiring resolution before plan review can be initiated.

**[c]** Within thirty (30) days of receipt of application for drainage plan approval, the administrator shall take action on the plan. Failure to respond within thirty (30) days of receipt of the drainage plan will constitute approval of the plan.

[1] The administrator shall forward a copy of the plan to the Watauga Soil and Water Conservation District who, within twenty (20) days of receipt of the plan, will review the plan and submit its comments and recommendations to the Planning and Inspections Department. Failure of the Soil and Water Conservation District to submit its comments and recommendations within twenty (20) days, shall not delay final action on the plan. The Planning and Inspections Department is solely responsible for plan(s) review and will incorporate review comments and recommendations from the Soil and Water Conservation District into its examination of the plan application.



**[d]** Approval or denial of the proposed Drainage Plan shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal the decision of the administrator to the Board of Adjustment as provided in Article V.

[1] A condition of plan approval will be the right to physical inspection of the drainage structures and stormwater management measures during construction.

**[e]** The administrator shall take action on revisions to a Drainage Plan which has been previously denied, within fifteen (15) days of receipt of the revised plan application for approval. Failure to respond within fifteen (15) days of receipt of the revised plan will constitute approval of the revised plan.

**[f]** Application for an amendment to a Drainage Plan in written and graphic form may be made at any time by repeating the filing process outlined in Subsections [a] through [e]. Until such time as any amendment is approved by the administrator, it shall be unlawful to deviate from the approved plan.

#### **Section 314. Diligence in Construction of Drainage Structures**

**[a]** Storm water management facilities shall be constructed in accordance with approved plans and maintained in proper working condition. The property owner is responsible for ensuring that the construction of drainage structures and stormwater management measures are completed in accordance with the approved plan and specifications. Inspections which may be performed by the Town of Boone during construction will not relieve the developer of his responsibility to install drainage facilities in accordance with the approved plan. A written certification from a registered professional competent in the area of construction shall be submitted prior to issuance of the certificate of occupancy.

**[b]** In response to a complaint, or as a random check on compliance with the requirements of the ordinance, the town may perform a physical inspection of the construction of drainage structures and stormwater management measures, or monitor long term maintenance procedures. Inspections performed by the town during construction will not relieve the property owner or developer of their responsibility to install and maintain drainage facilities in accordance with the approved plan.

**[c]** The property owner will be notified in writing of any substandard and/or non-conforming work identified by the administrator. The notification shall state the specific work that is out of compliance, the specific reasons for noncompliance, and the corrective measures necessary to bring the work into compliance.

**[d]** Failure of the property owner or developer to correct substandard and/or nonconforming work identified by the administrator shall be sufficient reason for the town to refuse ownership (transfer of title) or assumption of maintenance responsibility for said work. Additionally, the town may refuse or revoke building permits, and/or deny occupancy permits for buildings serviced by said work. Appeals on determination of nonconforming or substandard work and/or the adequacy of the corrective measures executed shall be made as prescribed in Article V. Pending the ruling on the appeal, the determination of the administrator remains in effect.

**[e]** Revisions which affect the intent of the design or the capacity of the system shall require prior written approval by the town.

### **Section 315. Drainage and Storm Water Management Objectives**

**[a]** In order to reduce drainage related damage and hazards, adequate natural drainage systems or storm water management installations are required to collect and transmit storm water flows into either existing town drainage facilities or a natural drainage system. The general objectives of this requirement are, but not limited to:

- [1] The prevention and abatement of flooding and runoff related property damage, nuisances, and hazards,
- [2] The prevention of stream bank and channel degradation by accelerated erosion caused by increased velocity of runoff, and
- [3] The reduction of water quality degradation caused by erosion, sedimentation, and non point source pollution.

**[b]** All storm drainage facilities shall be designed, constructed and maintained so that adjacent properties are not unreasonably burdened with surface waters as a result of such improvements. Specifically:

- [1] Offsite areas which drain to or across a site proposed for development must be accommodated in the storm water plans for the development. The storm water management system must be capable of conveying the existing offsite flows through or around the development such that the volume and rate of flow from the adjacent property is not altered. If offsite flows are carried in the site system any detention ponds shall be sized to accommodate this flow.

- [2] Storm drainage facilities shall be designed to limit the discharge from the site to the rate that existed prior to development of the site. For projects that are redeveloping a developed site, the discharge will be limited to that which occurs before any new development. The type and location of the discharge will be as occurred before the current development unless the discharge is to a manmade conveyance system. If the discharge is in a manmade conveyance the Town of Boone will be furnished an easement to the point that the pre-development flows are duplicated.

**[c]** All site improvements shall be provided with a drainage system that is adequate to prevent the undue retention of surface water on the development site. Surface water shall not be regarded as unduly retained if:

- [1] The retention results from a technique, practice or device deliberately installed as part of an approved sedimentation or storm water runoff control plan, or
- [2] The retention is not substantially different in location or degree than that experienced on the development site prior to site improvements, unless such retention presents a danger to health or safety.

**[d]** These competing goals for retention and discharge can be accomplished by designing, constructing and maintaining all storm water management installations to the extent practicable:

- [1] Avoid increases in surface runoff volume and velocity by including measures which promote the infiltration of storm water,
- [2] Maximize the time of concentration of storm water runoff, and
- [3] Promote the filtration and precipitation of pollutants from storm water runoff in order to protect the water quality of the receiving watercourse.

**[e]** Whenever practicable, the drainage system of a development site shall coordinate with and connect to the drainage systems or drainage ways on surrounding properties or streets.

**[f]** To the extent practicable, all site improvements shall conform to the natural contours of the land, and without disturbance, utilize the preexisting natural and preexisting man made drainage ways.

**[g]** To the extent practicable, lot boundaries within subdivisions shall be made to coincide with natural and preexisting man made drainage ways to avoid creation of lots that can only be built upon by altering such drainage ways.

**[h]** Storm water shall not be diverted from one natural drainage basin into another.

**[i]** Storm water shall not be channeled or directed into sanitary sewers.

### **Section 316. Drainage and Storm Water Management Design Standards**

**[a]** Design standards are established for the purpose of promoting sound development practices which respect, preserve and enhance the town's watercourses and are not intended to prohibit the use of innovative and alternative techniques which can be demonstrated to have the potential for successfully achieving the objectives stated in Section 315. Applications which are exempt from the Drainage Plan requirements set forth in Section 312[a] are also exempt from the Design Standards contained in Section 316[b][4].

**[b]** Design Storm:

- [1] The minimum design capacity for all storm drainage facilities shall be the ten (10) year discharge. The design capacity for cross drainage facilities in public streets shall be the twenty five (25) year discharge.
- [2] The design of drainage facilities in flood hazard areas shall be consistent with the requirements of Article XVII, Part I.
- [3] The computation of storm water runoff shall follow established engineering practice. Acceptable methods of computation include, but are not limited to, those outlined in the Soil Conservation Service National Engineering Field Manual, the Rational Method, and published U.S. Geological Survey techniques for estimating stream flow. Runoff coefficients shall be based on full development of the watershed to the extent of the current zoning.
- [4] Stormwater detention shall be provided to insure that the rate of discharge does not exceed the pre-development rate of discharge. In order to demonstrate this, pre and post development hydrographs will be submitted that demonstrate no increase in flow leaving the site during the 10 year 24 hour storm. Inflow-outflow calculations shall also be submitted for any storm water detention ponds.

**Note:** The Town of Boone is developing a comprehensive stormwater management plan to address stormwater quality. The plan is anticipated to be ready for implementation in April of 2006. The plan will reflect Low Impact Development strategies, an integrated system of preventive and control practices, to accomplish stormwater management goals consistent with NPDES Phase II program requirements. Contact the Planning and Inspection Department office for up to date information.

**[c]** Storm water pipe for either culverts or closed systems shall be constructed of either reinforced concrete, corrugated steel, or aluminized pipe in conformance with North Carolina Department of Transportation (NCDOT) Standard Specifications or high density polyethylene corrugated pipe with smooth interior which meets the product specification of ASHTO M294.

- [1] Corrugated steel pipe shall be fully bituminous coated. In lieu of fully bituminous coated galvanized pipe, aluminized pipe without a bituminous coating may be used. Pipe which carries active stream flow shall be partially paved (paved invert) fully bituminous coated galvanized pipe. In lieu of fully bituminous coated partially paved galvanized pipe, aluminized pipe which has been half bituminous coated and partially paved may be used. Connecting bands shall conform to NCDOT Standard Specifications.
- [2] Minimum pipe diameter shall be eighteen (18) inches for open ended culverts and fifteen (15) inches for closed systems and driveway culverts. Minimum pipe diameter for portions of closed systems placed outside the public right-of-way and privately maintained shall be twelve (12) inches.
- [3] Depth of cover shall be appropriate for the pipe material, pipe wall thickness and anticipated loading. Minimum depth of cover shall be twelve (12) inches.
- [4] Down sizing of culverts within pipe systems is prohibited.
- [5] Storm drainage piping shall be placed in a straight alignment at uniform grade. No changes in alignment shall be allowed except at catch basins, manholes, or other junctions that provide appropriate clean out access.
- [6] Storm drainage structures, including inlet grates and frames, shall conform to NCDOT Standard Specifications.
- [7] No change in pipe material shall be allowed except at storm drainage structures.

- [8] Existing storm water conveyance infrastructure on or through any site being considered for development or redevelopment may remain in place and active, subject to the following criteria:
- a. The conveyance system meets all requirements of Section 316, except subsection [c] [1] and the system is certified by a licensed professional engineer to be properly sized with capacity to handle the applicable design storm in accordance with Section 288 [b]. The engineer shall also provide a qualitative assessment of the system to include observations of visible signs of erosion, scour, corrosion, degradation, or other structural inadequacies, along with recommendations for any suggested improvements.
  - b. That the property owner will, at their expense, repair or replace the system or components thereof in the event that the system should fail to function at any time in the future. Any such repair or replacement shall be in accordance with all provisions of Section 316.
- [9] The centerline of any culverts placed along a roadway shall be a minimum of 10 feet from the edge of pavement or edge of unpaved travel way. Due to the extreme topography or other unique features related to a specific driveway, it may not be practical to install the culvert at this location. Upon demonstration of adequate cause the permit issuing authority may allow deviations from this requirement. The applicant shall demonstrate that the proposed deviation will result in a culvert that adequately provides the drainage function and minimizes the chance that the ends of the culverts will be damaged.

**[d]** Hydraulic Design:

- [1] Design capacity headwater elevations for open ended culverts shall be below the roadway shoulder or finished site grade elevation.
- [2] Design capacity hydraulic grade line for closed pipe systems shall be at or below the inlet grate elevation.
- [3] The hydraulic design of culverts and pipe systems shall take into account the effect of tail water and allow for all energy losses within the system.

- [4] Drainage design calculations shall be submitted demonstrating compliance with these regulations. Minimum information required is a tabulation of the system which presents the type of each inlet, time of concentration, volume to the inlet, size of pipe, length of pipe, pipe inverts at both the high and low end, and hydraulic grade line for each pipe section.

**[e]** End Treatments:

- [1] Headwalls, flared end sections, or other adequate slope protection shall be provided at culvert ends.
- [2] Storm drain outlets shall be protected against erosion by providing energy dissipaters and/or other adequate channel lining.

**[f]** Open Channels and Ditches:

- [1] Design capacities for open channels and ditches shall be determined by the Manning Equation. The value of the roughness coefficient shall be appropriate for the material encountered and the condition of the channel.
- [2] All ditch bottoms and side slopes shall be stabilized with pavement, stone, or vegetative linings adequate to withstand design velocities. Stone rubble linings shall be placed on filters of washed gravel and/or geotextile fabric.

**[g]** NCDOT Standard concrete curb or combination curb and gutter is required for the direction and control of storm water in all parking lots. Alternate effective control measures which are consistent with the objectives of Section 315 [d] will be considered for approval on a case by case basis.

**[h]** Use of drainage swales rather than curb and gutter with storm sewers in subdivisions is provided for in Section 237. Private roads and access ways within unsubdivided developments shall utilize curb and gutter with storm drains to provide adequate drainage when the grade of such roads or access ways is too steep to provide adequate drainage in another manner.

**[i]** Building construction is prohibited from being horizontally closer than:

- [1] Ten (10) feet, from the centerline of drainage culverts less than forty eight (48) inches in diameter, or
- [2] Ten (10) feet plus one half the culvert diameter, from the centerline of drainage culverts greater than forty eight (48) inches in diameter.

This restriction shall not apply to building roof, foundation drains, or incidental yard drains which originate closer than ten (10) feet to the building and convey stormwater immediately away from the building.

**[j]** Culverts or pipe systems which convey storm water to or from existing enclosed drainage facilities shall be connected to the existing facility with an enclosed junction. Connections to existing facilities in public rights-of-way shall require the execution of an encroachment agreement with the town for town streets or the NCDOT for state maintained roads.

**[k]** Where impoundment or detention facilities are included in the design of storm water management installations, every effort shall be made to minimize the degree of maintenance required to ensure the continuing effectiveness of the facility.

- [1] Maintenance of storm water impoundment or detention facilities shall be the responsibility of the property owner.
- [2] Where impoundment or detention facilities are to be located in common areas, the developer shall record with the Watauga County Register of Deeds an instrument setting forth provisions for the establishment of a property owners association for the purpose of assessing dues for maintenance of the facilities by purchasers of property which will be served by the facilities within the development. The developer shall maintain these facilities until such time that the property owners association assumes responsibility for maintenance.

**Section 317. Reserved**

**Section 318. Reserved**

**Section 319. Reserved**

**Section 320. Reserved**



## Article XVIII Signs

### Section 321. Purpose

- [a]** The purpose of the sign ordinance is:
- [1] to encourage the use of outdoor advertising signs as an effective means of communication in the Town of Boone;
  - [2] to encourage outdoor advertising signs that maintain, enhance, and are compatible with the beauty and unique character and enhance the aesthetic environment of the town by eliminating visual blight;
  - [3] to enhance the town's ability to attract sources of economic development and growth;
  - [4] to protect pedestrians and motorists of the town from damage or injury caused or partially attributable to the distractions and obstructions which are hereby declared to be caused by improperly sized or situated signs;
  - [5] to minimize the possible adverse effect of signs on nearby public and private property;
  - [6] to promote public safety, welfare, convenience and enjoyment of travel and the free flow of traffic within the town;
  - [7] and to provide a uniform sign ordinance.
- [b]** The purpose and requirements for sign permits are as follows:
- [1] A sign permit is required for all signs except as otherwise outlined in Section 324 (Signs Which Do Not Require a Permit) and Section 325 (Signs Excluded from Regulation).
  - [2] Signs may be constructed, erected, moved, enlarged, illuminated or altered only in accordance with a sign permit issued by the administrator.
  - [3] Sign permit applications and sign permits shall be governed by the same provisions of this ordinance applicable to zoning permits.

- [4] Mere repainting or changing the message of a sign shall not, in and of itself, be considered a substantial alteration requiring a sign permit.

## **Section 322. Definitions**

**[a]** Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this article.

*Abandoned Sign:* Sign or parts of signs which advertise or pertain to a business, product, service, commodity, event, activity, or purpose which no longer exists, is not maintained or that has not been in use for ninety (90) days or more. Signs which are associated with seasonal business such as ski shops, Horn in the West, etc. shall not be considered abandoned or obsolete provided there is clear intent to continue in the coming season.

*Agricultural Sign:* A temporary sign posted to direct the public to an agricultural exposition, festival or event, as those terms are described, when such exposition, festival or event is taking place within the corporate or planning limits of the Town, or within Watauga County. An agricultural exposition, festival or event is an event which involves at least ten separate participants involved in the cultivation of land, who for a period of time not exceeding six weeks per year, provide tours and/or on-site sales or samples of agricultural products resulting from that cultivation to area tourists.

*Appalachian Skatepark Sign:* Sponsorship signs placed at Appalachian Skatepark.

*Attached Sign:* A sign which is mounted flush to a building wall or attached to the face of a canopy.

*Awning:* A shelter projecting from and supported by the exterior wall of a building constructed of non rigid materials on a supporting framework.

*Banner:* A sign made of fabric or any nonrigid material with no enclosing framework.

*Bench Sign:* A sign located on the surface of a bench. The size of the bench is limited to seventy (70) inches in length and thirty-six (36) inches in height.

*Billboard:* A sign identifying advertising and/or directing the public to a business, merchandise, service, entertainment or product which is located at a place other than the property on which such sign is located. These signs are also known as off-premise, outdoor advertising signs.

*Canopy Sign:* Sign that is part of, or attached to, an awning, canopy or other fabric, plastic or structural protective cover over a door, window, entrance or outdoor service area.

*Changeable Copy Sign:* Sign on which copy changes through mechanical, electronic, digital or manual means and reader boards with changeable letters.

*Community Event Signs:* An annual temporary sign, other than a commercial sign, posted to direct patrons to community events for public agencies, schools, churches, civic-fraternal organizations or similar non-commercial organizations, or an annual temporary sign posted to direct patrons to a commercial event, when that event, as determined by the Boone Town Council, provides a significant economic benefit to the Town as a whole, is open to all citizenry of the Town of Boone and its planning jurisdiction, portrays the Town of Boone in a positive light, and which has received the written endorsement of a non-profit group whose mission includes promoting the economic vitality of Boone such as, but not limited to, the Downtown Business Development Association, the Boone Chamber of Commerce, or the High Country Host.

*Construction Sign:* Sign identifying an architect, engineer, contractor, subcontractor, financial institution, material supplier, etc., participating in construction on the property where the sign is located.

*Copy:* The wording and/or symbols on a sign surface in either permanent or changeable form.

*Directional Sign:* An on premise sign giving directions, instructions, or facility information. The signs may contain the name or logo of an establishment, but no advertising copy. Examples include “parking”, “exit”, or “enter” signs.

*Directory Sign:* A sign listing the names of more than one business, activity or professional office conducted within a building, group of buildings or commercial center.

*Double-Faced Sign:* A sign with two faces.

*Drive-Through Window Sign:* An attached or freestanding sign listing choices and prices. The sign also allows communication between the consumer and business.

*Face of Sign:* The area of a sign on which copy is placed.

*Farmer's Market Sign:* A temporary sign posted to direct the public to a farmer's market when such farmer's market is taking place within the corporate or planning limits of the Town. A "farmer's market" is a one-day event which can take place from week to week, but in the aggregate no more than two days each week, which involves individual participants selling retail products, at least fifteen of whom sell products which derive from the cultivation of land, and which takes place under the sponsorship of a non-profit organization.

*Freestanding Sign:* A sign supported by a sign structure placed in the ground which is wholly independent of any building, fence, vehicle, or object other than the sign structure for support.

*Gasoline Pump Sign:* Signs which are normally associated with the sale of gasoline including the price, self service, etc. information contained on the pump.

*Governmental Entity:* The Town and its departments, the Watauga County Board of Education, Watauga County, the State of North Carolina and its departments, and the United States of America and its departments.

*Government Sign:* Any temporary or permanent sign erected and maintained by a governmental entity.

*Ground Mounted Sign/Monument Sign:* A freestanding sign that is less than six (6) feet in height.

*Height (of a sign):* is the vertical distance measured from the highest point of the sign to the lowest point of surface grade beneath the sign.

*Home Occupation Sign:* A sign permitted in association with a legitimate home occupation conducted on the premises of the dwelling unit occupied by the operator of the business.

*Identification Sign:* A sign whose copy is limited to the name and address of a building, institution, person and/or activity or occupation being identified.

*Illegal Sign:* A sign which does not meet the requirements of this ordinance.

*Illuminated Sign:* A sign with an artificial light source incorporated internally or externally for the purpose of illuminating the sign.

*Inflatable Sign:* A sign or figure filled with air or gas to enlarge said sign or figure.

*Informational Sign:* A sign, emblem or decal informing the public of goods, facilities or services available on the premises, e.g., credit card sign or sign indicating hours of business.

*Little League Sign:* Sponsorship signs placed at the Optimist Club field.

*Living Sign:* A non illuminated sign constructed of living material such as shrubs, trees, and/or flowers.

*Maintenance:* The cleaning, painting, repair or replacement of defective parts of a sign in a manner that does not alter the basic copy, design or structure of the sign.

*Marquee:* A sign of a theater, auditorium, fairground or museum which advertises present and/or scheduled events with the use of changeable text.

*Nonconforming Sign:* A sign which was legally erected, but does not comply with subsequently enacted sign regulations and restrictions.

*Off Premise Sign:* A sign which does not pertain to the use of the premises on which it is located.

*On Premise Sign:* A sign which pertains to the use of the premises on which it is located.

*Owner:* The owner of the sign is presumed to be the person recorded as the owner of the sign on official records (such as the sign permit) unless facts to the contrary are officially recorded or otherwise brought to the attention of the sign administrator, e.g., a sign which is leased.

*Painted Wall Sign:* A sign painted directly on any exterior building wall or door surface, exclusive of window and door glass areas.

*Political Sign:* A temporary sign used in connection with a local, state, national election or referendum.

*Portable Sign:* A sign mounted on a frame or chassis, designed to be easily relocated, and not meant to be permanently affixed to buildings, poles, or the ground.

*Projecting Sign:* A sign which is attached to a building wall with the face of the sign perpendicular to the building wall.

*Projecting Theater Marquee:* A structure projecting from and supported by the building with independent roof and drainage provisions and which is erected over doorways as protection against weather and which also advertises present and/or scheduled events with the use of changeable text.

*Public Right-of-way:* The land or interest therein acquired for or devoted to transportation purposes by the Town of Boone or State of North Carolina.

*Public Utility Poles:* Poles erected by service companies that run electric, phone, cable, etc. services to consumers.

*Real Estate/for Sale/Open House/or Lease Sign:* A temporary sign advertising the real estate upon which the sign is located as being for rent, lease, open house or sale.

*Roof Sign:* Any sign erected or constructed wholly upon and over the roof of any building and supported solely on the roof structure.

*Rotating Sign:* A sign which turns around on an axis.

*Satellite Parcel:* A parcel of land located beside or near another parcel of land in which the same entity owns both parcels.

*Sidewalk Sign:* A temporary sign placed on the sidewalk during regular business hours.

*Sign:* Any object, device, display, structure, or part thereof, situated outdoors, which is used solely to advertise, identify, display, direct, or visually attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including but not limited to words, letters, figures, designs, symbols, fixtures, streamers, balloons, pennants, air driven devices, colors, illuminated or projected images. Signs do not include the flag or emblem of any nation, organization of nations, state, city, or any fraternal, religious or civic organizations; works of art which in no way identify a product; or scoreboards located on athletic fields.

*Snipe Sign:* A temporary sign or poster affixed to a tree, public utility pole, fence, etc.

*Temporary Sign:* A sign or advertising display constructed of cloth, canvas, fabric, plastic, paper, plywood or other light material that is used only temporarily and is not permanently mounted.

*Time and Temperature Sign:* Signs which display only time and temperature in alternate light cycles.

*Vision Obstruction:* The placement of a sign that would limit a full view of both pedestrian and vehicular traffic to less than seventy (70) feet measured along the right of way line.

*Yard Sale Sign:* A sign directing the public to the occasional non-business sale of secondhand household and other goods incidental to household uses.

### **Section 323. General Regulation of Signs**

- [a]** Location Requirements: No signs shall be located in or overhang any right-of-way, including alleys and sidewalks, except for government signs. All signs shall be set back a minimum of one (1) foot from the right of way in all zoning districts except the “B-1” Central Business District.
- [b]** Vision Obstructions: No signs shall create any vision obstructions onto a public right of way, alley, sidewalk, adjacent drive or private drive entering onto a street. Signs or floodlights erected or placed in such a manner as to cause glare that impairs driver vision on a roadway or causes a nuisance to adjacent property as defined in North Carolina General Statute 136-32.2 are also prohibited.
- [c]** Landscaping Requirements: Freestanding signs must be placed in a landscaped area which is at least three (3) feet in width and at least the length of the greatest dimension of the sign. Curbing, railroad ties, bricks, fencing and/or other suitable vehicular barrier shall enclose the landscaped area.
- [d]** Construction Signs: Signs may be two-sided, non-illuminated and shall not exceed thirty-two (32) square feet and may be placed on premise. They shall be removed no later than seven (7) days after completion of the project.
- [e]** Attached Sign Limitations: Attached signs shall not project higher than the building soffit or eave height and shall not extend beyond the edge of any wall or other surface to which they are mounted (this does not refer to projecting signs).
- [f]** Copy Area: The area of a sign shall be measured according to the following rules as applicable:
- [1] In the case of freestanding, projecting, canopy or marquee signs, area consists of the entire surface area on which copy could be placed. The supporting structure or bracing of a sign shall not be counted as a part of the sign area unless such structure or bracing is made part of the signs message. Where a sign has two (2)

display faces back to back, the area of only one face shall be considered as the sign area. When a sign has more than one display face, all areas which can be viewed simultaneously shall be considered the sign area. All signs are limited to two (2) faces.

- [2] In the case of a sign (other than freestanding, projecting, canopy or marquee) whose message is fabricated together with the background which borders or frames the message, sign area shall be the total area of the entire background.
- [3] In the case of a sign (other than freestanding, projecting, canopy or marquee) whose message is applied to a background which provides no border or frame, sign area shall be computed by continuous rectilinear lines, or a circle or an ellipse enclosing the extreme limits of the letters, writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display used to differentiate the sign from the backdrop or structure against which it is placed.

**[g]** Freestanding Signs: All freestanding signs shall follow the following criteria:

- [1] No freestanding sign shall be placed less than forty (40) feet from another freestanding sign.
- [2] Freestanding signs shall not be located in satellite parcels of real estate.
- [3] All freestanding signs, support structures and required landscaping areas shall be at least one (1) foot from any right-of-way or easement.

**[h]** Lighting: Interior lighting for signs, where permitted, shall not exceed eleven (11) watts per bulb (the standard industry size). In the case of the use of exterior lighting by floodlights, such lights must comply with North Carolina General Statute 136-32.2.

**[i]** Changeable Copy: Signs in the B-2, B-3 zones and projecting theater marquees in the B-1 zones may contain changeable copy; however, in no case shall the changeable copy portion of the sign exceed fifty percent (50%) of the total sign area. Copy which changes through mechanical, digital, electronic, or manual means may change or alternate no more than once every sixty (60) minutes.

**[j]** Awning, Canopy, Projecting and Suspended Signs: Awning, canopy projecting and suspended signs may be no less than eight feet at their lowest point above any sidewalk.



**[k]** All signs must be placed in accordance with Section 98 of the Boone Town Code.

**Section 324. Signs Which Do Not Require a Permit**

**[a]** No permit is necessary for these signs, provided they are not prohibited as defined in Section 326 and provided that they comply with the conditions described herein.

- [1] Informational Signs displayed for the direction or convenience of the public. Such signs shall not exceed four (4) square feet in area and may be illuminated.
- [2] Directional Signs as defined by Section 322 are permitted provided that they do not exceed four (4) square feet in area and three (3) feet in height.
- [3] Gasoline Pump Signs that are non illuminated giving information such as self service instructions, price, type of fuel, etc, shall be permitted on gasoline pumps. These may contain the trade name or emblem, but they shall not exceed beyond the side of the gasoline pump and not more than one (1) foot above it. In addition, establishments that sell gasoline shall be allowed one (1) price sign (or two (2)) if the station is located on corner property which displays price only, and does not exceed four (4) square feet in area. This sign shall be in addition to the signs permissible in the district in which said gas station is located.
- [4] Time and Temperature Signs are limited to one sign with alternating cycles. This sign may be in addition to other permitted signs. It may not contain any advertising other than the name or logo of the business and it must comply with all requirements of the district in which it is located.
- [5] Drive Through Window Signs are permitted as either a freestanding sign or attached wall sign. Such signs may not exceed twenty-eight (28) square feet and should not generally be visible from the front of the restaurant. If a freestanding menu sign is used, such sign may not exceed eight (8) feet in height. No more than two (2) drive through signs are permitted for each business.
- [6] Little League sponsorship signs are permitted at the Optimist Club fields for the Little League Season (April through October). The signs may not exceed twenty-four (24) square feet and must be uniform in dimension. The copy on the temporary sign is limited to the name of the sponsoring business and its logo.

- [7] Business Directory Signs: Signs that are not illuminated may be placed on buildings to identify the tenants within. Such signs shall contain no advertising other than business name and/or logo and shall not exceed one (1) square foot per sign, per business.
- [8] Temporary Signs, other than Agricultural Signs, Community Event Signs, inflatable signs and Farmer's Market Signs.
- [9] Political Signs
- [10] Subdivisions, multi-family residential developments, and mobile home parks may display one sign announcing the name of the development at each entrance. The sign copy is limited to the name of the development only and may be freestanding or placed on the entrance wall of the development. The sign may be illuminated and the size may not exceed thirty (30) square feet in area, or eight (8) feet in height.
- [11] Appalachian Skatepark sponsorship signs are permitted at the site owned by Watauga County on Complex Drive. The maximum size of any sponsorship sign may not exceed thirty-two (32) square feet in dimension. The signs may not be canvas, vinyl, or a material of similar nature.

### **Section 325. Signs Excluded From Regulation**

**[a]** The following signs and/or displays shall be exempt from the regulations of this Article. These exemptions do not relieve an applicant from obtaining a building permit pursuant to the North Carolina Building Code:

- [1] A government sign, when approved or duly authorized by the governmental entity's governing body.
- [2] Trade names and graphics customarily painted on newspaper and soft drink dispensers, as well as delivery trucks.
- [3] Publicly owned memorial/historical tablets or signs.
- [4] Living Sign
- [5] Bench Signs located on private property

### **Section 326. Prohibited Signs**

**[a]** The following signs are prohibited:

- [1] Abandoned Signs

- [2] Flashing, blinking, or scrolling signs or signs with intermittent lights
- [3] Portable Signs
- [4] Roof Signs
- [5] Rotating Signs
- [6] Sidewalk Signs
- [7] Snipe Signs
- [8] Inflatable Signs, other than those permitted under the Temporary Sign Regulations of Section 338.
- [9] Signs imitating or resembling official traffic or government signs or signals
- [10] Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying said sign(s). Vehicles or trailers which display signs must move to perform only business related activities at least every forty-eight (48) hours to obtain exemption from this requirement.
- [11] Temporary Signs except those as defined in Section 338.
- [12] Trademarks, emblems, pictures, etc. displayed in a three (3) dimensional nature.
- [13] Pavement marking of any kind, except for traffic control.
- [14] Offensive Signs as defined by North Carolina General Statute 19-1.1.
- [15] Signs which obstruct views of other signs, other property, or sight into public right-of-ways.
- [16] Billboards or off premise advertising, except off-premise community event signs as defined in Section 338.
- [17] Signs placed in public right-of-way
- [18] Signs placed which obstruct public safety

- [19] Any sign(s) which does not comply with regulations of this ordinance.

**Section 327. Signs Permitted in the R-1, RA, RR, R-1-A, R-2, R-4 and MH Districts**

**[a]** The residential districts provide for a quiet environment and sound neighborhoods. While some service oriented businesses are allowed, the general usage is for family life. The intent of this section is therefore to provide for a limited use of signs which are generally not illuminated and which will preserve the family oriented character of neighborhoods.

- [1] One sign at each entrance announcing the name of a subdivision, residential development or mobile home park is allowed.
- a. The sign copy is limited to the name of the development only.
  - b. The sign may be freestanding or placed on the entrance wall of the development.
  - c. The sign may not exceed thirty (30) square feet in area, or eight (8) feet in height.
  - d. The sign may be illuminated.
- [2] Any Use 5.2 Churches, Synagogues and Temples is permitted two signs from the following categories: attached or freestanding.
- a. Freestanding signs may not exceed thirty (30) square feet in area or eight (8) feet in height.
  - b. Attached signs may not exceed an area equal to one (1) square foot of sign area per linear foot of the building frontage. The maximum square footage for an attached sign is thirty (30) square feet.
  - c. Signs may be illuminated.
- [3] All signs shall meet the general requirements of Section 323.

**Section 328. Signs Permitted in the R-3 District**

**[a]** The R-3 District is established to provide a medium density area consisting of three or more family dwelling units plus limited service use.

- [1] Advertising Signs.

- a. Two signs allowed per premise that may be chosen from the following categories: attached, freestanding, canopy, or projecting. In no case may both signs be from the same category. Painted wall signs are prohibited.
- b. Attached and freestanding signs may not exceed sixteen (16) square feet in area per sign.
- c. Freestanding signs may not exceed ten (10) feet in height.
- d. Projecting signs may not exceed eight (8) square feet in area per sign.
- e. Awning signs may not exceed twenty-five percent (25%) of the area of the awning. The maximum allowable square footage is forty-eight (48) square feet regardless of the size of the awning.
  1. Signs which are attached to the face or side of an awning may not exceed twelve (12) inches in height and no support structures shall be visible.
- f. All signs shall meet the additional requirements of Section 323.

### **Section 329. Signs Permitted in the B-1 District**

**[a]** The B-1 (downtown) district has diverse shops in close proximity to one another, and is oriented primarily to daytime pedestrian use. Flower boxes, benches, shake shingle roofs and natural plantings lend the area a distinctive mountain village appearance. Leisurely shopping is encouraged. The intent of this section is therefore, to promote the downtown as a shopping and gathering place and to enhance the village atmosphere. The use of wooden signs is encouraged, so as to contribute to the warmth, friendliness and natural beauty of the area.

- [1] Each business is permitted two (2) signs chosen from the following categories: attached, canopy, or projecting. In no case may both signs be in the same category. Painted wall signs are prohibited in the B-1 zone. Signs may be illuminated. Businesses are also allowed one sign from the following:
  - a. A projecting sign which may contain the name of the business and any logo which the business chooses to adopt. The sign may not exceed four (4) square feet in size. It shall display only the name of the business and/or buildings which it is attached to and the

building and/or business logo or logos and no more than one (1) per building.

- b. A freestanding sign which may be a maximum size of two (2) feet by two (2) feet, and the bottom of said sign shall display only the name of the business and/or building which it is located in front of, and the building and/or business logo or logos and no more than one (1) sign per building.
- [2] Attached signs shall not exceed an area equal to the greater of sixteen (16) square feet or one half (1/2) square foot of sign area per linear foot of building frontage. For example, buildings which are thirty-two (32) feet across the front or less may have a sixteen (16) square feet attached sign. If the building is larger than thirty-two (32) feet across the front the permitted size would be determined by the formula, one half (1/2) square feet per linear foot of building. The maximum allowable square footage is forty-eight (48) square feet regardless of building size.
  - [3] Projecting signs may not exceed sixteen (16) square feet in area.
  - [4] Awning signs shall not exceed twenty-five percent (25%) of the area of the awning. The maximum allowable square footage is forty-eight (48) square feet regardless of the size of the awning. Signs which are attached to the face or side of an awning may not exceed twelve (12) inches in height and no support structures shall be visible.
  - [5] All signs shall meet the additional requirements of Section 323.
  - [6] Businesses who choose to use a ground mounted sign instead of a freestanding sign may increase the maximum square footage in accordance with the provisions of Section 337.
  - [7] Projecting Theater Marquees: Theaters which choose to use a projecting theater marquee are only allowed to have the signage as permitted in Section 335[b].

### **Section 330. Signs Permitted in the B-2 District**

**[a]** The neighborhood business district provides a variety of commercial services. It is oriented to vehicular traffic as well as pedestrian traffic. The signs allowed in this area permit an efficient means of information transfer consistent with the size of the streets and speed of the traffic.

- [1] Advertising Signs

- a. Signs may be illuminated.
- b. Each business is permitted two signs. They may be chosen from the following categories: attached, freestanding, canopy, projecting. In no case may the signs be of the same category except that a business may have two (2) attached signs.
- c. Attached signs shall not exceed an area equal to one (1) square foot of sign area per linear foot of building frontage. For example, a building which is fifty (50) feet across the front may have a fifty (50) square foot attached sign. The maximum allowable square footage of attached sign is eighty (80) square feet, regardless of building size.
- d. Freestanding signs shall not exceed thirty (30) square feet in area and twenty (20) feet in height.
- e. Projecting signs may not exceed sixteen (16) square feet in area.
- f. Awning signs shall not exceed twenty-five percent (25%) of the area of the awning. The maximum allowable square footage is forty-eight (48) square feet regardless of the size of the awning. Awning signs may be attached at the face of, side of, or under the awning. Signs which are attached to the face or side of awning may not exceed twelve (12) inches in height.
- g. All signs shall meet the general requirements of Section 323.
- h. Businesses who choose to use a ground mounted sign instead of a freestanding sign may increase the maximum square footage in accordance with the provisions of Section 337.

### **Section 331. Signs Permitted in the B-3 District**

**[a]** The B 3 districts are located on all major access roads to Boone. It is on these roads that the visitor receives a first impression of the town. It is the intent of this ordinance to allow the visitor to locate business establishments easily and quickly and yet not to allow signs which might interfere with views of the scenic mountains. The B-3 districts provide a variety of services primarily oriented toward vehicular traffic. Because vehicles in this area travel at speeds up to 45 m.p.h., it is important to insure that signs are clear, distinct and readable in a brief space of time. The requirements identify establishments quickly and easily.

- [1] Advertising Signs
- a. Signs may be illuminated.
  - b. Each business is permitted two (2) signs which may be of any type, however, no more than one canopy sign per business.
  - c. Freestanding signs shall not exceed fifty (50) square feet in area and twenty (20) feet in height.
  - d. No freestanding sign shall be placed less than forty (40) feet from another freestanding sign.
  - e. Projecting signs may not exceed sixteen (16) square feet.
  - f. Awning signs shall not exceed twenty-five percent (25%) of the area of the awning. The maximum allowable square footage is forty-eight (48) square feet regardless of the size of the awning. Awning signs may be attached to the awning at the face of, side of, or under the awning. Signs which are attached to the face or side of the awning may not exceed twelve (12) inches in height and no support structures shall be visible.
  - g. Attached signs and painted wall signs may not exceed an area equal to one (1) square foot of sign area per linear foot of the building frontage. For example, a building which is fifty (50) feet across the front may have a fifty (50) square foot attached or painted wall sign. The maximum square footage of attached or painted wall sign is one hundred twenty (120) square feet, regardless of building size.
  - h. All signs shall meet the general requirements in Section 323.
  - i. Businesses who choose to use a ground mounted sign instead of a freestanding sign may increase the maximum square footage in accordance with the provisions of Section 337.

### **Section 332. Signs Permitted in the M-1 District**

**[a]** The industrial district in Boone is limited to currently existing industrial uses. Each industrial use shall be permitted one advertising sign. The sign must comply with Section 323 and the following:

- [1] Advertising Signs.



- a. The sign may be attached or freestanding.
- b. The sign may be illuminated.
- c. Attached signs may not exceed an area equal to one (1) square foot per linear foot of building frontage and not exceed one hundred twenty (120) square feet.
- d. Freestanding signs may not exceed fifty (50) square feet in size and twenty (20) feet in height.

**[b]** In addition to signage permitted by Section 332[a], the industrial district shall be permitted a directory sign which announces the name of the industrial park and all businesses located within the park. Directory Signs may be freestanding and shall conform to the following requirements:

[1] Directory Sign.

- a. The freestanding directory sign shall not exceed fifty (50) square feet in area.
- b. The height of the directory sign shall not exceed twenty (20) feet.

**[c]** Businesses who choose to use a ground mounted sign instead of a freestanding sign may increase the maximum square footage in accordance with the provisions of Section 337.

**Section 333. Signs Permitted in the O/I District**

**[a]** The Office/Institutional district provides a variety of office, institutional and commercial services. The signs allowed in this area permit an efficient means of information transfer consistent with the size of the streets and speed of the traffic.

[1] Advertising Signs

- a. Signs may be illuminated.
- b. Each office/institution/business is permitted two signs. They may be chosen from the following categories: attached, freestanding, canopy, or projecting. In no case may the signs be of the same category except that an office/institution/business may have two (2) attached signs. Painted wall signs are not permitted in the O/I district.

- c. Attached signs shall not exceed an area equal to one (1) square foot of sign area per linear foot of building frontage. For example, a building which is fifty (50) feet across the front may have a fifty (50) square foot attached sign. The maximum allowable square footage of an attached sign is sixty four (64) square feet, regardless of building size.
- d. Freestanding signs shall not exceed thirty (30) square feet in area and ten (10) feet in height.
- e. Projecting signs may not exceed sixteen (16) square feet in area.
- f. Awning signs shall not exceed twenty-five percent (25%) of the area of the awning. The maximum allowable square footage is forty-eight (48) square feet regardless of the size of the awning of the awning. No signs may be attached to the awning support structures. Signs which are attached to the face or side of an awning may not exceed twelve (12) inches in height.
- g. All signs shall meet the general requirements of Section 323.
- h. Businesses who choose to use a ground mounted sign instead of a freestanding sign may increase the maximum square footage in accordance with the provisions of Section 337.

**Section 334. Sign Regulations for Shopping Centers, Malls and Unified Business Establishments**

**[a]** Directory Signs. A shopping center, mall or unified business establishment consisting of two or more businesses in one building or in connecting buildings shall be permitted a directory sign which announces the name of the commercial center and/or establishments within. Directory signs may be attached or freestanding and shall conform to the area requirements as follows:

- [1] In the B-1 district, the permitted area of an attached directory sign shall not exceed the greater of twenty (20) square feet or one half (1/2) square foot per linear foot of total frontage of the building to a maximum of forty eight (48) square feet. Freestanding directory signs shall not exceed twenty (20) square feet in area and ten (10) feet in height.
- [2] In the B-2 district, the permitted area of an attached directory sign shall not exceed one (1) square foot per linear foot of frontage of the

building to a maximum of eighty (80) square feet. A freestanding directory sign shall not exceed forty-eight (48) square feet in area, and twenty (20) feet in height.

- [3] In the B-3 district, an attached directory sign shall not exceed one (1) square foot per linear foot of building frontage to a maximum of one hundred twenty (120) square feet. A freestanding directory sign shall not exceed the greater of fifty (50) square feet in area or ten (10) square feet in area for each one hundred fifty (150) linear feet of arterial road frontage of the lot in which it is located. The height of the directory sign shall not exceed twenty (20) feet.
- [4] In the R-3 district, directory signs shall conform to the requirements set forth in Section 328 (Advertising signs in the R-3 district).
- [5] When a shopping center, mall or unified business establishment has in excess of four hundred (400) feet on an arterial road(s) and consists of more than five (5) acres, one directory sign per arterial road upon which it fronts is permitted.

**[b]** Entrances to interior malls may be identified by an attached sign in addition to the other sign permitted to the business establishment. Such signs shall be attached to the building over the entrances or beside the entrances only. The signs shall not exceed four (4) square feet in the B-1 district, eight (8) square feet in the B-2 district and sixteen (16) square feet in the B-3 district.

**[c]** Signs for tenants within shopping centers, malls and unified business establishments shall meet the following requirements:

- [1] Businesses within shopping centers, malls and unified business establishments are permitted two (2) signs from the following categories: attached, canopy, and projecting. In the B-3 district, painted wall signs are also permitted.
- [2] If the business has an exterior frontage in the commercial development of eighty (80) linear feet or more, the business may be permitted a freestanding sign as one of its two permitted signs. All signs permitted by this section must meet all regulations contained in Section 323 as they pertain to the district in which they are located. Area of attached and painted wall signs shall be computed by the linear building frontage feet of each individual establishment.

**Section 335. Marquee Sign Regulations**

**[a]** The following regulations shall apply solely to marquee signs other than projecting theater marquee.

- [1] Except where a projecting theater marquee is utilized pursuant to Section 335 [b], theaters, museums, auditoriums and other entertainment facilities are permitted one (1) changeable copy marquee in addition to their two (2) permitted signs.
- [2] Marquee signs shall conform to the applicable sign requirements for the district in which they are located, however the area of the marquee sign shall be permitted an increase in size up to an additional one hundred (100%) percent provided that one of the other signs to which the business is entitled is reduced in size. The percentage of increase in area shall be equal to the reduction in area of the other permitted sign.
- [3] If the marquee is a freestanding sign, the height of the marquee may not be increased over that permitted in the zone in which it is located.

**[b]** The following regulations shall apply solely to projecting theater marquee signs:

- [1] A projecting theater marquee shall be allowed only in the B-1 Central Business District.
- [2] No portion of a projecting theater marquee shall be less than ten feet above grade nor higher than sixteen feet.
- [3] A projecting theater marquee and supporting structures shall not extend over the edge of any sidewalk or into any street right-of-way absent an encroachment agreement authorizing such incursion by the Town.
- [4] The projecting theater marquee shall only be attached to the building in which the theater is located and must be above an entrance to the theater. No projecting theater marquee sign shall be wider than the building to which it is attached.
- [5] Signage may be installed directly upon the vertical face or faces of a projecting theater marquee with the following conditions:
  - [a] Channel letters may extend above such vertical face or faces provided that the letter height is restricted to 12 inches in height.

- [b] No sign may extend below such vertical face or faces with the exception of lighting elements. All lighting elements shall meet the requirements of 335 [b][2] above.
  - [c] The changeable copy portions of a projecting theater marquee shall not exceed fifty percent of the total area of all faces and comply with Section 323 [i].
  - [d] All other signage attached to a projecting theater marquee may not exceed 20 percent of the total area of all faces.
- [6] A projecting theater marquee may be illuminated but shall not include flashing, blinking, scrolling or intermittent lights.
- [7] Encroachment: Where a projecting theater marquee extends over a public sidewalk or other public property, an executed encroachment agreement approved by the Boone Council shall be required prior to issuance of any sign permit for a projecting theater marquee.
- [8] A projecting theater marquee may be constructed either as part of a new structure or as an addition to an existing structure as follows:
- [a] Site specific plans and specifications must be submitted from a registered North Carolina licensed structural engineer demonstrating that the projecting theater marquee complies in all ways with appropriate code provisions of the Town and the State of North Carolina, including but not limited to, materials, drainage, roof strength, bracing and anchorage.
  - [b] A final certification from the registered North Carolina licensed structural engineer shall be required stating that the projecting theater marquee complies with all appropriate code provisions of the Town and the State of North Carolina and that the projecting theater marquee has been constructed according to their submitted design.

### **Section 336. Home Occupation Signs**

- [a] The following regulations shall apply solely to home occupation signs.
- [1] Home occupation signs are permitted in the R-1, R-1-A, R-A, R-2, R-3, R-4, MH, B-1, B-2, and B-3 districts.
  - [2] The sign may not be illuminated.

- [3] The sign must be an attached sign mounted flat on the building.
- [4] The sign may not exceed four (4) square feet in size.

### **Section 337. Exceptions and Modifications**

**[a]** Where a business establishment elects to erect only one (1) sign on premises, and that sign is to be an attached sign, the permitted area of this sign may be increased as follows:

- [1] The permitted area of an attached sign may be increased by fifty percent (50%).
- [2] The attached sign permitted by this section shall meet all other applicable requirements regarding placement, lighting, permit procedures, etc., of this ordinance.
- [3] In the event that the business should desire a second sign after the attached sign allowed by this section is erected, no permit for the additional sign shall be issued until the attached sign meets the size requirements of the district in which it is located as specified in Section 323.

**[b]** Where a business establishment is set back from its major road by two-hundred (200) feet or more, the permitted size of the attached signs may be increased by ten percent (10%) plus an additional ten percent (10%) for each fifty (50) feet of distance in excess of two hundred (200) feet to a maximum of one hundred percent (100%) increase provided that:

- [1] This increase shall apply to attached signs only.
- [2] This increase shall apply to only one of the two permitted signs.
- [3] The attached sign must meet all other applicable requirements regarding placement, lighting, permit procedures, etc. as it pertains to the district in which it is located.
- [4] If the business has a freestanding sign this increase shall not apply.
- [5] If a business is set back from its major access road by two hundred (200) feet or more and has only one sign, the business may choose the modifications of size permitted by this subsection or subsection [a], but may not combine the allowances provided by the two subsections.

**[c]** Businesses may erect more than the two (2) allowed signs upon obtaining staff approval provided that:

- [1] The additional signs must be attached or projecting signs.
- [2] The combined area of all signs must be less than or equal to the permitted area by type of sign. For example, if a ninety (90) square foot attached sign is permitted, then the business may have two (2) forty five (45) square feet attached signs or three (3) thirty (30) square feet signs.
- [3] The maximum number of additional signs allowed is three (3).
- [4] The additional signs are not illuminated.
- [5] The applicant shall submit a drawing of the proposed locations of the additional signs and meet all applicable requirements of Article IV.

**[d]** Businesses in the B-2, B-3, M-1, and O/I districts who chose to use a ground sign instead of a freestanding sign may increase the maximum square footage of that sign by thirty-five (35) percent, provided that the monument sign meets the definition in Section 322.

**[e]** Businesses located in the B-1 district may erect a ground/monument sign provided that:

- [1] All applicable requirements of Section 323 are met, and;
- [2] A minimum of forty (40) feet (setback) is provided between any building and a ground/monument sign, and;
- [3] No ground/monument sign shall exceed sixteen (16) square feet in area with no horizontal or vertical dimension exceeding six (6) feet, and except as allowed under [5] below, and;
- [4] A business located one hundred (100) feet or more from King Street may erect a freestanding sign with a maximum area of twenty five (25) square feet and a maximum height of six (6) feet.
- [5] No sign shall be placed in a public right-of-way.

**[f]** Corner Lots: Businesses located on a corner lot may be permitted one additional attached sign to those otherwise permitted herein.

**Section 338. Temporary Sign Regulations**

**[a]** Temporary signs must conform to all regulations of this section not otherwise superseded by this Article. No type of temporary sign, other than an agricultural sign whose placement is approved by the North Carolina Department of Transportation, may be placed in the public right-of-way. Temporary signs, other than agricultural signs, inflatable signs and community event signs, shall not be required to obtain a sign permit.

- [1] Community event signs are permitted for public agencies, schools, churches, civic-fraternal organizations or similar non-commercial organizations, or for commercial events when approved by the Boone Town Council.
  - a. Signs for non-commercial community events may be erected provided that:
    1. Such groups shall be non-profit corporations or associations organized and operated for charitable purposes that are licensed as non-profit groups with the North Carolina Secretary of State.
    2. Any fund being raised by the community event must be used for charitable or non-profit purposes.
    3. All community events must occur within Watauga County. A community event that does not occur within Watauga County may receive permission to display signs with the approval of the Boone Town Council.
    4. A Community Event Sign Permit Application must be completed by the sponsor of the event and approved by the administrator. The sponsor must organize all aspects of a community event. A representative of the organization must sign the permit application and will be jointly responsible with the organization for insuring that the regulations are followed.
  - b. Signs for commercial community events may be erected, provided that:
    1. An application is properly completed and delivered to the Town of Boone Planning and Inspections Department at least forty-five days before the event.



2. The event is approved by the Boone Town Council as a “community event”.
  3. As determined by the Boone Town Council, the event provides a significant economic benefit to the Town as a whole, and portrays or places the Town of Boone in a positive light.
  4. The event is open to all citizenry of the Town of Boone and its planning jurisdiction.
  5. The event has received the written endorsement of a non-profit group whose mission includes promoting the economic vitality of Boone, such as, but not limited to, the Downtown Business Development Association, the Boone Chamber of Commerce, or the High Country Host.
  6. The sponsor of the event has completed a Community Event Sign Permit Application and paid the appropriate fee, and the application is approved by the Development Services Department. A representative of the organization must sign the permit application and will be jointly responsible with the organization for insuring that these regulations are followed.
- c. All community events, whether non-commercial or commercial are subject to the following requirements:
1. Each community event is allowed to display no more than twelve (12) off-premise signs that do not exceed four (4) square feet in an area and four (4) feet in height. Only one sign per lot is allowed with the permission of the property owner or registered agent. One (1) off-premise banner and one (1) banner at the event site are allowed. Each banner may not exceed twenty-four (24) square feet.
  2. A community event may display allowable signage annually.
  3. The signs are not illuminated.
  4. The signs may not be displayed earlier than seven (7) days prior to the event and must be removed within forty-eight hours after the event.

- d. An event which does not take place in Watauga County may still be designated a “community event” when the event is approved by the Boone Town Council based upon a determination that the event nevertheless significantly contributes to the economic vitality and heritage of Boone.
- e. The Boone Town Council recognizes the following as community events:

The Highland Games  
 The Blowing Rock Celtic Festival  
 Trade Days  
 Watauga High School Project Graduation  
 Boone Bluegrass Festival  
 Gospel Singing Jubilee  
 Sugar Grove Music Festival  
 Wooly Worm Festival

- [2] Political signs are permitted in accordance with Section 339.
- [3] Real Estate Sign: A real estate sign is a temporary sign advertising the real estate upon which the sign is located as being for rent, lease, open house or sale. Real estate signs are permissible subject to the following regulations:
  - [A] Real estate signs advertising property for sale, lease or rent shall adhere to the following regulations:
    - 1. Only one (1) sign per lot is allowed.
    - 2. The sign shall not be illuminated.
    - 3. Area and Height Requirements:

Zoning District	Maximum Area (square feet)	Maximum Height (feet)
Residential Zoning Districts	4	5
B-1 Central Business	4	
Remaining Zoning Districts	20	8

- 4. The real estate sign shall be removed within forty-eight (48) hours after the property closing.

- [B] Open House Residential Real Estate Sign: Open house residential real estate signs shall be subject to the following requirements:
1. There shall be no more than one on-premise and two (2) total off-premise open house residential real estate signs for any open house event. These signs must include the realtor's phone number or the homeowner's address and the street address where the event is taking place.
  2. Off-premise signs may be in place only from 8 a.m. on Saturday to 8 p.m. on Sunday.
  3. Off-premise signs shall not exceed three (3) square feet in area and two (2) feet in height.
  4. Such signs shall not be illuminated.
  5. Only one on-site sign per lot is allowed with the permission of the property owner, registered agent or tenant.
- [4] Yard Sale signs are permitted as temporary signs provided that the signs adhere to the following criteria:
- a. No more than three (3) signs per event are allowed.
  - b. Two (2) signs may be placed off premise from the location of the event on private property with the property owner or registered agent's consent.
  - c. The signs may remain in place for forty-eight (48) hours only.
  - d. Such signs shall serve as directional aids and text on such signs shall be limited to Yard Sale or Garage Sale and an arrow.
  - e. Signs shall be placed out of the street right-of-way and no signs will be placed on utility poles.
  - f. The signs shall not be illuminated.
  - g. Signs are limited in size to four (4) square feet in area and must list the phone number of the event organizer on the back.
- [5] Businesses which are newly established or have changed locations may display a temporary sign provided that:

- 
- a. The size of any such sign is not in excess of twenty four (24) square feet in area.
  - b. The sign may be displayed for a period of thirty (30) days. This thirty day period may begin no earlier than fifteen (15) days prior to the opening date of the business and not later than thirty (30) days after the certificate of occupancy is issued by the building inspector.
  - c. Only one such sign is allowed per premise, however this one sign may be used in addition to other permitted signs.
- [6] Temporary signs as defined by advertising special sales and promotions by merchants and other profit making concerns may be erected in addition to other permitted signs provided:
- a. The size of such sign shall not exceed twenty four (24) square feet.
  - b. The signs are not illuminated.
  - c. The signs are displayed for a period of ten (10) days only.
  - d. Only one (1) sign per premise is allowed.
  - e. An interval of thirty (30) days shall separate each event.
- [7] Agricultural signs are subject to the following criteria:
- a. A permit must be applied for by delivery of a completed application and payment of such fee as established by the Boone Town Council, no less than forty-five days prior to the first day of display. The application for a permit must state the dates of the exposition, festival or event in question. Only one fee shall be due for each separate exposition, festival or event in question;
  - b. Signs must comply with all North Carolina Department of Transportation requirements, including those requirements as to location and placement, and the applicant is responsible for compliance with DOT requirements and with the requirements of this ordinance;
  - c. Off-premises signs may only be placed with the permission of the person with the legal authority to grant such permission. There may be no more than fifteen off-premises agricultural signs within the planning jurisdiction of the Town for each exposition, festival or event;

- d. Signs may be permitted for a maximum of six weeks, must be fixed in place for the duration of the exposition, festival or event, and must be removed by the applicant within forty-eight hours of the conclusion of the exposition, festival or event;
- e. All signs relating to a particular agricultural exposition, festival or event must be uniform in shape and color. Any designs must be complementary. Each sign must be stable and must be properly secured to its location;
- f. Signs may not exceed twenty-eight square feet, but may be comprised of a large sign with smaller signs attached, which smaller signs direct the public to particular locations participating in the exposition, festival or event;
- g. Agricultural signs may not be illuminated.

[8] Farmer's Market Sign Regulations.

- a. A permit must be applied for by delivery of a completed application and payment of such fee as established by the Boone Town Council, no less than ten days prior to the first day of operation. The application for a permit must state all dates the farmer's market will operate during the calendar year in question, and must disclose the name and address of the sponsoring non-profit organization. The person signing the application is jointly responsible with the sponsoring organization for compliance with this Article. Only one fee shall be due for each calendar year of operation of a farmer's market.
- b. A farmer's market may display no more than eight (8) off-premises signs that do not exceed four (4) square feet in area and four (4) feet in height. Only one sign is permitted per lot, and off-premises signs may be posted only with the permission of the person with the legal authority to grant such permission.
- c. Farmer's market signs may not be illuminated.
- d. Farmer's market signs may be displayed only during daylight hours on each day of operation.
- e. Signs must comply with all relevant North Carolina Department of Transportation requirements as to location and placement, and the applicant is responsible for compliance with DOT requirements.

- [9] Inflatable signs may be temporarily displayed in a B-3 zoning district subject to the following conditions:
- a. Only one inflatable sign may be displayed per tax parcel, and no more than one inflatable sign per business or event, even if the business or event is located on multiple tax parcels.
  - b. An inflatable sign may be displayed for a period of seven [7] continuous days, an interval of thirty (30) days shall separate each event for which the sign is displayed. In addition the inflatable sign may be displayed for no more than three (3) separate events in any calendar year.
  - c. Any inflatable sign must be set back and away from any pedestrian or vehicular right of way, any utility poles, above ground utility lines and any other hazardous structure, at least the vertical distance from the ground to the top of the sign when it is displayed at its maximum height, plus ten (10) feet.
  - d. An inflatable sign may not obstruct visibility for vehicular traffic.
  - e. Any inflatable sign must be secured to the ground in conformity with the manufacturer's specifications.
  - f. No inflatable sign may be displayed in such a way that the top of the sign is more than twenty-five (25) feet above the ground level.
  - g. Inflatable signs shall not be illuminated.
  - h. No inflatable sign may exceed 400 cubic feet when fully inflated.
  - i. The applicant shall submit a certification that the inflatable sign will be erected and displayed in conformance with this Section 338[9] and the manufacturer's specifications.

### **Section 339. Political Sign Regulations**

[a] The following regulations shall apply solely to political signs, posters, etc.

- [1] No signs shall be placed in a public right-of-way.

- [2] No signs shall be placed on public utility poles, telephone poles, parking meter poles or any other sign or sign support structure erected by a duly constituted governmental body.
- [3] No signs shall be placed on roofs nor painted on roofs.
- [4] Any political sign which is determined to be a hazard or infringement to the public health, safety and welfare is prohibited.
- [5] Portable signs shall not be allowed for political uses.
- [6] Political Signs may be placed on private property with the consent of the property owner or their authorized agent.
- [7] Except for legal billboards, no political sign shall be larger than sixteen (16) square feet.
- [8] Political signs may be displayed no sooner than sixty (60) days before any election. All political signs must be removed within forty-eight (48) hours after each election.

#### **Section 340. Maintenance and Relocation of Signs**

**[a]** All sign supports, braces, poles, wires, and anchors thereof shall be kept in good repair. They shall be maintained in safe condition, free from deterioration, missing parts, and peeling paint. Any sign not in compliance with these standards shall be deemed a nuisance and the following action may be taken.

- [1] The administrator shall give written notice to the owner specifying the sign indicated and telling what needs to be done to bring the sign into compliance.
- [2] The owner of the sign shall respond to the notice within two (2) weeks and shall have sixty (60) days to complete said repairs. Additional time shall be granted by the administrator only upon delay of parts when it has been clearly shown that the parts have been ordered.
- [3] Failure to complete repairs in the specified time shall result in the administrator causing the sign to be repaired, removed or altered at the expense of the owner(s). Costs of removal or repair, court costs and attorney fees incurred by the town shall be assessed against the owner(s), to be collected by the town in an action in the nature of a debt.

- [4] In the event a sign is damaged in excess of fifty percent (50%) of its reproduction value, such sign shall be restored or repaired only in compliance with the provisions of this ordinance.

**[b]** Signs for which a sign permit has been issued may be relocated in conformance with the regulations of this article upon notification of the administrator. Signs which are nonconforming may not be relocated except upon removal of all non conforming features of the sign.

#### **Section 341. Obsolete and Abandoned Sign Regulations**

**[a]** Signs or parts of signs which advertise or pertain to a business, product, service, commodity, event, activity, or purpose which no longer exists or that has not been in use for ninety (90) days or more shall be deemed to be an abandoned sign. Signs which are associated with seasonal business such as ski shops, Horn in the West, etc., shall not be considered obsolete or abandoned provided there is clear intent to continue in the coming season.

- [1] Obsolete or abandoned signs are prohibited and shall be removed by the owner or his agent within thirty (30) days of termination of the business, activity, event, etc.
- [2] Failure to remove such signs or parts of signs shall result in written notice from the administrator. Failure to comply with these terms shall result in the sign being removed at the owner(s) expense. Costs of removal or repair, court costs and attorney fees incurred by the town shall be assessed against the owner(s), to be collected by the town in an action on the nature of the debt.

#### **Section 342. Penalties for Sign Violations**

**[a]** Any sign that requires a permit and is installed or displayed before a sign permit which is issued by the administrator shall be subject to the following penalties:

- [1] The permitting fees are doubled for all signs installed or displayed before a permit is issued. The owner of the sign that is in violation shall have five (5) business days to obtain an approved sign permit. Any sign(s) without proper permits which continues to be displayed after five (5) working days from receipt of written notification shall subject the owner to a civil penalty of \$100.00 per day for each day that the offense continues, plus court costs and attorney fees.

**[b]** Any sign prohibited by Section 326 that is placed in the town limits or extraterritorial jurisdiction shall be subject to the following penalties:



- [1] Each sign that is illegally displayed shall be subject to a civil penalty of \$100.00 per sign, per day. If prohibited signs are creating a public safety hazard and/or found in the right-of-way, the owner will be subject to the civil penalties and a representative of the town may pick up the prohibited signs. The town will assess a \$10.00 pick-up fee for each sign the town removes. The sign owners will be notified by phone and/or first-class mail that the signs may be picked up after payment of the associated penalties within ten (10) business days at the Development Services Department before the sign(s) are destroyed.

### **Section 343. Permanent Off-Premise Signs in Easements**

**[a]** Permanent off-premise signs in access easements: Permanent off-premise signs in access easements shall be permissible subject to the following requirements and limitations:

- [1] Application required: No permanent off-premise sign may be placed or displayed in an access easement area until a permit authorizing its display is issued.
  - a. The applicant must submit a certified copy of the instrument creating the easement with the application. The access easement area must be the only available and planned access for the development requesting the permanent off-premise sign. The Administrator may require that the applicant provide a signed statement from an attorney that such easement confers upon the applicant the right to display a sign within the easement if the Administrator is unsure of the scope of the rights created by the easement. Unless the easement affords rights to display a sign for the full potential life of the development, it will be considered legally insufficient.
- [2] No permit for a sign which will be displayed or located within an access easement may be issued unless there are no roads contiguous with the lot upon which the development is located, or the access easement in which the sign is to be located is the only available and planned vehicular access to the aforementioned lot.
- [3] The only sign which may be permitted for display in an off-premise easement is a ground mounted/monument sign which must meet all dimensional, separation, location, and lighting requirements of this Article for a ground mounted/monument sign in the zoning district in which it will be placed or the development is located, whichever is more restrictive, unless any such requirement is explicitly superseded by this section.

- a. For residential developments, including multi-family developments, all signs subject to this section shall be limited to no more than thirty (30) square feet of sign face.
- [4] Limitations on the number of signs allowed: Only one permanent off-premise sign will be allowed on a lot which is subject to an access easement which also allows a permanent off-premise sign (further known as the hosting lot). The permanent off-premise sign shall count as one of the free-standing signs (not including directory signs) allowed for the hosting lot. Furthermore, if at the time of application, existing signs on the hosting lot have either a combined square footage that meets/exceeds the maximum square footage allowed, or meet/exceed the maximum number of freestanding signs allowed, the applicant must provide a written declaration from the owner or occupant of the hosting lot indicating which sign(s) will be removed. If any signs are required to be removed, this shall be done prior to the issuance of the permit for the permanent off-premise sign.

**Section 344. Reserved**

## Article XIX Parking

### Section 345. Definitions

**[a]** Unless otherwise specifically provided or unless clearly required by the context, the words and phrases defined below shall have the meaning indicated when used in this section.

- [1] *Circulation Area*: That portion of the vehicle accommodation area used for access to parking or loading areas or other facilities on the lot. Essentially, driveways and other maneuvering areas (other than parking aisles) comprise the circulation area.
- [2] *Driveway*: That portion of the vehicle accommodation area that consists of a travel lane bounded on either side by an area that is not part of the vehicle accommodation area.
- [3] *Gross Floor Area*: The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.
- [4] *Loading and Unloading Area*: That portion of the vehicle accommodation area used to satisfy the requirements of Section 354.
- [5] *Vehicle Accommodation Area*: That portion of a lot that is used by vehicles for access, circulation, parking, and loading and unloading. It comprises the total of circulation areas, loading and unloading areas, and parking areas (spaces and aisles).
- [6] *Parking Area Aisles*: That portion of the vehicle accommodation area consisting of lanes providing access to parking spaces.
- [7] *Parking Space*: A portion of the vehicle accommodation area set for the parking of one vehicle.

### Section 346. Number of Parking Spaces Required

**[a]** All developments in all zoning districts shall provide a sufficient number of parking spaces to accommodate the number of vehicles that ordinarily are likely to be attracted to the development in question. The number of parking spaces provided at the time of approval of the development may not be subsequently reduced without the approval of the permit issuing authority. All spaces must otherwise be maintained for the life of the development. Should the applicant or its successor at anytime fail to provide the initially approved

number and type of spaces, it shall be a violation of this ordinance and subject the responsible party(ies) to the penalties of Article VII. Upon the discovery that the number of spaces provided has been reduced without approval of the permit issuing authority, the administrator shall revoke the zoning or special use permit and the certificate of occupancy until the violation is cured.

**[b]** The number of off-street vehicle parking space included in a development plan shall comply with the standards in Subsection [e] and other relevant parts of this Section; however, required minimums and maximums may be adjusted by the permit issuing authority when the applicant provides a parking demand analysis prepared by a qualified engineer which supports a conclusion that application of the minimums established by subsection [e] would result in excess and unnecessary parking for the development or maximums established by subsection [e] are inadequate to meet the parking needed for the development.

**[c]** Uses listed in Subsection [e] are preceded by a number. Except as to churches and schools, that number corresponds to a broad use category of the Table of Permissible Uses, Section 165, *supra*, i.e., 1.400 includes 1.410, 1.420, etc. When application of the formulas in Subsection [e] results in a number of parking spaces which includes fractional space less than one-half (.5), the fractional space may be disregarded; when application of the formulas result in a number of parking space which includes fractional space one-half (.5) or greater, the fraction shall be counted as one additional parking space.

**[d]** When a use is proposed which is not listed in Subsection [e], the permit issuing authority shall determine the number of spaces required or permitted, as relevant, by referencing the most similar use listed in Subsection [e]. If the permit issuing authority concludes that no reasonably similar use is listed, it may require the applicant to submit a parking demand analysis prepared by a qualified engineer to determine the number of needed or permitted spaces for the proposed use, or the permit issuing authority may procure its own parking demand analysis.

**[e] Required Parking by Use**

**Residential Land Uses**

**Minimum Parking Required**

1.100 Single-Family Residences	2 spaces
1.200 Two-Family Residences	3 spaces
1.300 Multi-Family Residences	1 space / 1 bedroom units
	2 spaces / 2 bedroom units
	3 spaces / 3 or more bedroom units
	1 space / unit for multi-family residences limited to the Elderly
	1 space / unit for affordable rental dwelling units

	1 space / unit for affordable owner-occupied dwelling units
1.400 Group Homes	1 space / 4 beds
1.500 Hotels/Rooms for Rent	1 space / rentable room

**Commercial Land Uses**

**Maximum Parking Allowed**

2.100 Commercial Retail	5 spaces / 1,000 Sq. Ft.
2.200 Commercial Wholesale	3 spaces / 1,000 Sq. Ft.
2.300 Convenience Stores	5 spaces / 1,000 Sq. Ft.
2.400 Large Scale Retail	5 spaces / 1,000 Sq. Ft.
3.0 Commercial Office	5 spaces / 1,000 Sq. Ft.
4.0 Industrial Uses	2 spaces / 1,000 Sq. Ft.
5.100 Schools	5 spaces / per classroom
5.200 Churches	Total spaces equal to half the seating capacity
6.0 Recreation/Entertainment	5 spaces / 1,000 Sq. Ft.
7.0 Institutional Residence	2 spaces / bed
8.0 Restaurants	12 spaces / 1,000 Sq. Ft.
9.0 Automobile Sales & Service	
First 2,000 Sq. Ft.:	20 spaces / 1,000 Sq. Ft.
Additional Sq. Ft. Above 2,000:	10 spaces / 1,000 Sq. Ft.
12.0 Animal Services	5 spaces / 1,000 Sq. Ft.
13.0 Emergency Services	5 spaces / 1,000 Sq. Ft.
16.0 Dry Cleaner	5 spaces / 1,000 Sq. Ft.
19.0 Open Air Markets	5 spaces / 1,000 Sq. Ft.
20.0 Funeral Home	12 spaces / 1,000 Sq. Ft.
22.0 Daycare	3 spaces / 1,000 Sq. Ft.
28.0 Combination Uses	As applied to individual uses

**[f] Parking Requirements for Use 1.300 Multi-Family Residences**

[1] The minimum parking required for a Use 1.300 Multi-Family Residences shall be reduced by a factor of 10% for each one of the following, with a maximum reduction of 20% based on these factors:

[A] The development is located within 1 mile of linear sidewalk distance from any portion of the Appalachian State University library, and public sidewalks or public pedestrian walkways exist or will be constructed in connection with the development which allow safe pedestrian travel between the development and the main campus.

[B] Bus service to the development exists or is arranged by the developer and a transit shelter or bus pull-off for use by the residents is built or exists within ½ mile linear sidewalk distance from the development boundary.

- [2] The number of automobile parking spaces for Use 1.300 Multi-Family Residences shall not exceed one-hundred and twenty percent (120%) of the minimum requirement.

**[g]** When requested by the Administrator or permit issuing authority, an application for a permit for a new development shall include an evaluation of the need for automobile parking which may result from the development as proposed, and strategies to mitigate parking impacts upon both the immediate environs of the development and upon the region which may be negatively affected. When the Administrator or permit issuing authority concludes that due to existing unsatisfactory traffic flows or anticipated unsatisfactory traffic flows if the development is constructed as proposed, or where the Administrator or permit issuing authority concludes that existing parking in the vicinity of the development, supplemented by parking proposed for the development, may be inadequate to meet the anticipated parking needs generated by the development, the Administrator or permit issuing authority may request that the applicant provide a report, prepared by a competent engineer, predicting the impact of the development on traffic and parking in the immediate environs of the development or the entire region which may be negatively affected. This analysis shall include identification of specific strategies, improvements, and other measures necessary to effectively mitigate identified impacts.

#### **Section 347. Flexibility in Administration Required**

**[a]** The council recognizes that, due to the particularities of any given development, the inflexible application of the parking standards set forth in Subsection 346 [e] may result in a development either with inadequate parking space or parking space far in excess of its needs. The former situation may lead to traffic congestion or parking violations in adjacent streets as well as unauthorized parking in nearby private lots. The latter situation wastes money as well as space that could more desirably be used for valuable development or environmentally useful open space. Therefore, as suggested in Section 346, the permit issuing authority may permit deviations from the presumptive requirements of Subsection 346 [e] and may require more parking or allow less parking whenever it finds that such deviations are more likely to satisfy the standard set forth in Subsection 346 [a].

**[b]** Without limiting the generality of the foregoing, the permit issuing authority may allow deviations from the parking requirements set forth in Subsection 346 [e] when it finds that:

- [1] A residential development is irrevocably oriented toward the elderly;
- [2] A business is primarily oriented to walk-in trade.

**[c]** Whenever the permit issuing authority allows or requires a deviation from the presumptive parking requirements set forth in Subsection 346 [e], it shall enter on the face of the permit the parking requirement that it imposes and the reasons for allowing or requiring the deviation.

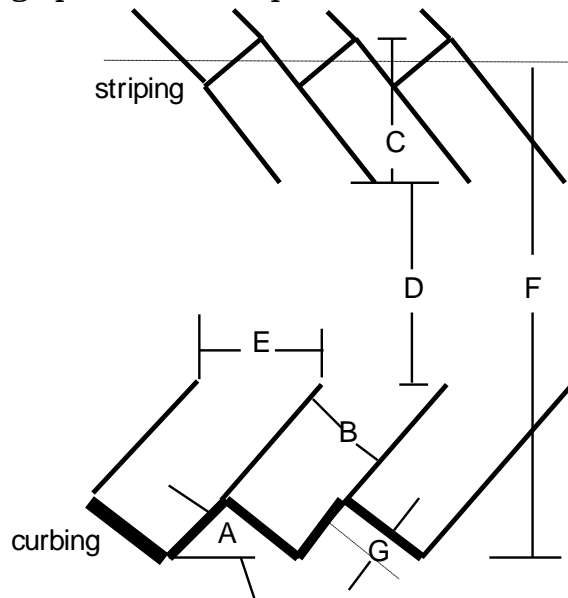
**[d]** If the permit issuing authority concludes, based upon information it receives in the consideration of a specific development proposal, that the presumption established by Subsection 346 [e] for a particular use classification is erroneous, it shall initiate a request for an amendment to the Table of Parking Requirements in accordance with the procedures set forth in Article XXI.

**Section 348. Parking Space Dimensions and Required Widths of Parking Area Aisles and Driveways**

**[a]** Subject to Subsection [b], [c] and [f], each parking space shall contain a rectangular area at least seventeen and one half (17.5) feet long and nine (9) feet wide. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this section.

**[b]** In parking areas containing ten (10) or more parking spaces, a rectangular area of only seven and one half (7.5) feet in width by fifteen (15) feet in length, may be conspicuously designated as reserved for compact cars in the following situations:

- [1] Multi-family uses may provide up to fifty (50) percent of the parking spaces for compact cars.
- [2] All other uses may provide up to thirty five (35) percent of the parking spaces for compact cars.



Schematic Diagram of Parking Geometry

**[c]** Wherever parking areas consist of spaces set aside for parallel parking, the dimensions of such parking spaces shall be not less than twenty three (23) feet by nine and one half (9.5) feet.

**[d]** Parking area aisle widths shall conform to the Geometric Design Standards for Parking Table, which varies the width requirement according to the angle of parking.

**[e]** Driveways shall not be less than eleven (11) feet in width for one way traffic and eighteen (18) feet in width for two way traffic, except that eleven feet wide driveways are permissible for two way traffic when, (i) the driveway is not longer than fifty feet, (ii) it provides access to not more than six spaces, and (iii) sufficient turning space is provided so that vehicles need not back into a public street.

**[f]** Geometric Design Standards for Parking Table.

### Geometric Design for Standard Automobiles

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>
Parking Angle (degrees)	Stall Width ( feet )	Stall Depth (to Curb) ( feet )	Aisle Width ( feet )	Stall Width Parallel to Aisle ( feet )	Module Width ( feet )	Bumper Overhang ( feet )
<b>0</b>	9.5	N/A	12.0	23.0	31.0	N/A
<b>45</b>	9.0	17.5	12.0	12.7	47.2	2.0
<b>60</b>	9.0	19.0	16.0	10.4	54.0	2.5
<b>75</b>	9.0	19.5	23.0	9.3	62.0	2.5
<b>90</b>	9.0	18.0	24.0	9.0	60.0	3.0



**Geometric Design for Compact Automobiles**

A	B		C	D	E	F	G
Parking Angle (degrees)	Stall Width		Stall Depth (to Curb) ( feet )	Aisle Width ( feet )	Stall Width Parallel to Aisle ( feet )	Module Width ( feet )	Bumper Overhang ( feet )
	Multi-Family ( feet )	Other Uses ( feet )					
<b>0</b>	8.0	8.0	N/A	11.0	19.0	27.0	N/A
<b>45</b>	7.5	8.0	16.0	11.0	10.5	43.0	2.0
<b>60</b>	7.5	8.0	16.7	14.0	8.7	47.4	2.3
<b>75</b>	7.5	8.0	16.3	17.4	7.8	50.0	2.5
<b>90</b>	7.5	8.0	15.0	20.0	7.5	50.0	2.5

**Section 349. General Design Requirements**

**[a]** Unless no other practicable alternative is available, vehicle accommodation areas shall be designed so that, without resorting to extraordinary movements, vehicles may exit such areas without backing into a public street. This requirement does not apply to parking areas consisting of driveways that serve one or two dwelling units, although backing onto arterial streets is discouraged.

**[b]** Vehicle accommodation areas of all developments shall be designed so sanitation, emergency, and other public service vehicles can serve such developments without the necessity of backing unreasonable distances or making other dangerous or hazardous turning movements.

**[c]** Every vehicle accommodation area shall be designed so that vehicles cannot extend beyond the perimeter of such area onto adjacent properties or public rights-of-way. Such areas shall also be designed so that vehicles do not extend over sidewalks or tend to bump against or damage any wall, vegetation, or other obstruction.

**[d]** Circulation areas shall be designed so that vehicles can proceed safely without posing a danger to pedestrians or other vehicles and without interfering with parking areas.

**[e]** All vehicle accommodation areas shall designate parking space for handicapped persons in accordance with the state Building Code.

**Section 350. Vehicle Accommodation Area Surfaces**

**[a]** Except for single or two family dwellings and excluding vehicle accommodation areas designed for two (2) vehicles or less, all vehicle accommodation areas shall be surfaced with a bituminous paving or NCDOT standard ABC stone. ABC stone may not be used on vehicle accommodation areas with slopes greater than five (5) percent.

**[b]** Parking spaces in areas surfaced with bituminous paving shall be appropriately demarcated with painted lines or other markings. Parking spaces in areas surfaced with NCDOT standard ABC stone shall be demarcated whenever practicable.

**[c]** Vehicle accommodation areas shall be properly maintained in all respects. In particular, and without limiting the foregoing, vehicular accommodation area surfaces shall be kept in good condition (free from potholes, etc.) and parking space lines or markings shall be kept clearly visible and distinct.

**[d]** Use of pavement or asphalt sealant, coating or like product (hereafter referred to as "sealant").

[1] Any sealant may only be used in conformity with its manufacturer's specifications and is further subject to the following requirements:

[A] No person may apply a sealant nor authorize its application without first obtaining a zoning permit from the Administrator. As part of the permit application, the applicant must disclose the date the sealant will be applied, the location of the area to which the sealant will be applied, the type of sealant which will be applied and such other information as the Administrator shall request. The Administrator may charge appropriate fees to defray the costs of inspections needed to verify compliance with this section.

[B] A sealant may not be applied unless the pavement and air temperatures at the location of the application, at all times during application and for at least forty-eight hours thereafter, are and are predicted to be at least fifty-five degrees Fahrenheit and stable or rising, but less than eighty degrees Fahrenheit.

[C] A sealant may not be applied during rainy or wet weather.

- [D] Any person applying a sealant must have on site for ready inspection by the Administrator a copy of the manufacturer's specifications for application of the sealant.
- [2] Additional Requirement for Non-Coal-Tar-Based Sealants: In addition to the foregoing requirements of subsection [d][1], a non-coal-tar-based sealant may not be applied if at the time the application is to begin, any chance of precipitation is predicted by the National Weather Service for any portion of the period during which the sealant is expected to be applied, or at the time application begins there is more than a ten percent chance of precipitation predicted by the National Weather Service for any portion of the forty-eight hours following the anticipated completion of the application.
- [3] Additional Requirement for Coal-Tar-Based Sealants:
- [A] In addition to the foregoing requirements of subsection [d][1], a sealant containing coal tar may not be applied if at the time the application is to begin, any chance of precipitation is predicted by the National Weather Service for any portion of the period during which the sealant is expected to be applied; at the time application begins there is a ten percent or more chance of precipitation predicted for any period within the forty-eight hours following the anticipated completion of the application; or if at the time application begins, there is more than a twenty percent chance of precipitation predicted for any period within seven full days following the anticipated completion of the application, each as predicted by the National Weather Service.
- [B] A sealant containing coal tar may never be applied to a surface, any part of which is located within a flood way, nor to a surface, any part of which is within two hundred feet from the closest point of any natural watercourse, as defined in Section 300 and shown on a map labeled as the "NC Stream Map" as produced by the North Carolina Stream Mapping Project (<http://www.ncstreams.org>)" on file with and available through the Administrator.
- [C] A sealant containing coal tar may only be applied to a surface, any part of which is located in an area of special flood hazard, as defined in Section 300, if buffering is placed along all portions of the downslope perimeter of the surface sufficient to absorb and impede any draining of the sealant from the surface to a degree equivalent or more effective than the absorption and impedance which can be achieved with

bales of hay, laid end to end, and such buffering is maintained in place for a period of no less than seven days following application of the sealant. For purposes of this paragraph, the use of bales of hay of normal size and weight, laid end to end, shall be considered sufficient to meet the requirements of this paragraph.

- [D] A sealant containing coal tar may only be applied to a surface, any part of which contains a storm drain, if buffering or filters are placed around the full perimeter of the storm drain sufficient to absorb and impede any draining of the sealant from the surface to a degree equivalent or more effective than the absorption and impedance which can be achieved with bales of hay, laid end to end, and such buffering is maintained in place for a period of no less than seven days following application of the sealant. For purposes of this paragraph, the use of bales of hay of normal size and weight forming an unbroken perimeter around a storm drain shall be considered a sufficient buffer and filter to meet the requirements of this paragraph.

### **Section 351. Joint Use of Required Parking Spaces**

[a] One parking area may contain required spaces for several different uses, but except as otherwise provided in this section, the required space assigned to one use may not be credited to another use.

[b] To the extent that developments that wish to make joint use of the same parking spaces operate at different times, the same spaces may be credited to both uses. For example, if a parking lot is used in connection with an office building on Monday through Friday but is generally ninety (90) percent vacant on weekends, another development that operates only on weekends could be credited with ninety (90) percent of the spaces on that lot. Or, if a church parking lot is generally occupied only to fifty (50) percent of capacity on days other than Sunday, another development could make use of fifty (50) percent of the church lot's spaces on those other days.

[c] If the joint use of the same parking spaces by two or more principal uses involves satellite parking spaces, then the provisions of Section 352 are also applicable.

### **Section 352. Satellite Parking**

[a] If the number of off-street parking spaces required by this ordinance cannot reasonably be provided on the same lot where the principal use associated with these parking spaces is located, then spaces may be provided on adjacent or nearby lots in accordance with the provisions of this section. These off site spaces are referred to in this section as satellite parking spaces.

**[b]** All such satellite parking spaces (except spaces intended for employee use) must be located within five hundred (500) feet of a public entrance of a principal building housing the use associated with such parking, or within five hundred (500) feet of the lot on which the use associated with such parking lot is located if the use is not housed within any principal building. Satellite parking spaces intended for employee use may be located within any reasonable distance.

**[c]** The developer wishing to take advantage of the provisions of this section must present satisfactory written evidence that he has the permission of the owner or other person in charge of the satellite parking spaces to use such spaces. The developer must also sign an acknowledgment that the continuing validity of his permit depends upon his continuing ability to provide the requisite number of parking spaces.

**[d]** Persons who obtain satellite parking spaces in accordance with this section shall not be held accountable for ensuring that the satellite parking areas from which they obtain their spaces satisfy the design requirements of this article.

### **Section 353. Special Provisions For Lots With Existing Buildings**

**[a]** Notwithstanding any other provisions of this ordinance, whenever (i) there exists a lot with one or more structures on it constructed before the effective date of this ordinance, and (ii) a change in use that does not involve any enlargement of a structure is proposed for such lot, and (iii) the parking requirements of Section 346 that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for parking, then the developer need only comply with the requirements of Section 346 to the extent that (i) parking space is practicably available on the lot where the development is located, and (ii) satellite parking space is reasonably available.

**[b]** Should satellite parking subsequently become reasonably available, then it shall be a continuing condition of the permit authorizing development on such lot that the developer obtain satellite parking when it does become available.

### **Section 354. Loading and Unloading Areas**

**[a]** Subject to Subsection [f], whenever the normal operation of any development requires that goods, merchandise, or equipment be routinely delivered to or shipped from that development, a sufficient off-street loading and unloading area, located at the rear, side or end of the business, must be provided in accordance with this section to accommodate the delivery or shipment operations in a safe and convenient manner.

**[b]** The loading and unloading area must be of sufficient size to accommodate the numbers and types of vehicles that are likely to use this area, given the nature of the development in question. Subsection [c] indicates the number of spaces that, presumably satisfies the standard set forth in this Subsection. However, the permit issuing authority may require more or less loading and unloading area if reasonably necessary to satisfy the standard in Subsection [c].

**[c]** For the purpose of this section, the off-street loading and unloading space shall have the minimum dimensions of twelve (12) feet by fifty five (55) feet and overhead clearance of fourteen (14) feet from street grade.

- [1] Retail business shall provide one (1) space of three hundred (300) square feet for each five thousand (5,000) square feet of floor space.
- [2] Wholesale and industry shall provide one (1) space of five hundred (500) square feet for each ten thousand (10,000) square feet of floor area.
- [2] In the case of mixed uses, the total requirements for off-street loading or unloading space shall be the sum of the requirements for the various uses computed separately.

**[d]** Loading and unloading areas shall be so located and designed that the vehicles intended to use them can (i) maneuver safely and conveniently to and from a public right-of-way, and (ii) complete the loading and unloading operations without obstructing or interfering with any public right-of-way or any parking space or parking lot aisle.

**[e]** No area allocated to loading and unloading facilities may be used to satisfy the area requirements for off-street parking, nor shall any portion of any off-street parking area be used to satisfy the area requirements for loading and unloading facilities.

**[f]** Whenever (i) there exists a lot with one or more structures on it constructed before the effective date of this ordinance, and (ii) a change in use that does not involve any enlargement of a structure is proposed for such lot, and (iii) the loading requirements of this section cannot be satisfied because there is not sufficient area available on the lot that can be practicably be used for loading and unloading, then the developer need only comply with this section to the extent reasonably possible.

**Section 355. Bicycle Parking**

**[a]** The B – 1 Central Business zoning district is exempt from the requirements of Section 355 Bicycle Parking.

**[b]** Except for single family housing (Use 1.100, Table of Permitted Uses), two family housing (Use 1.200), home occupation uses (Use 1.600), and agriculture and livestock uses (Use 14.100), bicycle parking facilities meeting the standards of this Section shall be provided by a permit applicant under each of the following circumstances:

- [1] When a new building is constructed;
- [2] When any addition to or enlargement of an existing building is constructed;
- [3] When a change in occupancy of any building occurs which results in a requirement for additional vehicle parking facilities under UDO Section 346.

**[c]** The number of bicycle spaces included in the required bicycle parking facilities shall be determined by the following table of uses. Use descriptions are abbreviated and are for descriptive purposes only. Uses listed below are preceded by a number which corresponds to a use category in the Table of Permissible Uses, Section 165, *supra*, and include all specific uses described in association with that number, i.e., 5.200 includes not only “Churches,” as mentioned herein, but also “synagogues, and temples, including associated residential structures for religious personnel and associated buildings but not including elementary school or secondary school buildings,” the full detail of Section 5.200 in the Table of Permitted Uses. In those instances when alternative measures are associated with a particular use, e.g., “2, or 1 per 20 units,” the measure providing the higher number of bicycle parking spaces shall be used.

<b>Residential Land Uses</b>	<b>Short Term Spaces</b>	<b>Long Term Spaces</b>
1.300 Multi-family Residences	2, or 1 per 20 units	1 per 4 units
1.400 Group Homes	2, or 1 per 20 bedrooms	
1.510 Rooming Houses	2	
1.530 Hotels	2	2
1.540 Fraternity/Sorority Dwellings	2, or 1 per 20 units	2

<b>Commercial Land Uses</b>	<b>Short Term Spaces</b>	<b>Long Term Spaces</b>
2.100 Commercial Retail	2, or 1 per 5,000 SF*	2, or 1 per 12,000 SF
2.200 Commercial Wholesale	2, or 1 per 15,000 SF	
2.300 Convenience Stores	2	2
2.400 Large Scale Retail	2, or 1 per 5,000 SF	2, or 1 per 12,000 SF
3.0 Commercial Office	2	2, or 1 per 10,000 SF
4.0 Industrial Uses	2, or 1 per 15,000 SF	
4.300 Warehouses	2, or 1 per 40,000 SF	
5.110 Elementary/High Schools	1 per classroom	1 per classroom
5.120 Trade Schools	2, or 1 per 10,000 SF	2, or 1 per 20,000 SF
5.130 Colleges	2, or 1 per 10,000 SF	2, or 1 per 20,000 SF
5.200 Churches	2	2
5.300 Libraries	1 per 10 automobile spaces	2
5.400 Social Clubs	1 per 10 automobile spaces	2
6.110 Indoor Recreation	1 per 10 automobile spaces	2
6.120 Movie Theaters	8 or 1 per 40 seats	
6.130 Coliseums	8 or 1 per 40 seats	
6.210 Private Outdoor Recreation	2	
6.220 Public Outdoor Recreation	2	
6.230 Town Passive Recreation	5	
7.100 Hospitals	2, or 1 per 40,000 SF	2, or 1 per 50,000 SF
7.200 Nursing Homes	2	2

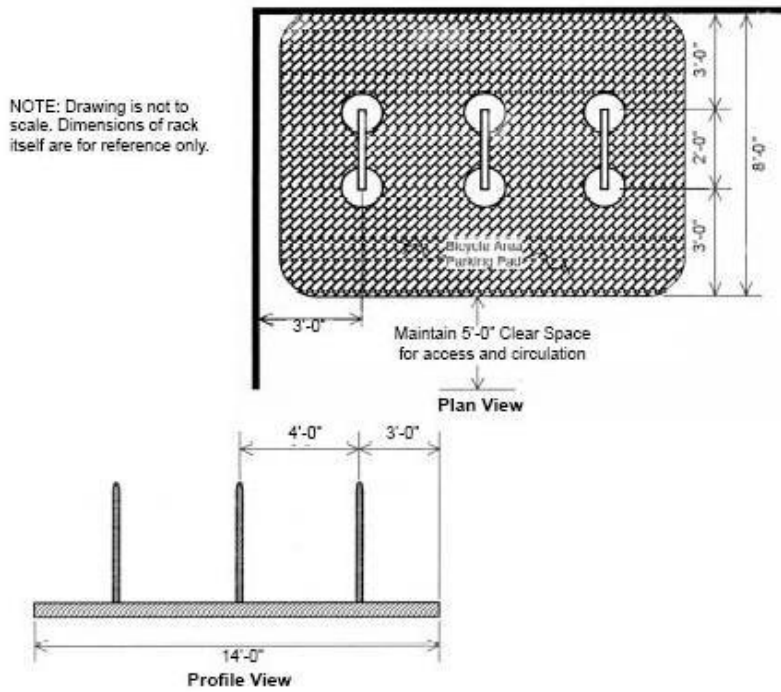


<b>Commercial Land Uses</b>	<b>Short Term Spaces</b>	<b>Long Term Spaces</b>
8.0 Restaurants	2, or 1 per 5,000 SF	2, or 1 per 12,000 SF
9.0 Motor Vehicle Sales	2	
10.100 Automobile Parking	1 per 10 automobile spaces	
12.0 Animal Services	2	
13.0 Emergency Services	2	
15.100 Post Office	2	2
15.200 Airport	2	2
16.0 Dry Cleaners	2	2
19.0 Open Air Market	2	2
22.0 Daycare	2, or 1 per 10,000 SF	
24.0 Transportation	8	
25.0 Greenhouse	2	2
28.0 Combination	As applied individually	As applied individually

\* “SF” shall denote and refer to “square feet.”

**[d]** Parking facilities shall meet the following standards:

- [1] Each bicycle parking space shall be no less than six (6) feet long by two (2) feet wide, plus sufficient area for access. A “rack” is a bicycle facility which includes multiple contiguous bicycle parking spaces. Exact conformity with the following diagram for a single rack bicycle facility is not required, but adherence to this design shall meet the requirements of this section:

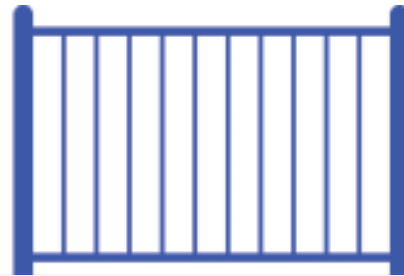
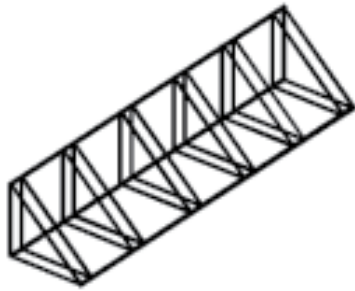


- [2] No less than four (4) feet must be provided between parallel racks.
- [3] Bicycle parking facilities shall be constructed of materials of sufficient strength to significantly resist their displacement or removal, and they shall be securely anchored in concrete or other equivalent material or system of sufficient strength to significantly resist removal. Bicycle parking facilities shall support bicycles in a stable position without damage to wheels, frame or other components and allow for the use of either a cable, U-shaped, or similar lock to secure the bicycle.

Examples of acceptable facilities



Examples of **unacceptable** facilities (because they secure only one wheel)



- [4] Outside bicycle parking facilities shall be illuminated in conformity with the standards for "open parking areas" of UDO Section 396. Inside bicycle parking facilities shall be illuminated in conformity with the standards for "building entries" of UDO Section 396.
- [5] Areas set aside for outside bicycle parking shall be clearly marked and reserved for bicycle parking only. Where the location of said parking is not easily visible from the street, a sign that does not exceed four (4) square feet in area and directs cyclists to parking shall be provided on site and must be visible from the street or from the main building entrance. For purposes of this Section, "main building entrance" shall connote and refer to the primary doorway by which residents, visitors or customers enter and exit a building, whether or not said entrance is oriented facing the public street.

Examples of acceptable signs



- [6] Bicycle parking shall be located so as to avoid impeding or creating a hazard to pedestrians from parked or approaching bicycles, and to avoid creating a hazard to bicyclists or bicycles from automobiles or other motor vehicles. Bicycle racks installed on private sidewalks within the development must provide a clear, unobstructed passage of at least five (5) feet for pedestrians and should be installed at least three (3) feet from the face of any curb. Bicycle racks may not be installed on public sidewalks without the express authorization of

the Boone Town Council, subject to such conditions which may be attached to such authorization.

**[e]** Short-term bicycle parking is parking intended or utilized for 2 hours or less by customers or visitors to a particular use. Parking facilities for short-term bicycle parking must be located no farther from the main building entrance than the distance to the closest non-handicap vehicle space, or 50 feet, whichever is less, and they must be visible from public sidewalk areas along the public street frontage adjoining the use and located directly in front of the main building entrance unless the main building entrance is not oriented toward the public street. In those instances where the main building entrance is not oriented toward the public street, the parking facilities must be visible from such locations, as determined by the Administrator or permit issuing authority, which will provide the greatest level of visibility to achieve the dual purposes of security for the bicycles using the facilities and availability to bicyclists visiting the building for the first time. Short term bicycle parking, when allowed within a public right-of-way, should be coordinated with street furniture as applicable.

**[f]** Long term bicycle parking is intended or utilized for daily, overnight or even longer duration bicycle parking by residents and employees. Long term bicycle parking shall be covered or enclosed, and must provide security and protection from weather and the elements. Long term bicycle parking should be incorporated whenever possible into the building design.

**[g]** Bicycle parking exceeding the requirements of subsection [b] may reduce by up to 10% required motor vehicle parking for residential uses and other uses where a parking demand analysis establishes a minimum motor vehicle parking expectation. For every five bicycle parking spaces in excess of the short or long term bicycle parking requirements of subsection [b], the use's motor vehicle parking requirement is reduced by one (1) space.

### **Section 356. Motorcycle Parking**

**[a]** The B - 1 Central Business zoning district is exempt from the requirements of Section 356 Motorcycle Parking.

**[b]** Motorcycle parking facilities meeting the standards of this Section shall be provided by a permit applicant under each of the following circumstances, and one (1) motorcycle parking space shall be provided for every 40 motor vehicle parking spaces:

- [1] When a new building is constructed;
- [2] When any addition or enlargement of an existing building is constructed;

- [3] When a change in occupancy of any building occurs where 40 or more vehicle parking spaces are provided.
- [c]** Motorcycle parking facilities shall meet the following design standards:
- [1] Each motorcycle parking space shall be no less than eight (8) feet long by four (4) feet wide, and sufficient space for access shall be provided.
  - [2] Motorcycle parking facilities must be visible from public sidewalk areas along the public street frontage adjoining the use and located directly in front of the main building entrance unless the main building entrance is not oriented toward the public street. In those instances where the main building entrance is not oriented toward the public street, the motorcycle parking facilities must be visible from such locations, as determined by the Administrator or permit issuing authority, which will provide the greatest level of visibility to achieve security for the motorcycles using the facilities. Motorcycle parking facilities must also include features to provide reasonable security for motorcycles. Designers are encouraged to include fixed features such as rails, hoops, or posts designed to provide a simple locking point to secure a motorcycle or scooter using a chain or similar device.
  - [3] Motorcycle parking facilities shall be clearly marked and reserved for motorcycle parking only, using signage and/or pavement marking determined by the Administrator or permit issuing authority as adequate to both direct motorcycle riders to the proper facilities and to prevent use of the motorcycle parking facilities by other motor vehicles.
  - [4] The slope of motorcycle parking facilities should be as close to level as possible while still providing adequate drainage. "Adequate drainage" is such drainage as will prevent the buildup of water and ice in included motorcycle parking spaces. Motorcycle parking facilities must have a firm surface capable of supporting the weight supported by the stand of the heaviest of models of motorcycle.

### **Section 357. Reserved**



## Article XX Landscape Standards

### Section 358. The Purpose and Intent

The purpose of this article is to regulate the planting and preservation of landscape material, to promote the general health, safety and welfare of this community; to facilitate the creation of an attractive environment; to protect property values; to further the urban design and economic development of the community; and to encourage skilled installation and continued maintenance of all plant materials.

**[a]** Thus, the Town Council finds that these regulations are intended to apply minimum standards which result in a better overall appearance of the community by:

- [1] Encouraging the preservation of existing vegetation and trees, especially large, old trees, and replacement of plant material which has been damaged or removed;
- [2] Improving the visual quality of the town and minimizing potential negative impacts of development such as noise, dust, glare of lights, and parking lots;
- [3] Providing environmental benefits such as reduced stormwater runoff, decreased erosion, improved water and air quality;
- [4] Providing transition between dissimilar land uses to protect abutting properties from potential negative impacts of neighboring development and preserve the character and value of a property and provide a sense of privacy;
- [5] Improving standards for quantity, location, size, spacing, protection, and maintenance of landscape plants and other screening materials to assure a high level of quality in the appearance of Boone while allowing flexibility to promote well designed and creative landscape plantings;
- [6] Requiring the maintenance of landscaping installed to meet the requirements of these standards to ensure that the landscaping continues to thrive and enhance the visual quality of the Town of Boone.

**[b]** The table set forth in Section 362, in conjunction with the explanations in Section 362 concerning the types of screening, establishes suggested screening requirements that, presumably, satisfy the general standards established in Section 359. However, this table is only intended to establish a

presumption and should be flexibly administered in accordance with Section 368.

**[c]** The provisions of this Article and Appendix B of this ordinance shall apply to all commercially developed land and all land within the following zoning districts: R-3, M-H, O/I, B-1, B-2, B-3 and M-1, unless the property is excluded from municipal regulation pursuant to NCGS 160A-458.5 (b).

**[d]** The following provisions shall apply in the U-1 zoning district:

- [1] New development in the U-1 district shall provide street trees along town maintained streets in accordance with Section 366 and consistent with the University's treatment of streets on or adjacent to the main campus.
- [2] New development in the U-1 district shall provide a ten (10) foot Type "A" Standard Buffer adjacent to all non-university property in accordance with Section 362 [b] [1] and Section 363.

#### **Section 359. General Screening Standard**

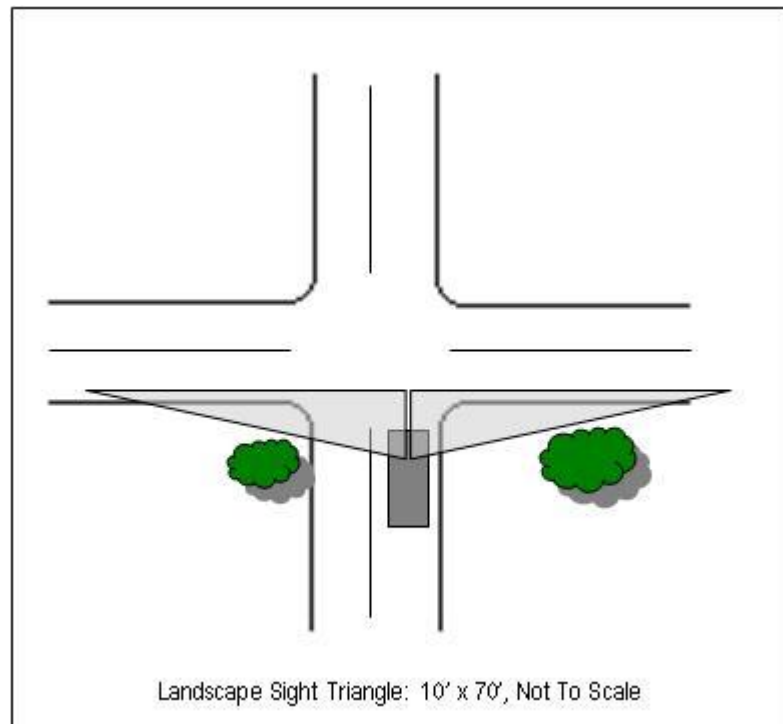
**[a]** Every development shall provide sufficient landscape material so that:

- [1] Neighboring properties are shielded from adverse external effects of that development;
- [2] The development is shielded from the negative impacts of adjacent uses such as parking lots.

**[b]** When application of the formulas in this Article results in a number which includes a fractional number less than one-half (.5), the fractional number may be disregarded; when application of the formulas result in a number which includes a fractional number one-half (.5) or greater, the fraction shall be counted as one.



**[c]** To ensure that landscape materials do not constitute a traffic hazard, a sight triangle ten (10) feet by seventy (70) feet will be observed at all intersections of driveways/streets with adjacent streets (**see diagram below**). Required street trees shall be planted outside of the sight triangle area. Shrubs planted within sight distance triangles shall be of a type with a maximum mature height of twenty (24) inches. See note following table Section 363 [b].



### **Section 360. Compliance with Screening Standard**

- [a]** To determine the required screening, the following steps shall be taken:
- [1] Identify the classification of the proposed land use and all adjacent uses listed in Section 361 Screening Land Use Classification.
  - [2] Use the Table of Screening Requirements in Section 362 to determine the appropriate letter designation for each abutting area. If the abutting area is undeveloped, the highest allowable land use classification shall be used.
  - [3] Match the letter designation obtained from the Table of Screening Requirements in Section 362 with the Description of Screening in Section 363 to determine the required screening.

- [4] The screening requirements established in this article apply to all land uses except where specific requirements are established for uses elsewhere in this ordinance.

### **Section 361. Screening Land Use Classification**

**[a]** Listed below are the classifications of land uses that will determine the required screening established in Section 362, Table of Screening Requirements. The land uses are keyed to the Table of Permissible Uses contained in Section 165.

- [1] Classification I: single-family residences (1.100); golf courses and parks (privately and publicly owned) not constructed pursuant to a permit authorizing the construction of another use such as a residential development or a school (6.200).
- [2] Classification II: two-family residences (1.200); multi-family residences (1.300); homes emphasizing special services, treatment or supervision (1.400); miscellaneous, rooms for rent situations (1.500, excluding 1.530); educational, cultural, religious, philanthropic, social, fraternal uses (5.0); recreation, amusement, entertainment activity conducted primarily outside enclosed buildings or structures (6.200); cemetery (21.0); commercial greenhouse operations (25.0).
- [3] Classification III: hotels, motels and other similar businesses or institutions providing overnight accommodations (1.530); sales and rental of goods, merchandise and equipment (2.0); office, clerical, research and services not primarily related to goods or merchandise (3.0); light industrial uses (4.100); activity conducted entirely within building or substantial structure (6.100); institutional residence or care or confinement facilities (7.0); restaurants, bars, night clubs (8.0); motor vehicle related sales and service operations (9.0); storage and parking (10.0); services and enterprises related to animals (12.0); emergency service operations (13.0); agricultural operations, farming (14.100); post office (15.100); airports (15.200); dry cleaner and Laundromat (16.0); utility facilities (17.0); open air markets and horticultural sales (19.0); funeral home (20.0); nursery schools, day care centers (22.0); transportation (24.0)
- [4] Classification IV: scrap materials salvage yards, junkyards, automobile graveyards (11.0); mining or quarrying operations, including on-site sales of products (14.200); telecommunication towers and related structures (18.0)

**Section 362. Table of Screening Requirements**

**[a]** The Table of Screening Requirements shall be used to determine screening requirements between adjacent land uses.

Proposed Land Use Class	Adjacent Permitted Land Use Classification				Adjacent Zone with Nonconforming Use		Adjacent Public or Private Street
	I	II	III	IV	Residential	Non-Residential	
<b>II</b>	C	A	A	A	B	A	A
<b>III</b>	C	B	A	A	B	A	A
<b>IV</b>	C	C	C	A	C	C	C

**[b]** Three basic types of screening are hereby established and are used as the basis for the table. Compliance of planted vegetation screens or natural vegetation will be judged on the basis of the average mature height and density of foliage of the subject species, or field observation of existing vegetation. All types may be composed of a wall, fence, landscaped earth berm, planted vegetation, or existing vegetation. Suggested plant material is included in Appendix B.

- [1] Standard Screen, Type “A” is a screen composed of intermittent visual obstructions from the ground to a height of at least twenty (20) feet. The standard screen is intended to create a separation of spaces without necessarily eliminating visual contact between the spaces.
- [2] Semi-Opaque Screen, Type “B” is intended to partially block the view between uses and to create a strong distinction of separation of spaces. At maturity, the portion of intermittent visual obstructions should not contain any completely unobstructed openings more than ten feet wide.
- [3] Opaque Screen, Type “C” is a screen that is opaque from the ground to a height of at least six (6) feet, with intermittent visual obstructions from the opaque portion to a height of at least twenty feet. An opaque screen is intended to exclude completely all visual contact between uses and to create a strong spatial separation. The opaque portion of the screen must be opaque in all seasons of the year. At maturity, the portion of intermittent visual obstruction should not contain any completely unobstructed openings more than ten feet wide.

<b>Screening Type</b>	<b>Required Width of Bufferyard In feet)</b>
Type "A" Standard	10
Type "B" Semi-Opaque	15
Type "C" Opaque	25

### **Section 363. Buffer and Screen Requirements**

#### **[a] Existing Vegetation**

Buffers require provision of both physical separation and landscape elements to meet the intent of this ordinance. Existing vegetation shall be used to meet all or part of the requirements of this section wherever possible, if it provides the same level of obscurity as the planted buffer required below. Vegetation to be saved shall be identified on site plans along with protection measures to be used during grading and construction. See Section 370 for protection measures required and calculation of credits for existing trees.

#### **[b] Planted Vegetation**

Required plantings include for a mix of large shade trees, small trees/large shrubs, and smaller shrubs to provide variable height screening, and a variety of plantings and seasonal color. Evergreen trees are used to provide a more opaque screen, as well as more natural appearance to the buffer. The mix is designed to create a buffer which will give a satisfactory screen within three (3) to five (5) years of planting, under normal maintenance, while allowing room for the various plants to grow. Planting requirements for buffers include both trees and shrubs as described below.

	<b>"A" Buffer</b>	<b>"B" Buffer</b>	<b>"C" Buffer</b>
<b>Minimum Bufferyard Width</b>	10 feet	15 feet	25 feet
Total Number of Plants per 100 Linear Feet	20	30	40
Number of Evergreen Trees	3	10	15
Number of Large Deciduous Trees	1	3	5
Number of Small Deciduous Trees	2	2	5
Number of Shrubs (at least 75 % must be evergreen)	14	15	15

Note: Plant list must only describe plant sizes on landscape plan by: height for shrubs (gallon sizes for shrubs will not be approved), height for evergreen trees and either or both caliper and height for deciduous trees.

- [1] Minimum plant sizes for buffer requirements.

Evergreen tree: Minimum height of eight (8) feet at planting.

Large deciduous tree: Minimum caliper of 2 1/2 inches with a height of 12 – 14 feet at planting.

Small deciduous tree: Minimum caliper of one (1) inch with a height of eight (8) feet at planting.

Shrubs: Minimum height of eighteen (18) inches at planting.

- [2] Plant standards. All plants must meet the requirements of the most recent edition of the American Standards for Nursery Stock. Plants must be healthy, well branched, and free of disease and insect infestation.

**[c]** Use of Bufferyards

Required bufferyards shall not be disturbed for any reason except for approved driveway openings, pedestrian or bicycle paths, designated greenways, utilities, drainage ways, bio-retention areas, walls, fences, and other passive or minor uses compatible with the general separation of land uses and provided that the total number of required plantings are still met. Approval from the Administrator is required prior to initiating any disturbance of the buffer. Utility easements may be included in the width of the buffer with the following conditions:

- [1] Utility lines should be located cross perpendicular to a buffer, if possible, to minimize the impact.
- [2] If utility lines must run within bufferyard, they must be located along the edge of the bufferyard.
- [3] The developer should minimize the amount of plantings for the bufferyard in the utility easement area so they will not have to be removed if the utility line needs maintenance. If a developer plans to plant in the utility easements, approval must be obtained from the affected utility companies to ensure that plantings will not conflict with the installation, operation, or maintenance of utility lines. Trees and shrubs planted within the utility easement will not count towards the buffer planting requirement unless they are approved by the utility companies. This may necessitate adding

more land to the buffer to accommodate the required number of plantings.

**[d]** Bufferyard Reductions

The width of the buffer may be reduced with the use of a fence or wall. If a developer plans to build a fence or wall, a “C” classification buffer reduces to a “B” classification and a “B” classification buffer reduces to an “A” classification buffer. Fences and walls must meet the following standards:

- [1] Fences or walls shall be constructed of wood, brick, stone, or other masonry, and be architecturally compatible with the proposed structure. A detailed drawing of the screen must be shown on the landscape plan and approved by the Administrator.
- [2] Walls and fences shall be solid construction and opaque.
- [3] Walls and fences shall be a minimum height of six feet.
- [4] The wall or fence shall be located in the center of the buffer with vegetation planted on either side.

**[e]** Screening of Solid Waste and Recycling Container Areas, Loading Docks, Outdoor Storage Areas, and Utility Structures and Rainwater Harvesting Systems.

- [1] Loading docks, solid waste and recycling containers, outdoor storage, mechanical and HVAC equipment, Rainwater Harvesting Systems, and similar facilities on the roof, on the ground, or on buildings shall be incorporated into the overall design theme. These areas shall be located and screened so that the visual impacts of these facilities are fully contained and out of view from adjacent properties and public streets.
- [2] Solid waste and recycling containers (when required) shall be screened in accordance with the Solid Waste and Recycling Enclosure Detail (Appendix C). The design and materials of the enclosure, fence or wall must be presented as part of the site plan or subdivision approval process. The screening material shall be architecturally compatible with the principal building(s) on site. Landscape planting compatible with the overall landscape plan may be required outside of enclosures where they are in public view from a street and it is necessary to soften the enclosures appearance.
- [3] Outdoor storage areas shall be located along the side or the rear of the principle structure and screened so that the visual impacts are fully contained and out of view from adjacent properties and public

streets. Screening material may include fence, wall or landscaping so long as materials are architecturally compatible with the principle building(s) on site and will provide an opaque screen. All areas utilized for outdoor storage must be located in areas specifically designed for outdoor storage and is prohibited in or on designated exterior walkways, parking areas, driveways, and landscape areas.

#### **Section 364. Combination Uses**

**[a]** In determining the screening requirements that apply between a combination use and another use, the permit issuing authority shall proceed as if the principal uses that comprise the combination use were not combined and reach its determination accordingly, relying on the table set forth in Section 362.

**[b]** When two or more principal uses are combined to create a combination use, screening shall not be required between the composite principal uses unless they are clearly separated physically and screening is determined to be necessary to satisfy the standard set forth in Section 359. (For example, screening may be required in a residential combination use consisting of single-family and multi-family components.)

#### **Section 365. Subdivisions**

**[a]** When undeveloped land is subdivided and undeveloped lots only are sold, the developer shall not be required to install any screening. Screening shall be required, if at all, only when the lots are developed, and the responsibility for installing such screening shall be determined in accordance with the requirements of this Article.

**[b]** It shall be the responsibility of all new subdivision applicants to submit a tree survey in areas of land disturbance associated with construction of streets, drainage, utilities, and storm water management areas. The tree survey shall be drawn to engineers scale and accurately designate the species, location and diameter of all trees eight (8) inches in diameter and greater.

- [1] Every subdivision shall retain all existing healthy Historic trees with drip lines outside the land disturbing limits associated with proposed streets, drainage, utilities and storm water management areas. A developer may be required to modify his/her design in order to preserve healthy Historic trees, provided the redesign can be accommodated without reducing the intensity of the development on the site or increasing the area of land disturbance.
- [2] Every subdivision shall retain all existing healthy Significant trees with drip lines outside the land disturbing limits associated with

proposed streets, drainage, utilities and storm water management areas.

### **Section 366. Screening Along Streets**

**[a]** The required minimum street yard shall be ten (10) feet and a maximum of twenty five (25) feet, measured perpendicular from the street right-of-way. An average of one large tree 2 1/2 inch minimum caliper (unless subject to overhead power lines) per thirty (30) feet of street frontage is required. Innovative design in tree arrangement is encouraged. Trees planted to satisfy this section shall not be placed uniformly but in an irregular pattern. However, the minimum spacing between street trees shall be twenty (20) feet and the maximum shall be forty (40) feet. The developer shall either plant or retain sufficient trees so that, there is for every thirty (30) feet of street frontage at least an average of one deciduous tree that has or will have when fully mature a trunk at least twelve 12 inches in diameter at maturity.

**[b]** The Administrator shall have the authority to vary on a case-by-case basis the amount and size of required street trees where an alternative requirement would address unique site conditions and allow design flexibility while still serving the objectives for street tree standards. At least 250 square feet of contiguous, un-encroached growing area shall be provided for each tree. Planting location shall take into consideration any roadway widening identified on approved thoroughfare plans but not provided by the development.

**[c]** Evergreen shrubs at the rate of one eighteen (18) inch minimum height shrub per three (3) lineal feet of property line abutting public streets less driveways, of a species expected to reach a minimum height of thirty (30) inches and a minimum spread of thirty (30) inches within three (3) to five (5) years of planting.

**[d]** Except in the B-1 Central Business District, when a surface parking area is the principal land use or a component principal use of a combination use (USE 29.0), the following provisions shall apply:

- [1] The minimum street yard shall be twenty five (25) feet measured perpendicular from the street right-of-way but the minimum street yard may be reduced by one (1) foot for every two (2) feet below adjacent street grade when the Administrator concludes the parking area shall have less of a visual impact than at street level.
- [2] An average of one large tree, two and one-half (2 ½) inch minimum caliper, per twenty- five (25) feet of street frontage shall be provided.
- [3] An average of one (1) large evergreen tree, eight (8) feet minimum height, per fifty (50) feet of street frontage shall be provided.



- 
- [4] Shrubs at the rate of one (1) eighteen (18) inch minimum height per two (2) lineal feet of street frontage shall be provided. The shrubs shall be of a species expected to reach a minimum height of thirty (30) inches and a minimum spread of thirty (30) inches within five (5) years of planting. At least seventy-five percent (75%) of shrubbery in this area must be evergreen.
    - [i] When a proposed parking area will be substantially below grade and shrubbery will not be visible from the street, the administrator may reduce this requirement.
  - [5] A minimum three (3) foot opaque decorative brick/rock wall not to exceed six (6) feet in height with landscape plantings along the street side **or** an earthen berm at least three (3) feet in height with landscape plantings incorporated into the design of the berm **or** a combination of both must be provided along any street frontage. Semi-opaque walls and variations in wall material may be approved by the Community Appearance Commission.
  - [6] The height of any berm shall be undulating and the base shall be curving in nature.
  - [7] A parking area that is located above or below the adjacent street level must design the plant material in the street yard in such a way as to maximize screening from the street.
- [e]** In the B-1 Central Business District, when a surface parking area is the principal land use or a component principal use of a combination use the following provisions shall apply:
- [1] The minimum street yard shall be ten (10) feet measured perpendicular from the street right-of-way.
  - [2] An average of one large tree, two and one-half (2 ½) inch minimum caliper, per twenty- five (25) feet of street frontage shall be provided.
  - [3] An average of one (1) large evergreen tree, eight (8) feet minimum height, per fifty (50) feet of street frontage shall be provided.
  - [4] Shrubs at the rate of one (1) eighteen (18) inch minimum height per three (3) lineal feet of street frontage shall be provided. The shrubs shall be of a species expected to reach a minimum height of thirty (30) inches and a minimum spread of thirty (30) inches within five (5) years of planting. At least seventy-five percent (75%) of shrubbery in this area must be evergreen. When a proposed parking area will be substantially below grade and shrubbery will not be visible from the street, the administrator may reduce this requirement.
  - [5] A minimum three (3) foot opaque decorative red brick/native rock wall not to exceed six (6) feet in height with landscape plantings along the street side shall be provided. Semi-opaque walls and
-

variations in wall material may be approved by the Community Appearance Commission.

- [6] A parking area that is located above or below the adjacent street level must design the plant material in the street yard in such a way as to maximize screening from the street.

### **Section 367. Vehicular Surface Area**

The purpose of this section is to provide visual relief from large expanses of pavement with the introduction of landscape plantings. Trees and shrubs are required in and around parking lots with more than six (6) spaces to provide attractive views from roads and adjacent properties, provide shade to reduce heat generated by impervious surfaces, reduce glare from parking lots, and to help filter exhaust from vehicles.

**[a]** Plant beds shall be evenly distributed throughout the vehicular surface areas for maximum shade. No portion of the vehicular surface area shall be further than sixty (60) feet from the trunk of a tree, except for areas that cannot reasonably be landscaped in the interior as determined by the Administrator, including, but not limited to, truck loading and unloading spaces and vehicle storage areas.

**[b]** Plantings which shall be used to meet these requirements shall be located within the vehicular surface area or in plant beds directly adjacent to the surface areas. Trees along the adjacent street or yard areas and a maximum of ten (10) feet from the vehicular surface area may be used to meet this requirement.

- [1] Plant bed islands within the vehicular surface area shall be a minimum ten (10) feet in width to allow for adequate root aeration and expansion.
- [2] Plant bed islands shall provide a minimum 250 square feet of contiguous growing area for each tree.
- [3] Planting areas and islands shall be protected by barriers including but not limited to curbs, bollards, wheel stops, walls or fences.
- [4] Plantings shall be arranged so as not to interfere with driver vision, vehicle circulation, or pedestrian circulation.

**[c]** Shrubs shall be planted at the rate of one eighteen (18) inch minimum height evergreen or deciduous shrub per two hundred (250) square feet of vehicular surface area. Shrubs to meet this requirement must be located within fifteen (15) feet of the paved area. Additionally, shrubs shall be located to facilitate safe sight distances within parking areas, and to protect them from

overhangs of motor vehicles.

- [1] Minimum curb radii of three (3) feet are required on the corners of all planting islands and medians to allow for free movement of motor vehicles around planting materials. All islands shall have raised edging around them to further protect plant material from being run over by motor vehicles.
- [2] Shrubs shall not be planted within six (6) feet of a trunk of a new tree, nor within the drip line of a protected, existing tree.

**[d]** Parking areas shall be separated from the exterior wall of a structure by landscaped planting areas at least four (4) feet in width. Planting areas may be omitted where necessary to accommodate pedestrian entrance ways. Alternative planting areas meeting the purpose and intent of this section may be approved by the Administrator.

### **Section 368. Flexibility in Administration Required**

The requirements of this Article are established by the Town Council as standards that presumptively result in a better overall appearance of the built environment and protect the natural resources of the community. The Town Council recognizes that due to the particular nature of a tract, the nature of the proposal, or other factors, that the objectives of this Article may be achieved even though the standards are not adhered to with mathematical precision.

**[a]** Therefore, the Administrator is authorized to permit deviations from these standards when both of the following conditions are met:

- [1] The objectives underlying these standards can be met without strict adherence to them.
- [2] Because peculiarities in the developer's tract of land or the facilities proposed would make it unreasonable to require strict adherence to these standards.

**[b]** Whenever the permit-issuing authority authorizes any deviation from the standards, the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation.

### **Section 369. Compliance and Maintenance**

**[a]** Certificate of Compliance

Landscaping must be installed according to the approved site plan and inspected prior to receiving a certificate of compliance. All plant material shall meet or exceed size and shape relationships specified in the latest edition of the American Standard for Nursery Stock published by the American Association of

Nurserymen. Beginning January 1, 2008, installation of plant material must be installed by a landscape contractor licensed to practice in the State of North Carolina. All sizes specified refer to size at time of planting. Vegetation shall be planted to ensure the best chance of survival and to reduce the potential expense of replacing damaged plant material.

- [1] Caliper of the trunk of all new planted trees shall be taken six (6) inches above ground up to and including four (4) inch caliper, and twelve (12) inches above the ground for larger sizes. Seldom are tree trunks perfectly round. Caliper measurements may be taken with “pincer” type caliper, or diameter tape.

**[b] Request for Extension of Compliance**

It is recognized that land development occurs continuously and that if the season or weather conditions prohibit planting the materials, the developer may file a written request for extension of compliance with landscaping requirements with the Administrator, which states the reasons why the request is being made. If the Administrator finds that there are unfavorable conditions for planting, an extension of compliance with landscaping requirements may be allowed. Along with the letter the applicant must provide a performance guarantee (such as a performance bond, or irrevocable letter of credit), in an amount equal to 150 percent of the official signed landscape contract for installing the required landscaping to guarantee the completion of the required planting.

- [1] In addition, this letter shall acknowledge that the applicant for the Building Permit is aware of all landscaping and screening requirements, and will comply with those requirements within 90 days, or discontinue use of the property.
- [2] If the initial letter of request for extension of compliance with landscaping requirements has expired and conditions are still deemed unsuitable for planting, the applicant may request one additional extension of up to 90 days. Failure to comply with the provisions of this Section within the time noted in the letter of request for the extension of compliance with landscaping requirements shall be deemed a violation of this ordinance.
- [3] The applicant shall also acknowledge that while a Conditional Certificate of Compliance may be issued, no final Certificate of Compliance will be issued while there is an active (pending) letter of request for extension of compliance with landscaping requirements. Violation of these provisions shall constitute an illegal occupancy of the principal use.

**[c] Compliance of Maintenance**

The owners of the property and their agents, heirs, or assigns shall be responsible for the installation, preservation, and maintenance of all planting and physical features required under this article. The disturbance of any landscaped area or vegetation installed pursuant to the Article shall constitute a violation of the site plan or subdivision plan. Any vegetation that is dead, substandard, unhealthy, of poor structural quality, or missing, shall be removed and replaced in conformance with the standards of this ordinance and to the approved site plan or subdivision plan.

- [1] Should significant amounts of landscaping or physical elements used to meet Article XX requirements be lost due to an unusual weather occurrence or natural catastrophe, the owner of the property shall submit a plan detailing his/her intent in replacing lost material. Replacement planting may occur within a phased basis as approved by the Administrator. The owner shall have one year or one growing season, whichever is sooner, to replace or replant.

**[d] Prohibited Pruning**

All plant materials required by Article XX shall be allowed to reach their mature size and shall be maintained at their mature size. Any trimming or pruning must be conducted in strict accordance with the current edition of *“Tree, Shrub, and other Woody Plant Maintenance – Standard Practices” of the American National Standard for Tree Care Operations (ANSI 300)*. Required plantings shall not be cut or excessively pruned or otherwise damaged so that their natural form is impaired. Improper pruning includes the removal of the central leader, removal of more than twenty five (25) percent of the foliage within an annual growing season, removal of (twenty five) 25 percent of the foliage of a branch or limb when it is cut back to a lateral branch, and cutting a branch back to a lateral not large enough to assume apical dominance.

- [1] A violation of this subsection shall subject the violator to a civil penalty as set forth in Section 132 of any improperly pruned, damaged, or excessively trimmed tree. In addition to this civil penalty, if more than fifty (50) percent of the crown of a tree is removed within a continuous five-year period, the owner of the property, where a violation has occurred, shall replace each improperly pruned, damaged, or excessively trimmed tree with the appropriate replacement rate in accordance with Section 370 [b]. Any replacement tree shall be planted in a planting area of at least two hundred fifty (250) square feet of contiguous growing area for each and shall have a minimum dimension of seven (7) feet. If the property whereon the violation has occurred fails to contain sufficient land area to replant the required replacement trees and replacement trees cannot be planted on adjoining public street right-of-ways, then in lieu of such replacement trees, a fee equal to one hundred dollars (\$100) per caliper inch of 2 ½” replacement trees shall be paid to the Town. The Town’s Administrator may require

crown restoration and/or crown reduction in accordance with the current edition of *“Tree, Shrub, and other Woody Plant Maintenance – Standard Practices” of the American National Standard for Tree Care Operations (ANSI 300)* for any improperly pruned, damaged, or excessively trimmed tree. All such corrective pruning shall be done under the supervision of a Certified Horticulturist, Arborist or Forester, Landscape Architect, North Carolina Landscape Contractor, or North Carolina Certified Plant Professional and approved by the Administrator.

### **Section 370. Preservation of Existing Trees and Vegetation**

**[a]** Preserving trees can improve the aesthetic quality of the site and improve property values, provide environmental benefits, mitigate the impacts of development on the community, and help minimize opposition to the proposed development. It is recommended that groups of trees be preserved, as well as individual trees. Existing healthy preserved trees and shrubs may be credited towards required buffer trees, street trees, and parking lot trees according to the following:

**[b]** Credits and other incentives to preserve vegetation.

[1] Preserved trees may be credited at the rate of:

2” – 6” caliper tree = 1 tree

7” – 12” caliper tree = 2 trees

13” – 18” caliper tree = 3 trees

19” – 24” caliper tree = 4 trees

25” + caliper tree = 5 trees

Note: All replacement trees are required to be a minimum 2 1/2 inch caliper with a height of 12 - 14 feet.

[2] In order to receive credit, preserved vegetation must be certified in good health and condition by a Certified Horticulturist, Arborist or Forester, Landscape Architect, North Carolina Landscape Contractor, or N. C. Certified Plant Professional. Trees designated to be preserved must be indicated on the Landscape and Grading Plans. Protective barriers must be shown on the Landscape and Grading Plans in accordance with the requirements of Section 370 [c]. If a preserved tree dies after completion of the project, it must be replaced with the total number of trees which were credited to the existing tree.

- [3] Every development shall retain all existing healthy Historic trees with drip lines outside the building footprint except new subdivisions. New subdivisions shall refer to Section 365 [b] [1]. A developer will be required to modify his/her design in order to preserve healthy Historic trees, provided the redesign can be accommodated without reducing the intensity of development on the site.
- [4] It shall be the responsibility of all applicants that submit site plans for new construction to submit a tree survey of the site proposed for development except for new subdivisions. New subdivisions shall submit a tree survey in accordance with Section 365 [b]. The tree survey shall be drawn to engineers scale and accurately designate the species, location and diameter of all trees eight (8) inches in diameter or greater on the site, and all trees proposed for credit as provided in Section 365 [b].
- [5] If a property owner contends a tree is or is not healthy and the Administrator is in disagreement with such claim, the property owner shall submit an evaluation of the tree's health, performed by an individual who meets the requirements established in Section 370 [b] [2]. If such evaluation determines the tree is not in good health or will not remain healthy under new conditions proposed for the site, the Administrator shall permit the removal of the tree(s).
- [6] Every development shall retain all existing healthy Significant trees with drip lines outside the building and paving area footprint to the greatest extent possible. A developer may be required to modify his/her design in order to preserve healthy Significant trees, provided the redesign can be accommodated without reducing the intensity of development on the site.
- [7] The permit issuing authority may approve reductions in the requirements for the number of parking spaces or loading area requirements in order to facilitate preservation of Historic and Significant trees.
- [8] The standard measurement for existing trees to be preserved shall be the Diameter-at-breast-height (Dbh) measured in inches at a height of 4.5 feet above ground. If a tree splits into multiple trunks below 4.5 feet, then each trunk is measured as a separate tree. A tree which splits into multiple trunks above 4.5 feet is measured as a single tree at 4.5 feet.

**[c] Protection of Existing Vegetation**

- [1] No grading or other land disturbing activity can occur on a site with existing trees which are designated to be preserved in order to meet the landscaping requirements until protective barriers are installed by the developer and approved by the Administrator. Protection measures to be used during grading and construction shall be specified on all landscaping, grading and erosion control plans.
- [2] For purposes of this article, the Tree Protection Perimeter is defined as that area within a circle drawn with the tree's trunk as the center and a radius defined by the tree's drip line (which is the perimeter formed by the points farthest away from the trunk of a tree where precipitation falling from the branches of that tree lands on the ground). No storage of materials, dumping of waste materials, fill or parking of equipment shall be allowed within this protected area, either during construction or after completion. No structures shall be permitted within the protected area unless approved by the Administrator.
- [3] A protection fence constructed of a high visible material resistant to degradation by sun, wind and moisture for the duration of the construction, shall be used. A tree protection fence detail should be drawn on one plan submittal sheet and referenced on the landscaping, grading and erosion control sheets.
- [4] If a violation of Section 370 occurs and as a result protected trees or shrubs die after a certificate of occupancy is issued for the development, then the owner of the property and their agents, heirs, or assigns shall be required to replace the tree using the credits in Section 370 [b]. Such replacement must take place within thirty (30) days after death and this condition shall be a continuing condition of the validity of the permit.
- [5] Where tree preservation areas are damaged during the development of the site and trees or shrubs which are designated to be preserved are killed or removed, the permit recipient shall be penalized as follows:
  - a. A fine of one hundred (\$100.00) dollars per each inch in diameter of the damaged tree and fifty (\$50.00) dollars per each shrub, and
  - b. Replacement vegetation shall be provided in accordance with Section 370 [b].

For example, the penalty for damaging a six (6) inch caliper tree shall be \$600.00.



- 371. Reserved**
- 372. Reserved**
- 373. Reserved**
- 374. Reserved**
- 375. Reserved**
- 376. Reserved**
- 377. Reserved**



## Article XXI Amendments

### Section 378. Amendments in General

**[a]** Amendments to the text of this ordinance (hereafter, “the UDO”) or to the Town’s officially adopted zoning map shall be made in accordance with the provisions of this article.

**[b]** The term major map amendment shall refer to an amendment that addresses the zoning district classification of five or more tracts of land in separate ownership or any parcel of land (regardless of the number of lots or owners) in excess of fifty (50) acres. All other amendments to the zoning district map shall be referred to as a minor map amendment.

### Section 379. Initiation of Amendments

**[a]** Within the Municipal Government of the Town of Boone, including staff, officers, boards, commissions, task forces, advisory bodies, committees, and other such entities, only the Council may initiate an amendment to this ordinance (hereafter, “staff and other Town entities”). Staff and other Town entities, when they are charged or empowered with making recommendations to the Town Council regarding the text of the UDO, may make recommendations regarding potential desired changes to the UDO to the Council, but the preparation of the text of a proposed draft amendment shall only proceed after the Council has endorsed the policy objectives sought to be achieved with the recommendation and has acted to authorize preparation of a draft text amendment.

**[b]** Whenever a request to amend this ordinance is initiated or authorized by the Council, the Town Attorney in consultation with the Administrator shall determine whether the proposed amendment represents substantive planning policy or procedural matters, such as enforcement procedures, amendment procedures and appeal procedures.

- [1] If the Town Attorney determines the proposed amendment represents a substantive planning policy, the Administrator shall draft the text of the proposed amendment in consultation with the Town Attorney. Before an amendment drafted by the Administrator is presented to the Council for consideration, the Town Attorney shall endorse and date the draft amendment with the following statement: Approved as to Form this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_, Town Attorney.

- [2] If the Town Attorney determines the proposed amendment represents a procedural matter, the Town Attorney shall draft the text of the proposed amendment in consultation with the Administrator. Before an amendment drafted by the Town Attorney is presented to the Council for consideration, the Administrator shall endorse and date the draft amendment with the following statement: Approved as to Planning Policy this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, \_\_\_\_\_, Administrator.

**[c]** Any other person may petition the Council to amend this ordinance. The petition shall be filed with the administrator and shall include, among the information deemed relevant by the administrator:

- [1] The name, address, and phone number of the applicant,
- [2] A description of the land affected by the proposed amendment if a change in zoning district classification is proposed,
- [3] Stamped envelopes containing the names and addresses of all those to whom notice of the public hearing must be sent as provided for in Section 380, and
- [4] A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this ordinance.

**[d]** Upon receipt of a petition as provided in Subsection [c], the administrator shall either:

- [1] Treat the proposed amendment as one requested by the staff and other Town entities, and proceed in accordance with Subsection [a] if the Administrator believes that the proposed amendment has significant merit and would benefit the general public, or
- [2] Forward the petition to the Council with or without written comment for a determination of whether a draft amendment should be prepared in accordance with subsection [b].

**[e]** Upon receipt of a draft amendment, should the Council act to proceed with its consideration, it shall establish a date for a public hearing on it. The public hearing may be scheduled at a pre-arranged date, time and location, such as at a “quarterly public hearing,” or at such other date, time and location authorized by the Council which will allow proper notice to issue in advance of the hearing.

**[f]** No later than seven (7) days prior to the date set for the public hearing, the Administrator shall prepare an analysis of the proposed petition (hereafter, “the Section 379[f] report”) to assist the Planning Commission and Council in determining the conformity of the draft amendment with the Comprehensive Plan and any other officially adopted plans of the Town which relate to the proposed amendment.

### **Section 380. Hearing Required: Conduct of Hearing; Notice of Hearing**

**[a]** No action that amends or repeals any of the provisions of the UDO may be adopted until a public hearing has been held on such.

**[b]** The Council and Planning Commission shall meet in joint session to hold the public hearing, and a quorum of each body must be present. Public hearings on proposed ordinance amendments will be scheduled no less frequently than on a quarterly basis in February, May, August and November. A record of the public hearing will be prepared by staff and minutes of the hearing submitted to the Planning Commission and Council as soon as practical following the public hearing. Public hearings shall be conducted in accordance with rules for the hearing adopted by the Council. The Mayor or other presiding officer may, at a minimum, limit the length of time for each speaker, require the designation of a spokesperson for groups of persons supporting or opposing the proposed amendment for the same reasons, provide for the maintenance of order and order the removal from the hall of any person attempting to disrupt the hearing or to intimidate or belittle other speakers, and limit the number of persons in the hall at any one time, insofar as the number of persons wishing to attend the hearing exceeds the safe capacity of the hall.

**[c]** The Administrator shall publish a notice of the public hearing no less than once a week for two (2) successive weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10) days nor more than twenty five (25) days before the date fixed for the hearing. In computing this period, the date of publication shall not be counted but the date of the hearing shall be.

**[d]** With respect to map amendments, the Administrator shall mail written notice of the public hearing by first class mail to the owners, as shown on the listings of the Watauga County Tax Administrator, of all properties whose zoning classification will be changed by the proposed amendment and owners of properties for which any portion is within one hundred fifty (150) feet of the subject property. Each notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing. The person mailing such notices shall certify to the Council that fact, and such certificate shall be deemed conclusive in the absence of fraud. The certificate of mailing shall be included in the Administrator’s Section 379[f] report to the Council and Planning Commission. However, if the proposed zoning map

amendment directly affects more than fifty (50) properties owned by a total of at least fifty (50) different property owners, the Council may direct notification, instead of by the aforesaid individually mailed notices, by publication of the notice described in subsection [c], *supra*, alone, but the notice must be not less than one-half a newspaper page in size and must be supplemented by individual notices by first class mail to property owners who reside outside the newspaper circulation area, according to the addressees listed on the most recent property tax listing for each affected property.

**[e]** The Administrator shall also post notices of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right of way within at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Administrator shall post sufficient notices to provide reasonable notice to interested persons. In addition the Administrator shall take any other action deemed by the Council or Administrator to be useful or appropriate or desirable to give notice of the public hearing.

**[f]** Every notice required by this section shall:

- [1] State the date, time, and place of the public hearing,
- [2] Summarize the nature and character of the proposed change,
- [3] Reasonably identify the property whose zoning classification would be affected by the amendment if the proposed amendment involves a change in zoning district classification,
- [4] State that the full text of the proposed amendment can be obtained from the Town Clerk, and
- [5] State that substantial and insubstantial changes in the proposed amendment may be made following the public hearing.

### **Section 381. Protest to Zoning District Changes (used to be Section 384)**

**[a]** If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this section, then the proposed amendment may be adopted only by a favorable vote of three-fourths of the Council. For the purposes of this section, vacant positions on the Council and members who are excused from voting shall not be considered for calculation of the requisite supermajority.

**[b]** To trigger the three-fourths vote requirement, the petition must meet all of the following:

- [1] Be signed by the owners of either (I) twenty percent (20%) or more of the area included in the proposed change or (ii) five percent (5%) of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary the Town may rely on the county tax listing to determine the 'owners' of potentially qualifying areas. When there are multiple owners of a single parcel, all owners must sign the protest petition for the parcel to be included in the calculation of the amount of property represented by the protest petition.
- [2] Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.
- [3] Be received by the Town Clerk in sufficient time to allow the town at least two normal working days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.
- [4] Be on a form provided by the Town Clerk and contain all the information requested on this form.

**[c]** A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment.

**[d]** Only those protest petitions that meet the qualifying standards set forth at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.

**[e]** A protest petition shall not be applicable to any amendment which initially zones property added to the territorial coverage of the Town as a result of annexation or otherwise, or to an amendment to an adopted conditional district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the conditional district.

**[f]** If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this section, the

Administrator shall announce to the Planning Commission and Council receipt of such petition prior to accepting public comment at the public hearing.

### **Section 382. Planning Commission Consideration of Proposed Amendments**

**[a]** At its next meeting following the public hearing, scheduled in accordance with Section 22[a], *supra*, the Planning Commission shall review the proposed amendment and shall submit a written recommendation to the Council. The Planning Commission shall specifically advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan and any other officially adopted plans that are applicable and whether the Planning Commission recommends adoption of the proposed amendment. In its report to the Council, the Planning Commission may comment, as it deems appropriate, on any other matter related to the proposed amendment.

**[b]** Additional testimony not presented at the public hearing may be considered by the Planning Commission upon favorable vote of the majority of its members present.

**[c]** No member of the Planning Commission shall participate in the discussion or vote on any recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

### **Section 383. Council Action on Amendments**

**[a]** At any meeting following the receipt of the recommendation from the Planning Commission or after thirty (30) days following referral of the proposed amendment to the Planning Commission if the Planning Commission fails to make a recommendation, the Council may proceed with its consideration of the proposed amendment. The Council must take action, however, no later than sixty (60) days after the Planning Commission adopts a recommendation. A comment by the Planning Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Council, and the Council is not bound by any other recommendation of the Planning Commission, including a recommendation that the proposed amendment be rejected.

**[b]** Additional testimony not presented at the public hearing may be considered by the Council upon favorable vote of the majority of its members present.

**[c]** Prior to adopting or rejecting any zoning amendment, the Council shall adopt a statement describing whether its action is consistent with the comprehensive plan and other officially adopted plan that is applicable and explaining why the Council considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.



**[d]** A Council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

#### **Section 384. Ultimate Issue Before Council on Amendments**

**[a]** In deciding whether to adopt a proposed amendment to this ordinance, the central issue before the Council is whether the proposed amendment advances the public health, safety, or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the mayor and be excluded. In particular, when considering proposed minor map amendments:

- [1] The Council shall not consider any representations made by the petitioner that if the change is granted the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. Rather, the Council shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.
- [2] The Council shall not regard as controlling any advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

#### **Section 385. Action Subsequent to Council Decision**

**[a]** The Administrator shall notify the petitioner of the disposition of the amendment petition and file a copy of the decision in the office of the Planning and Inspections Department. All amendments pertaining to watershed protection must be filed with the North Carolina Division of Environmental Management, North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.

**[b]** In the case of approval of an amendment, all necessary changes to the zoning ordinance or zoning map shall be entered within five (5) working days of the effective date of the amendment. The Administrator shall authenticate the entry of each amendment and shall maintain a record of the nature and date of the amendment.

#### **Section 386. Special Provisions for Conditional Districts**

**[a]** Property may be placed in a conditional district (bearing the designation CD) only in response to a petition by the owners of all property to be included. No State owned property may be placed in a conditional district without approval by the Council of State.

**[b]** Any proposal for a conditional district zoning approval must be accompanied by a site specific development plan and supporting documentation that specifies the actual use or uses intended for the property and any rules, regulations and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property. Refer to Appendix A for additional information.

**[c]** Conditional zoning district decisions are a legislative process subject to judicial review using the same procedures and standard of review established for general district zoning decisions. Requests for conditional zoning district approvals shall be processed and considered in the same procedure as set forth in Section 380, *et seq.*, for zoning amendments and the voting shall be the same as required in zoning matters. Conditional zoning district decisions shall be made in consideration of relevant adopted land use plans such as the Comprehensive Plan, Thoroughfare Plan, Alternative Transportation Plan and similar adopted land use policy.

**[d]** Specific conditions applicable to this district may be proposed by the petitioner or the town or its agencies, but only those conditions mutually approved by the town and the petitioner may be incorporated into the zoning regulations or permit requirements. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to town ordinances and the comprehensive plan or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a conditional district.

**[e]** Changes to an approved petition or to conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the zoning map and shall be processed as a new application. Except for a proposed minor modification to a previously approved conditional zoning district, no proposal to amend or change any conditional zoning district may be accepted nor considered within twelve (12) months of the date of the original approval of the conditional zoning district or within twelve (12) months of a hearing upon any previous proposal to amend or change the conditional zoning district. A minor modification is one which does not significantly change the essential character of the use or activity that has been previously authorized through the conditional district zoning approval. The Administrator shall determine whether a proposed modification to a previously approved conditional district zone is a minor modification, and the Administrator's decision on this issue may be appealed by an aggrieved party to the Board of Adjustment, in conformity with the provision of Section 106.

**[f]** If a petition for conditional zoning is approved, a copy of the approval and all conditions relative to the approval, including site specific development plan(s), shall be kept on file in the Planning and Inspections Department office. A copy of the approval will also be recorded in the office of the Watauga County Register of Deeds.

**[g]** Should, by the end of the applicable vesting period, the property fail to develop in accordance with the terms and conditions of the conditional district approval, no subsequent use of the property shall be permitted without a new petition for zoning amendment being filed.

**[h]** Should a petition for a conditional zoning district be denied, then no new petition for making similar use the same property shall be considered within (12) months of the date of the original denial.

**Section 387. Previously Approved Conditional Use Zoning Districts**

**[a]** Applications for amendments to the use of property currently subject to the terms and conditions of a previously approved conditional use zoning district will be processed as new conditional zoning district applications.

**Section 388. Reserved**

**Section 389. Reserved**



## Article XXII Commercial Development Appearance Standards

### Section 390. The Purpose and Intent

**[a]** The purpose and intent of this article is to regulate aesthetic features on commercial building sites to: improve community appearance by requiring developments to use designated exterior color palettes, provide finish materials that enhance the visual interest and regional character of a building, address the human scale through the use of architectural features and detailing, and provide well designed exterior lighting.

### Section 391. Applicability

**[a]** This article is applicable to the publicly visible portions of building elements, as defined herein, in new commercial (non-residential), multi-family (more than three dwelling units), institutional, and industrial uses. Each element of a building shall be evaluated independently for public visibility.

**[b]** If building elements are not publicly visible at the time of construction due to existing site features (earth berms, heavily wooded areas, existing buildings to remain), then these existing site features must remain indefinitely. If they are altered at any time to allow greater visibility, then the element made visible must comply with the standard.

**[c]** This article is not intended to supercede more stringent requirements which may exist within the North Carolina Building Code.

### Section 392. Definitions

**[a]** Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this article.

- [1] Element of a building – an exterior wall, roof, or site wall which is manmade and constructed.
- [2] Public visibility – An element of a building shall be deemed publicly visible when any of the following conditions are met:
  - a. At least 70 percent of the element occurs above adjacent grade and is visible from any street adjacent to the property;  
or
  - b. At least 70 percent of the element is, upon staff review, deemed visible from an adjacent residentially zoned property;  
or

- c. At least 70 percent of the element is taller than the vegetative buffer at the time of planting.
- [3] Exterior walls - the vertical or nearly-vertical planes which form the exterior envelope of a building.
  - [4] Site walls – retaining walls, screen walls or other vertical or nearly-vertical planes which occur on a property, but are not part of the exterior envelope of a building.
  - [5] Roof area – a single, unbroken, contiguous plane, measured perpendicular to slope.
  - [6] Flat Roof – The external covering of a building having a 2(v):12(h) slope or less.
  - [7] Pitched Roof – The external covering of a building having a slope greater than 2(v):12(h).
  - [8] Field color – a single paint color which is used most extensively in a building’s visible façade.
  - [9] Trim color – a single paint color which is used on a building’s trim, lesser in proportion to the Field Color.
  - [10] Accent color – a single paint color which is used on a building, in the least proportion of all colors used, not to exceed 5% of the façade area.
  - [11] Full cutoff fixture – a light fixture designed so that no light is projected at or above a 90-degree plane running through the lowest point on the fixture where the light is emitted and less than ten percent (10%) of the rated lumens are projected between 90-degrees and 80-degrees.
  - [12] Façade – the face of a building.
  - [13] Volume – a portion of a building which is offset by a minimum of ten feet (10’) in plan or in elevation.
  - [14] IESNA – The Illuminating Engineering Society of North America
  - [15] Primary Public Way – The street that adjoins the property that carries the highest volume of traffic in accordance with Section 231

### **Section 393. Building Design**

#### **[a] Pedestrian-Orientation**

The intent of this section is to provide a design of buildings that support a safe and attractive pedestrian environment.

- [1] Primary façade and main building entry shall face the primary public way. If site constraints are present, the applicant’s intent to use a “stock plan” is not a basis for appeal. The Community Appearance Commission may approve a redesign in which the main primary entrance does not face the primary public way provided the following;

- [a] The main building entrance, when not facing the primary public way, shall provide a safe and convenient access for pedestrians from the main building entrance to the primary public way. The pedestrian way must provide additional landscape amenities.
- [b] Entrances which are oriented on a diagonal are permitted, provided that they are integrated with the overall architectural design, and not merely angled appendages or alcoves.
- [c] Ground floor windows or window displays shall be provided along at least [10] percent of the building's (ground floor) street-facing elevation(s); windows and display boxes shall be integral to the building design and not mounted to an exterior wall. Parapets above the first floor are excluded from the calculations when the building is over eighty feet (80') in length.

**[b] Exterior Walls**

The intent of this section is to require running lengths of walls to be interrupted by architectural features which lend a more human scale to the overall massing.

- [1] Features include:
  - [a] Offsets of the building wall or other elements in plan of four (4) feet;
  - [b] A colonnade with columns or other vertical elements of sixteen feet (16') or less on center;
  - [c] A change in building material, with a maximum of two uses of this option being counted toward the schedules below;
  - [d] Awnings or canopies;
  - [e] Covered entries or porticos;
  - [f] Windows with a minimum width of 2'8" and a minimum height of 3'4";
  - [g] Trellises;
  - [h] Pilasters, which must be a different material or contrasting color than their background;
  - [i] A combination of the above; and
  - [j] Any other type of feature not listed here which is deemed by staff to meet the intent of this ordinance.
- [2] Plumbing, mechanical, electrical service components and gutter downspouts are not considered features and may require screening. Such screening is not considered an architectural feature.

[3] Required features must be distributed throughout the building façade and not clustered.

[4] Features shall be provided in accordance with the following feature schedules:

**TABLE A**  
**FEATURE SCHEDULE – PLAN**

Linear Dimensions, in Plan	Minimum # of Feature Types	Minimum # of Total Features
10' to less than 40'	2	4
40' to less than 80'	3	8
80' to less than 120'	4	12
120'+	5	16

**TABLE B**  
**FEATURE SCHEDULE – ELEVATION**

Linear Dimensions, in Elevation	Number of Features Required
10' to less than 16'	2
16' to less than 32'	3
32' to less than 48'	4
48'+	5

[5] Features which serve to interrupt the building façade in both plan and elevation shall be credited as such using the above charts. Windows are considered plan and elevation features. See examples in Figure 3 on page 22-14 and Figure 4 on page 22-15.

**[c] Roofs**

The purpose of this section is to regulate both pitched and flat roof types. The intent is to interrupt expanses of pitched roofs and minimize or prevent the visibility of flat roofs.

[1] Walls shall not appear to terminate at flat roofs. Flat roofs shall be concealed from view by using pitched roof features, parapets, or a mixture thereof. Where only one elevation has this condition, the parapet or other feature will continue four feet (4') along the adjacent elevation. See Figure 5 on page 22-16.

[2] Buildings over two stories above grade may utilize a flat roof, provided the flat portion is not publicly visible. Compliance may not be possible if the adjacent road grade is substantially above the roof in question.

[3] Minimum roof slope for pitched roofs is 4'(v):12'(h).



[4] Publicly visible plumbing vent stacks shall be colored to match the roofing material.

[5] Where a parapet intersects with a pitched roof element, there shall be no apparent breaks in the parapet wall. See Figure 6 on page 22-17.

[6] Awnings or canopies which are illuminated from within must be covered or finished with fully opaque material.

[7] Publicly visible pitched roofs shall be articulated by features in accordance with the following schedule. Features shall be in proportion to the roof area where they appear. Features include:

- [a] Dormers;
- [b] Eyebrows;
- [c] Intermittent gables or hips;
- [d] Vertical offset in ridge line;
- [e] Horizontal offset in ridge line;
- [f] A combination of the above; and
- [g] Any other type of feature not listed here which is deemed by staff to meet the intent of this ordinance.

**TABLE C**  
**FEATURE SCHEDULE – ROOF AREAS**

Roof Area	Number of Features Required
Less than 1200 s.f.	0
1200 s.f. to less than 1600 s.f.	1
1600 s.f. to less than 2400 s.f.	2
2400 s.f. +	3

[8] No part of this ordinance shall be construed to prevent solar panels or any other type of renewable energy collection or storage method, provided the development follows the massing guidelines established herein.

**[d] Materials**

The purpose of this section is to establish standards for finish materials used on publicly visible exterior walls. For any publicly visible elevation, a minimum of 25% of the building finish material must be stone or concrete-simulated stone, wood or simulated wood in concrete board (such as “Hardi” products), or brick or concrete-simulated brick.

[1] Mirrorized glass is prohibited from use. Reflective tinted glass is acceptable up to 30 percent tint. Anything above 30 percent tint is subject to review by the Community Appearance Commission.

- [2] Architectural concrete masonry such as split face, or ground-face block is acceptable.
- [3] Stucco and synthetic stone are acceptable finish materials.
- [4] Architectural concrete (containing a pattern or finish) as a finish material is acceptable. Gray, unfinished concrete is prohibited as a finish material. Concrete architectural detail elements intended to be a decorative enhancement for exterior walls and site walls are acceptable
- [5] Other materials subject to staff review and approval include vinyl siding (which should simulate wood grain) and other manufactured materials. Vinyl siding shall be anchored to the exterior envelope sufficiently to avoid the appearance of deformation or bowing across the façade.
- [6] For publicly visible roof surfaces, allowed materials include standing seam metal, asphalt shingles, shakes, tile, or manufactured shingles which give an appearance of shingles, shakes, or other simulated natural material. Sheet materials other than those listed in this section are subject to staff review for use on publicly visible roofs.
- [7] Any materials which comprise less than 10 percent of a publicly visible exterior building wall and are components of windows or trim systems are allowed (example: aluminum storefront, metal corner trim, etc.).
- [8] FRP, PVC, and other composites formed into architectural detail elements such as columns, cornices, etc., are approved for use as long as such material is intended to be a decorative enhancement for the façade.

**[e] Colors**

The purpose of this section is to prevent inordinately bright façades and primary color ranges. All new construction elements are subject to color requirements, except pavement markings and signage.

- [1] Acceptable colors for site walls, site lighting, and any other outside construction elements (excluding signage) include that equivalent to Sherwin-Williams series “Essential” and “Fundamentally Neutral” in the *Town of Boone Color Reference Guide*.
- [2] Acceptable field colors and trim colors are those equivalent to Sherwin Williams series “Essential” and “Fundamentally Neutral” in the *Town of Boone Color Reference Guide*.
- [a] The “LRV” Light Reflection Value of field colors must be

below 60. Any colors above “60 LRV” are subject to review by the Community Appearance Commission.

[b] Black is prohibited as a field color in the series “Essential”.

[3] Acceptable accent colors are those equivalent to Sherwin-Williams series “Essential”, “Fundamentally Neutral”, and “Color Options” in the *Town of Boone Color Reference Guide*.

#### **Section 394. Parking Garages**

[a] The purpose of this section is to regulate aesthetic features on parking structures to prevent a utilitarian appearance, and to provide a safe, secure environment for patrons, employees and vehicles.

[b] Publicly visible facades must comply with provisions of this article pertaining to exterior walls, materials, and colors.

[c] All above-ground parking floors and decks shall be designed using a continuous façade incorporating window-like openings. The sill of any window-like opening must be a minimum of 42” above the finished floor

[d] Exterior vehicle ramps are subject to review by the Community Appearance Commission to minimize the appearance of tilted ramps.

[e] Elevator and stair shafts shall be topped with gabled roofs or other architectural features and be oriented so that lobbies are visible from the street at each level.

[f] Lighting shall be uniform throughout the structure so that dark hiding places are not created. Lighting levels must conform to IESNA standards.

[g] In the B-1 Central Business District, the façade must be in harmony with the historic look of the area. Facades that are 75% native rock or red brick are presumptively consistent with the historic look of the B-1 Central Business District. Any other combination of materials must be approved by the Community Appearance Commission.

#### **Section 395. Site Walls**

[a] The purpose of this section is to limit dimensions of site walls. The intent is to prevent walls which appear to dwarf the human scale and to encourage equalizing cut/fill or majority cut slope methods of grading.

- [b]** No retaining wall may be more than eight feet (8') in height. This height does not include decorative caps that are less than eight inches (8") in height. Screen walls shall not be taller than necessary to conceal the item screened (such as a dumpster, HVAC equipment, etc.)
- [c]** Buildings located near the top of site retaining walls shall be a minimum of four feet (4') horizontally from the top of the retaining wall.
- [d]** Retaining walls, any portion of which are within six feet (6') of a sidewalk or pedestrian way, shall not exceed four feet (4') in height. Subsequent walls must be offset a minimum of four feet (4') in plan. See Figure 1 on page 22-12.
- [e]** A series of two (2) retaining walls must have a minimum of four feet (4') horizontally from the back of the top of the lower wall face to the toe of the upper wall face in plan. See Figure 1 on page 22-12. For three (3) or more walls in series, see item [g] below.
- [f]** The space between retaining walls in series shall be landscaped with appropriate grasses, vines or other ground cover in accordance with provisions of Appendix B and may contain shrubs and trees not to exceed thirty-five feet (35') in height at maturity. This area shall be maintained in accordance with the provisions of Section 369.
- [g]** Retaining walls in series which collectively exceed sixteen feet (16') in height shall have a minimum of one (1), ten foot (10') wide Type "A" buffer (see Section 362), between two of the walls. Retaining walls which are separated by a building, a road, or a parking area shall be exempt from this requirement. See Figure 2 on page 22-13.
- [h]** Publicly visible site wall material and color shall be architecturally compatible with the principle building(s) on site.

### **Section 396. Lighting**

- [a]** The purpose of this section is to regulate the intensity of exterior lighting. The intent is to prevent light from commercial developments from excessively illuminating the property in question, other properties, or the night sky.
- [b]** Only light fixtures which are categorized as full cut-off (FCO) fixtures shall be permitted, except sportsfield fixtures which must comply with Section 393[d].
- [c]** The following are specific standards for lighting intensity based upon the land use involved. Values are presented in allowable foot-candles (fc) maintained (measured horizontally) at grade and are to be averaged throughout the site to avoid hot spots, i.e. areas of extreme light intensity relative to the remainder of the site:

<b>Land Use</b>	<b>Minimum</b>	<b>Maximum</b>	<b>Min./Max. Uniformity Ratio</b>
Pedestrian areas/sidewalks	.2 fc	1.0 fc	
Building entries	1.0 fc	10.0 fc	
Street lighting	.2 fc	1.0 fc	
Open Parking areas	.2 fc to .9 fc	3.6 fc	4:1
Playgrounds		5.0 fc	
Site perimeter		.5 fc	

**[d]** Lighting for sports fields and outdoor courts is generally in excess of general outdoor lighting levels. Recreation lighting levels established by the IESNA are to be used as the standard. Higher lighting levels for tournament or high league play are sometimes required and must be approved by the Community Appearance Commission. All sportsfields or tennis courts must meet the following minimum standards.

- [1] Fixtures must be fitted with the manufacturer’s glare control package. If the manufacturer does not have a glare control package, the fixture specification must be changed to a manufacturer that offers a glare control package.
- [2] Lighting shall be extinguished no later than one hour after the event ends.
- [3] Fixtures must be designed with a sharp cutoff and aimed so that their beams fall within the primary playing area and the immediate surroundings, so that off-site direct illumination is significantly restricted.

**[e]** Gas station canopies shall be illuminated at a maximum illuminance of 30 fc and individual fixtures shall be flush mounted or have the canopy edge below the lowest light-emitting point on the fixtures. All existing gas station canopies which exceed this standard shall be made compliant within seven (7) years of the date of adoption of this article.

**[f]** Up-lighting may be used to illuminate a building, landscaping element or architectural feature, provided the lighting design has a maximum illuminance of 12fc, measured in a vertical plane. Down lighting is preferred.

**[g]** Parking decks and covered parking areas must conform to IESNA standards.

**Section 397. Flexibility in Administration**

**[a]** Flexibility in administration is required for this article. When strict application of the standards within this article undermines other provisions of the UDO, then those other provisions take precedence. For example, the

retaining wall height limitation may be increased to afford an opportunity to preserve significant or historic tree(s).

### **Section 398. Submission Requirements**

**[a]** Development site plans shall graphically illustrate, in both a site plan view and elevation view, those elements which are not publicly visible. Otherwise, each element of the project will be assumed by staff to be publicly visible.

**[b]** Elevation drawings of each side of the building shall be provided. The elevations shall have materials and colors rendered in such a way that each is distinct.

**[c]** Elevation drawings shall be accompanied by the following information for each portion of the building, corresponding to the design requirements set forth in Article XXII.

- [1] Largest distance in plan between required features, and the elevation(s) on which this occurs.
- [2] Largest distance in elevation between required features, and the elevation(s) on which this occurs.
- [3] Number of features required and number present in each elevation.
- [4] Name of each type of feature in elevation.

**[d]** Material samples shall be provided for all synthetic materials not specifically approved by Section 393.

**[e]** A lighting plan shall be submitted for staff review and approval prior to issuance of building permits. The plan shall contain the following information:

- [1] An area lighting plan, drawn to scale, indicating all structures, parking lots, building entrances, vehicular and pedestrian traffic areas, vegetation that may interfere with lighting, and adjacent land uses that may be adversely impacted by the lighting. The plan shall contain a layout of all proposed fixtures by location, orientation, aiming direction, mounting height and type.
- [2] The submission shall include, in addition to proposed area lighting, all other exterior lighting, e.g., architectural, building entrance, landscape, flagpole, sign, etc.
- [3] A 10' x 10' illuminance grid (point-by-point) of maintained footcandles overlaid on the site plan plotted out to 0.0 footcandles, which demonstrates compliance with light intensity standards specified in Section 396.

**Section 399. Community Appearance Commission Review**

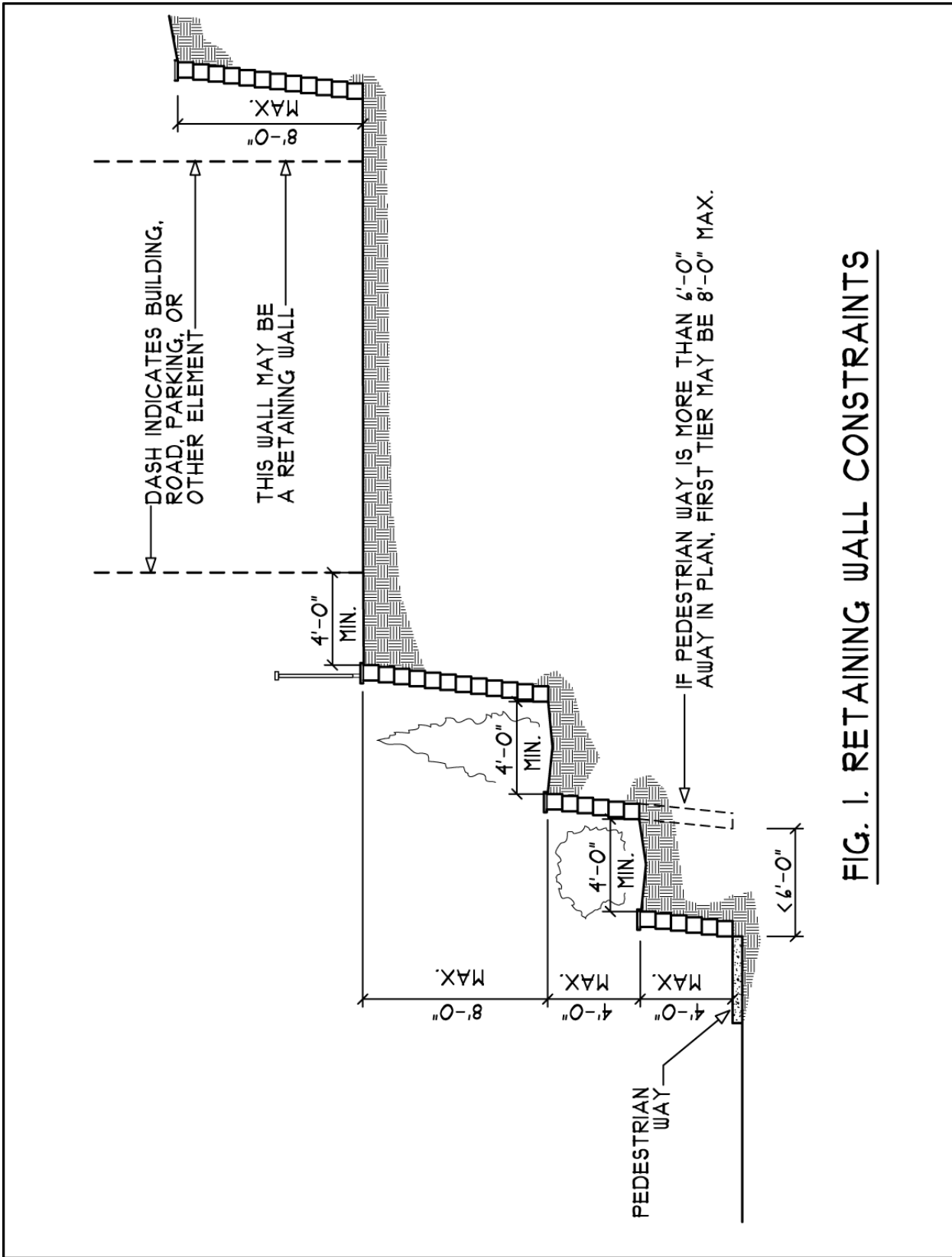
**[a]** Alternatives to the appearance standards provided herein may be permitted upon review and approval of the Community Appearance Commission. Applications containing alternatives shall be forwarded to the commission for review at their next regularly scheduled meeting.

**[b]** The Commission may approve such alternatives if it finds the alternatives involved meet the purpose and intent of the provisions contained within this article.

**[c]** Unless otherwise specified, the Commission’s review and approval of any deviation from the standards contained herein is required prior to permit approval.

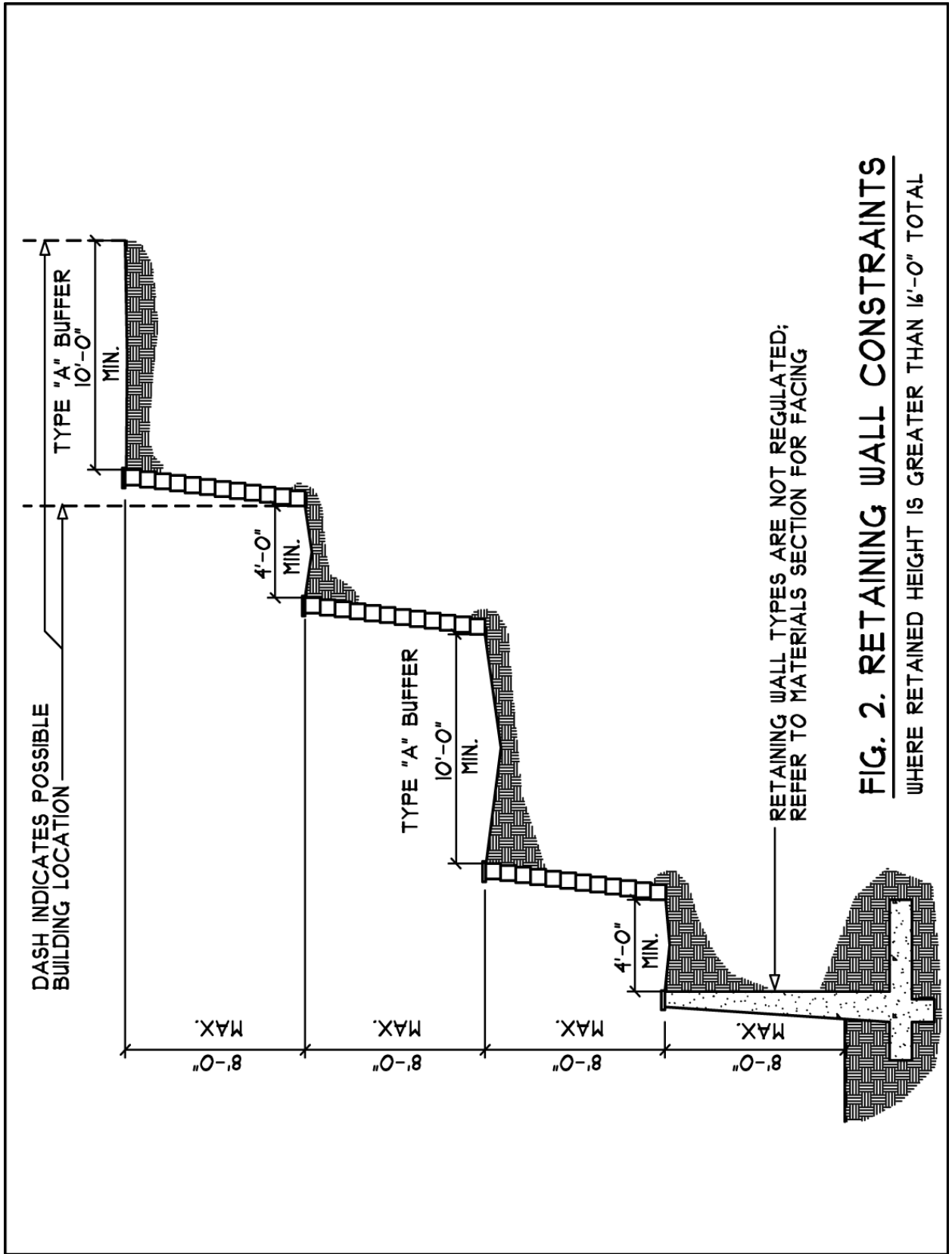
**Section 400. Reserved**

**Section 401. Reserved**



**FIG. 1. RETAINING WALL CONSTRAINTS**





**FIG. 2. RETAINING WALL CONSTRAINTS**

WHERE RETAINED HEIGHT IS GREATER THAN 16'-0" TOTAL

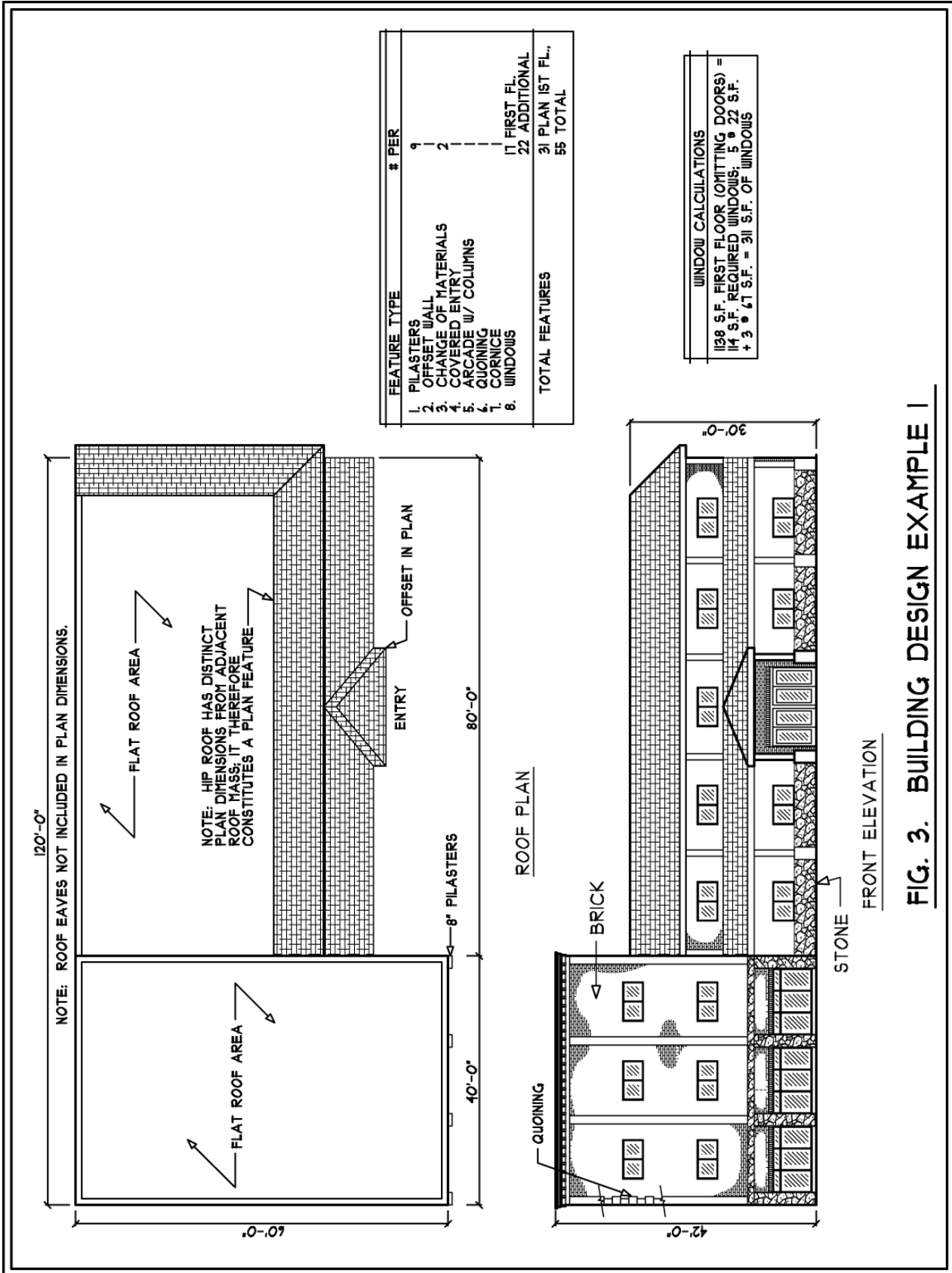


FIG. 3. BUILDING DESIGN EXAMPLE I

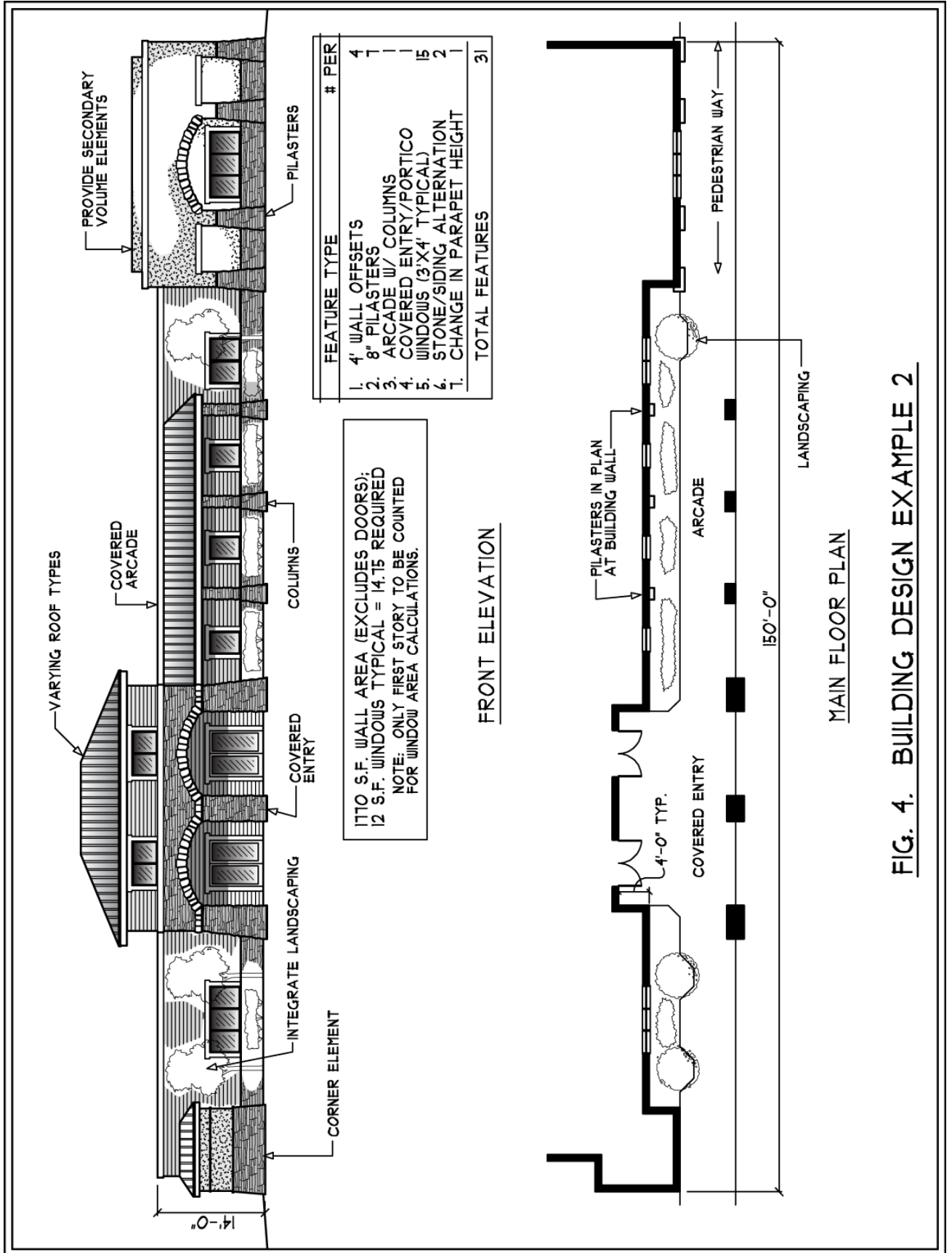
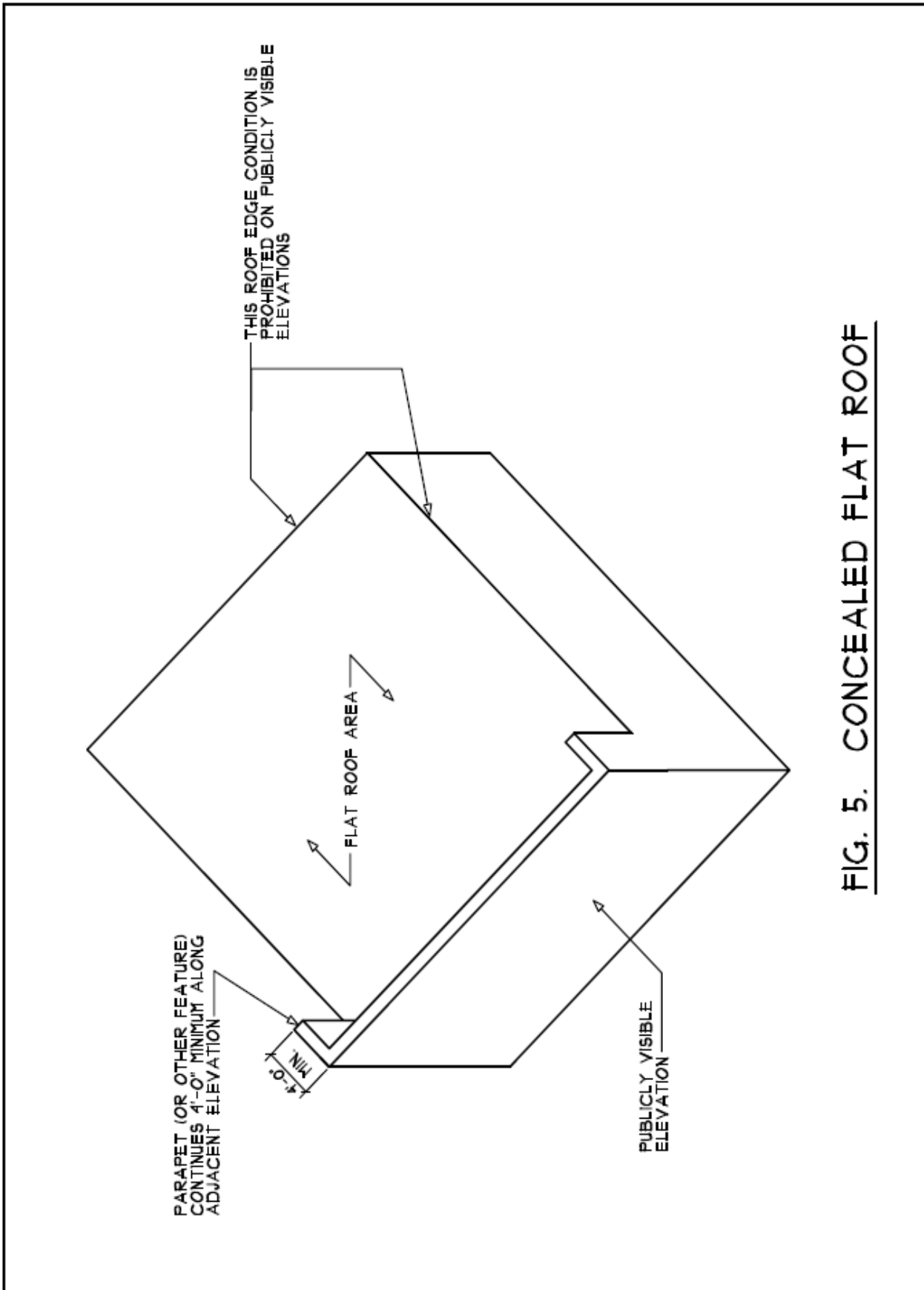


FIG. 4. BUILDING DESIGN EXAMPLE 2



**FIG. 5. CONCEALED FLAT ROOF**

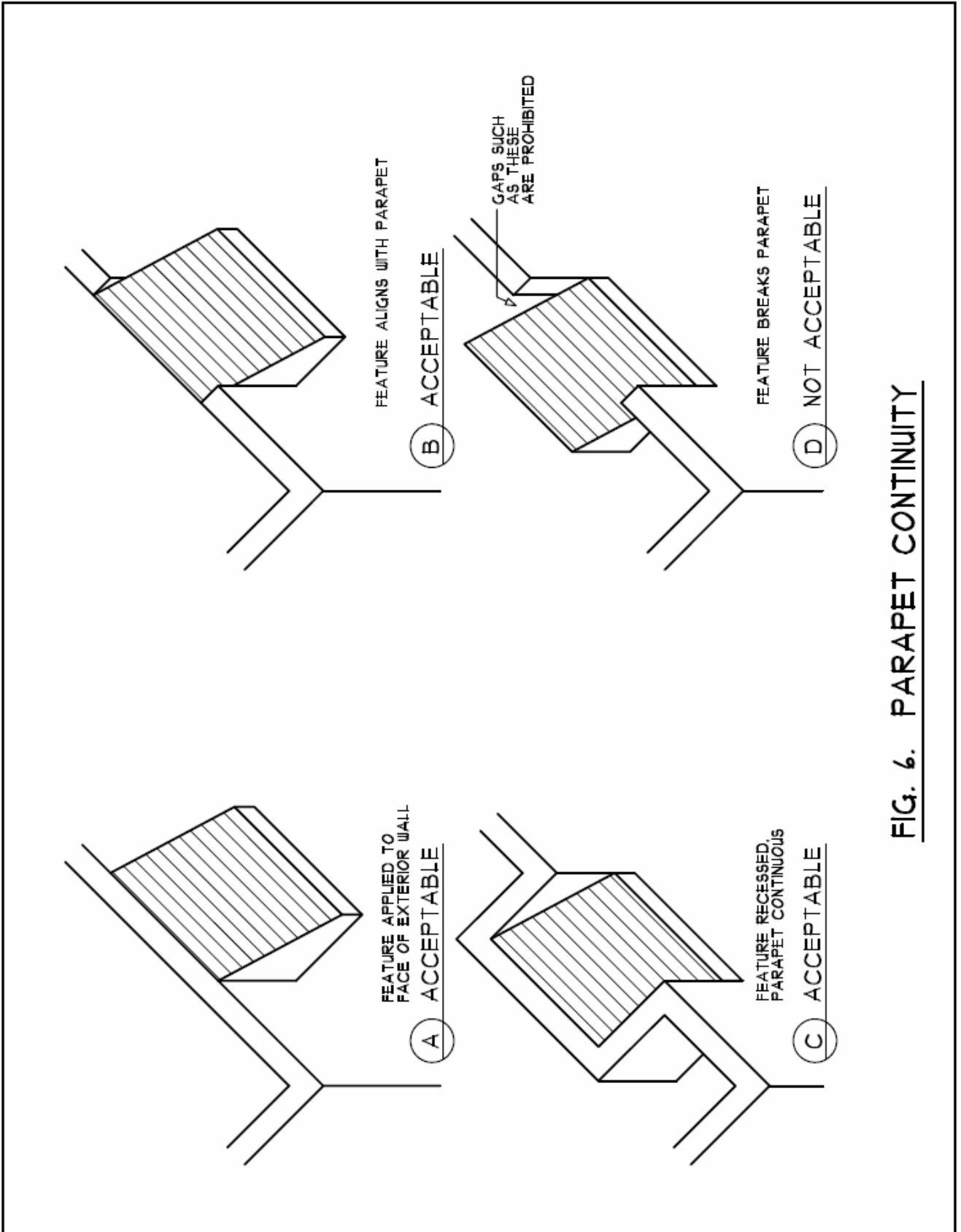


FIG. 6. PARAPET CONTINUITY



## Article XXIII Historic Preservation

### Section 402. Historic Districts.

#### [a] Designation of Historic Districts.

[1] Upon recommendation by the Historic Preservation Commission or on its own initiative the Town Council may designate Historic Districts as overlay districts in the Town's planning jurisdiction. However, no historic district shall be designated until:

[A] An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared, and

[B] The North Carolina Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the Town within thirty calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the Town of any responsibility for awaiting such analysis, and the Town Council may at any time thereafter take any necessary action to amend the zoning map.

#### [b] Modification of Historic District Boundaries and Creation of Additional Districts.

[1] After its initial designation of Historic Districts, should the Town Council wish to make changes in the boundaries of any such district subsequent to its initial establishment, or create additional districts within the jurisdiction, the investigative studies and reports required by subsection [a] of this section shall be prepared by the Historic Preservation Commission, and shall be referred to the Planning Commission for its review and comment. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the North Carolina Department of Cultural Resources in accordance with the provisions of subsection [a].

- [2] On receipt of these reports and recommendations, the Town Council may proceed to amend the Town's zoning map in accordance with Article XXI of this Ordinance.

### **Section 403. Landmarks.**

#### **[a] Designation of landmarks.**

- [1] The Town Council may adopt, amend or repeal ordinances designating one or more historic landmarks. No property shall be recommended for designation as a historic landmark unless it is deemed and found by the Preservation Commission to be of special significance in terms of its historical, prehistorical, architectural, or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.
- [2] Each property designated as a landmark shall be identified in the ordinance, along with the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistorical value, including the land area of the property so designated, and any other information the governing board deems necessary. For each building, structure, site, area, or object so designated as a historic landmark, the ordinance shall require that the waiting period set forth in this Article be observed prior to its demolition. For each designated landmark, the Town Council may also provide for a suitable sign on the property indicating that the property has been so designated, and if the owner consents, the sign shall be placed upon the property. Otherwise, the sign shall be placed on a nearby public right-of-way.

### **Section 404. Certificate of Appropriateness Required.**

**[a]** From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on such landmark or within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the Historic Preservation Commission. Such a certificate must also be issued by the Historic Preservation Commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving, or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this Article. A certificate of appropriateness shall be required whether or not a building or other permit is required.



**[b]** For purposes of this Section, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size, and location of all such signs. Such "exterior features" shall include historic signs, color, and significant landscape, archaeological, and natural features of the area.

**[c]** Except as provided in [d] below, the Historic Preservation Commission shall have no jurisdiction over interior arrangement and shall take no action under this section except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district which would be incongruous with the special character of the landmark or district.

**[d]** Notwithstanding subsection (a) of this section, jurisdiction of the Historic Preservation Commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the Watauga County Register of Deeds and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the Commission's jurisdiction over the interior.

**[e]** Prior to any action to enforce this Article, the Historic Preservation Commission shall (i) prepare and adopt rules of procedure, and (ii) prepare and adopt principles and guidelines not inconsistent with this Article for new construction, alterations, additions, moving and demolition within Historic Districts and relating to Landmarks. The Historic Preservation Commission may delegate to the Administrator, subject to detailed standards, review and approval of certain applications for a certificate of appropriateness. However, no application for a certificate of appropriateness may be denied without formal action by the Historic Preservation Commission taken in accordance with its duly adopted rules of procedure.

**[f]** Prior to issuance or denial of a certificate of appropriateness the Historic Preservation Commission shall take such steps as may be reasonably required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the Commission deems it necessary, it may hold a public hearing concerning the application.

**[g]** All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the application for a certificate of appropriateness is filed, as defined by the Commission's rules of procedure. As part of its review procedure, the Commission may view the premises and seek the advice of the North Carolina Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

**[h]** An appeal may be taken to the Board of Adjustment from the Commission's action in granting or denying any certificate, which appeals (i) may be taken by any aggrieved party, (ii) shall be taken within times prescribed by the Historic Preservation Commission by general rule, and (iii) shall be in the nature of certiorari. Any appeal from the Board of Adjustment's decision in any such case shall be heard by the Watauga County Superior Court in accordance with Section 49 of this Ordinance.

**[i]** This Article shall apply to construction, alteration, moving and demolition by the State of North Carolina, its political subdivisions, agencies and instrumentalities, excluding the interiors of buildings or structures owned by the State of North Carolina. The State and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under North Carolina Gen. Stat. § 121-12(a) from any decision of the Historic Preservation Commission. The decision of the North Carolina Historical Commission shall be final and binding upon both the State and the Town of Boone Historic Preservation Commission.

#### **Section 405. Remedies.**

**[a]** In case any building, structure, site, area or object designated as a historic landmark or located within a historic district designated pursuant to this Article is about to be demolished whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed or destroyed, except in compliance with the ordinance, the Town Council or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area or object.

#### **Section 406. Certain Changes Not Prohibited.**

**[a]** Nothing in this Article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a landmark which does not involve a change in design, material or appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, moving or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because

of an unsafe or dangerous condition. Nothing in this Article shall be construed to prevent a property owner from making any use of his property that is not prohibited by other law. Nothing in this Article shall be construed to prevent a) the maintenance, or b) in the event of an emergency the immediate restoration, of any existing above-ground utility structure without approval by the Historic Preservation Commission.

**Section 407. Delay in Demolition of Landmarks and Buildings Within Historic District.**

**[a]** An application for a certificate of appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within the district may not be denied except as provided in subsection (c). However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. This period of delay authorized by this section shall be reduced by the Historic Preservation Commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the Historic Preservation Commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the Historic Preservation Commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition, or removal.

**[b]** If the Historic Preservation Commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not yet been made by the Town Council, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the Historic Preservation Commission for a period of up to 180 days or until the Town Council takes final action on the designation, whichever occurs first.

**[c]** An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the Historic Preservation Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.



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## **Appendix A Information Required with Applications**

### **A 1 In General**

**[a]** It is presumed that all of the information listed in this appendix must be submitted with an application for a zoning permit, sign permit or special use permit to enable the permit issuing authority to determine whether the development, if completed as proposed, will comply with all the requirements of the ordinance. As set forth in Article V, applications for variances are subject to the same provisions. However, the permit issuing authority may require more information or accept as sufficient less information according to the circumstances of the particular case. A developer who believes information required by this appendix is unnecessary shall contact staff for an interpretation

**[b]** The administrator shall develop application processes, including standard forms, to simplify and expedite applications for simple developments that do not require the full range of information called for in this appendix. In particular, developers seeking only permission to construct single family and two family residences or to construct new or modify existing signs should contact the administrator for standard forms.

### **A 2 Written Application**

**[a]** Every applicant for a variance, sign, or special use permit shall complete a written application containing at least the following information:

- [1] The name, address, and phone number of the applicant.
- [2] If the applicant is not the owner of the property in question, (i) the name, address, and phone number of the owner, and (ii) the legal relationship of the applicant to the owner that entitles the applicant to make application.
- [3] The date of the application.
- [4] Identification of the particular permit sought.
- [5] A succinct statement of the nature of the development proposed under the permit or the nature of the variance.

- [6] Identification of the property in question by street address and tax map reference.
- [7] The zoning district within which the property lies.
- [8] The number of square feet in the lot where the development is to take place.
- [9] The gross floor area of all existing or proposed buildings located on the lot where the development is to take place.
- [10] If the proposed development is a two family or multi family residential development or an architecturally integrated subdivision, the number of one, two, three, or four bedroom dwelling units proposed for construction.

### **A 3 Development Site Plans**

**[a]** Subject to Section A 1 of this appendix, every application for a variance or a zoning, sign or special use permit shall contain plans that locate the development site and graphically demonstrate existing and proposed natural, man made, and legal features on and near the site in question, all in conformity with Sections A 4 through A 6 of this appendix.

### **A 4 Graphic Materials Required for Plans**

**[a]** The plans shall include a location map that shows the location of the project in the broad context of the town or planning jurisdiction. This location map may be drawn on the development site plans or it may be furnished separately using reduced copies of maps of the town's planning jurisdiction available at the Planning and Inspections Department.

**[b]** Development site plans shall be drawn to scale, using such a scale that all features required to be shown on the plans are readily discernible. Very large developments may require that plans show the development in sections to accomplish this objective without resort to plans that are so large as to be cumbersome, or the objective may be accomplished by using different plans or plans drawn to different scales to illustrate different features. In all cases, the permit issuing authority shall make the final determination whether the plans submitted are drawn to the appropriate scale, but the applicant for a special use permit may rely in first instance on the recommendations of the administrator.

**[c]** Development site plans should show on the first page the following information:

- [1] Name of applicant.
- [2] Name of development (if any).
- [3] North arrow.
- [4] Legend.
- [5] Scale.

**[d]** All of the features required to be shown on plans by Section A 5 and A 6 may be included on one set of plans, so long as the features are distinctly discernible.

### **A 5 Existing Natural, Man Made, and Legal Features**

**[a]** Development plans shall show all existing natural, man made and legal features on the lot where the development is to take place, including but not limited to those listed below. In addition, the plans shall also show those features, indicated in the following by an asterisk, that are located within fifty (50) feet in any direction of the lot where the development is to take place, and shall specify (by reference to the Table of Permissible Uses or otherwise) the use made of adjoining properties.

**[b]** Existing natural features:

- [1] Tree line of wooded areas.
- [2] Individual trees eighteen (18) inches in diameter or more, identified by common or scientific name.
- [3] Orchards or other agricultural groves by common or scientific name.
- \*[4] Streams, ponds, drainage ditches, swamps, boundaries of Floodways and Floodplains.
- [5] (If the proposed development is a subdivision of more than fifty lots or if more than five acres of land are to be developed), base flood elevation data (See Article XVII, Part I).
- \*[6] Contour lines in accordance with the requirements of Article XVI.

**[c]** Existing man made features:

- \*[1] Vehicle accommodation areas (including parking areas, loading areas and circulation areas) all designated by surface material and showing the layout of existing parking spaces, and direction of travel lanes, aisles, or driveways.
- [2] Streets, private roads, sidewalks, and other walkways, all designated by surface material.
- [3] Curbs and gutters, curb inlets and curb cuts, and drainage grates.
- [4] Other storm water or drainage facilities, including manholes, pipes, and drainage ditches.
- [5] Underground utility lines, including water, sewer, electric power, telephone, gas, cable television.
- [6] Above ground utility lines and other utility facilities.
- \*[7] Fire hydrants.
- \*[8] Buildings, structures and signs (including dimensions of each).
- [9] Location of exterior light fixtures.
- \*[10] Location of dumpsters.

**[d]** Existing legal features:

- [1] The zoning of the property, including zoning district lines where applicable.
- [2] Property lines (with dimensions identified).
- [3] Street right-of-way lines.
- [4] Utility or other easement lines.

**A 6 Proposed Changes in Existing Features or New Features**

**[a]** Development site plans shall show the proposed changes in (i) existing natural features, (ii) existing man made features, and (iii) existing legal features.



**[b]** Development site plans shall also show proposed new legal features (especially new property lines, street right-of-way lines, and utility and other easements), as well as proposed man made features, including, but not limited to, the following:

- [1] The number of square feet in every lot created by a new subdivision.
- [2] Lot dimensions, including lot widths measured in accordance with Article XII.
- [3] The location and dimensions of all buildings and freestanding signs on the lot, as well as the distances all buildings and freestanding signs are set back from property lines, streets, or street right-of-way lines.
- [4] Principal side(s) building elevations for typical units of new buildings or exterior remodeling of existing buildings, showing building heights and proposed wall sign or window sign area.
- [5] The location and dimensions of all required recreational areas, with each area designated as to type of use.
- [6] Areas intended to remain as usable open space. The plans shall clearly indicate whether such open space areas are intended to be offered for dedication to public use or to remain privately owned.
- [7] Streets, labeled by classification and street name showing whether curb and gutter or shoulders and swales are to be provided and indicating street paving widths. Private roads in subdivisions shall also be shown and clearly labeled as such.
- [8] Curbs and gutters, curb inlets and curb cuts, drainage grates.
- [9] Other storm water or drainage facilities, including manholes, pipes, drainage ditches, retention ponds, etc.
- [10] Sidewalks and walkways, showing widths and surface material.
- [11] Bridges.
- [12] Outdoor illumination with lighting fixtures sufficiently identified.
- [13] Underground utility lines, including water, sewer, electric power, telephone, gas, cable television. Water and sewer pipe lines shall also be labeled.
- [14] Aboveground utility lines and other facilities.

- [15] Fire hydrants.
- [16] Dumpsters.
- [17] New contour lines resulting from earth movement shown in accordance with the requirements in Article XVI.
- [18] Scale drawings of all signs requiring permits pursuant to Article XVIII, together with an indication of the location and dimensions of all such signs.
- [19] Vehicle accommodation areas (including parking areas, loading areas, and circulation areas), all designated by surface material and showing the dimensions and layout of proposed parking spaces and the dimensions and direction of travel of lanes, aisles and driveways.
- [20] Proposed plantings or construction of other devices to comply with screening and tree requirements of Article XX. Plans shall label shrubbery by common or scientific name, show the distance between plants and indicate the height at the time of planting and expected mature height and width. Plans shall label trees by common or scientific name, show the circles of the mature crowns (major trees shall be drawn at diameter = 30 feet; dwarf or decorative trees shall be drawn at their actual mature crown), and indicate the height at the time of planting.

## **A 7 Documents and Written Information in Addition to Plans**

**[a]** In addition to the written application and the plans, whenever the nature of the proposed development makes information or documents such as the following relevant, such documents or information shall be provided. The following is a representative list of the types of information or documents that may be requested:

- [1] Documentation confirming that the applicant has a legally sufficient interest in the property proposed for development to use it in the manner requested, or is the duly appointed agent of such a person.
- [2] Certifications from the appropriate agencies that proposed utility systems are or will be adequate to handle the proposed development, and that all necessary easements have been provided.

- [3] Legal documentation establishing homeowners associations or other legal entities responsible for control over required common areas and facilities.
- [4] Bonds, letters of credit, or other surety devices.
- [5] Stamped envelopes containing the names and addresses of all those to whom notice of a public hearing must be sent.
- [6] Complete documentation justifying any requested deviation from specific requirements established by this ordinance as presumptive satisfaction of design standards.
- [7] Written evidence of permission to use satellite parking spaces under the control of a person other than the developer when such spaces are allowed, or written evidence of good faith efforts to acquire satellite parking under certain circumstances.
- [8] Verification that 4.0 classification uses will meet the performance standards set forth in Article XI. Such verification shall be made by a licensed engineer or other qualified expert unless it is utterly apparent from the nature of the proposed development that such expert verification is unnecessary.
- [9] Time schedules for the completion of phases in staged development.
- [10] The environmental impact of a development, including its effect on historically significant or ecologically fragile or important areas and its impact on pedestrian or traffic safety or congestion.

## **A 8                    Numbers of Copies of Plans and Documents**

**[a]** With respect to all plans and other documents required by this appendix, the developer shall submit the number of copies that the administrator deems necessary to expedite the review process and to provide necessary permanent records.



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## **Appendix B      Guide for Landscaping**

### **B1      Introduction**

The guidelines included in this Appendix apply to all new development, governed by the permitting process defined in the Town of Boone Unified Development Ordinance. Any property developed or substantially changed under a permit approved by the Town of Boone is subject to the planting guidelines of this Appendix.

Appendix B is a compilation of the latest accepted horticultural practices. It is meant to be used by North Carolina Landscape Contractors and staff to help assure that installed landscapes thrives once planted. It contains definitions, text descriptions, and plant list. Sections within this Appendix provide information on tree protection, planting guidelines and suggested species.

This Appendix is the guide that staff uses to assess landscape installation. The information is designed to be used interchangeably with Article XX. All those who install landscape material subject to staff approval towards a Certificate of Occupancy or landscape compliance are expected to follow these guidelines. Failure to follow these guidelines can result in staff's refusal to accept work and may result in the issuance of a stop work order.

### **B2      Definitions**

- [1]      Annuals: flowering plants, used to provide seasonal color and interest. Root stock dies in winter, therefore annuals need replanting each growing season. Often referred to as bedding plants.
- [2]      Caliper: standard trunk diameter measurement for nursery grown stock taken six (6) inches above the ground up to and including four (4) inch caliper size, and twelve (12) inches above the ground for larger sizes.
- [3]      Canopy: the branched portion of a tree or forest.
- [4]      Central Leader: primary or terminal shoot, i.e. the trunk of a tree.
- [5]      Critical Root Zone (CRZ): a circular region measured outward from a tree trunk representing the area where roots must be maintained

for the tree's survival. This CRZ is measured from the tree trunk to the outermost edge of the drip line of the canopy.

- [6] Cut: the exposed wood area that remains after a branch has been removed.
- [7] Dbh: Diameter-at-breast-height is a standard measurement of existing tree size, and is a tree trunk measured in inches at a height of 4.5 feet above the ground. Refer to Section 370 [b] [8] for more detail.
- [8] Deciduous: those plants that annually lose their leaves.
- [9] Dormant: a condition of non-active plant growth. Deciduous trees and shrubs are considered to be dormant from the time their leaves fall until new foliage begins to reappear.
- [10] Drip Line: a vertical line, extending from the outermost edge of the tree canopy or shrub branches, to the ground.
- [11] Evergreen: those plants that retain foliage throughout the year.
- [12] Groundcovers: usually evergreen, spreading growth form, used to control erosion and pedestrian traffic.
- [13] Height Measurement: shrubs height in inches, deciduous trees caliper and height in feet, evergreen trees height in feet.
- [14] Historic Tree: Any healthy tree with a diameter of twenty-five (25) inches or more measured Diameter-at-breast-height (Dbh).
- [15] Improper Pruning: For deciduous trees: the removal of the central leader or the shortening of branch ends. For deciduous shrubs: removal of more than a third of healthy growth. For evergreen trees and shrubs: removal of more than a third of growth. For all trees and shrubs: use of tools leaving uneven or broken cuts or wounds.
- [16] Lifting or Limbing Up: the removal of lower branches for under clearance.
- [17] Ornamental Grasses: used to provide landscape interest, perhaps for screening views, or for pedestrian control. Are typically low water users.

- [18] Perennials: flowering plants whose root stock survives the winter. Used to provide color/textural interest, and control pedestrian traffic, seldom used for screening.
- [19] Plan of Action: a written/graphic document containing at least a replacement planting plan, an estimated date of completion of the required plant installation, and an agreed on date for the Administrator to re-inspect.
- [20] Planting Plan: a landscape plan showing types, numbers, sizes, and locations of plants to be planted or preserved.
- [21] Pruning: the removal of dead or diseased, live but interfering, and/or weak branches.
- [22] Scars or Injuries: natural or man-made lesions of the bark in which wood is exposed.
- [23] Significant Tree: Any healthy tree with a diameter of eight (8) inches or more measured Diameter-at-breast-height (Dbh).
- [24] Shrubs: may be evergreen or deciduous and have branches to the ground. Used as accent, focus, or if evergreen, as screening material.
- [25] Tree Deciduous: small to large tree, from a height of 20 feet to over 40 feet at maturity, planted for aesthetic purposes such as canopy of shade, interesting bark, or fall foliage.
- [26] Tree Evergreen: some medium to large evergreen tree, which, because used to screen views, must keep branches to the ground. Examples are White Pine and Carolina Hemlock.
- [27] Vehicular Surface Area: The paved or non-paved area intended for vehicular circulation or parking area.

### **B3 Procedures and General Requirements**

Landscape plans shall be prepared by a person who demonstrates knowledge and experience in the field of landscaping and/or site design such as a landscape architect, urban designer, nurserymen, or horticulturist. A detailed tree survey showing all existing trees eight (8) inch caliper or greater shall be submitted with the landscape plans. The landscape plan shall adequately detail the requirements of this Ordinance.

- [a]** Plans shall include the following:
- [1] A plant list showing: quantity / scientific names / common names / sizes and a key that identifies the location of all plant material on the landscape plan.
  - [2] Shrub sizes shall be shown by height only and tree sizes by caliper and height.
  - [3] Proposed drives, paving areas, decks, walks, pools, and other man-made structures/elements which are to be constructed within the property.
  - [4] All construction notes/details relating to construction, specific material and planting procedures.
  - [5] A table which indicates detail use of existing plant material.
  - [6] Landscape plans shall comply with required driveway/intersection sight distance triangle requirements in Section 368 [d].

#### **B4 Tree Preservation and Care During Construction**

- [a]** Tree Preservation
- [1] Install tree protection fencing around the “Tree Save Area”.
  - [2] The size of the “Tree Save Area” is the area within the drip line of the tree or group of trees.
  - [3] If installing tree protection fencing for trees along a wood’s edge, locate the fence at the drip line of the outermost trees.
  - [4] Install tree protection fencing before doing any grading or land disturbing activity.
  - [5] Call the Planning and Inspections Department (828-268-6960) to request that the Administrator visit the site to give approval of the placement of the fencing before doing any other site work.
  - [6] Do not disturb the Critical Root Zone (CRZ) of any tree(s) in an area designated “Tree Save Area.” In other words do not clear, grub, trench, remove soil, backfill, drive or park vehicles, equipment or materials, dump trash, oil, paint or any material harmful to the health and growth of the tree within the area marked by the drip line of any tree.



- [7] If authorized to clear within the CRZ, cut any trees or shrubs flush with the grade or grind the stumps to a minimum twelve (12) inches below surrounding grade. Backfill any holes with clean, dry soil the same day. Moisten the soil. Seed or mulch the remaining area depending on which landscaping treatments are stipulated on the plans.
- [8] The Administrator may allow a Temporary Access (for 30 days only) across the "Tree Save Area." Get permission in writing from the Administrator and keep a copy on the construction site at all times. Mulch the access across the "Tree Save Area" with a minimum 6" layer of large wood chips. No material storage, however, is allowed in the access area even on a temporary basis.
- [9] Some trees being saved may require root pruning. See Subsection [b] below for specific guidelines on root pruning.
- [10] Those trees requiring more than a third of their roots pruned/removed are unlikely to survive. Remove those trees.

**[b]** Care During Construction

- [1] Root pruning may be done on existing trees located near proposed construction using the following guidelines:
  - [1a] Cut roots no more than 6" back from new construction, cut to a depth of two (2) feet only.
  - [1b] Backfill with clean, dry soil within hours of root pruning. Moisten soil the same day.
  - [1c] Keep all tools sharp to ensure roots are not broken or torn.
- [2] Any clearing done in the CRZ may only be done if specified on the approved site plan or with written permission from the Administrator and cannot disturb the roots. Cut any trees or shrubs flush with grade or use a stump grinder.
- [3] Do not use climbing irons, spurs or spikes on trees when pruning them.

**B5 Requirements for Successful Groundcover, Shrub, and Tree Installations:**

**[a]** Plant Material:

Protect all plants at all times. Protect plants from sun and/or drying winds. Plants cannot be planted immediately upon delivery to the site must be kept in the shade or covered with burlap to prevent sun scorch. These plants need to be well watered. Plants which remain unplanted for longer than one day must be heeled in, i.e. covered with wet compost, soil, or other acceptable material and their root ball kept moist by watering. No plant may remain unplanted on site longer than three (3) days.

To protect surrounding turf that may be damaged from being driven over and upon which soil may be temporarily piled, cover with a tarp or sheets of plywood. Provide tree protection fencing to protected any existing trees, shrubbery, and beds in this area.

Supply all plants as specified in the Plant List as shown on the approved Site Plan. Determine from the plan the quantities of each species required. **If a discrepancy exists between the number of plants specified in the Plant List and the graphic representation on the plan, the installer is to use the number graphically represented on the plan.** Plants must be typical of their species and variety, have normal growth habit, have well developed branching, be densely foliated, and have healthy roots. Size of plants, spread of roots, and size of root ball must be in accordance with the American Standard for Nursery Stock (most current edition). Plants of each particular variety must be uniform in size, density, and configuration.

Container plants must have a root system dense enough to hold the soil intact when removed from the container. The root system however must not be root bound, or so dense in mass that it is excessively intertwined or has a circular growth pattern.

Balled and burlap (B & B) plants must be nursery grown, and dug within three (3) days of transplanting. The burlap used to secure the ball must be untreated and biodegradable. There can be no more than one (1) inch of fill over the original roots. B & B plants must have firm balls of earth in which the plant has been growing and of a diameter not less than specified in the American Standard for Nursery Stock.

All new trees must have straight trunks with an intact single central leader, unless a multi-stem tree is specified. Trees will not be accepted which have had their branches shortened, leaders cut, or have damaged leaders which require cutting. Unless otherwise specified, shade trees shall not have branches within six (6) feet of the top of the root ball.

**[b]** Soil Preparation:

Create plant beds the size and location shown on the approved Site Plan. All groundcovers and container shrubs must be planted in a shrub bed, B & B material or large container material may be planted in individual planting holes. The planting area must be wide enough to accommodate all roots without crowding, and must contain nutrient rich soil.

In order to ready the planting areas, prepare the soil by taking the following steps:

- [1] Remove all vegetation and topsoil from the top three (3) inches of the planting area for both planting beds and plant holes. Remove unwanted vegetation from the site, stockpile topsoil on site for future use or remove from site if specifically stated in the approved Site Plan.
  - [2] Dig all shrub beds 2 to 3 times the width of the root mass and all tree planting holes 1.5 to 2 times the width of the root ball with a minimum nine (9) inches on each side of the mass or ball.
  - [3] Install a sufficient quantity of planting mix to replace the removed topsoil, and to achieve positive drainage at a minimum of 1.5% slope.
    - [a] The replacement soil shall be the following planting mix: 10% - 30% sterile well pulverized red clay, 30% - 50% silt, 30% - 45% coarse sand, 1.0 mm to 0.5 mm in diameter, minimum 5% organic material such as completely decomposed compost/humus. The acidity range of the plant mix shall be ph 5.5 to ph 7.0. The planting mix shall have the following nutrients at the specified percent base saturation: calcium at 55% to 80%, magnesium at 10% to 30%, and potassium at 5% to 8%.
    - [b] If the quality of planting mix seems questionable to the Administrator, staff may require the results of a soil test for analysis.
  - [4] If no replacement planting mix is used, there is an acceptable alternative soil preparation. Thoroughly pulverize the soil, minus the sod, removed from the planting hole or plant bed. Amend with lime and fertilizer at the rates specified on the package.
- [c] Plant Installation:**
- [1] Soak with water all container plants before removing them from their containers to keep the plant moist and healthy during the planting process.

- [2] Remove groundcover and shrubbery from their containers. If their root balls are pot bound, scarify the ball before installation.
- [3] Set plants upright, plumb, and oriented to provide the best appearance and relationship to the viewer.
- [4] Set trees and shrubs two (2) to three (3) inches above finished grade. Do not place backfill soil on top of the root ball, or up the stems or trunks of plant material.
- [5] Backfill around the root ball being careful not to pack tightly. Form a two (2) inch high collar of soil around the drip zone of the individual shrub in all areas not irrigated.
- [6] Take extra care to adequately backfill B & B plants. Backfill and compact bottom third (1/3) of the root ball. Cut away the ball ties, the top two thirds (2/3) of the wire basket, and the exposed burlap. Do not remove the burlap from under the root ball. Backfill one half (1/2) the remaining hole with the specified planting mix, and water thoroughly. Backfill the rest of the hole with the specified planting mix, firm down to eliminate air pockets, but do not pack tightly. Build a collar of soil four (4) inches in height around the edge of the root ball to form a basin for holding water. Form the bottom of the basin at surrounding finish grade.
- [7] Mulch with two (2) to three (3) inches of hardwood mulch.
- [8] Water all plants immediately after planting. See Subsection B4 [e] for more on watering.

**[d]** Fertilizing and Liming Shrubs and Trees:

- [1] Incorporate lime and fertilizer uniformly in the top six (6) to eight (8) inches of the soil using a rototiller.
- [2] The fertilizer analysis for shrubs shall be either 12-6-6 or 14-7-7 and shall be applied at a rate of 2 pounds per 100 square feet.
- [3] For trees, apply fertilizer at a rate of 0.16 lb. to 0.20 lb. nitrogen per inch caliper of tree. Use a slow release fertilizer. Two possible fertilizer mixes are either 1 cup 31-7-7 or 2 cups 12-6-6 fertilizer per inch caliper.
- [4] In addition to nitrogen, apply phosphorous and potassium at a rate of 0.05 lb. per inch caliper.

[5] Apply granulated fertilizer as a top dressing within the drip line of each individual plant. Immediately remove any fertilizer that comes in contact with the stem, trunk or foliage of a plant. Work the fertilizer into the top two (2) inches of the soil.

[6] Apply fertilizer and work into the soil before installing mulch.

**[e]** Watering Shrubs and Trees:

[1] Be sure water is free from oil, acids, salts or any other substances that is toxic or harmful to vegetation.

[2] Water container plants thoroughly before removing from their containers to keep the plant moist and healthy during the planting process.

[3] Water all plants immediately after planting. To water thoroughly, saturate all backfill in beds during the same day of planting. Water only by open-end hose at very low pressure to avoid erosion of soil, breaking the soil collars surrounding each plant, and/or injury to roots. Make sure plants are vertical and the top of the root ball is not below existing grade once they are watered and fully settled.

**[f]** Mulching Shrubs and Trees:

[1] Use shredded hardwood (triple or double cut) as a mulch. The mulch cannot contain any trash.

[2] Apply mulch in a two (2) to three (3) inch layer within two days of planting.

[3] Do not spread mulch closer than six (6) inches from the trunk of a tree.

**[g]** Staking Trees:

[1] Generally for large caliper 2 1/2 inch caliper to 6 inch caliper B & B trees, staking for support is not recommended, if the tree is planted using the methods described in this Appendix. However, because the trunks are exposed, it may be necessary to place 3 stakes around the tree at the edge of the rootball for protection of the trunk of the tree. Use stakes that are tall enough to be seen easily. Finally, when using stakes for protection, do not attach wire or rope to the trees.

- [2] Trees less than two (2) inch caliper and shrubs less than eight feet in height do not stake.
- [3] In unusual conditions, staking may be used with the Administrator's approval. Stake trees using three (3) 1"x 2"x18" minimum size wood stakes per tree. Drive anchors into undisturbed soil. Use strapping or rope fed through a rubber hose at the trunk to prevent damage to the bark.
- [4] The stakes should offer support, but also not bind or bend the tree, because flexibility of the trunk is essential for its future growth and development. Generally, after the first growing season the tree will be able to support itself.

**[h]** Pruning Techniques:

- [1] Remove water sprouts, those vertical sprouts which grow up through the middle of the tree or shrub.
- [2] Remove crossing branches which rub against other branches. The rubbing weakens the growth of both branches.
- [3] Remove branches which grow at a sharp angle to the trunk. The sharp angle is a weak angle of attachment and can cause a weakened limb to split from the trunk, or cause rot by giving water a place to collect.
- [4] Remove parallel branches, those branches which attach to the trunk one above the other within inches up the trunk.
- [5] Remove all branches up to six (6) feet (deciduous trees only) above the ground.
- [6] Remove any branch competing with the central leader. If left on the tree it may cause the development of two leaders, and waste available growth energy. Later, as each leader gets larger, the fork may split and damage the tree.

**[i]** Turf:

- [1] Prepare the soil and apply lime and fertilizer.
- [2] Incorporate lime and fertilizer in the top six (6) to eight (8) inches of the soil using a rototiller.
- [3] Use a rake to create a smooth and level bed free of hollows and depressions and with soil particles no larger than pea size.

- [4] Water to settle the soil, and rake again to break the crusty surface before seeding.
- [5] Sod installation:
- [a] Spread 4 inches of topsoil and cultivate entire area to 4 to 6 inch depth.
  - [b] Spread lime and fertilizer over cultivated topsoil (as per specifications on package) and hand rake to smooth finish grade.
  - [c] Thoroughly water area to be sodded prior to installation.
  - [d] Lay sod, roll and water thoroughly.

## **B6 Plant List**

### **Large Trees - Evergreen**

Scientific Name	Common Name
<i>Abies balsamea</i>	Balsam Fir *
<i>Abies concolor</i>	White Fir *
<i>Abies fraseri</i>	Fraser Fir *
<i>Cedrus atlantica</i>	Atlas Cedar
<i>Cedrus deodara</i>	Deodar Cedar
<i>Cedrus libani</i>	Cedar of Lebanon
<i>Cladrastis kentukea</i>	American Yellowwood *
<i>Cryptomeria japonica</i>	Japanese Cryptomeria
<i>Cupressoyparis leylandii</i>	Leyland Cypress
<i>Cupressus bakeri</i>	Baker's Cypress *
<i>Ilex opaca</i>	American Holly *
<i>Juniperus virginiana</i>	Eastern Red Cedar *
<i>Magnolia grandiflora</i>	Southern Magnolia *

Picea abies	Norway Spruce
Picea glauca	White Spruce *
Picea orientalis	Oriental Spruce
Picea pungens	Colorado Spruce *
Pinus aristata	Bristlecone Pine *
Pinus banksiana	Jack Pine *
Pinus echinata	Shortleaf Pine *
Pinus strobes	White Pine *
Pinus sylvestris	Scotch Pine
Pinus virginiana	Virginia Pine *
Pseudotsuga menziesii	Douglas Fir *
Thuja occidentaus	Northern White Cedar *
Tsuga Canadensis	Eastern Hemlock *
Tsuga caroliniana	Carolina Hemlock *

### **Large Trees - Deciduous**

Acer platanoides	Norway Maple
Acer rubrum	Red Maple *
Acer saccharinum	Silver Maple *
Acer saccharum	Sugar Maple *
Aesculus glabra	Ohio Buckeye *
Aesculus flava	Yellow Buckeye *
Betula alleghaniensis	Yellow Birch *
Betula lenta	Sweet Birch *
Betula papyrifera	Canoe Birch *



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Betula nigra	River Birch *
Betula pendula	European White Birch
Betula platyphylla	Japanese White Birch
Betula populifolia	Gray Birch *
Carya cordiformis	Bitternut Hickory *
Carya glabra	Pignut Hickory *
Carya illinoensis	Pecan *
Carya laciniata	Shellbark Hickory *
Carya ovata	Shagbark Hickory *
Catalpa bignonioides	Southern Catalpa *
Celtis laevigata	Sugar Hackberry *
Celtis occidentalis	Common Hackberry *
Cladrastis lutea	Yellowwood *
Diospyros virginiana	Persimmon *
Fagus grandifolia	American Beech *
Fraxinus americana	White Ash *
Fraxinus nigra	Black Ash *
Fraxinus pennsylvanica	Green Ash *
Ginkgo biloba	Maidenhair Tree
Gleditsia triacanthos inermis	Thornless Honeylocust *
Gymnocladus dioica	Kentucky Coffee Tree *
Juglans cinerea	Butternut *
Juglans nigra	Black Walnut *
Liquidambar styraciflua	Sweetgum *

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<i>Liriodendron tulipifera</i>	Tulip Poplar *
<i>Magnolia acuminata</i>	Cucumber Tree *
<i>Magnolia macrophylla</i>	Big Leaf Magnolia *
<i>Metasequoia glyptostroboides</i>	Dawn Redwood *
<i>Nyssa sylvatica</i>	Black Gum *
<i>Platanus occidentalis</i>	Sycamore *
<i>Populus angustifolia</i>	Balsam Cottonwood *
<i>Populus deltoids</i>	Eastern Cottonwood *
<i>Populus tremuloides</i>	Quaking Aspen *
<i>Prunus serotina</i>	Black Cherry *
<i>Quercus alba</i>	White Oak *
<i>Quercus coccinea</i>	Scarlet Oak *
<i>Quercus imbricaria</i>	Shingle Oak *
<i>Quercus falcate</i>	Southern Red Oak *
<i>Quercus muehlenbergii</i>	Chinkapin Oak *
<i>Quercus michauxii</i>	Swamp chestnut *
<i>Quercus phellos</i>	Willow Oak *
<i>Quercus palustris</i>	Pin Oak *
<i>Quercus rubra</i>	Red Oak *
<i>Quercus stellata</i>	Post Oak *
<i>Quercus velutina</i>	Black Oak *
<i>Taxodium distichum</i>	Bald Cypress *
<i>Tilia americana</i>	Basswood *
<i>Ulmus americana</i>	American Elm *

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Zelkova serrata Japanese Zelkova

**Small Trees - Evergreen**

Cupressus arizonica Arizona Cypress \*

Ilex x attenuate Hybrid Holly \*

Ilex x attenuate 'Fosteri' Foster Hybrid Holly \*

Ilex Montana Big Leaf Holly \*

Ilex x 'Nellie R. Stevens' Nellie Stevens Holly \*

Juniperus virginiana Eastern Red Cedar \*

**Small Trees - Deciduous**

Acer buergeranum Trident Maple

Acer ginnala Amur Maple

Acer griseum Paperbark Maple

Acer leucoderme Chalk Maple \*

Acer palmatum Japanese Maple

Acer palmatum dissectum Laceleaf Japanese Maple

Acer pensylvanicum Striped Maple \*

Aesculus pavia Red Buckeye \*

Aesculus sylvatica Painted Buckeye \*

Alnus serrulata Alder \*

Amelanchier arborea Serviceberry \*

Aralia spinosa Devil's Walking Stick \*

Asimina triloba Pawpaw \*

Carpinus caroliniana Ironwood \*

Celtis tenuifolia Dwarf Hackberry \*

Cercis Canadensis	Redbud *
Chionanthus virginicus	Fringetree *
Cladrastis kentukea	Yellowwood *
Cornus alternifolia	Pagoda Dogwood *
Cornus amomum	Silky Dogwood *
Cornus florida	Flowering Dogwood *
Cotinus obovatus	American Smoke Tree *
Crataegus mollis	Downy Hawthorn *
Crataegus marshallii	Parsley Hawthorn *
Diospyros virginiana	Eastern Persimmon *
Halesia diptera	Silverbell *
Hamamelis virginiana	Witchhazel *
Ilex deciduas	Poosumhaw *
Magnolia fraseri	Mountain Magnolia *
Malus coronaria	Sweet Crabapple *
Ostrya virginiana	Ironwood *
Oxydendrum arboretum	Sourwood *
Rhus copallina	Winged Sumac *
Sassafras albidum	Sassafras *
Sorbus americana	American Mountain Ash *
Vaccinium arboretum	Sparkleberry *
<b>Shrubs - Evergreen</b>	
Abelia x grandiflora	Glossy Abelia
Azalea kaempferi	Kaempferi Azalea

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<i>Azalea hybrida</i>	Satsuki Azalea
<i>Azalea obtusum</i>	Kurume Azalea
<i>Berberis julianae</i>	Wintergreen Barberry
<i>Berberis thunbergii</i>	Japanese Barberry
<i>Berberis verruculosa</i>	Warty Barberry
<i>Buxus microphylla</i> 'Koreana'	Korean Boxwood
<i>Buxus sempervirens</i> 'Suffrutocosa'	Dwarf Boxwood
<i>Chamaecyparis obtusa</i> 'Nana Gracilis'	Dwarf Hinoki Cypress
<i>Cotoneaster horizontalis</i>	Rockspray Cotoneaster
<i>Cotoneaster dammeri</i>	Bearberry Cotoneaster
<i>Cotoneaster divaricatus</i>	Spreading Cotoneaster
<i>Cotoneaster horizontalis</i>	Rockspray Cotoneaster
<i>Euonymus alatus</i>	Winged Euonymus
<i>Euonymus fortunei</i>	Wintercreeper Euonymus
<i>Hypericum patulum</i>	St. Johnswort *
<i>Hypericum frondosum</i>	Golden St Johnswort *
<i>Hypericum pronlificum</i>	Shrubby St. Johnswort *
<i>Ilex aquifolium</i>	English Holly
<i>Ilex cornuta</i>	Chinese Holly
<i>Ilex cornuta</i> 'Burford'	Burford Holly
<i>Ilex cornuta</i> 'Carissa'	Carissa Holly
<i>Ilex cornuta</i> 'Rotunda'	Dwarf Horned Holly
<i>Ilex crenata</i>	Japanese Holly
<i>Ilex crenata</i> 'Helleri'	Heller Japanese Holly

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<i>Ilex crenata</i> ‘Kingsville’	Kingsville Japanese Holly
<i>Ilex crenata</i> ‘Repandens’	Repanden Japanese Holly
<i>Ilex crenata</i> ‘Stokes’	Stokes Japanese Holly
<i>Ilex crenata</i> ‘Tiny Tim’	Japanese Holly
<i>Ilex glabra</i>	Inkberry *
<i>Ilex pernyi</i>	Perny Holly
<i>Juniperus chinensis</i>	Chinese Juniper
<i>Juniperus communis</i>	Common Juniper
<i>Juniperus conferta</i>	Shore Juniper
<i>Juniperus davurica</i> ‘Expansa’	Parsons Juniper
<i>Juniperus horizontalis</i>	Creeping Juniper
<i>Juniperus procumbens</i>	Japanese Garden Juniper
<i>Juniperus Sabina</i> ‘Tamariscifolia’	Tamarix Juniper
<i>Kalmia latifolia</i>	Mountain Laurel *
<i>Kalmia polifolia</i>	Bog Laurel *
<i>Leucothoe axillaries</i>	Doghobble *
<i>Leucothoe populifolia</i>	Florida Leucothoe *
<i>Magnolia virginiana</i>	Sweet Bay *
<i>Osmanthus heterophyllus</i> ‘Rotundifolius’	Curleyleaf Tea Olive
<i>Ostrya virginiana</i>	Ironwood *
<i>Oxydendrum arboretum</i>	Sourwood *
<i>Pinus mugo</i> ‘Compacta’	Mugo Pine
<i>Prunus laurocerasus</i> ‘Otto Luyken’	Otto Laurel
<i>Rhododendron catawbiense</i>	R. Catawba *

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Rhododendron maximum	Rosebay Rhododendron *
Rhododendron minus	Carolina Rhododendron *
Rhus aromatica	Fragrant Sumac *
Rhus copallinum	Winged Sumac *
Rhus glabra	Smooth Sumac *
Taxus x media	Intermediate Yew
Thuja orientalis	Oriental Arborvitae
Viburnum rhytidophyllum	Leatherleaf Viburnum
<b>Shrubs - Deciduous</b>	
Azalea hybrida 'Exbury'	Exbury Hybrid Azalea
Buddleja davidii	Butterfly Bush
Callicarpa americana	American Beautyberry *
Calycanthus floridus	Sweetshrub *
Chaenomeles speciosa	Common Floweringquince
Clethra alnifolia	Sweet Pepperbush *
Cytisus scoparius	Scotch Broom
Deutzia scabra	Pride of Rochester
Elaeagnus umbellate	Autumn Elaeagnus
Euonymus alata	Winged Euonymus
Euonymus americanus	Hearts-a-Burstin *
Forsythia x intermedia	Border Forsythia
Fothergilla major	Withalder *
Gaylussacia dumosa	Dwarf Huckleberry *
Hibiscus syriacus	Rose of Sharon

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Hydrangea arborescens	Wild Hydrangea *
Hydrangea quercifolia	Oakleaf Hydrangea *
Lindera benzoin	Spicebush *
Lonicera fragrantissima	Winter Honeysuckle
Magnolia stellata	Star Magnolia
Malus sargentii	Sargent Crab Apple
Neviusia alabamensis	Snowwreath *
Rhododendron arborescens	Sweet Azalea *
Rhododendron austrinum	Yellow Azalea *
Rhododendron calendulaceum	Flame Azalea *
Rhododendron canadense	Rhodora *
Rhododendron canescens	Piedmont Azalea *
Rhododendron cumberlandense	Cumber Land *
Rhododendron periclymenoides	Pinxter Bloom *
Rhododendron prunifolium	Plumleaf *
Rhododendron viscosum	Swamp Azalea *
Rosa palustris	Swamp Rose *
Spiraea prunifolia	Bridalwreath Spirea
Spiraea x vanhouttei	Vanhoutte Spirea
Syringa vulgaris	Common Lilac
Styrax americana	American Snowbell *
Viburnum dentatum	Arrowwood *
Viburnum x juddii	Judd Viburnum
Viburnum macrocephalum 'Sterile'	Chinese Snowball

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Viburnum plicatum tomentosum Doublefile Viburnum

Vitex agnus-castus Chaste Tree

### **Wet Land Plants**

Cornus amomum Silky Dogwood \*

Salix candida Sage willow \*

Salix discolor Pussy Willow \*

Salix exigua Coyote Willow \*

Salix herbacea Snowbed Willow \*

Salix lucida Shinning Willow \*

Salix nigra Black Willow \*

Salix sericea Silky Willow \*

Stewartia ovata Mountain Stewartia \*

### **Vines**

Gelsemium sempervirens Yellow Jasmine \*

Lonicera ciliosa Orange Honeysuckle \*

Lonicera dioica Wild Honeysuckle \*

Lonicera hirsuta Hairy Honeysuckle \*

Lonicera involucrata Bearberry Honeysuckle \*

Lonicera sempervirens Trumpet Honeysuckle \*

Parthenocissus quinquefolia Virginia Creeper \*

Wisteria frutescens American Wisteria \*

### **Ground Covers Evergreen**

Antennaria plantaginifolia Pussytoes \*

Galax urceolata Galax \*

Hexastylis arifolia	Heartleaf *
Lycopodium flabelliforme	Running Cedar *
Mitchella repens	Partridgeberry *
Senecio aureus	Butterweed *
Smilax pumila	Dwarf Smilax *

### **Ground Cover Deciduous**

Asarum canadense	Wild Ginger *
Chrysogonum virginianum	Southern Green and Gold *
Hepatica americana	Liverleaf *
Pachysandra procumbens	Allegheny Spurge *
Tiarella cordifolia var. collina	Foamflower *
Uvularia sessilifolia	Strawlily *

\* denotes native plant

### **Grasses**

Andropogan gerardii	Big Bluestem
Andropogan glomeratus	Bushy Bluestem
Andropogan virginicus	Broomsedge
Miscanthus sinensis	Adagio
Miscanthus sinensis	Gracillimus
Miscanthus sinensis	Morning Light
Muhlenbergia	Capillaris
Panicum virgatum	Switch Grass
Panicum virgatum	North Wind

Panicum virgatum

Heavy Metal

Pennisetum orientale

Tall Tails



## **Appendix C**

### **Solid Waste and Recycling Enclosure Detail**

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## **Appendix D Off-Premise Directional Sign Program “Corridor Area.” Guidelines for Sign Approval Adopted 5-22-97. (last revision 5-23-97)**

### **Requirements for Corridor Signs:**

- [1] NCDOT Off-Premise Sign Permit with fees (obtained by the Planning and Inspections Department).
- [2] Any building or freestanding sign on the applicant’s property cannot be located less than 300 feet from Highway 105, US 321 or US 421.
- [3] Applicants cannot have an existing off-premise billboard within the town limits or ETJ.
- [4] Eligibility of applicants:
  - a. must be non-residential use only; no home occupations or homes offices.
  - b. must be active for a minimum of 30 consecutive weeks out of calendar year; no seasonal business.
  - c. all other on-premise signs of business must be in compliance with current ordinance.
  - d. use must be in compliance with zoning ordinance requirements.

### **Availability:**

Sign panels will be on a “first come, first serve” basis. There may be a waiting list for each sign structure.

### **Sign Structure:**

- [1] One 3’ x 5’ metal sign board with names of businesses and directional arrow.
- [2] Business names and arrow affixed with vinyl lettering.
- [3] Supported by two wooden or metal posts.
- [4] Six (6) business spots available per sign.

- [5] One sided signs only.

The Town of Boone Public Services/Traffic Operations Division will be responsible for the construction, placement and maintenance of signs.

**Location of Off-Premise Sign:**

- [1] Only where a change of direction is necessary to arrive at the business location.
- [2] Must be located within 300 feet of intersection.
- [3] Sign will be located no further than one mile from business.
- [4] Must be approved by NCDOT.
- [5] Must be approved by Zoning Officer.

**Fees, Insurance, and Application:**

All applicants for the off-premise directional sign program and fees will be processed in the Planning and Inspections Department.

As part of the application process, the town will attempt to obtain easements on private property by donation only. No compensation will be offered or negotiated for any easement.

- [1] Initial fee of \$500.00 to cover permits, sign construction, placement, and labor is required of each applicant per sign.
- [2] The town will bill each applicant annually to cover insurance (if sign is damaged or destroyed) and /or DOT permit renewal costs. The billing amount will equal the deductible for the sign (\$250), if necessary due to sign damage, and the DOT permit renewal fee (\$30) divided by the number of applicants on the sign.

**Reinstatement:**

If applicant does not pay renewal fee, next applicant on waiting list is awarded panel with payment of initial fees. If no waiting list, business may be reinstated with full payment of initial fee.