

# ***Town of Boone***



# **UNIFIED DEVELOPMENT ORDINANCE**

**Adopted: October 23, 1997**

**Effective Date: January 1, 1998**

**TECHNICAL ASSISTANCE PROVIDED BY**



P.O. DRAWER 192 • BOONE, NORTH CAROLINA 28607

**EARTH** IMPROVEMENT TECHNOLOGIES



Printed on 100% Recycled Paper.



# Table of Contents

**ARTICLE I            GENERAL PROVISIONS..... 1**

    Section 1.    Short Title..... 1

    Section 2.    Authority..... 1

    Section 3.    Jurisdiction..... 1

    Section 4.    Effective Date..... 1

    Section 5.    Relationship to Existing Zoning, Subdivision and Soil Erosion and Sedimentation Control Ordinances..... 2

    Section 6.    Relationship to Comprehensive Plan..... 2

    Section 7.    No Use or Sale of Land or Buildings Except in Conformity With Ordinance Provisions..... 2

    Section 8.    Fees..... 3

    Section 9.    Severability..... 3

    Section 10.    Computation of Time..... 3

    Section 11.    Miscellaneous..... 4

    Section 12.    Reserved..... 4

    Section 13.    Reserved..... 4

    Section 14.    Reserved..... 4

**ARTICLE II            BASIC DEFINITIONS AND INTERPRETATIONS ..... 5**

    Section 15.    Definitions of Basic Terms..... 5

    Section 16.    Reserved..... 25

    Section 17.    Reserved..... 25

    Section 18.    Reserved..... 25

    Section 19.    Reserved..... 25

    Section 20.    Reserved..... 25

**ARTICLE III            ADMINISTRATIVE MECHANISMS ..... 27**

**PART I            PLANNING COMMISSION ..... 27**

        Section 21.    Appointment and Terms of Planning Commission Members..... 27

        Section 22.    Meetings of the Planning Commission..... 28

        Section 23.    Quorum and Voting..... 29

        Section 24.    Planning Commission Officers..... 29

        Section 25.    Powers and Duties of Planning Commission..... 29

        Section 26.    Advisory Committees..... 30

        Section 27.    Reserved..... 30

        Section 28.    Reserved..... 30

**PART II            COMMUNITY APPEARANCE COMMISSION..... 31**

        Section 29.    Appointment and Terms of Community Appearance Commission Members .. 31

Section 30. Meetings of the Community Appearance Commission ..... 31

Section 31. Quorum and Voting..... 32

Section 32. Community Appearance Commission Officers..... 32

Section 33. Powers and Duties of Community Appearance Commission ..... 32

Section 34. Reserved ..... 33

Section 35. Reserved ..... 33

**PART III TREE BOARD ..... 33**

Section 36. Appointment and Terms of Tree Board Members..... 33

Section 37. Meetings of the Tree Board..... 34

Section 38. Quorum and Voting..... 34

Section 39. Tree Board Officers ..... 34

Section 40. Powers and Duties of the Tree Board..... 35

Section 41. Reserved ..... 35

Section 42. Reserved ..... 35

**PART IV BOARD OF ADJUSTMENT..... 36**

Section 43. Appointment and Terms of Board of Adjustment..... 36

Section 44. Meetings of the Board of Adjustment ..... 37

Section 45. Quorum ..... 37

Section 46. Voting ..... 38

Section 47. Board of Adjustment Officers..... 39

Section 48. Powers and Duties of Board of Adjustment ..... 39

Section 49. Reserved ..... 39

Section 50. Reserved ..... 39

**PART V LAND USE ADMINISTRATOR AND PLANNING DIRECTOR ..... 40**

Section 51. Land Use Administrator..... 40

Section 52. Planning and Inspections Director..... 40

Section 53. Reserved ..... 40

**PART VI TOWN COUNCIL ..... 40**

Section 54. The Town Council..... 40

Section 55. Reserved ..... 41

Section 56. Reserved ..... 41

Section 57. Reserved ..... 41

Section 58. Reserved ..... 41

Section 59. Reserved ..... 41

Section 60. Reserved ..... 41

**ARTICLE IV PERMITS AND FINAL PLAT APPROVAL ..... 43**

**PART I ZONING, SPECIAL USE, AND CONDITIONAL USE PERMITS ..... 43**

Section 61. Permits Required ..... 43

Section 62. No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled ..... 44

Section 63. Who May Submit Permit Applications..... 44

Section 64. Applications To Be Complete..... 45

Section 65. Staff Consultation Before Formal Application..... 46

Section 66. Staff Consultation After Application Submitted..... 47

Section 67. Zoning Permits ..... 47

Section 68. Authorizing Use or Occupancy Before Completion of Development Under Zoning Permit..... 48

Section 69.	Special Use Permits and Conditional Use Permits .....	48
Section 70.	Burden of Presenting Evidence; Burden of Persuasion .....	49
Section 71.	Recommendations on Special Use Permit Applications .....	50
Section 72.	Recommendations on Conditional Use Permit Applications .....	50
Section 73.	Council Action on Conditional Use Permits .....	51
Section 74.	Board of Adjustment Action on Special Use Permits .....	51
Section 75.	Additional Requirements on Special Use and Conditional Use Permits .....	53
Section 76.	Authorizing Use, Occupancy, or Sale Before Completion of Development Under Special Use or Conditional Use Permits .....	54
Section 77.	Completing Developments in Phases.....	55
Section 78.	Expiration of Permits .....	55
Section 79.	Zoning Permit With Vested Rights .....	57
Section 80.	Effect of Permit on Successors and Assigns .....	59
Section 81.	Amendments to and Modification of Permits.....	59
Section 82.	Reconsideration of Board Action.....	60
Section 83.	Applications to be Processed Expediently.....	61
Section 84.	Maintenance of Common Areas, Improvements, and Facilities.....	61
Section 85.	Reserved .....	62
Section 86.	Reserved .....	62
Section 87.	Reserved .....	62
Section 88.	Reserved .....	62
Section 89.	Reserved .....	62
Section 90.	Reserved .....	62
<b>PART II</b>	<b>MAJOR AND MINOR SUBDIVISIONS.....</b>	<b>63</b>
Section 91.	Regulation of Subdivisions.....	63
Section 92.	No Subdivision Without Plat Approval.....	63
Section 93.	Minor Subdivision Approval .....	63
Section 94.	Major Subdivision Approval Process.....	65
Section 95.	Endorsements on Major Subdivision Plats .....	68
Section 96.	Plat Approval Not Acceptance of Dedication Offers .....	70
Section 97.	Protection Against Defects.....	70
Section 98.	Maintenance of Dedicated Areas Until Acceptance .....	71
Section 99.	Reserved .....	71
Section 100.	Reserved .....	72
Section 101.	Reserved .....	72
Section 102.	Reserved .....	72
Section 103.	Reserved .....	72
Section 104.	Reserved .....	72
Section 105.	Reserved .....	72
<b>ARTICLE V</b>	<b>APPEALS, VARIANCES, INTERPRETATIONS .....</b>	<b>73</b>
Section 106.	Appeals.....	73
Section 107.	Variances.....	74
Section 108.	Additional Requirements for Variances within Water Supply Watersheds.....	75
Section 109.	Interpretations.....	76
Section 110.	Requests to be Heard Expediently.....	77
Section 111.	Burden of Proof in Appeals and Variances.....	78
Section 112.	Board Action on Appeals and Variances.....	78

Section 113. Actions Subsequent to Decision..... 79  
 Section 114. Appeal of Decision to Superior Court ..... 79  
 Section 115. Reserved..... 79  
 Section 116. Reserved..... 79  
 Section 117. Reserved..... 79

**ARTICLE VI HEARING PROCEDURES FOR APPEALS AND APPLICATIONS ..... 81**

Section 118. Hearing Required on Appeals and Applications..... 81  
 Section 119. Notice of Hearing..... 81  
 Section 120. Evidence..... 82  
 Section 121. Modification of Application at Hearing..... 82  
 Section 122. Record..... 83  
 Section 123. Written Decision ..... 83  
 Section 124. Reserved ..... 83  
 Section 125. Reserved ..... 83  
 Section 126. Reserved ..... 83  
 Section 127. Reserved ..... 83

**ARTICLE VII ENFORCEMENT AND REVIEW ..... 85**

Section 128. Violations..... 85  
 Section 129. Complaints Regarding Violations ..... 85  
 Section 130. Persons Liable ..... 85  
 Section 131. Procedures Upon Discovery of Violations..... 85  
 Section 132. Penalties and Remedies for Violations..... 86  
 Section 133. Permit Revocation ..... 86  
 Section 134. Judicial Review..... 87  
 Section 135. Enforcement Concerning Violations in Floodway Overlay Zones..... 88  
 Section 136. Reserved ..... 88  
 Section 137. Reserved ..... 88

**ARTICLE VIII NONCONFORMING SITUATIONS ..... 89**

Section 138. Definitions..... 89  
 Section 139. Continuation of Nonconforming Situations and Completion of Nonconforming Projects..... 90  
 Section 140. Nonconforming Lots..... 90  
 Section 141. Extension or Enlargement of Nonconforming Situations..... 91  
 Section 142. Repair, Maintenance and Reconstruction..... 93  
 Section 143. Change in Use of Property Where a Nonconforming Situation Exists..... 94  
 Section 144. Abandonment and Discontinuance of Nonconforming Situations..... 96  
 Section 145. Completion of Nonconforming Projects..... 97  
 Section 146. Reserved ..... 99  
 Section 147. Reserved ..... 99  
 Section 148. Reserved ..... 99  
 Section 149. Reserved ..... 99  
 Section 150. Reserved ..... 99

<b>ARTICLE IX</b>	<b>ZONING DISTRICTS AND ZONING MAP</b> .....	<b>101</b>
<b>PART I</b>	<b>ZONING DISTRICTS</b> .....	<b>101</b>
Section 151.	Residential Districts Established .....	101
Section 152.	Commercial Districts Established.....	102
Section 153.	Manufacturing Districts Established.....	103
Section 154.	Conditional Use Zoning Districts Established .....	103
Section 155.	Planned Unit Development Districts Established.....	105
Section 156.	Floodway and Floodway Fringe Districts .....	106
Section 157.	Watershed Districts.....	106
Section 158.	Corridor Districts.....	107
Section 159.	Reserved.....	110
Section 160.	Reserved.....	110
<b>PART II</b>	<b>ZONING MAP</b> .....	<b>111</b>
Section 161.	Official Zoning Map.....	111
Section 162.	Amendments to Official Zoning Map.....	111
Section 163.	Reserved.....	111
Section 164.	Reserved.....	111
<b>ARTICLE X</b>	<b>PERMISSIBLE USES</b> .....	<b>113</b>
Section 165.	Table of Permissible Uses .....	113
Section 166.	Use of the Designations Z, S, C in the Table of Permissible Uses.....	124
Section 167.	Board of Adjustment Jurisdiction Over Uses Otherwise Permissible With a Zoning Permit .....	124
Section 168.	Permissible Uses and Specific Exclusions .....	125
Section 169.	Accessory Uses .....	125
Section 170.	Permissible Uses Not Requiring Permits.....	126
Section 171.	Change In Use.....	127
Section 172.	Combination Uses.....	128
Section 173.	More Specific Use Controls.....	129
Section 174.	Residential Occupancy Controls .....	129
Section 175.	Reserved.....	130
Section 176.	Reserved.....	130
Section 177.	Reserved.....	130
<b>ARTICLE XI</b>	<b>SUPPLEMENTARY USE REGULATIONS</b> .....	<b>131</b>
<b>PART I</b>	<b>GENERAL PROVISIONS</b> .....	<b>131</b>
Section 178.	Planned Residential Developments.....	131
Section 179.	Planned Unit Developments.....	131
Section 180.	Temporary Emergency, Construction, or Repair Residences.....	132
Section 181.	Primary Residence with Accessory Apartment .....	133
Section 182.	Mining or Quarrying Operations, Including On Site Sale of Products.....	133
Section 183.	Fraternity or Sorority Dwellings .....	134
Section 184.	Homes Emphasizing Special Services, Treatment or Supervision.....	134
Section 185.	Open Air Markets.....	134
Section 186.	Parking As A Principal Use .....	134
Section 187.	Temporary Emergency, Construction, and Repair Residences.....	135

---

Section 188.	Temporary Structures Construction Related.....	135
Section 189.	Home Occupations .....	135
Section 190.	Adult Establishments .....	136
Section 191.	Manufactured Home Park.....	139
Section 192.	Telecommunication Towers and Related Structures.....	142
<b>PART II</b>	<b>MANUFACTURING/PROCESSING PERFORMANCE STANDARDS.....</b>	<b>147</b>
Section 193.	Smoke .....	147
Section 194.	Odors.....	148
Section 195.	Air Pollution .....	148
Section 196.	Electrical Disturbances or Interference.....	148
Section 197.	Reserved .....	149
Section 198.	Reserved .....	149
<b>ARTICLE XII</b>	<b>INTENSITY REGULATIONS .....</b>	<b>151</b>
Section 199.	Definitions.....	151
Section 200.	Schedule of Land Use Intensity Regulations .....	152
Section 201.	Gross Land Area.....	154
Section 202.	Minimum Lot Widths.....	154
Section 203.	Minimum Street Frontage Widths.....	154
Section 204.	Minimum Recreation Space.....	155
Section 205.	Building Setback Requirements .....	155
Section 206.	Accessory Building Setback Requirements .....	157
Section 207.	Building Height Limitations.....	158
Section 208.	Minimum Building Spacing.....	159
Section 209.	Intensity Regulations for the U-1 District .....	160
Section 210.	Architecturally Integrated Subdivisions.....	160
Section 211.	Density On Lots Where Portion Dedicated to Town.....	161
Section 212.	Reserved .....	161
Section 213.	Reserved .....	161
Section 214.	Reserved .....	161
Section 215.	Reserved .....	161
<b>ARTICLE XIII</b>	<b>WATERSHED PROTECTION .....</b>	<b>163</b>
Section 216.	Purpose .....	163
Section 217.	Adoption Date and Effective Date.....	163
Section 218.	Jurisdiction.....	163
Section 219.	Exceptions to Applicability .....	164
Section 220.	Establishment of Watershed Review Boards.....	164
Section 221.	Establishment of Watershed Areas .....	164
Section 222.	Watershed Areas Described.....	165
Section 223.	Cluster Development .....	167
Section 224.	Buffer Areas Required .....	168
Section 225.	Rules Governing the Interpretation of Watershed Area Boundaries.....	168
Section 226.	Existing Development.....	168
Section 227.	Watershed Protection .....	169
Section 228.	Public Health, Safety, and General Welfare.....	169
Section 229.	Reserved .....	169
Section 230.	Reserved .....	169



<b>ARTICLE XIV</b>	<b>STREETS AND SIDEWALKS .....</b>	<b>171</b>
Section 231.	Street Classification .....	171
Section 232.	Access to Lots.....	173
Section 233.	Access to Arterial Streets.....	173
Section 234.	Entrances to Streets.....	173
Section 235.	Coordination with Surrounding Streets .....	174
Section 236.	Relationship of Streets to Topography .....	174
Section 237.	Street Width, Sidewalk, and Drainage Requirements in Subdivisions.....	175
Section 238.	General Layout of Streets .....	176
Section 239.	Street Intersections.....	177
Section 240.	Construction Standards and Specifications .....	178
Section 241.	Public Streets and Private Roads in Subdivisions .....	178
Section 242.	Road and Sidewalk Requirements in Unsubdivided Developments .....	179
Section 243.	Attention to Handicapped in Streets and Sidewalk Construction.....	180
Section 244.	Street Names and House Numbers.....	180
Section 245.	Bridges .....	181
Section 246.	Utilities.....	181
Section 247.	Reserved .....	181
Section 248.	Reserved .....	181
Section 249.	Reserved .....	181
Section 250.	Reserved .....	181
Section 251.	Reserved .....	181
Section 252.	Reserved .....	181
Section 253.	Reserved .....	181
Section 254.	Reserved .....	181
<b>ARTICLE XV</b>	<b>UTILITIES .....</b>	<b>183</b>
Section 255.	Utility Ownership and Easement Rights.....	183
Section 256.	Lots Served by Governmentally Owned Water or Sewer Lines .....	183
Section 257.	Sewage Disposal Facilities Required.....	183
Section 258.	Determining Compliance with Sewage Disposal Facilities Requirements .....	184
Section 259.	Water Supply System Required .....	184
Section 260.	Determining Compliance with Water Supply System Requirements.....	184
Section 261.	Lighting Requirements .....	185
Section 262.	Excessive Illumination .....	185
Section 263.	Electric Power.....	185
Section 264.	Telephone Service.....	186
Section 265.	Underground Utilities .....	186
Section 266.	Utilities To Be Consistent With Internal and External Development.....	187
Section 267.	As - Built Drawings Required.....	187
Section 268.	Fire Hydrants .....	187
Section 269.	Sites for and Screening of Dumpsters.....	188
Section 270.	Reserved .....	188
Section 271.	Reserved .....	188
Section 272.	Reserved .....	188

<b>ARTICLE XVI</b>	<b>GRADING, SOIL EROSION AND SEDIMENT CONTROL</b>	<b>189</b>
Section 273.	Activities Affected.....	189
Section 274.	Plan Approval Required.....	189
Section 275.	Administrative Procedures for Plan Approval.....	191
Section 276.	Compliance With Approved Plans.....	193
Section 277.	Stop Work Orders.....	194
Section 278.	Definitions.....	194
Section 279.	Reserved.....	198
Section 280.	Reserved.....	198
<b>PART I</b>	<b>GRADING.....</b>	<b>199</b>
Section 281.	Grading Plan.....	199
Section 282.	Topographic Survey.....	199
Section 283.	Grading Plan Format.....	201
Section 284.	Grading Performance Standards.....	202
Section 285.	Reserved.....	204
Section 286.	Reserved.....	204
<b>PART II</b>	<b>SOIL EROSION AND SEDIMENT CONTROL.....</b>	<b>205</b>
Section 287.	Authority and Purpose.....	205
Section 288.	Soil Erosion and Sediment Control Plan.....	205
Section 289.	Basic Erosion Control Objectives.....	207
Section 290.	Soil Erosion Control Design Standards.....	207
Section 291.	Soil Erosion Control Performance Standards.....	209
Section 292.	Acceptable Erosion Control Management Measures.....	210
Section 293.	Maintenance of Erosion Control Measures.....	211
Section 294.	Penalties.....	211
Section 295.	Injunctive Relief.....	212
Section 296.	Existing Uncovered Areas.....	212
Section 297.	Reserved.....	213
Section 298.	Reserved.....	213
<b>ARTICLE XVII</b>	<b>FLOODPLAINS, DRAINAGE, AND STORM WATER MANAGEMENT.....</b>	<b>215</b>
<b>PART I</b>	<b>FLOODWAY ZONE AND FLOOD FRINGES.....</b>	<b>215</b>
Section 299.	Definitions.....	215
Section 300.	Statement of Purpose.....	216
Section 301.	Floodway and Flood Fringe Overlay Districts.....	216
Section 302.	Artificial Obstructions Within Floodways Prohibited.....	217
Section 303.	Permissible Uses Within the Floodway Zone and Flood Fringe Overlay Districts.....	217
Section 304.	Construction Within the Floodway Zone and Flood Fringe Restricted.....	217
Section 305.	Special Provisions for Subdivisions.....	220
Section 306.	Water Supply and Sanitary Sewer Systems in Floodway Zones and Flood Fringes.....	221
Section 307.	Additional Duties of Administrator Related to Flood Insurance and Flood Control.....	221
Section 308.	Floor Elevation or Flood-proofing Certification Required.....	222
Section 309.	Location of Boundaries of Floodway Zone and Flood Fringe Districts.....	223

Section 310.	Regulations Do Not Guarantee Flood Protection.....	223
Section 311.	Standards for Streams Without Established Base Flood Elevation and/or Floodways.....	224
<b>PART II</b>	<b>DRAINAGE AND STORM WATER MANAGEMENT .....</b>	<b>225</b>
Section 312.	Plan Approval Required.....	225
Section 313.	Administrative Procedures for Drainage Plan Approval.....	226
Section 314.	Diligence in Construction of Drainage Structures .....	227
Section 315.	Drainage and Storm Water Management Objectives .....	228
Section 316.	Drainage and Storm Water Management Design Standards .....	229
Section 317.	Reserved.....	233
Section 318.	Reserved.....	233
Section 319.	Reserved.....	233
Section 320.	Reserved.....	233
<b>ARTICLE XVIII</b>	<b>SIGNS.....</b>	<b>235</b>
Section 321.	Definitions.....	235
Section 322.	Signs Excluded From Regulation.....	238
Section 323.	Prohibited Signs.....	238
Section 324.	Permit Required for Signs.....	240
Section 325.	Signs Which Do Not Require a Permit .....	241
Section 326.	General Requirements for On Premise Signs.....	243
Section 327.	Signs Permitted in the R-1, R-2, R-4 and MH Districts .....	245
Section 328.	Signs Permitted in the R-3 District .....	246
Section 329.	Signs Permitted in the B-1 District.....	247
Section 330.	Signs Permitted in the B-2 District.....	248
Section 331.	Signs Permitted in the B-3 District.....	249
Section 332.	Signs Permitted in the M-1 District.....	250
Section 333.	Signs Permitted in the U-1 District .....	251
Section 334.	Signs Permitted in the O/I District .....	251
Section 335.	Marquee Sign Regulations.....	252
Section 336.	Sign Regulations for Shopping Centers, Malls and Unified Business Establishments .....	252
Section 337.	Political Sign Regulations .....	254
Section 338.	Elevated Merchandise Regulations.....	254
Section 339.	Temporary Sign Regulations.....	254
Section 340.	Exceptions and Modifications.....	255
Section 341.	Maintenance, Relocation and Obsolete and Abandoned Signs.....	258
Section 342.	Reserved .....	259
Section 343.	Reserved .....	259
Section 344.	Reserved .....	259
<b>ARTICLE XIX</b>	<b>PARKING .....</b>	<b>261</b>
Section 345.	Definitions.....	261
Section 346.	Number of Parking Spaces Required .....	262
Section 347.	Flexibility in Administration Required .....	265
Section 348.	Parking Space Dimensions and Required Widths of Parking Area Aisles and Driveways .....	265
Section 349.	General Design Requirements.....	268

---

Section 350.	Vehicle Accommodation Area Surfaces .....	268
Section 351.	Joint Use of Required Parking Spaces .....	269
Section 352.	Satellite Parking.....	269
Section 353.	Special Provisions For Lots With Existing Buildings.....	270
Section 354.	Loading and Unloading Areas .....	270
Section 355.	Reserved .....	271
Section 356.	Reserved .....	271
Section 357.	Reserved .....	271
<b>ARTICLE XX</b>	<b>SCREENING AND TREES .....</b>	<b>273</b>
<b>PART I</b>	<b>SCREENING .....</b>	<b>273</b>
Section 358.	Council Findings Concerning the Need for Screening Requirements.....	273
Section 359.	General Screening Standard.....	273
Section 360.	Compliance with Screening Standard.....	274
Section 361.	Screening Land Use Classification.....	274
Section 362.	Table of Screening Requirements.....	275
Section 363.	Description of Screening.....	277
Section 364.	Flexibility in Administration Required .....	281
Section 365.	Combination Uses.....	282
Section 366.	Subdivisions .....	282
Section 367.	Screening for Nonconforming Uses.....	282
Section 368.	Maintenance of Screening and Landscape Plantings.....	283
Section 369.	Use Before Completion of Screening Requirements.....	284
Section 370.	Reserved .....	284
<b>PART II</b>	<b>TREES.....</b>	<b>285</b>
Section 371.	Council Findings and Declaration of Policy on Shade Trees.....	285
Section 372.	Required Trees Along Dedicated Streets.....	286
Section 373.	Preservation of Existing Trees and Vegetation.....	286
Section 374.	Trees in Parking Areas.....	288
Section 375.	Protection of Trees During Construction.....	290
Section 376.	Use Before Completion of Tree Planting Requirements .....	291
Section 377.	Reserved .....	291
<b>ARTICLE XXI</b>	<b>AMENDMENTS .....</b>	<b>293</b>
Section 378.	Amendments in General .....	293
Section 379.	Initiation of Amendments .....	293
Section 380.	Hearing Required: Notice.....	294
Section 381.	Planning Commission Consideration of Proposed Amendments .....	295
Section 382.	Council Action on Amendments .....	296
Section 383.	Ultimate Issue Before Council on Amendments .....	296
Section 384.	Protest to Zoning District Changes.....	297
Section 385.	Action Subsequent to Council Decision.....	297
Section 386.	Special Provisions for Conditional Use Districts and Conditional Use Permits.....	298
Section 387.	Reserved .....	298
Section 388.	Reserved .....	298
Section 389.	Reserved .....	298

---

---

<b>APPENDIX A</b>	<b>INFORMATION REQUIRED WITH APPLICATIONS .....</b>	<b>299</b>
A 1	In General.....	299
A 2	Written Application.....	299
A 3	Development Site Plans.....	300
A 4	Graphic Materials Required for Plans.....	300
A 5	Existing Natural, Man Made, and Legal Features.....	301
A 6	Proposed Changes in Existing Features or New Features.....	302
A 7	Documents and Written Information in Addition to Plans.....	304
A 8	Numbers of Copies of Plans and Documents.....	305
<b>APPENDIX B</b>	<b>GUIDE FOR LANDSCAPING .....</b>	<b>307</b>
B 1	Guide for Protecting Existing Trees and Vegetation.....	307
B 2	Standards for Street and Parking Lot Trees.....	307
B 3	Guide for Planting Trees.....	308
B 4	Guide for Planting Shrubs.....	309
B 5	Lists of Recommended Trees and Shrubs.....	310
<b>APPENDIX C</b>	<b>CONDITIONAL OR SPECIAL USE PERMIT BOARD CONSIDERATION WORKSHEET .....</b>	<b>313</b>
<b>APPENDIX D</b>	<b>OFF-PREMISE DIRECTIONAL SIGN PROGRAM "CORRIDOR AREA." GUIDELINES FOR SIGN APPROVAL ADOPTED 5-22-97. (LAST REVISION 5-23-97) .....</b>	<b>315</b>



## 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. 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 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. 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, conditional use 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 9. 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 10. 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 11. 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 12. Reserved****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.

- [1] *Accessory Use*: (See Section 169).
- [2] *Administrator*: Person whose primary responsibility is administrating and enforcing this ordinance as assigned by the town manager.
- [3] *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.
- [4] *Agriculture, Non-Livestock*: The use of land for the production of cash grains, field crops, vegetables, fruit and nuts, and for horticulture and floriculture.
- [5] *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.
- [6] *Antenna*: Any equipment or device designed to transmit or receive telecommunication signals.
- [7] *Base Flood*: The flood having a one percent chance of being equaled or exceeded in any given year. Also known as the 100 year flood.
- [8] *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.

- [9] *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.
- [10] *Building:* A structure designed to be used as a place of occupancy, storage or shelter.
- [11] *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.
- [12] *Building, Principal:* The primary building on a lot or a building that houses a principal use.
- [13] *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).
- [14] *Business, Convenience:* Commercial establishments designed to attract and to be dependent upon large volumes of stop-and go traffic, including but not limited to, all types of convenience stores and fast food restaurants, with or without drive-thru windows.
- [15] *Business, General:* Commercial establishments that, in addition to serving day to day commercial needs of a community, also supply the more durable and permanent needs of a whole community.
- [16] *Business, Neighborhood:* Small scale unified or independent commercial establishments with a per-unit floor area under three thousand (3,000) square feet, that generally serve the day to day commercial needs of a residential neighborhood.
- [17] *Business, Wholesale:* Commercial establishments that generally sell commodities in large quantities or by the piece to retailers, jobbers, other wholesale establishments, or manufacturing establishments, for use in the fabrication of a product, or use by a business.
- [18] *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.

- [19] *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.
- [20] *Church*: A structure in which persons regularly assemble for religious worship and which is maintained by a religious body organized to sustain public worship.
- [21] *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.
- [22] *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.
- [23] *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.
- [24] *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.
- [25] *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.
- [26] *Conditional Use Permit*: A permit issued by the town council 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 council.
- [27] *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.

- [28] *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.
- [29] *Development:* The use or occupancy of any land or structure, or the construction, erection, alteration or moving of any structure.
- [30] *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.
- [31] *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.
- [32] *Dwelling:* Any buildings or structure (except a mobile home) that is or is intended to be used for living or sleeping by one or more human occupants.
- [33] *Dwelling, Single-Unit:* A detached dwelling consisting of a single dwelling unit only.
- [34] *Dwelling, Two-Unit:* A dwelling or combination of dwellings on a single lot consisting of two (2) dwelling units.
- [35] *Dwelling, Multi-Unit:* A dwelling or combination of dwellings on a single lot consisting of three (3) or more dwelling units.
- [36] *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.

- [37] *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).
- [38] *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.
- [39] *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.
- [40] *Extraterritorial Planning Area*: The portion of the town's planning jurisdiction that lies outside the corporate limits of the town.
- [41] *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 and foster children, provided that a group of more than two (2) persons who are not related by blood or marriage shall not be deemed to constitute a family.
- [42] *Floodplain*: The channel and area abutting a watercourse, which would be covered with water during a one hundred year flood as designated by reports and data provided by the Federal Emergency Management Agency.

- [43] *Floodway*: The portion of the channel and Floodplain of a stream designated by the Federal Emergency Management Agency reports and data as adequate to provide passage for the one hundred year flood, without increasing the elevation of that flood at any point by more than one foot.
- [44] *Flood Fringe*: An area lying outside the floodway, but within the Floodplain.
- [45] *Flood Insurance Rate Map*: An official map on which the Federal Emergency Management Agency has delineated both the floodway and floodway fringe areas. Said maps also contain cross sectional information relevant to both the floodway and floodway fringe areas with data available in official reports supplied by the Federal Emergency Management Agency.
- [46] *Flood, One Hundred Year*. A flood predicted by the United States Army Corps of Engineers, the Soil Conservation Service of the United States Department of Agriculture, or the Federal Insurance Administration to be of the magnitude as may be expected to occur on an average of once every one hundred years.
- [47] *Flood-Proofing*: Any structural or nonstructural addition, change, or adjustment to a structure for the prevention of flood damage to the structure and its contents, sanitary facilities and utilities.
- [48] *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.
- [49] *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.
- [50] *Greenway*: A corridor of protected open space, usually located adjacent to natural features, that is managed for conservation and/or recreation purposes.



- [51] *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.
- [52] *Gross Land Area*: All the area within the boundaries of a lot as described in a fee simple deed.
- [53] *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.
- [54] *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.
- [55] *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).
- [56] *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.
- [57] *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.
- [58] *Height Limitation, Secondary*: The absolute maximum height allowed for any structure, as shown in Section 200, Schedule of Land Use Intensity Ratios.
- [59] *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.

[60] *Homes Emphasizing Special Services:* An establishment qualified for a license by the State of North Carolina for the provision of resident services to seven (7) or more individuals of whom one or more are unrelated, and who are handicapped, aged, or disabled, and undergoing rehabilitation or extended care, and who are provided services to meet their needs. Included are group homes for all ages, half-way houses, boarding homes for children, and convalescent and nursing homes.

[61] *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.

[62] *Industrial Development:* Any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

[63] *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.

[64] *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.

- [65] *Landfill*: Any lot or premises on which is deposited solid waste material, including trash, construction debris, stumps, branches and limbs, garbage, and industrial waste.
- [66] *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.
- [67] *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.
- [68] *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.
- [69] *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.

- [70] *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.
- [71] *Lot Line*: A line that marks the boundary of a lot.
- [72] *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.
- [73] *Lot Line, Interior*: Any lot line that is not a street lot line; a lot line separating a lot from another lot.
- [74] *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.
- [75] *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.*
- [76] *Maintenance and/or Storage Facility*: Land, building, or structure devoted primarily to the maintenance and/or storage of equipment and materials.

- [77] *Manufacturing, Light:* Manufacturing, processing, creating, renovating, painting, cleaning, assembly of goods, merchandise, and equipment, or other industrial uses which have all operations and storage within enclosed structures.
- [78] *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.
- [79] *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.
- [80] *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.
- [81] *Mobile Home, Class C:* Any mobile home that does not meet the definition criteria of a Class A or Class B mobile home.

- [82] *Mobile (Manufactured) Home Park*: A residential use in which more than one (1) mobile home is located on a single lot.
- [83] *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.
- [84] *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.
- [85] *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.
- [86] *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.
- [87] *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.

- [88] *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).
- [89] *Nursing Care Home*: A facility maintained for the purpose of providing skilled nursing care and medical supervision at a lower level than that available in a hospital to not more than nine (9) persons.
- [90] *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.
- [91] *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.
- [92] *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.
- [93] *Parking, Off-Street*: Space located outside of any street right-of-way or easement that is designed to accommodate the parking of motor vehicles.
- [94] *Parking Space*: A portion of the vehicle accommodation area set aside for the parking of one vehicle.
- [95] *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, amphitheatres, and arenas.

- [96] *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.
- [97] *Planned Unit Development*: A development constructed on a tract of at least twenty five (25) acres under single ownership, planned and developed as an integral unit, and consisting of a combination of residential and nonresidential uses on land within a PUD district (see Section 155) in accordance with Section 179.
- [98] *Plat*: A map or plan of a parcel of land which is to be, or has been subdivided.
- [99] *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.
- [100] *Public Water Supply System*: Any water supply system furnishing potable water to ten (10) or more dwelling units or businesses or any combination thereof.
- [101] *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.
- [102] *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.
- [103] *Road*: All public or private ways used to provide motor vehicle access to [i] two (2) or more lots or [ii] two (2) or more distinct areas or buildings in non subdivided developments.
- [104] *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.



- [105] *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.
- [106] *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.
- [107] *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.
- [108] *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.
- [109] *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.
- [110] *Street*: A public street or a street with respect to which an offer of dedication has been made.
- [111] *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.

- [112] *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.
- [113] *Street, Cul-de-sac*: A street that terminates in a vehicular turnaround.
- [114] *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.
- [115] *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.
- [116] *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.
- [117] *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.
- [118] *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.
- [119] *Streetline*: The line where the edge of the right-of-way of a street meets the abutting property.
- [120] *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.

- [121] *Structure*: Anything constructed or erected which requires location on the ground or attached to something having a fixed location on the ground.
- [122] *Subdivision*: The division of a tract of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and including 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 nor be subject to the regulations of this ordinance applicable strictly to subdivisions:
- a. The combination or recombination of portions of previously platted 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, or,
  - b. The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved, or,
  - c. The public acquisition by purchase of strips of land for widening or opening streets, or,
  - 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 minimum standards set forth in this ordinance, or
  - e. The division of land solely among members of the same family, which shall include all lineal descendants or ancestors plus brothers, sisters, aunts, uncles, fathers-in-law, mothers-in-law, brothers-in-law, and sisters-in-law, by any method of transfer except where the parties contemplate development for resale. If a plat is recorded at the time of subdivision, the subdivided land must be deeded to the family members at the same time.
  - f. The division of land by court ordered or court approved partition except where the parties contemplate development for resale.
- [123] *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.

- [124] *Subdivision, Major.* Any subdivision other than a minor subdivision.
- [125] *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.
- [126] *Supply Yard.* A commercial establishment storing and offering for sale building supplies, steel supplies, coal, heavy equipment, feed and grain, and similar goods.
- [127] *Temporary Emergency, Construction, or Repair Residence.* A residence (which may be a mobile home) that is:[i] located on the same lot as a residence made uninhabitable by fire, flood, or other natural disaster and occupied by the persons displaced by such disaster, or [ii] located on the same lot as a residence that is under construction or undergoing substantial repairs or reconstruction and occupied by the persons intending to live in such permanent residence when the work is completed, or [iii] located on a nonresidential construction site and occupied by persons having construction or security responsibilities over such construction site.
- [128] *Temporary Portable Building.* A building intended for nonresidential use for a limited time period, consisting of one (1) or more modules constructed off the ultimate site of use and transported to that site either on its own wheels or otherwise.
- [129] *Temporary Portable Building, Construction Related.* A temporary portable building associated with the development of a lot and limited in duration to a time period extending from issuance of the initial zoning permit for such development to issuance of the final certificate of occupancy for the development.
- [130] *Temporary Shelter for Homeless.* A shelter for occupants without means of obtaining shelter with a minimum of two (2) non-occupant managers. Such shelter must be established and managed by a non-profit organization.

- [131] *Tourist Home (Bed and Breakfast)*: A building or group of buildings containing combination of three (3) to nine (9) lodging units intended for rental or lease primarily to transients for daily or weekly periods, with or without board, as distinguished from rooming houses, in which occupancy is generally by residents rather than transients.
- [132] *Town*: The Town of Boone.
- [133] *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.
- [134] *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.
- [135] *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.
- [136] *Use*: The activity or function that actually takes place or is intended to take place on a lot.
- [137] *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.
- [138] *Use, Principal*: The primary use and chief purpose of a lot or structure.

- [139] *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.
- [140] *Utility Facilities, Community or Regional*: All utility facilities other than neighborhood facilities.
- [141] *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.
- [142] *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.
- [143] *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.
- [144] *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.
- [145] *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.
- [146] *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.

- [147] *Watershed*: The entire land area contributing surface drainage to a specific point (e.g. the water supply intake.)
- [148] *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.
- [149] *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]** There shall be a planning commission consisting of eleven (11) members. Eight (8) members, appointed by the town council, shall reside within the town. Three (3) members, appointed by the county board of commissioners, shall reside within the town's extraterritorial planning area. (In accordance with N. C. G. S. 160A-362, the town must provide a means of proportional representation based on population for residents of the extraterritorial area being regulated. There shall be at all times at least one representative of the extraterritorial planning area on the planning commission. An additional member must be appointed to the planning commission to achieve proportional representation only when the population of the entire extraterritorial planning area constitutes a full fraction of the town's population divided by the total membership of the planning commission). If the county board fails to make these appointments within ninety (90) days after receiving a resolution from the town council requesting that they be made, the council may make them. (When selecting a new representative to the planning commission as a result of an extension of the extraterritorial jurisdiction, the board of county commissioners shall hold a public hearing on the selection. A 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 county board shall select appointees only from those who apply at or before the public hearing. The county shall make the appointments within forty five days following the public hearing). To the extent qualified persons can be found, one of the eight (8) members from the Town of Boone shall be a resident of Boone and a full-time student of Appalachian State University.

**[b]** Planning commission members shall 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 for the unexpired remainder of the term.

**[c]** Members may be appointed to successive terms without limitation.

**[d]** Planning commission members may be removed by the council at any time for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) or more of the meetings within a calendar year or for any other good cause related to performance of duties. Upon request of the member proposed for removal the council shall hold a hearing on the removal before it becomes effective. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the members status on the commission, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

**[e]** If an in-town member moves outside the town or if an extraterritorial area member moves outside the planning jurisdiction, that shall constitute a resignation from the planning commission, effective upon the date a replacement is appointed by the council.

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

**[a]** The planning commission shall establish a regular meeting schedule and may meet monthly and shall meet quarterly, and more often as it shall determine and require or at the request of the council or town manager.

**[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]** Minutes shall be kept of all commission meetings.

**[d]** All commission meetings shall be open to the public, and whenever feasible, the agenda for each commission meeting shall be made available in advance of the meeting.

**[e]** Whenever the commission is called upon to make recommendations concerning a conditional use permit request, special use permit request, or a zoning amendment proposal, the planning staff shall post on or near the subject property one or more notices that are sufficiently conspicuous in terms of size, location, and content to provide reasonably adequate notice to potentially interested persons of the matter that will appear on the commission's agenda at a specified date and time. Such notice(s) shall be posted at least seven (7) days prior to the meeting at which the matter is to be considered. The planning staff shall also send written notice to adjoining property owners if and to the extent required by any regulation or requirement of the planning commission adopted under Subsection 25[b].

---

**Section 23. Quorum and Voting**

- [a]** A quorum for the planning commission shall consist of six (6) members. A quorum is necessary for the commission to take official action.
- [b]** All actions of the planning commission shall be taken by majority vote, a quorum being present.
- [c]** A roll call vote shall be taken upon the request of any member.
- [d]** Extraterritorial planning area members may vote on all matters considered by the commission, regardless of whether the property affected lies within or without the town.

**Section 24. Planning Commission Officers**

- [a]** At its first meeting in January of each year, the planning commission shall, by majority vote of its membership (excluding vacant seats) elect one (1) of its members to serve as chairman and preside over the commission's meetings and one (1) member to serve as vice-chairman. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for re-election. Vacancies in these offices may be filled for the unexpired terms only by a majority vote of the commission membership (excluding vacant seats).
- [b]** The chairman and vice-chairman 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 and recommend to the council plans, goals, and objectives relating to the growth, development, and redevelopment of the town and the surrounding extraterritorial planning area.
  - [2]** Develop and recommend to the council policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
  - [3]** Make recommendations to the council concerning proposed conditional use permits, special use permits and proposed zoning map changes, as provided by Sections 72 and 381.

[4] Act as the Watershed Review Board on proposed plats of land subdivision and hear major and minor variance requests related to subdivisions within the designated Water Supply Watersheds.

[5] Perform any other duties assigned by the council.

**[b]** The planning commission may adopt rules and regulations governing its procedures and operations, including attendance records of its members, its resolutions, findings, recommendations, and actions not inconsistent with the provisions of the ordinance. 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.

## **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.

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

**[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 ten (10) members. All members, appointed by the town council, shall reside within the planning jurisdiction of the town. 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 architecture, horticulture, city planning, or other related field. In addition, one of the ten (10) members shall be an official representative of Appalachian State University.

[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 successive terms without limitation.

[d] Community appearance commission members may be removed by the council at any time for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) or more of the meetings within a calendar year or for any other good cause related to performance of duties. Upon request of the member proposed for removal the council shall hold a hearing on the removal before it becomes effective. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the members status on the commission, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

### 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 and more often as it shall determine and require or at the request of the council or town manager.

[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] Minutes shall be kept of all commission meetings.

[d] All commission meetings shall be open to the public, and whenever feasible, the agenda for each commission meeting shall be made available in advance of the meeting.

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

[a] A quorum for the commission shall consist of six (6) members. A quorum is necessary for the commission to take official action.

[b] All actions of the commission shall be taken by majority vote, a quorum being present.

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

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

[a] At its first meeting in January of each year, the commission shall, by majority vote of its membership (excluding vacant seats) elect one (1) of its members to serve as chairman and preside over the commission's meetings and one (1) member to serve as vice-chairman. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for re-election. Vacancies in these offices may be filled for the unexpired terms only by a majority vote of the commission membership (excluding vacant seats).

[b] The chairman and vice-chairman may take part in all deliberations and vote on all issues.

### **Section 33. Powers and Duties of 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.

- [3] Respond to requests made by the town landscape planner to make recommendations concerning the aesthetic suitability and site landscaping for proposed conditional use and special use permits.
- [4] Perform any other duties assigned by the council.

**[b]** The commission may adopt rules and regulations governing its procedures and operations, including attendance records of its members, its resolutions, findings, recommendations, and actions not inconsistent with the provisions of the ordinance. 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.

**Section 34. Reserved**

**Section 35. Reserved**

### **Part III Tree Board**

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

**[a]** There shall be a tree board consisting of four (4) members. All members, appointed by the community appearance commission chairman, shall be members of the community appearance commission. One (1) of the four (4) members shall be the chairman of the community appearance commission. To the extent qualified persons can be found, the members shall have special training or experience in a arbor culture, horticulture, architecture, or landscape architecture.

**[b]** Tree board members shall be appointed for one (1) year 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 successive terms without limitation.

**[d]** Tree board members may be removed by the chairman at any time for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) or more of the meetings within a calendar year or for any other good cause related to performance of duties. Upon request of the member proposed for removal the council shall hold a hearing on the removal before it becomes effective. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the members status on the board, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

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

**[a]** The tree board shall meet as necessary, or at the request of the council or town manager.

**[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]** Minutes shall be kept of all board meetings.

**[d]** All board meetings shall be open to the public, and whenever feasible, the agenda for each board meeting shall be made available in advance of the meeting.

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

**[a]** A quorum for the board shall consist of three (3) members. A quorum is necessary for the board to take official action.

**[b]** All actions of the board shall be taken by majority vote, a quorum being present.

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

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

**[a]** The chairman of the community appearance commission shall be the chairman of the tree board.

**[b]** The chairman 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 and the community appearance commission, plans, goals, and objectives relating to the urban forest of the town.
- [2] Develop and recommend to the council and community appearance commission policies, ordinances, administrative procedures, plans and other means for maintaining the town's urban forest program.
- [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]** The tree board may adopt rules and regulations governing its procedures and operations, including attendance records of its members, its resolutions, findings, recommendations, and actions not inconsistent with the provisions of the ordinance. 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.

**Section 41. Reserved**

**Section 42. Reserved**

---

## Part IV Board of Adjustment

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

**[a]** There shall be a board of adjustment consisting of seven (7) regular members and four (4) alternates. Five (5) regular members and one (1) alternate, appointed by the council, shall reside within the town. Two (2) regular members and one (1) alternate, appointed by the county board of commissioners, shall reside within the town's extraterritorial planning area. (In accordance with N. C. G. S. 160A-362, the town must provide a means of proportional representation based on population for residents of the extraterritorial area being regulated. There shall be at all times at least one representative of the extraterritorial planning area on the board of adjustment. An additional member must be appointed to the board of adjustment to achieve proportional representation only when the population of the entire extraterritorial planning area constitutes a full fraction of the town's population divided by the total membership of the board of adjustment). If, despite good faith efforts, enough residents of the extraterritorial planning area cannot be found to fill the seats reserved for residents of such area, then the county board of commissioners may appoint other residents of the county (including residents of the town) to fill these seats. If the county board of commissioners fails to make these appointments within ninety (90) days after receiving a resolution from the council requesting that they be made, the council may make them. (When selecting a new representative to the board of adjustment as a result of an extension of the extraterritorial jurisdiction, the board of county commissioners shall hold a public hearing on the selection. A 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 county board shall select appointees only from those who apply at or before the public hearing. The county shall make the appointments within forty five days following the public hearing).

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

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

**[d]** Regular board of adjustment members may be removed by the council at any time for failure to attend four (4) consecutive meetings or for failure to attend one fourth of the regular meetings in a calendar year, or for any other good cause related to performance of duties. Alternate members may be removed for repeated failure to attend or participate in meetings when requested to do so in accordance with regularly established procedures. Upon request of the member proposed for removal, the council shall hold a hearing on the removal before it becomes effective.

**[e]** If a regular or alternate in town member moves outside the town, or if an extraterritorial area regular or alternate member moves outside the planning jurisdiction, that shall constitute a resignation from the board, effective upon the date a replacement is appointed.

**[f]** Extraterritorial planning area members may vote on all matters coming before the board.

**[g]** The in town alternate may sit only in lieu of a regular in town member and the extraterritorial area alternate may sit only in lieu of the regular extraterritorial area member. When so seated, alternates shall have the same powers and duties as the regular member they replace.

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

**[a]** The board of adjustment shall establish a regular meeting schedule and shall meet frequently enough so that it can take action as expeditiously as reasonably as possible.

**[b]** The board shall conduct its meetings in accordance with the quasi-judicial procedures set forth in Articles IV, V, and VI.

**[c]** All meetings of the board shall be open to the public, and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.

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

**[a]** A quorum for the board of adjustment shall consist of the number of members equal to four fifths of the regular board membership (excluding vacant seats). 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 regular board membership (excluding vacant seats) 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 of a special-use permit) or to grant any variance. All other actions of the board shall be taken by majority vote, a quorum being present.

**[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 may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:

- [1] If the member has a direct financial interest in the outcome of the matter at issue; or,
- [2] If the matter at issue involves the member's own official conduct; or,
- [3] If participation in the matter might violate the letter or spirit of a member's code of professional responsibility; or,
- [4] If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.

**[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]** 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.

**Section 47. Board of Adjustment Officers**

**[a]** At its first regular meeting in January, the board of adjustment shall, by majority vote of its membership (excluding vacant seats) elect one (1) of its members to serve as chairman and preside over the board's meetings and one (1) member to serve as vice-chairman. The persons so designated shall serve in these capacities for terms of one (1) year. Vacancies may be filled for the unexpired terms only by majority vote of the board membership (excluding vacant seats).

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

**[c]** The chairman and vice-chairman 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 interpretation made by the administrator, as provided in Section 106.
- [2] Applications for special-use permits, as provided in Subsection 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 may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this ordinance.

**Section 49. Reserved****Section 50. Reserved**

## **Part V      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 staff” is sometimes used interchangeably with the term “administrator”.

### **Section 52.    Planning and Inspections Director**

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

### **Section 53.    Reserved**

## **Part VI      Town Council**

### **Section 54.    The Town Council**

**[a]** The town council, in considering conditional -use permit applications, acts in a quasi judicial capacity and, accordingly, is required to observe the procedural requirements set forth in Articles IV and VI of this ordinance.

**[b]** 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.

---

**[c]** Unless otherwise specifically provided in this ordinance, in acting upon conditional-use permit requests or 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, Special Use, and Conditional Use Permits

#### Section 61. Permits Required

**[a]** Subject to Section 324 (Permit Required for Signs), 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 issued by the administrator.
- [2] A special use permit issued by the board of adjustment.
- [3] A conditional use permit issued by the town council.

**[b]** Zoning permits, special use permits, conditional use permits and sign permits are 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 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. Renovations, remodeling and structural alterations, including additions of a building which are less than fifty percent (50%) of the current market value of both the structure and the land, are exempt from certain provisions of the ordinance including parking, screening, and landscaping requirements. The exemptions shall be noted by the administrator on the issued permit.

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

**[d]** A zoning permit, conditional use permit, special use permit, or sign permit 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. All such permits issued with respect to tracts of land in excess of one acre (except sign permits and zoning permits for single family and two family residential uses) shall be recorded in the Watauga County Registry after execution by the record owner as provided in Section 78.

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

**[a]** Issuance of a conditional use, special use, or zoning permit authorizes the recipient to commence the activity resulting in a change in use of the land or (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 conditional use or special use permit have been complied with.

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

**[a]** Applications for zoning, special use, conditional 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. By way of illustration, in general this means that applications should be made by the owners or lessees of property, or their agents, 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 (who may make application in the name of such owners, lessees, or contract vendors).

**[b]** The administrator may require an applicant to submit evidence of his authority to submit the application in accordance with Subsection [a] whenever there appears to be a reasonable basis for questioning this authority.

---

**Section 64. Applications To Be Complete**

**[a]** All applications for zoning, special use, conditional use, zoning vested right or sign permits must be complete before the permit issuing authority is required to consider the application.

**[b]** Subject to Subsection [c], 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.

**[c]** 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 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 to allow the permit issuing authority to evaluate the application in the light of the substantive requirements set forth in this text of this ordinance.

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.

**[d]** 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.

[e] 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, such as applications for zoning permits to construct single family or two family houses, or applications for sign permits, 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 the planning staff is encouraged or required as provided in this section.

[b] Before submitting an application for a conditional use permit authorizing a development that consists of or contains a major subdivision, the developer shall submit to the administrator a sketch plan of such subdivision, drawn approximately to scale (1 inch = 100 feet). The sketch plan shall contain:

- [1] The name and address of the developer,
- [2] The proposed name and location of the subdivision,
- [3] The approximate total acreage of the proposed subdivision,
- [4] the tentative street and lot arrangement,
- [5] Topographic lines, and
- [6] Any other information the developer believes necessary to obtain the informal opinion of the planning staff as to the proposed subdivision's compliance with the requirements of this ordinance.

The administrator shall meet with the developer as soon as conveniently possible to review the sketch plan.

[c] Before submitting an application for any other permit, developers are strongly encouraged to consult with the planning staff concerning the application of this ordinance to the proposed development.

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

**[a]** Upon receipt of a formal application for a zoning, special use, conditional use permit, zoning vested right or minor plat approval, the administrator shall review the application and confer with the applicant to ensure that he understands the planning staff's interpretation of the applicable requirements of this ordinance, that he has submitted all of the information that he intends to submit, and that the application represents precisely and completely what he proposes to do.

**[b]** If the application is for a special use, conditional use permit, or zoning vested right, the administrator shall place the application on the agenda of the appropriate boards when the applicant indicates that the application is as complete as he intends to make it. However, as provided in Sections 71 and 72, if the administrator believes that the application is incomplete, he shall recommend to the appropriate board that the application be denied on that basis.

**Section 67. Zoning Permits**

**[a]** A completed application form for a zoning permit shall be submitted to the administrator by filing a copy of the application with the administrator in the Planning and Inspections Department.

**[b]** The administrator shall issue the zoning permit unless he finds, after reviewing the application and consulting with the applicant as provided for in Section 65, that:

- [1] The requested permit is not within his 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 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 and Conditional Use Permits**

**[a]** An application for a special use permit shall be submitted to the board of adjustment by filing a copy of the application with the administrator in the Planning and Inspections Department.

**[b]** An application for a conditional use permit shall be submitted to the town council by filing a copy of the application with the administrator in the Planning and Inspections Department.

**[c]** Subject to Subsection [d], the board of adjustment or the council, respectively, shall issue the requested permit unless it concludes, based upon the information submitted at the hearing, that:

- [1] The requested permit is not within his 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

**[d]** Even if the permit issuing board finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:

- [1] Will materially endanger the public health or safety, or
- [2] Will substantially injure the value of adjoining or abutting property, or
- [3] Will not be in harmony with the area in which it is to be located, or
- [4] 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 permit issuing board shall be upon the applicant. 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]** Once a completed application has been submitted, the burden of presenting evidence to the permit issuing board sufficient to lead it to conclude that the application should be denied for any reasons stated in Subdivisions 69 [c] [1], 69 [c] [3] or 69 [d] 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.

**[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. The burden of persuasion on the issue of whether the application should be turned down for any of the reasons set forth in Subdivision 69 [c] and [d] rests on the party or parties urging that the requested permit should be denied.

**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 forth the planning staff's proposed findings concerning the application's compliance with Section 64 (Applications To Be Complete) and the other requirements of this ordinance, as well as any other staff recommendations for additional requirements 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.

**[c]** The board of adjustment may, by general rule applicable to all cases or any class of cases, or on a case by case basis, refer applications to the planning commission to obtain its recommendations.

**Section 72. Recommendations on Conditional Use Permit Applications**

**[a]** Before being presented to the council, an application for a conditional use permit shall be referred to the planning commission for action in accordance with this section. The council may not hold a public hearing on a conditional use permit application until the planning commission has had an opportunity to consider the application pursuant to standard agenda procedures. In addition, at the request of the planning commission, the council may continue the public hearing to allow the planning commission more time to consider or reconsider the application.

**[b]** When presented to the planning commission, the application shall be accompanied by a report setting forth the planning staff's proposed findings concerning the application's compliance with Section 64 and other requirements of this ordinance, as well as any staff recommendations for additional requirements to be imposed by the council. If the planning staff report 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.

**[c]** The planning commission shall consider the application and the attached staff report in a timely fashion, and may, in its discretion, hear from the applicant or members of the public. (Notice to the adjoining property owners is provided for in Subsection 22 [e] ).



**[d]** After reviewing the application, the planning commission shall report to the council whether it concurs in whole or in part with the staff's proposed findings and conditions, and to the extent there are differences the planning commission shall propose its own recommendations and the reasons therefor.

**[e]** In response to the planning commission's recommendations, the applicant may modify his application prior to submission to the council, and the planning staff may likewise revise its recommendations.

### **Section 73. Council Action on Conditional Use Permits**

**[a]** In considering whether to approve an application for a conditional use permit, the council shall proceed according to the following format:

- [1] The council shall consider whether the application is complete. If no member moves that the application be found incomplete (specifying either the particular type of information lacking or the particular requirement with respect to which the application is incomplete) then this shall be taken as an affirmative finding by the council that the application is complete.
- [2] The council shall consider whether the application complies with all of the applicable requirements of this ordinance. If a motion to this effect passes, the council need not make further findings concerning such requirements. If such a motion fails 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. Separate votes may be taken with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the council to be unsatisfied through this process.
- [3] If the council concludes that the application fails to comply with one or more requirements of this ordinance, the application shall be denied. If the council 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 [d]. Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion.

---

**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 in the same manner as the council when considering conditional use permit applications (Section 73), except that the format of the board of adjustment proceedings will differ as a result of the four fifths voting requirement set forth in Subsection 46 [a].

- [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 [c], 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 [d]. Such a motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion. Since such a motion is not in favor of the applicant, it is carried by a simple majority vote.

---

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

**[a]** Subject to Subsection [b], in granting a special or conditional use permit, the board of adjustment or town council, respectively, 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 variation 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 [c] or [d].

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

**[a]** In cases when, because of weather conditions or other factors beyond the control of the special use or conditional 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.

## 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, special use, conditional use, 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 within the jurisdiction of the council or the board of adjustment is issued when such board votes to approve the application and issue the permit. A permit within the jurisdiction of the zoning administrator 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, such as having the permit executed by the property owner so it can be recorded if required under Section 80 [b].

**[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 or conditional approval by the board of adjustment or the town council, as applicable, 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 permitted or special use permit granted by the board of adjustment,
- [2] A conditional use permit granted by the town council, or
- [3] A conditional use 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 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 issued, 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 may 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. 153A-344.1.



[i] In the event that North Carolina G.S. 153A-344.1 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, conditional 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 (as provided in Subsection [b]) 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 the permit (including approved plans) issued by the town council, the board of adjustment and the administrator are permissible and the administrator may authorize such insignificant deviations. A deviation is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.

**[b]** Minor design modifications or changes in permits (including approved plans) are permissible with the approval of the permit issuing authority. Such permission may be obtained without a formal application, public hearing, or payment of any additional fee. For purposes of this section, minor design modifications or changes are those that have no substantial impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.

**[c]** All other requests for changes in approved plans will be processed as new applications. If such requests are required to be acted upon by the council or board of adjustment, new conditions may be imposed in accordance with Section 75, but the applicant retains the right to reject such additional conditions by withdrawing his request for an amendment and may then proceed in accordance with the previously issued permit.

**[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].

**[e]** A developer requesting approval of changes shall submit a written request for such 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 (i) the town council disapproves a conditional use permit application, or (ii) 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 council or 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 Expediently**

[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.

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

[a] The recipient of any zoning, special use, conditional 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. Reserved**

**Section 86. Reserved**

**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 conditional 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).

### 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.

[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.

### 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 endorsements set forth in Subsection 95 [d] [2] and [3], as well as the following Certificate of Approval.

[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 conditional use permit has been authorized by the town council.

**[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.
- [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 conditional 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 sea 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 order or decision of the administrator may be taken to the board of adjustment by any person aggrieved. An appeal is taken by filing with the administrator and the board of adjustment a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the administrator and the board of adjustment when delivered to the planning department, and the date and time of filing shall be entered on the notice by the planning staff.

**[b]** An appeal must be taken within thirty (30) days after the date of the decision or order appealed from.

**[c]** Whenever an appeal is filed, the administrator shall forthwith transmit to the board of adjustment all the papers constituting the record relating to the action appealed from.

**[d]** An appeal stays all actions by the administrator seeking enforcement of or compliance with the order or decision 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, 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.

**[e]** The board of adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the board shall have all the powers of the officer from whom the appeal is taken.

**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 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] Strict compliance with the regulations allows no reasonable use of the applicants property;
- [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.

### **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 in the planning department. 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 107, the administrator shall have the initial burden of presenting to the board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

**[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]** With respect to appeals, a motion to reverse, affirm or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the four fifths vote necessary for adoption (see Section 46), then a motion to uphold the decision appealed from shall be in order. This motion is adopted as the board's decision if supported by more than one fifth of the board's membership (excluding vacant seats).

**[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).

---

**Section 113. Actions Subsequent to Decision**

**[a]** The decision of the board 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 office of the Planning and Inspections Department.

**[b]** If a 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 114. Appeal of Decision to Superior Court**

**[a]** A decision by the board of adjustment on an application for appeal or for a variance may be appealed to the Superior Court by an aggrieved party. Such appeal shall be in the nature of certiorari and must be filed within thirty (30) days of the filing of the decision in the office of the Planning and Inspections Department or the notification required in Subsection 113 [a], whichever is later.

**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, or conditional-use permit, or a zoning vested right, or a petition from the planning staff to revoke a special use permit or conditional use permit, the board of adjustment or the town council, as the case may be, 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 city council or 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 the planning 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 or the town council regarding an appeal or variance or issuance or revocation of a conditional use permit or 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.

**[b]** Any conditions attached to the issuance of a variance, conditional use permit, 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, the performance of any act is required, or the performance of any act is prohibited, or whenever any regulations or limitation is imposed on the use of any land, or on the erection, alteration, or the use or change of use of a structure, a failure to comply with such provisions shall constitute a violation of this ordinance.

### Section 129. Complaints Regarding Violations

[a] Whenever the administrator receives a written, signed complaint 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.

### Section 130. Persons Liable

[a] The owner, tenant, or occupant of any land or structure, or part thereof who participates in, assists, directs, creates or maintains any situation that is contrary to the requirements of this ordinance may be held responsible for the violation and be subject to the penalties and remedies provided herein.

### Section 131. Procedures Upon Discovery of Violations

[a] If the administrator finds that any provision of this ordinance is being violated, he shall deliver a written notice of violation by hand delivery, or by certified mail, return receipt requested, to the person(s) responsible for such violation.

---

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

**[a]** Any act constituting a violation of this ordinance or a failure to comply with any of its requirements, including the violations of any conditions and safeguards established in connection with grants of variances or special use or conditional use permits, shall also subject the offender to a civil penalty of one hundred dollars (\$100.00), plus the court costs and attorney fees incurred by the town. If the offender fails to pay the penalty within ten (10) days of receiving final written notice of a violation, the penalty may be recovered by the town in a civil action in the nature of a debt. A civil penalty may not be appealed to the board of adjustment if the offender received a final written notice of violation and did not appeal to the board of adjustment within the time limit prescribed in Section 114.

**[b]** This ordinance may also be enforced by any appropriate equitable action or proceedings instituted by the administrator which would prevent, restrain, correct or abate a violation of this ordinance.

**[c]** Each day that any violation continues after the offender is in receipt of the final written notice of such violation, shall constitute a separate offense for purposes of the penalties and remedies specified in this section.

**Section 133. Permit Revocation**

**[a]** A zoning, sign, special use, or conditional 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 conditional use or 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 therefor.

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

### **Section 134. Judicial Review**

[a] Every decision of the city council granting or denying a conditional use permit and every final 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 office of 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 135. Enforcement Concerning Violations in Floodway Overlay Zones**

**[a]** Whenever land disturbing activity is undertaken in violation of Article XVII Floodplains, Drainage and Storm Water Management, 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 the 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 136. Reserved****Section 137. Reserved**

## 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.

**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]** Notwithstanding Subsection [a], any structure used for single family residential purposes and maintained as a nonconforming use 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]** Notwithstanding Subsection [a], 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 or conditional 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 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, special use or conditional use permit in accordance with Section 61 may not be made except in accordance with Subsections [b] through [d]. 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.

**[d]** If the intended change in use is to another principal use that is also nonconforming, then the change is permissible only if the board of adjustment issues a special use permit authorizing the change. The board of adjustment may issue the permit if it finds, in addition to other findings that may be required by this ordinance, that:

- [1] The use requested is one that is permissible in some zoning district with either a zoning, special use or conditional use permit, and
- [2] All of the conditions applicable to the permit, authorized in Subsection [c] of this section are satisfied, and
- [3] The proposed development will have less of an adverse impact on those most affected by it and will be more compatible with the surrounding neighborhood than the use in operation at the time the permit is applied for.

---

**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]** If the principal activity on property where a nonconforming situation other than a nonconforming use exists is discontinued for a period of one hundred eighty (180) days, then that property may thereafter be used only in conformity with all of the regulations applicable to the preexisting use unless the entity with authority to issue a permit for the intended use issues a permit to allow the property to be used for this purpose without correcting the nonconforming situations. This permit may be issued if the permit issuing authority finds that eliminating a particular nonconformity is not reasonably possible (i.e., cannot be accomplished without adding additional land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation). The permit shall specify which nonconformities need not be corrected.

**[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.
- [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. Reserved**

**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 further residential development in the central area of town.

[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, serve to meet 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[s] are established primarily to accommodate enterprises engaged in the manufacturing, processing, creating, repairing, renovating, painting, cleaning, or assembling of goods, merchandise, or equipment: M-1.

[b] The M-1 Light Industrial District is established to provide a district for wholesale activities, warehouses, storage yards and light processing operations.

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

[a] The following conditional use zoning districts are hereby established:

- [1] CU R-1 Single-Family Residential District
- [2] CU R-1A Single-Family Residential with Accessory Apartment District
- [3] CU RR Residential Rehabilitation District
- [4] CU R-2 Two-Family Residential District
- [5] CU R-3 Multiple-Family Residential District

- [6] CU R-4 Two-Family Residential/Mobile Home District
- [7] Cu RA Residential/Agricultural District
- [8] CU MH Mobile Home Park District
- [9] CU B-1 Central Business District
- [10] CU B-2 Neighborhood Business District
- [11] CU B-3 General Business District
- [12] CU M-1 Light Industrial District

**[b]** It is noted that a conditional use zoning district (bearing the designation CU) corresponds to each of the primary districts authorized by this ordinance. It is recognized that certain types of zoning districts would be inappropriate at particular locations in the absence of certain conditions.

**[c]** Where the applicant for rezoning desires property to be rezoned to such a district in such situations, the CU zoning district is a means by which certain conditions can be imposed in the furtherance of the purpose of this ordinance. The CU 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 accept any condition, the authorization of the CU rezoning and permit shall be null and void and of no effect and that proceedings shall be instituted to rezone the property to its previous zoning classification.

**[d]** Within a CU zoning district, only those uses authorized as permitted or conditional uses in the zoning district with which the CU zoning district corresponds shall be permitted, and all other requirements of the corresponding district shall be met as minimum standards. In addition, within a CU zoning district no use shall be permitted without a conditional use permit, authorized by the city council, which specifies the use or uses authorized. Such permit may further specify the location on the property of the proposed use or uses, the number of dwelling units, the location and extent of supporting facilities such as parking lots, driveways, and access streets, the location and extent of buffer areas and other special purpose areas, the timing of development, the location and extent of right-of-way and other areas to be dedicated for public use, and other such matters as the applicant may propose as conditions upon the request, but not to include architectural review or controls. In granting a conditional use permit, the city council may impose such additional reasonable and appropriate safeguards upon such permit as it may deem necessary in order that the purpose and intent of this ordinance are served, public welfare secured and substantial justice done.

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

### **Section 155. Planned Unit Development Districts Established**

[a] There are hereby established eight (8) different planned unit development (PUD) districts as described in this section. Each PUD district is designed to combine the characteristics of at least three (3) and possibly four (4) zoning districts.

- [1] One element of each PUD district shall be the medium density residential element. Here there is one possibility, each one corresponding to the R-2 zoning district described in Subsection 137 [e]. Within that portion of the PUD zone that is developed for medium density residential purposes, all development must be in accordance with the regulations applicable to the R-2 zoning district.
- [2] A second element of each PUD district shall be the higher density residential element. Here there is one possibility, each one corresponding to the R-3 zoning district described in Subsection 137 [f]. Within that portion of the PUD district that is developed for higher density residential purposes, all development must be in accordance with the regulations applicable to the R-3 zoning district.
- [3] A third element of each PUD district shall be the commercial element. Here there are four (4) possibilities, each one corresponding to one of the following commercial districts identified in Section 152: B-1, B-2, B-3, or O/I. Within that portion of a PUD district that is developed for purposes permissible in a commercial district, all development must be in accordance with the regulations applicable to the commercial district to which the PUD district corresponds.
- [4] A manufacturing/processing element may be a fourth element of any PUD district. Here there is one possibility, each one corresponding with the uses permitted in the M-1 zoning district described in Subsection 153 [b]. Within that portion of the PUD district that is developed for light industrial purposes, all development must be in accordance with the regulations applicable to the M-1 zoning district.

**[b]** In accordance with the description set forth in Subsection [a], the eight (8) PUD districts shall carry the following designations to indicate their component elements:

- [1] R-2, R-3, B-1
- [2] R-2, R-3, B-1, M-1
- [3] R-2, R-3, B-2
- [4] R-2, R-3, B-2, M-1
- [5] R-2, R-3, B-3
- [6] R-2, R-3, B-3, M-1
- [7] R-2, R-3, O/I
- [8] R-2, R-3, O/I, M-1

**[c]** No less than twenty five (25) contiguous acres may be zoned as a PUD district, and then only upon the request of the owner or owners of all the property intended to be covered by such zone.

**[d]** As indicated in the Table of Permissible Uses (Section 165) a planned unit development (use classification 29.0) is the only permissible use of a PUD zone and planned unit developments are permissible only in such zones.

**[e]** Planned unit developments are subject to the requirements set forth in Section 179.

### **Section 156. Floodway and Flood Fringe Districts**

**[a]** The Floodway and Flood Fringe 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. The Floodway and Flood Fringe districts are 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: US 421. The limits of the district shall extend for a distance of five hundred and fifty [550] feet on either side of the centerline of US 421, beginning at the intersection of Highway 194 and extending east along US 421 to the farthest extent of the town's planning jurisdiction and including the Auto Place satellite annexation. The above noted boundaries will also be shown on the Official Zoning map.

**[d]** Site development requirements shall apply to all developments within the established corridor district 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. The requirements for properties which have no frontage on the thoroughfare[s] being protected by the ordinance, but are located within the established corridor district are noted with an asterisk [\*].

- [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 provided it is demonstrated to be a necessity through a site access study that will be reviewed and approved by the town before permitting such access. The site access study shall be performed and prepared by a professional engineer registered in the state of North Carolina who is familiar with the standard practice and procedure of site access analysis. A site access study shall include:

- a. peak hour trip generation for proposed land use(s). Trip generation rates shall be obtained from Trip Generation, an ITE Publication;
- b. trip distribution to major attractions and surrounding areas;

- c. capacity analysis of adjacent intersections for a development with greater than or equal to fifty thousand [50,000] square feet gross floor area; and,
  - d. an appendix which shall include all calculations and other applicable information.
  - e. If the site access study shows the necessity for a driveway on the protected thoroughfare(s), a second driveway may be permitted on the alternate or side street.
- [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].
- [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: HVAC and similar types of incidental machinery or equipment shall be screened from view or located to be non-visible from the street.
- [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. Reserved**

**Section 160. Reserved**

## Part II Zoning Map

### Section 161. 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 162. 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 163. Reserved

### 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.

Permits required: Z = Zoning, S = Special Use, C = Conditional Use

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			S	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					ZSC	ZSC								
1.122 Class A or B mobile homes (manufactured home park)								ZSC						
<b>1.200 Two-family Residences</b>														
1.210 Primary 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					ZSC	ZSC			ZSC	ZSC	ZSC	ZSC	Z	
1.320 Multi-family town homes					ZSC	ZSC			ZSC	ZSC	ZSC	ZSC	Z	
1.330 Multi-family apartments					ZSC				ZSC	ZSC	ZSC	ZSC	Z	
<b>1.400 Homes emphasizing special services, treatment or supervision</b>														
1.410 Homes for handicapped or infirm	Z	Z	Z	Z	Z	Z	Z		Z	Z	Z	Z	Z	
1.420 Nursing care, intermediate care homes			S	S	S	S	S		Z		Z	Z	Z	
1.430 Temporary Shelter for Homeless					S				S	S	S	S	S	
1.440 Halfway houses					S				S	S	S	S	Z	
<b>1.500 Miscellaneous, rooms for rent situations</b>														
1.510 Rooming houses, boarding houses					Z					S	S	S	Z	
1.520 Tourist homes and other temporary rooms renting by the day or week					S					Z	Z	Z		



Permits required: Z = Zoning, S = Special Use, C = Conditional Use

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
	1.530 Hotels, motels and other similar businesses or institutions providing overnight accommodations									S	Z		Z	
1.540 Fraternity or sorority dwellings					S								Z	
1.600 Temporary emergency, construction and repair residences	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
1.700 Home Occupations	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	
1.800 Planned residential developments				C	C	C								
<b>2.0 SALES AND RENTAL OF GOODS, MERCHANDISE AND EQUIPMENT</b>														
2.100 No storage or display of goods outside fully enclosed building														
2.110 High-volume traffic generation														
2.111 Miscellaneous									Z	Z		Z		
2.112 Convenience stores											S	Z		
2.120 Low-volume traffic generation									Z	Z	Z	Z		
2.130 Wholesale sales										Z	Z	Z		Z
2.200 Storage and display of goods outside fully enclosed building allowed														
2.210 High-volume traffic generation												ZC		ZC
2.220 Low-volume traffic generation												ZC		ZC
2.230 Wholesale sales												ZC		ZC

Permits required: Z = Zoning, S = Special Use, C = Conditional Use

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>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				ZS	ZS	ZS	ZS	Z	ZS
3.120 Operations designed to attract little or no customer or client traffic other than employees of the entity operating the principal use					ZS				ZS	ZS	ZS	ZS	Z	ZS
3.130 Office or clinics of physicians or dentists with not more than 10,000 square feet of gross floor area					ZS				ZS	ZS	ZS	ZS	Z	
<b>3.200 Operations conducted within or outside fully enclosed building</b>														
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		

Permits required: Z = Zoning, S = Special Use, C = Conditional Use

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>4.0 MANUFACTURING, PROCESSING, CREATING, REPAIRING, RENOVATING, PAINTING, CLEANING, ASSEMBLING OF GOODS, MERCHANDISE AND EQUIPMENT</b>														
4.100 All operations conducted entirely within fully enclosed building														
4.110 Majority of dollar volume of business done with walk-in trade												ZS		ZS
4.120 Majority of dollar volume of business not done with walk-in trade												Z		Z
4.200 Operations conducted within or outside fully enclosed building												ZS		ZS
<b>5.0 EDUCATIONAL, CULTURAL, RELIGIOUS, PHILANTHROPIC, SOCIAL, FRATERNAL USES</b>														
5.100 Schools														
5.110 Elementary or secondary (including associated grounds and athletic and other facilities)	C	C	C	C	C	C	C		C		C	C	Z	
5.120 Trade or vocational schools											C	C		C
5.130 Colleges, universities, community colleges, (including associated facilities such as dormitories, office buildings, athletic fields, etc.)	C	C		C	C	C	C		C	Z	Z	Z	Z	
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	

Permits required: Z = Zoning, S = Special Use, C = Conditional Use

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>5.300 Libraries, museums, art galleries, art centers, and similar uses (including associated educational and instructional activities)</b>													
5.310 Located within a building designed and previously occupied as a residence or within a building having a gross floor area not exceeding 3,500 square feet	S	S	S	S	S	S	S			S	S	S		
5.320 Located within any permissible structure	S	S	S	S	S	S	S		S	Z	Z	Z	Z	Z
<b>5.400 Social, fraternal clubs and lodges, union halls, and similar uses</b>					ZS		ZS			ZS	ZS	ZS	Z	
<b>6.0 RECREATION, AMUSEMENT, ENTERTAINMENT</b>														
<b>6.100 Activity conducted entirely within building or substantial structure</b>														
6.110 Bowling alleys, skating rinks, indoor tennis and squash courts, billiard and pool halls, indoor athletic and exercise facilities and similar uses										ZS	ZS	ZS	Z	
6.120 Movie theaters										Z	Z	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									C	C	C	C	Z	
<b>6.200 Activity conducted primarily outside enclosed buildings or structures</b>														
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	S	S	S	S	S	S	Z	S

Permits required: Z = Zoning, S = Special Use, C = Conditional Use

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
6.220 Publicly owned and operated outdoor recreational facilities such as athletic fields, golf courses, tennis courts, swimming pools, parks, etc., not constructed pursuant to a permit authorizing the construction of another use such as a school	C	C	C	C	C	C	C	C	C	C	C	C	Z	C
<b>7.0 INSTITUTIONAL RESIDENCE OR CARE OR CONFINEMENT FACILITIES</b>														
7.100 Hospitals, clinics, other medical (including mental health) treatment facilities in excess of 10,000 square feet of floor area	S	S		S	S	S	S		Z	Z	Z	Z	Z	
7.200 Nursing care institutions, intermediate care institutions, handicapped or infirm institutions, child care institutions				S	S	S	S		Z		Z	Z	Z	
<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	S		

Permits required: Z = Zoning, S = Special Use, C = Conditional Use

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>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
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	Z	S	Z	Z	Z
10.320 Parking or storage is a minor and incidental part of the overall use	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
<b>11.0 SCRAP MATERIALS SALVAGE YARDS, JUNKYARDS, AUTOMOBILE GRAVEYARDS</b>														S

Permits required: Z = Zoning, S = Special Use, C = Conditional Use

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>12.0 SERVICES AND ENTERPRISES RELATED TO ANIMALS</b>														
12.100 Veterinarian							S		Z			Z	Z	
12.200 Kennel							S					S		Z
<b>13.0 EMERGENCY SERVICE OPERATIONS</b>	C	C	C	C	C	C	C	C	C	C	C	C	Z	C
<b>14.0 AGRICULTURAL, SILVICULTURAL, MINING, QUARRYING OPERATIONS</b>														
14.100 Agricultural operations, farming														
14.110 Excluding livestock	Z	Z	Z	Z			Z							Z
14.120 Including livestock							Z							
14.200 Mining or quarrying operations, including on-site sales of products							S							S
<b>15.0 MISCELLANEOUS PUBLIC AND SEMI-PUBLIC FACILITIES</b>														
15.100 Post Office										S	S	S	Z	S
15.200 Airport							S					S		
15.300 Municipal Solid Waste Landfill							C							C
<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	S
17.200 Community or regional	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z

Permits required: Z = Zoning, S = Special Use, C = Conditional Use

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>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	Z	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
<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		
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 STRUCTURES USED IN CONNECTION WITH THE CONSTRUCTION OF A PERMANENT BUILDING OR FOR SOME NON-RECURRING PURPOSE</b>	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
<b>24.0 BUS STATION, TRAIN STATION</b>										Z		Z	Z	



Permits required: Z = Zoning, S = Special Use, C = Conditional Use

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>25.0 COMMERCIAL GREENHOUSE OPERATIONS</b>														
25.100 No on-premises sales							Z					Z		Z
25.200 On-premise sales permitted							S					Z		S
<b>26.0 GOVERNMENT USES</b>	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
<b>27.0 SUBDIVISIONS</b>														
27.100 Major	C	C	C	C	C	C	C	C	C	C	C	C	Z	C
27.200 Minor	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
<b>28.0 COMBINATION USES</b>	ZSC	ZSC	ZSC	ZSC	ZSC	ZSC	ZSC	ZSC	ZSC	ZSC	ZSC	ZSC	Z	ZSC
<b>29.0 PLANNED UNIT DEVELOPMENTS</b>	Permissible only in Planned Unit Development District with a Conditional Use Permit													

**Section 166. Use of the Designations Z, S, C 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, and the letter “C” means a conditional use permit must be obtained from the city council.

**[b]** When used in connection with residential uses (use classification 1.000), the designation “ZSC” means that such developments with twelve (12) or less dwelling units must be pursuant to a zoning permit, developments with thirteen (13) and up to and including, twenty four (24) dwelling units need a special use permit, and developments of twenty five (25) or more dwelling units require a conditional use permit.

**[c]** When used in connection with nonresidential uses, the designation “ZS” or “ZC” 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 or conditional use permit, respectively, if the lot is one (1) acre or larger in area.

**[d]** The use of the designation ZSC for combination uses is explained in Section 172.

**Section 167. Board of Adjustment Jurisdiction Over Uses Otherwise Permissible With a Zoning Permit**

**[a]** Notwithstanding any other provisions of this article, whenever the Table of Permissible Uses (interpreted in light of Section 166 and the other provisions of this article) provides that a use in a nonresidential zone or a nonconforming use in a residential zone is permissible with a zoning permit, a special use permit shall nevertheless be required if the administrator finds that the proposed use would have an extraordinary impact on neighboring properties or the general public. In making this determination, the administrator shall consider, among other factors, whether the use is proposed for an undeveloped or previously developed lot, whether the proposed use constitutes a change from one principal use classification to another, whether the use is proposed for a site that poses peculiar traffic or other hazards or difficulties, and whether the proposed use is substantially unique or is likely to have impacts that differ substantially from those presented by other uses that are permissible in the zoning district in question.

---

**Section 168. Permissible Uses and Specific Exclusions**

**[a]** The presumption established by this ordinance is that all legitimate 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 liberally to include other uses that have similar impacts to the listed uses.

**[b]** Notwithstanding Subsection [a], all uses that are not listed in Section 165 (Table of Permissible Uses), even given the liberal interpretation mandated by Subsection [a], are prohibited. Nor shall Section 165 (Table of Permissible Uses) 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 in other zoning districts.

**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.
- [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.

### **Section 170. Permissible Uses Not Requiring Permits**

**[a]** Notwithstanding any other provisions of this ordinance, no zoning, special use, or conditional 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) or planned unit development (29.0), the relative proportion of space devoted to the individual principal uses that comprise the combination use or planned unit development 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 or planned unit development use, the mixture of types of individual principal uses that comprise the combination use or planned unit development use changes.
- [4] If the original use is a planned residential development, the relative proportions of different types of dwelling units change.
- [5] If there is only one business or enterprise conducted on the lot (regardless of whether that business or enterprise consists of one individual principal use or a combination use), that business or enterprise moves out and a different type of enterprise moves in (even though the new business or enterprise may be classified under the same principal use or combination use category as the previous type of business). For example, if there is only one building on a lot and a florist shop that is the sole tenant of that building moves out and is replaced by a clothing store, that constitutes a change in use even though both tenants fall within principal use classification 2.111. However, if the florist shop were replaced by another florist shop, that would not constitute a change in use since the type of business or enterprise would not have changed. Moreover, if the florist shop moved out of a rented space in a shopping center and was replaced by a clothing store, that would not constitute a change in use since there is more than one business on the lot and the essential character of the activity conducted on that lot (shopping center-combination use) has not changed.

**[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.

### **Section 172. Combination Uses**

**[a]** When a combination use comprises two or more principal uses that require different types of permits (zoning, special use, or conditional use), then the permit authorizing the combination use shall be:

- [1] A conditional use permit if any of the principal uses combined requires a conditional use permit.
- [2] A special use permit if any of the principal uses combined requires a special use permit but none requires a conditional use permit.
- [3] A zoning permit in all other cases.

This is indicated in the Table of Permissible Uses by the designation ZSC in each of the columns adjacent to the 28.0 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

Section 175. Reserved

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. Planned Unit Developments

**[a]** In a planned unit development, the developer may make use of the land for any purpose authorized in a particular PUD zoning district in which the land is located, subject to the provisions of this ordinance. Section 155 describes the various types of PUD zoning districts.

**[b]** Within any lot developed as a planned unit development, not more than thirty five percent (35%) of the total lot area may be developed for higher density residential purposes (R-3), not more than ten percent (10%) of the total lot area may be developed for purposes that are permissible only in a B-1, B-2, or B-3 zoning district (whichever corresponds to the PUD zoning district in question), and not more than five percent (5%) of the total area may be developed for uses permissible only in the M-1 zoning district (assuming the PUD zoning district allows such uses at all).

**[c]** The plans for the planned unit development shall indicate the particular portions of the lot that the developer intends to develop for higher density residential purposes, for lower density residential purposes, purposes permissible in a commercial district (as applicable), and purposes permissible only in an M-1 district (as applicable). For purposes of determining the substantive regulations that apply to the planned unit development, each portion of the lot so designated shall then be treated as if it were a separate district, zoned to permit, respectively, higher density residential (R-3), lower density residential (R-2), commercial or M-1 uses. However, only one permit, a planned unit development permit, shall be issued for the entire development.

**[d]** The nonresidential portions of any planned unit development may not be occupied until all of the residential portions of the development are completed or their completion is assured by any of the mechanisms provided in Article IV to guarantee completion. The purpose and intent of this provision is to ensure that the planned unit development procedure is not used, intentionally or unintentionally, to create nonresidential uses in areas generally zoned for residential uses except as part of an integrated and well planned, primarily residential development.

### **Section 180. Temporary Emergency, Construction, or Repair Residences**

**[a]** Temporary residences used on construction sites of nonresidential premises shall be removed immediately upon the completion of the project.

**[b]** Permits for temporary residences to be occupied pending the construction, repair, or renovation of the permanent residential building on a site shall expire within six months after the date of issuance, except that the administrator may renew such permit for one additional period not to exceed three months if he determines that such renewal is reasonably necessary to allow the proposed occupants of the permanent residential building to complete the construction, repair, renovation, or restoration work necessary to make such building habitable.

**Section 181. Primary Residence with Accessory Apartment**

- [a] A primary residence which contains an accessory apartment (use 1.220) shall be the principal residence of the owner, and shall not contain more than one accessory apartment on the lot.
- [b] In the R-1A zoning district, the owners of the lot shall occupy at least one of the dwelling units.
- [c] The occupancy of the accessory apartment shall be limited to no more than three persons.
- [d] The accessory apartment shall be designed so that the appearance of the primary residence remains that of a one family dwelling. Any new entrance shall be located on the side or in the rear of the building and any additions shall not increase the square footage of the original house by more than ten percent (10%).
- [e] The accessory apartment shall be clearly a subordinate part of the primary residence. In no case shall it be more than thirty percent (30%) of the primary residence's total floor area nor greater than eight hundred (800) square feet.
- [f] The primary residence with accessory apartment shall conform to the number of parking spaces required in Section 346.

**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. Homes Emphasizing Special Services, Treatment or Supervision**

- [a] The zoning lot on which homes emphasizing special services, treatment or supervision (use 1.400) shall not be located within five hundred (500) feet of a zoning lot containing another existing or approved home emphasizing special services, treatment or supervision.

### **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 A 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 374.

---

**Section 187. Temporary Emergency, Construction, and Repair Residences**

**[a]** Temporary emergency, construction and repair residences (use 1.600) are permitted in certain hardship situations such as the need to care for elderly parents or other dependents of the family occupying the principal building. The temporary building shall meet the requirements of a Class B mobile home. The administrator may issue a zoning permit, valid for a period of one year, for the temporary building. The permit may continue to be renewed as long as the hardship persists.

**[b]** The temporary building shall not be permitted in any flood district.

**[c]** In the event the property owner fails to remove a temporary building after the zoning permit has been terminated, the town shall remove the said temporary building at the expense of the owner, with the costs of removal, court costs and attorney fees to be assessed against the owner, for which the town may pursue collection in the form of a debt due the town.

**Section 188. Temporary Structures Construction Related**

**[a]** Temporary structures used in connection with the construction of a permanent building or for some non-recurring purpose (use 23.0) shall be permitted in all zoning districts subject to the issuance of a zoning permit valid for a period of one year, with a one year renewal period.

**[b]** The temporary building shall not be permitted in any flood district.

**[c]** In the event the property owner fails to remove a temporary building after the zoning permit has been terminated, the town shall remove the said temporary building at the expense of the owner, with the costs of removal, court costs and attorney fees to be assessed against the owner, for which the town may pursue collection in the form of a debt due the town.

**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 XVII,
- [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] 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.
  - [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 Table 1606.1 of the North Carolina Building Code, Volume 1.
  - [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.

## Part II            Manufacturing/Processing Performance Standards

### Section 193. Smoke

**[a]** For the purpose of determining the density of equivalent opacity of smoke, the Ringlemann Chart, as adopted and published by the United States Department of Interior, Bureau of Mines Information Circular 8333, May 1967, shall be used. The Ringlemann number referred to in this section refers to the number of the area of the Ringlemann Chart that coincides most nearly with the visual density of equivalent opacity of the emission of smoke observed. For example, a reading of Ringlemann No. 1 indicates a twenty (20) percent density of the smoke observed.

**[b]** All measurements shall be taken at the point of emission of the smoke.

**[c]** In the B-1, B-2, B-3, and all PUD districts, no 4.0 use classification may emit from a vent, stack, chimney, or combustion process any smoke that is visible to the naked eye.

**[d]** In the M-1 district, no 4.0 use classification may emit from a vent, stack, chimney, or combustion process any smoke that exceeds a density or equivalent capacity of Ringlemann No. 1, except that an emission that does not exceed a density or equivalent capacity of Ringlemann No. 2 is permissible for a duration of not more than four minutes during any eight hour period if the source of such emission is not located within two hundred fifty (250) feet of a residential district.

#### **Section 194. Odors**

**[a]** For purposes of this section, the “odor threshold” is defined as the minimum concentration in air of a gas, vapor, or particulate matter that can be detected by the olfactory systems of a panel of healthy observers.

**[b]** No 4.0 use classification in any district may generate any odor that reaches the odor threshold, measured at:

- [1] The outside boundary of the immediate space occupied by the enterprise generating the odor.
- [2] The lot line if the enterprise generating the odor is the only enterprise located on a lot.

#### **Section 195. Air Pollution**

**[a]** Any 4.0 use classification that emits any “air contaminant” as defined in NC G.S. 143-215.108 (F) shall comply with applicable state standards concerning air pollution, as set forth in the North Carolina air pollution control law.

**[b]** No zoning, special use, or conditional 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.

#### **Section 196. Electrical Disturbances or Interference**

**[a]** 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

---

**[b]** 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.

**Section 197. Reserved**

**Section 198. Reserved**



## 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, planned unit developments and architecturally integrated subdivisions shall apply to the lot as a whole and not to individual parts thereof.

Zone	Min. Gross Land Area (sq. ft.)	Min. Lot Width (ft.)	Max. Floor Area Ratio (FAR)	Min. Open Space Ratio (OSR)	Min. Livability Space Ratio (LSR)	Min. Recreation Space Ratio (RSR)	Min. Street Setback (ft.)	Min. Interior Setback (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	.283	.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>	None	none	.429	.71	.27	.039	20	10
<b>M-1</b>	17,000	80	.350	.65	.30	none	20	22

**[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]** Two-family conversions, primary residences with an accessory apartment and duplexes shall be allowed only on lots having at least one and one half (1 ½) times the minimum gross land area established in Section 200. With respect to multi-family conversions into three or four dwelling units, the minimum gross land area shall be two (2) times the minimum gross land area established in Section 200.

**[c]** 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 town 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 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 B-1, the lot boundary setback shall be fifteen (15) feet.

**[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.).

#### **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] The height of a building shall be the vertical distance measured from the mean elevation of the finished grade at the front of the building 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	85
B-1	44 (primary) - 67 (secondary)
B-2	35 (primary) - 40 (secondary)
B-3	44 (primary) - 67 (secondary)

**[c]** In the R-3, B-1, 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.

**[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.

### **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]** In the U-1 district, all development located within one hundred (100) feet of a lot boundary line shall observe the land use intensity ratios, the minimum setback and height limitations of the B-2 district as contained in the table of land use intensity ratios.

### **Section 210. Architecturally Integrated Subdivisions**

**[a]** In any architecturally integrated subdivision, the developer may create lots and construct buildings without regard to any minimum lot size, 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.

**[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.

### **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, Article II, Driveways and Excavations, or the North Carolina Department of Transportation Manual on Driveway Entrance Requirements, whichever is most restrictive. If driveway entrances and other openings onto streets are constructed in accordance with the foregoing specifications and requirements, this shall be deemed prima facie evidence of compliance with the standard set forth in Subsection [a].

[c] For purposes of this section, the term prima facie evidence means that the permit issuing authority may (but is not required to) conclude from this evidence alone that the proposed development complies with Subsection [a].

### **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, Sidewalk, 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. No sidewalks shall be required.

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.

<b>Street Type</b>	<b>Minimum Right-of-Way Width (in feet)</b>	<b>Minimum Pavement Width (in feet)</b>	<b>Sidewalk Requirement</b>
Minor	40	20	None
Local	40	20	One side
Private	30	18	None
Subcollector	50	20	One side
Collector	50	20	One side

**[d]** The sidewalks required by this section shall be at least four feet in width and constructed according to NCDOT specifications, except that the permit issuing authority may permit the installation of sidewalks constructed with other suitable materials when it concludes that:

- [1] Such walkways would serve the residents of the development as adequately as concrete sidewalks; and
- [2] Such walkways would be more environmentally desirable or more in keeping with the overall design of the development.

**[e]** 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 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, and the pavement width shall be twelve (12) feet without curb and gutter or eighteen (18) feet with curb and gutter. If left unpaved, the center of the turnaround area shall be landscaped.

**[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 and sidewalk 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 and Sidewalk 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.

[c] In all unsubdivided 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. Notwithstanding the foregoing, sidewalks shall not be required where pedestrians have access to a road that serves not more than nine dwelling units.

**[d]** Whenever the permit issuing authority finds that a means of pedestrian access is necessary from an unsubdivided development to schools, parks, playgrounds, or other roads or facilities and that such access is not conveniently provided by sidewalks adjacent to the roads, the developer may be required to reserve an unobstructed easement of at least ten (10) feet to provide such access.

**[e]** The sidewalks required by this section shall be at least four feet wide and constructed according to NCDOT specifications, except that the permit issuing authority may permit the installation of walkways with other suitable materials when it concludes that:

- [1] Such walkways would serve the residents of the development as adequately as concrete sidewalks; and
- [2] Such walkways could be more environmentally desirable or more in keeping with the overall design of the development.

#### **Section 243. Attention to Handicapped in Streets and Sidewalk Construction**

**[a]** Whenever curb and gutter construction is used on public streets, wheelchair ramps for the handicapped shall be provided at intersections and other major points of pedestrian flow. Wheelchair ramps and depressed curbs shall be constructed in accordance with the published standards of the North Carolina Building Code, Volume I-C, Accessibility.

**[b]** In unsubdivided developments, sidewalk construction for the handicapped shall conform to the requirements of Volume I-C of the North Carolina Building Code.

#### **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.

---

---

**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 hereafter constructed on a lot that is undeveloped on the effective date of this ordinance, then 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.

#### **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. Sites for and Screening of Dumpsters**

**[a]** Every development that, under the town's solid waste collection policies, is or will be required to provide one or more dumpsters for solid waste collection shall provide sites for such dumpsters that are:

- [1] Located so as to facilitate collection and minimize any negative impact on persons occupying the development site, neighboring properties, or public rights-of-way, and
- [2] Constructed according to specifications established by the public services department to allow for collection without damage to the development site or the collection vehicle.

**[b]** All such dumpsters shall be placed and screened in accordance with the Dumpster Pad and Screening Details.

**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 projects of less than twenty one thousand, seven hundred eighty (21,780) square feet (0.5 acre).

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.

The property owner shall apply for plan approval on the form(s) furnished by the Planning and Inspections Department. The application form for plan approvals of land-disturbing activity requires a zoning permit which indicates the requirement for these plan approvals, as specified in Article IV, Section 61, [a].

**[b]** Fees for plan approval may be established or amended from time to time by resolution of the town council.

**[c]** All plan approvals shall be valid for one year from the date of issuance, provided the conditions of its approval have not changed. Any land-disturbing activity not completed within one year of issuance of an approved plan, shall be required to reapply on a yearly basis by the anniversary date.

**Section 275. Administrative Procedures for Plan Approval**

**[a]** Three (3) copies of the "Grading Plan" and/or "Soil Erosion and Sediment Control Plan," plus two (2) copies of the supporting documentation for such plan(s), shall be submitted for review with the plan approval application form to the Planning and Inspections Department. The entire submittal 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 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 Planning and Inspections Department, 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 Planning and Inspections Department 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 Planning and Inspections Department 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]** Within thirty (30) days of receipt of application for Plan(s) approval, the Planning and Inspections department shall take action on the Plan(s). Failure to respond within thirty (30) days of receipt of the plan(s) will constitute approval of the Plan(s).

- [1] The Planning and Inspections Department shall forward a copy of the Plan(s) to the Watauga Soil and Water Conservation District who, within twenty (20) days of receipt of the plan(s), will review the Plan(s) 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(s). 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(s) application.

**[e]** 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 Planning and Inspections Department 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.

**[f]** The Planning and Inspections Department shall take action on revisions to Plan(s) which have been previously denied, within fifteen (15) days of receipt of the revised Plan(s) application for approval. Failure to respond within fifteen (15) days of receipt of the revised Plan(s) will constitute approval of the revised Plan(s).

**[g]** 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 [f]. Until such time as any amendment is approved by the Planning and Inspections Department, it shall be unlawful to deviate from the approved Plan(s).

- [1] In cases of any proposed amendment to Plan(s) for a tract with greater than two (2) acres of disturbed area, the Planning and Inspections Department shall notify the Soil and Water Conservation District of any proposed amendment prior to approving any such amendment, using the process described in Section 275 [d] [1].

**[h]** In the enforcement of this ordinance the Planning and Inspections Department 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 may require that a 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.
  - [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 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 Planning and Inspections Department 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 375) 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 Planning and Inspections Department 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 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.

**[g]** Exposed and fill covered slope cuts in rock formations should be properly investigated and designed by a 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 walls or slopes steeper than 1:1, exceeding five (5) feet in height, shall be designed by a licensed professional engineer. The construction of retaining structures shall be monitored by a licensed professional engineer familiar with the design, by performing visual inspections and testing as required. The monitoring engineer shall submit a separate summary report on the retaining structures construction to the Planning and Inspections Department.

**[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. Reserved**

**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.
- [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 the Planning and Inspections Department 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 a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty five percent (25%) of the buffer zone nearer the land-disturbing activity, provided, that this subsection shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over or under a lake or natural watercourse. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone twenty five (25) feet wide.
- [3] Graded Slopes and Fills: The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within thirty (30) working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.
- [4] Ground Cover: Within thirty (30) working days or one hundred twenty (120) calendar days following completion of land-disturbing activity, whichever period is shorter, the applicant shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion through, and after, completion of construction. For areas disturbed in the construction of any designed road, (all drainage ditches, side slopes, cut slopes, fill slopes, shoulders, etc.) a permanent ground cover shall be installed immediately upon completion of final grade.

**[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. 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]** 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.

**[c]** 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. Injunctive Relief**

**[a]** The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violation of Part II, Soil Erosion and Sediment Control of Article XVI Grading, Soil Erosion and Sediment Control, of this ordinance.

**[b]** Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate Part II, Soil Erosion and Sediment Control of Article XVI Grading, Soil Erosion and Sediment Control, of this ordinance or any rule or order adopted or issued pursuant to this ordinance, or any term, condition, or provision of an approved erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the town, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Watauga County.

**[c]** Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation of Part II, Soil Erosion and Sediment Control of Article XVI Grading, Soil Erosion and Sediment Control of this ordinance.

### **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 Floodplains, Drainage, and Storm Water Management

### Part I Floodway Zone and Flood Fringes

#### Section 299. 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] *Base Flood*: The flood having a one percent chance of being equaled or exceeded in any given year. Also known as the 100 year flood.
- [2] *Floodplain*: The channel and area abutting a watercourse, which would be covered with water during a one hundred year flood as designated by reports and data provided by the Federal Emergency Management Agency.
- [3] *Floodway*: The portion of the channel and Floodplain of a stream designated by the Federal Emergency Management Agency reports and data as adequate to provide passage for the one hundred year flood, without increasing the elevation of that flood at any point by more than one foot.
- [4] *Flood Insurance Rate Map (FIRM)*: An official map on which the Federal Emergency Management Agency has delineated both the Floodway and Flood Fringe areas. Said maps also contain cross sectional information relevant to both the Floodway and Flood Fringe areas with data available in official reports supplied by the Federal Emergency Management Agency.
- [5] *Flood Fringe*: An area lying outside the Floodway, but within the Floodplain.

- [6] *Floodway Zone*: A zone around all streams with drainage areas greater than one square mile, extending fifty (50) feet from the center of a channel, or twenty five (25) feet from the top of the bank, or to the limit of the mapped Floodway as shown on the most recent FIRM, whichever is greater.
- [7] *Flood-Proofing*: Any structural or nonstructural addition, change, or adjustment to a structure for the prevention of flood damage to the structure and its contents, sanitary facilities and utilities.

### **Section 300. Statement of Purpose**

[a] It is the purpose of this ordinance to promote the public health, safety and welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- [1] Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities,
- [2] Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction,
- [3] Control the alteration of natural flood plains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters,
- [4] Control filling, grading, dredging and other development which may increase erosion or flood damage,
- [5] Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands, and
- [6] Ensure that potential home buyers are notified that property is located in a flood area.

### **Section 301. Floodway and Flood Fringe Overlay Districts**

[a] The Floodway (FW) and Flood Fringe (FF) overlay districts are established in Section 156. The boundaries have been identified by the U.S. Federal Emergency Management Agency as areas of special flood hazard and are shown on Flood Insurance Rate Maps (FIRM's) Maps for Boone and non incorporated areas of Watauga County.

**[b]** The use of any land or structure within the Floodway or Flood Fringe district shall comply with the use regulations applicable to the underlying zoning district as well as any additional requirements imposed by this article.

### **Section 302. Artificial Obstructions Within Floodways Prohibited**

**[a]** No artificial obstruction may be located within any Floodway zone, except as provided for in Section 303.

**[b]** For purposes of this section, 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.

### **Section 303. Permissible Uses Within the Floodway Zone and Flood Fringe Overlay Districts**

**[a]** The following uses shall be permitted within a Floodway Zone or Flood Fringe provided they are permitted under Article X and documentation is submitted to show they shall comply with the provisions of Section 303.

- [1] General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses.
- [2] Lawns, gardens, play areas, and other similar uses.
- [3] 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.

### **Section 304. Construction Within the Floodway Zone and Flood Fringe Restricted**

**[a]** No zoning, special use, or conditional use permit may be issued for any development within the Floodway zone or Flood Fringe until the permit issuing authority has reviewed the plans for any such development to assure that:

- [1] The proposed development is consistent with the need to minimize flood damage, and

- [2] All public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and
- [3] Adequate drainage is provided to minimize or reduce exposure to flood hazards, and
- [4] All necessary permits have been received from those agencies from which approval is required by federal or state law.

**[b]** All encroachments including fill, new construction, substantial improvements to existing structures, and other development within the Floodway zone are prohibited unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during an occurrence of the base flood. In addition to the proceeding standard, the encroachment activity must result in an enhancement of the Floodway zone which reduces the flood hazard in some way. A special use permit is required for any Floodway zone encroachment. With respect to mobile home parks that are nonconforming because they are located within a Floodway zone, mobile homes may be relocated in such parks only if they comply with the provisions of Subsection [g] [2].

**[c]** No new residential building may be constructed and no substantial improvement of a residential building may take place within any Flood Fringe unless the lowest floor (including basement) of the building or improvement is elevated to no lower than two (2) feet above the base flood elevation.

- [1] Residential accessory buildings shall be allowed within the Flood Fringe provided they are firmly anchored to prevent flotation.
- [2] Anchoring of any accessory buildings may be done by bolting the building to a concrete slab or by over-the-top ties. When bolting to a concrete slab, one half inch bolts six feet on center with a minimum of two per side shall be required. If over-the-top ties are used, a minimum of two ties with a force adequate to secure the building is required.



**[d]** No new non residential building may be constructed and no substantial improvements of a non residential building may take place within any Flood Fringe unless the lowest floor (including basement) of the building or improvement is elevated or flood-proofed to no lower than two (2) feet above the base flood elevation. Where flood-proofing is used in lieu of elevation, a registered professional engineer or architect shall certify that any new construction or substantial improvement has been designed to withstand the flood depths, pressure, velocities, impact, and uplift forces associated with the base flood at the location of the building and that the walls below the base flood level are substantially impermeable to the passage of water. The flood-proofing shall protect the building or improvement to a level at least two (2) feet above the base flood elevation.

**[e]** For the purposes of this section, "substantial improvement" means for a building constructed prior to the effective date of this ordinance, any repair, reconstruction, or improvement of a building the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either (i) before the improvement or repair is started or (ii) if the structure has been damaged and is being restored, before the damage occurred. "Substantial improvement" occurs when the first alteration on any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include either (i) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to insure safe living conditions, or (ii) any alteration of a building listed on the National Register of Historic Places or a State Inventory of Historic Places.

**[f]** No zoning, special use, or conditional use permit may be issued for any development within the Floodway zone or Flood Fringe until the permit issuing authority has reviewed the plans to assure that any new construction or substantial improvement shall be:

- [1] Designed (or modified) and adequately anchored to prevent flotation collapse, or lateral movement of the structure.
- [2] Constructed with materials and utility equipment resistant to flood damage.
- [3] Constructed by methods and practices that minimize flood damage.

**[g]** No mobile home shall be permitted in any Floodway zone, except on existing lots in existing mobile home parks. A replacement mobile home may be permitted on a lot in an existing mobile home park provided the following anchoring and elevation standards are met.

- [1] Manufactured homes that are to be placed or substantially improved on sites in the Flood Fringe or in the Floodway zone of an existing manufactured home park must be elevated so that the lowest floor of the manufactured home is elevated no lower than one (1) foot above the base flood elevation. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. For the purpose of this requirement, manufactured homes shall be anchored in accordance with the Regulations for Mobile Homes and Modular Housing adopted by the Commissioner of Insurance pursuant to G.S. 143.143.15. Additionally, when the elevation requirement would be met by a chassis elevation of thirty six (36) inches or less above grade at the site, the chassis shall be supported by reinforced piers or elements of equivalent strength. When the elevation requirement results in a chassis elevation greater than thirty six (36) inches above grade at the site an engineered plan and certification is required.

Mobile or manufactured homes to be placed in the Flood Fringe and outside of existing manufactured home parks must meet all of the requirements of Subsection [g] [1], except the lowest floor must be elevated at least two (2) feet above the base flood elevation.

**[h]** Whenever any portion of a Floodplain is filled in with dirt, slopes shall be adequately stabilized to withstand the erosive force of the base flood.

### **Section 305. Special Provisions for Subdivisions**

**[a]** An applicant for a conditional use permit authorizing a major subdivision and an applicant for minor subdivision final plat approval shall be informed by the Planning and Inspections Department of the use and construction restrictions contained in Sections 302, 303, and 304 if any portion of the land to be subdivided lies within the Floodplain.

**[b]** Final plat approval for any subdivision containing land that lies within a Floodway zone or Flood Fringe may not be given unless the plat shows all Floodplain boundaries and contains in clearly discernible print the following statement: "Use of land within the Floodplain is substantially restricted by Article XVII of the Town of Boone Uniform Development Ordinance."

**[c]** Subject to the following sentence, a conditional use permit for a major subdivision and final plat approval for any subdivision may not be given if:

- [1] The land to be subdivided lies within a zone where residential uses are permissible and it reasonably appears that the subdivision is designed to create residential building lots, and

- [2] Any portion of one or more of the proposed lots lies within a Floodway zone or Flood Fringe and
- [3] It reasonably appears that one or more lots described in Subdivisions [1] and [2] of this subsection could not practicably be used as a residential building site because of the restrictions set forth in Sections 302, 303, and 304.

The foregoing provision shall not apply if the developer demonstrates to the reasonable satisfaction of the authority issuing the permit or approving the final plat that the proposed lots are not intended for sale as residential building lots.

### **Section 306. Water Supply and Sanitary Sewer Systems in Floodway Zones and Flood Fringes**

**[a]** Whenever any portion of a proposed development is located within a Floodway zone or Flood Fringe, the agency or agencies responsible for certifying to the town the adequacy of the water supply and sewage disposal systems for the development shall be informed by the developer that a specified area within the development lies within a Floodway zone or Flood Fringe. Thereafter, approval of the proposed system by that agency shall constitute a certification that:

- [1] Such water supply system is designed to minimize or eliminate infiltration of flood waters into it.
- [2] Such sanitary sewer system is designed to eliminate infiltration of flood waters into it and discharges from it into flood waters.
- [3] Any on site sewage disposal system is located to avoid damage during flooding or interruption when evacuation is not necessary.

### **Section 307. Additional Duties of Administrator Related to Flood Insurance and Flood Control**

**[a]** The administrator shall:

- [1] Where base flood elevation data is available:
  - a. Verify the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures,

- b. Verify for all structures that have been flood-proofed (whether or not such structures contain a basement) the actual elevation (in relation to mean sea level) to which the structure was flood-proofed, and
  - c. Maintain a record of all such information.
- [2] Where base flood elevation data has not been provided:
- a. Obtain, review and reasonably utilize any base flood elevation data available from a federal, state, or other source for enforcing the requirements set forth in Part I of this article, and
  - b. Verify and record the actual elevation constituting the highest adjacent grade, to which all new or substantially improved structures are elevated or flood-proofed.
- [3] Notify, in riverine situations, adjacent communities and the North Carolina Department of Crime Control and Public Safety prior to any alteration or relocation of a watercourse, and submit copies of such notification to the Federal Insurance Administrator; and
- [4] Ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

### **Section 308. Floor Elevation or Flood-proofing Certification Required**

**[a]** A Elevation Certificate or flood-proofing certification is required after the lowest floor is completed. Within twenty one (21) calendar days of establishment of the lowest floor elevation, or flood-proofing by whatever construction means, it shall be the duty of the permit holder to submit to the building inspector a certification of the elevation of the lowest floor, or flood-proofed elevation, whichever is applicable, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood-proofing is utilized for a particular building, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.

**[b]** Any work done within the twenty one (21) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The administrator shall review the floor elevation survey data submitted. Deficiencies by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a liable Stop Work Order for the project.

---

**Section 309. Location of Boundaries of Floodway Zone and Flood Fringe Districts**

**[a]** As used in this article, the terms Floodway zone, Floodway and Flood Fringe refer in the first instance to certain areas whose boundaries are determined and can be located on the ground by reference to the specific fluvial characteristics set forth in the definitions of these terms. These terms also refer to overlay zoning districts whose boundaries are established on the map identified in Section 161, which boundaries are intended to correspond to the actual physical location of Floodways and Flood Fringes. (These overlay districts thus differ from other zoning districts whose boundaries are established solely according to planning or policy, rather than physical criteria.) Therefore, the administrator is authorized to make necessary interpretations as to the exact location of the boundaries of Floodways and Flood Fringes if there appears to be a conflict between a mapped boundary and actual field conditions. 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.

**Section 310. Regulations Do Not Guarantee Flood Protection**

**[a]** The degree of flood protection required by this ordinance is considered reasonable for regulating purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man made or natural causes. This article does not imply that land outside the Floodway zone and Flood Fringe districts or uses permitted within such districts will be free from flooding or flood damages. This article shall not create liability on the part of the town or any officer or employee thereof for any flood damages that result from reliance on this article or any administration decision lawfully made thereunder.

**Section 311. Standards for Streams Without Established Base Flood Elevation and/or Floodways**

**[a]** In any area that is located outside a designated Floodplain, but where a stream may exist, and there is no base flood data or Floodways provided, the following provisions shall apply:

- [1] No encroachments, including fill material or structures shall be located within a distance of the stream bank equal to five (5) times the width of the stream at the top of the bank, or twenty (20) feet on each side from the top of the bank, whichever is greater, unless certification 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 flooding discharge. Such increases may be allowed if all areas affected by such increase are owned or controlled by the developer. However, in no case shall flood levels be increased above two (2) feet below the lowest floor of any adjacent structure.
- [2] New construction or substantial improvements of structures shall be elevated or flood-proofed in accordance with elevations established in this article.

## 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, special use, conditional use permits, zoning vested right or minor subdivision plat approval.

**[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.
- [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 Planning and Inspections Department 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 Planning and Inspections Department 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 Planning and Inspections Department 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 Planning and Inspections Department 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 of drainage structures and stormwater management measures during construction.

**[e]** The Planning and Inspections Department 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 Planning and Inspections Department, 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. Compliance with the plan, specifications, and/or work standards shall be determined through either:

- [1]** Scheduled inspections of all system components prior to covering by a qualified town inspector, or
- [2]** A written certification from a registered professional competent in that area of construction.

**[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 Planning and Inspections Department. 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 Planning and Inspections Department 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 Planning and Inspections Department 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 excess 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] Storm drainage facilities shall not alter not the natural flow of water from higher adjacent properties. The proposed site improvements may not alter the flow or velocity off adjacent properties from their pre-development value, or to such an extent that substantial damage is caused to the higher property, and
- [2] Storm drainage facilities are prohibited from collecting, channeling and/or discharging unreasonable water flows (volume or velocity) onto to lower adjacent properties or at unreasonable locations. The proposed site improvements may not alter the flow or velocity onto adjacent properties to such an extent that substantial damage is caused to the lower property. Storm drainage facilities shall not result in increased downstream channel degradation by accelerated erosion from increased velocity of runoff. Acceptable management measures are outlined in, Article XVI, Part II, Section 292.

**[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.

**[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.

**[c]** Pipe culverts shall be constructed of either reinforced concrete or corrugated steel, or aluminized pipe in conformance with North Carolina Department of Transportation (NCDOT) Standard Specifications. Pipe culverts placed outside the public right-of-way and privately maintained may be constructed of high density polyethylene corrugated pipe with smooth interior which meets the product specification of ASTM F667.

- [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.

**[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 headwater elevations 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.

**[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. 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] *Sign*: Any display of any letters, words, numbers, figures, devices, emblems, pictures, or any parts or combinations thereof, by any means whereby the same are made visible for the purpose of making anything known, whether such display be made on, attached to or as a part of a structure, surface or any other thing, including, but not limited to the ground, a rock, tree or other natural object. A sign includes all poles, frames and other supports upon which such display is made.

Signs do not include the recognized flag or emblem of any nation, state, or city; nor merchandise and pictures or models of products incorporated in a window display; nor works of art which in no way identify a product; nor scoreboards located on athletic fields.

- [2] *Advertising Sign*: A sign which directs attention to a business, profession, commodity, service, or entertainment sold or offered upon the premises where such sign is located or to which it is attached.
- [3] *Attached Sign*: A sign which is mounted flush to a building wall or attached to the face of a canopy. Such sign shall be attached throughout its entire length and shall not extend above the highest point indicated below:
- a. Signs mounted flush to a building wall shall not extend above the highest vertical point of the building.
  - b. Signs mounted to the face of a canopy shall not extend above the highest point of the face of the canopy.
- [4] *Awning*: A shelter projecting from and supported by the exterior wall of a building constructed of non rigid materials on a supporting framework.

- 
- [5] *Billboard Poster Board:* 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.
  - [6] *Business Identification Signs:* Flat mounted signs which are placed on multi-use buildings to identify tenants within.
  - [7] *Canopy:* A permanent structure, other than an awning, made of cloth or other material, attached or unattached to a building, for the purpose of providing shelter to patrons or automobiles, or as a decorative feature on a building wall. A canopy is not a completely enclosed structure.
  - [8] *Canopy Sign:* A sign which is suspended from, or attached to, the side, front, or underside of a canopy.
  - [9] *Construction Sign:* Signs which identify firms and/or builders and which are erected on the premise of the construction site during the period of construction.
  - [10] *Direction Sign:* A sign which is located off premise and indicates the location of public buildings, parks, schools, hospitals, and scenic or historic places.
  - [11] *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.
  - [12] *Elevated Merchandise:* Merchandise raised from the ground for the purpose of advertising.
  - [13] *Festival Sign:* A sign which is placed to commemorate and/or attract attention to a recognized festival within the town.
  - [14] *Freestanding Sign:* A sign supported by a sign structure placed in the ground and which is wholly independent of any building, fence, vehicle, or object other than the sign structure for support.
  - [15] *Gasoline Pump Signs:* Signs which are normally associated with the sale of gasoline including the price, self service, etc. information contained on the pump.
  - [16] *Holiday Decorations:* The decorations normally associated with the holiday season from November to January.

- [17] *Home Occupation Signs:* 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.
- [18] *Marquee:* A sign of a theater, auditorium, fairground, museum or cable vision central office which advertises present and scheduled events.
- [19] *No Trespassing/No Loitering Signs:* Such signs, and similar ones, which are placed to inform the public of private regulations.
- [20] *Occupant/Street Number Sign:* A sign bearing only the name of the principal occupant of a residence or street number of any residential, commercial or other structure.
- [21] *Painted Wall Sign:* A sign painted directly on any exterior building wall or door surface, exclusive of window and door glass areas.
- [22] *Portable Sign:* Any sign designed or intended to be readily relocated. This shall include signs on wheels, trailers, truck beds, A-frames or any other device which is capable of/or intended to be moved from one location to another.
- [23] *Private Traffic Directional Sign:* Signs such as in/out, do not enter, entrance/exit, etc., which are placed on private property to direct vehicular traffic.
- [24] *Projecting Sign:* A sign which is attached to a building wall with the face of the sign perpendicular to the building wall. Such signs shall not project into any street right-of-way and shall be at least eight (8) feet above the ground.
- [25] *Public Service Signs:* Sign displayed for the direction or the convenience of the public such as signs for rest rooms, public telephones, etc.
- [26] *Real Estate Signs:* A sign which advertises the sale and/or lease of the property on which said sign is located.
- [27] *Temporary Sign:* A sign or advertising display constructed of cloth, canvas, fabric, plastic, paper, plywood or other light material and intended to be displayed for a short period of time to inform the public of an unusual or special event. This shall include banners, balloons, flags, streamers, spinners, placards, pennants and other wind activated devices.
- [28] *Time and Temperature Sign:* Signs which display time and temperature in alternating light cycles.

- [29] *Window Signs*: Signs which are painted or affixed to windows.
- [30] *Yard Sale/Open House Signs*: A sign which serves to direct the public to such events and is placed off the premise of such event/sale, for a brief period of time.

### **Section 322. Signs Excluded From Regulation**

**[a]** The following signs and/or displays shall be exempt from the regulations of this ordinance:

- [1] Signs not visible beyond the boundaries of the property on which they are located.
- [2] Signs of a duly constituted governmental body, including traffic or similar regulatory devices, legal devices or warnings. This shall include street signs of a non commercial type which are used on premise to identify public buildings such as the Watauga County courthouse, town hall, Watauga County Hospital, Hardin Park School, political signs and posters during election year, etc. Also included are political signs and posters during an election year, except as prohibited under Section 337.
- [3] City directory and welcome signs approved by the Boone Commission which are erected to welcome visitors to Boone. Such signs may have affixed to them names and/or emblems of civic groups and churches.
- [4] Trade names and graphics which are customarily painted on newspaper and soft drink dispensers.
- [5] Publicly owned memorial tablets or signs.
- [6] Official flags of religious, fraternal and civic organizations provided that such flags are flown at meeting places of such organizations and/or special events of these organizations.

### **Section 323. Prohibited Signs**

**[a]** The following signs are prohibited:

- [1] Any sign which imitates or in any way approximates official highway signs, or any sign which obscures a sign displayed by a public authority.

- [2] Any sign which displays flashing, blinking or intermittent lights or lights of changing intensity. No moving signs or moving parts of signs will be allowed. Time and temperature signs shall be allowed in accordance with Section 325 [15].
- [3] Portable signs as defined in Section 321 [22].
- [4] Temporary signs as defined in Section 321 [27], except those of a temporary nature as per Section 339.
- [5] Displays of letters, logos, trademarks, emblems, pictures, etc. in such three dimensional items as oversize facsimiles of chicken buckets, human figures, tin cans, etc., except as specifically allowed as wooden signs in the B-1 district.
- [6] Any sign which is erected or placed in such a manner as to obstruct driver vision of any vehicle entering a roadway from any street, alley, driveway or parking lot.
- [7] Commercial identification or advertising signs on public utility poles, telephone poles, trees, parking meter poles, fences, benches and refuse containers, except the latter two may display a logo. In addition, no signs shall be painted on roofs nor placed on roofs.
- [8] Pavement markings of any kind other than for traffic control.
- [9] Signs which contain obscene words or words and pictures which offend the public.
- [10] Any sign located in such a way as to intentionally deny an adjoining property owner visual access to an existing sign.
- [11] Billboards or off premise advertising as defined in Section 321 [5], except as allowed by the town Off Premise Directional Sign Program. (See Appendix D).
- [12] Floodlights or signs 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.
- [13] Signs placed in a public right-of-way.
- [14] Signs erected, constructed, or maintained so as to obstruct any fire escape or any window or door or opening used as a means of egress or so as to prevent free passage from one part of a roof to any other part thereof. No sign shall be attached in any form, shape or manner as to interfere with an opening required for legal ventilation.

- [15] Any sign that violates any provision of any law of the State of North Carolina relative to outdoor advertising.
- [16] Any other sign which does not comply with the regulations of this ordinance.

#### **Section 324. Permit Required for Signs**

**[a]** Except as otherwise provided in Section 322 (Signs Excluded from Regulation) and 325 (Signs Which Do Not Require a Permit), no sign may be constructed, erected, moved, enlarged, illuminated or substantially altered except in accordance with the provisions of this section. Mere repainting or changing the message of a sign shall not, in and of itself, be considered a substantial alteration.

**[b]** If plans submitted for a zoning permit, special use permit, or conditional use permit include sign plans in sufficient detail that the permit issuing authority can determine whether the proposed sign or signs comply with the provisions of this ordinance, then issuance of the requested zoning, special use, or conditional use permit shall constitute approval of the proposed sign or signs.

**[c]** Signs not approved as provided in Subsection [b] or exempted under the provisions referenced in Subsection [a] may be constructed, erected, moved, enlarged, illuminated or substantially altered only in accordance with a sign permit issued by the administrator.

- [1] Sign permit applications and sign permits shall be governed by the same provisions of this ordinance applicable to zoning permits.
- [2] In the case of a lot occupied or intended to be occupied by multiple business enterprises (e.g., a shopping center), sign permits shall be issued in the name of the lot owner or his agent rather than in the name of the individual business enterprise requesting a particular sign. The town may assist the owner by suggesting a formula whereby the maximum square footage of sign area allowed on the lot may be allocated equitably among all tenants, but the town shall be responsible for enforcing only the provisions of the ordinance and not the provisions of any allocation formula, lease, or other private restriction.

---

**Section 325. Signs Which Do Not Require a Permit**

**[a]** No permit is necessary for these signs, provided they are not prohibited as defined in Section 323 and provided that they comply with the conditions described herein.

**[b]** Signs permissible as per this section shall not be considered in determining total sign area. However, if a sign exceeds the size, or in any other way does not comply with these limitations, it shall be subject to all other provisions of this ordinance.

- [1] Public Service Signs displayed for the direction or convenience of the public. This shall include signs for public rest rooms, telephones, vehicle inspection, credit cards accepted, hours of operation, freight entrances, etc. Such signs shall not exceed a total surface area of four (4) square feet per sign, and may be illuminated.
- [2] Real Estate Signs which advertise the sale or lease of the property on which said sign is located, subject to the following conditions:
  - a. One sign per premise.
  - b. Sign shall be non illuminated.
  - c. Sizes shall not exceed:
    1. In the R-1, R-2, R-3, R-4, and MH districts four (4) square feet and a height of five (5) feet.
    2. In the B-1 district one (1) square foot and sixty eight (68) feet.
    3. In the B-2, B-3, M-1, and O/I districts twenty (20) square feet and eight (8) feet in height.
  - d. Real estate signs must be removed within forty eight (48) hours of the sale of the property.
  - e. No off premises real estate signs are allowed along the highway. The location of real estate signs is to be limited to the property which is for sale. The real estate sign shall be removed by the Realtor within three (3) days after closing of the subject property.

- 
- [3] Residential Yard Sale/Open House Signs are limited to no more than three (3) signs per event or per premise for sale. Two may be placed off premise on private property. The signs may remain in place for forty eight (48) hours only. Such signs shall serve as directional aids and text on such signs shall be limited to Yard Sale/Garage Sale or Open House/House for Sale and an arrow. Signs shall be placed out of the street right-of-way and shall not be illuminated.
  - [4] Festival Signs non illuminated, which are associated with activities recognized by the council such as SeptemberFest, the Boone Christmas Parade, etc. In addition, signs placed to greet students, such as Welcome Back Mountaineers, Hello Apps , etc. shall be allowed for a two (2) week period at the beginning of the school term. No advertising shall be allowed on such signs.
  - [5] Holiday Decorations or Seasonal Decorations are allowed from November 1 to January 3 of the following year. Such decorations may be illuminated in compliance with Section 323 [a] [2] and shall contain no advertising.
  - [6] Construction Signs that are non illuminated and do not exceed four (4) feet by eight (8) feet may be placed on premise to identify firms and/or builders during the period of construction. They shall be removed no later than seven (7) days after completion of the project.
  - [7] No Trespassing, No Dumping, No Loitering, For Private Use Only, etc. signs may be placed where necessary. Such signs shall be non illuminated and not exceed four (4) square feet in size.
  - [8] Changing copy does not require a permit such as on a theater marquee or legal outdoor advertising sign, nor shall a permit be required for maintenance changes provided that in no way is the size of the sign altered.
  - [9] Occupant/Street Number Signs that are non illuminated signs affixed to mailboxes, decorative light posts, driveway entrances and the like which serve to identify occupants and/or street number. Street numbers are required to be placed on all residential, commercial and other structures in a manner to be visible from the street.
  - [10] Direction Signs as defined by Section 321 [a] [10], are permitted provided that they do not exceed four (4) square feet.



- [11] Business Identification Signs that are non illuminated may be placed on buildings to identify the tenants within. Such signs shall contain no advertising other than trade name and/or logo and shall not exceed one (1) square foot per sign, per business.
- [12] Gasoline Pump Signs that are non illuminated signs giving information such as self service instructions, price, type of fuel, etc. shall be permitted on gasoline pumps. These may contain the trade name and/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.
- [13] Window Signs as defined in this ordinance provided they are not lighted. If lighted, the sign is considered attached and must comply with the regulations for attached signs.
- [14] Private Traffic Directional Signs shall include such signs as in or out, entrance, exit, parking, one way, etc. Signs may be illuminated but may not exceed four (4) square feet and sign copy shall be limited to the directional information and the trade name or logo of the business.
- [15] 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.
- [16] Drive Thru Menu 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 thru menu boards are permitted for each drive thru restaurant.

### **Section 326. General Requirements for On Premise Signs**

- [a] All freestanding signs, support structures and required landscaping areas shall be at least one (1) foot from any right-of-way or easement.

**[b]** 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 landscape area.

**[c]** Signs shall be placed on the premise of the business being advertised and the sign copy shall be used primarily to identify the on premise business. However, a shopping center, mall or unified business establishment which lacks arterial road frontage but whose property is immediately adjacent to a business with arterial frontage may share signage with that business. This arrangement must be in the form of a mutual agreement between the property owners and/or business operators involved. No sign devoted solely to off premise advertisement shall be allowed. All signs erected under the provisions of this section shall comply with the size, height and other requirements for that zoning district as well as all other general provisions in this section.

For example, a shared use freestanding sign in the B-3 district could not exceed fifty (50) square feet in area and twenty (20) feet in height. Use of the sign copy for the general advertising of products, such as Coke, Sprite, etc., shall not be permitted in residential zones and shall be limited to twenty percent (20%) of the sign area in business zones.

**[d]** A sign may contain changeable copy in the B-2 and B-3 zones, however in no case shall the changeable copy portion of the sign exceed fifty percent (50%) of the total sign area.

**[e]** The area of a sign shall be measured according to the following rules as applicable:

- [1] In the case of freestanding, projecting and 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.
- [2] In the case of a sign (other than freestanding, projecting, 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, or marquee) whose message is applied to a background which provides no border or frame, sign area shall be computed by including the entire area within not more than eight (8), 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.

[f] 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 Section 323 [a] [12]. Non illuminated interior window signs are permitted. Illuminated interior window signs shall be considered attached signs and shall count as one of the permitted signs and must conform to all regulations of the zoning district in which it is located.

[g] Signs permitted in all zones shall include all applicable signs as listed in Section 325 (Signs Which Do Not Require A Permit).

[h] Businesses located on a corner lot may be permitted one attached sign in addition to those otherwise permitted herein.

[i] No freestanding sign shall be placed less than forty (40) feet from another freestanding sign.

[j] Freestanding signs shall not be located in satellite parcels of real estate, whether the parcel is connected by deed or easement.

### **Section 327. Signs Permitted in the R-1, 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] Home Occupation Sign:

- a. One sign per premise.
- b. The sign may not be illuminated.
- c. The sign must be an attached sign mounted flat on the building.
- d. The sign may not exceed four (4) square feet in size.

- 
- [2] One sign 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 forty (40) square feet in area, or ten (10) feet in height.
    - d. The sign may be illuminated.
  - [3] All signs shall meet the general requirements of Section 326.

### **Section 328. Signs Permitted in the R-3 District**

#### **[a] Home Occupation Signs**

- [1] One sign per premise.
- [2] The sign may not be illuminated.
- [3] The sign may be attached or freestanding.
- [4] Attached signs shall not exceed four (4) square feet in area.
- [5] Freestanding signs may not exceed four (4) square feet in area and five (5) feet in height.

#### **[b] One sign announcing the name of a subdivision, residential development, or apartment complex is allowed.**

- [1] Sign copy is limited to the name of the development.
- [2] The sign may be freestanding or placed on the entrance wall or the front wall of the apartment building.
- [3] The sign may not exceed forty (40) square feet in area or ten (10) feet in height.

#### **[c] Advertising signs for businesses in the R-3 zone.**

- [1] 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.
- [2] Attached and freestanding signs may not exceed sixteen (16) square feet in area per sign.

- [3] Freestanding signs may not exceed ten (10) feet in height.
- [4] Projecting and awning signs may not exceed eight (8) square feet in area per sign.
  - a. Awning signs may be attached to the awning at the face of, side of, or under the awning. No sign may be attached to the support structures.
  - b. Signs which are projecting or are suspended under an awning and/or cantilevered roof shall be at least eight (8) feet above the sidewalk at their lowest point.
  - c. 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.

[d] All signs shall meet the additional requirements of Section 326.

### **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] Advertising Signs

- a. Each business is permitted two (2) signs chosen from the following categories: attached, canopy, 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.
- b. Attached signs shall not exceed as 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 sixteen (16) square foot 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 of attached sign is forty eight (48) square feet, regardless of building size.

- c. Projecting signs may not exceed sixteen (16) square feet in area.
- d. Awning signs shall not exceed eight (8) square feet. Awning signs may be attached to the awning at the face of, side of, or under the awning. No sign may be attached to the support structures. Signs which are suspended under an awning and/or cantilevered roof shall be at least eight (8) feet above the sidewalk at their lowest point. 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.
- e. To encourage uniqueness and originality, the canopy sign or projecting sign may be of an unusual shape. Examples of such signs would be: a shoe to identify a shoe store, an apothecary jar to identify a drug store, a camera to identify a photo store, etc. These signs must comply with all regulations as stated herein.
- f. All signs shall meet the additional requirements of Section 326.
- g. In addition to the signs listed above, there shall also be allowed one of the following:
  1. 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, and the bottom of the sign shall be no more and no less than eight (8) feet above the sidewalk. 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.
  2. A freestanding sign which may be a maximum size of two (2) feet by two (2) feet, and the bottom of said sign shall be no more and no less than eight (8) feet above the sidewalk. It 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.

### **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 sixteen (16) square feet in area. Awning signs may be attached at the face of, side of, or under the awning. No signs may be attached to the awning support structures. Signs which are projecting or are suspended under an awning and/or cantilevered roof shall be at least eight (8) feet above the sidewalk at their lowest point. 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 326.

### **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 sixteen (16) square feet in area. Awning signs may be attached to the awning at the face of, side of, or under the awning. No sign may be attached to the awning support structure. Signs which are projecting or are suspended under an awning and/or cantilevered roof shall be at least eight (8) feet above the sidewalk at their lowest point. 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 326.

### **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 326 and the following:

- [1] The sign may be attached or freestanding.
- [2] The sign may be illuminated.
- [3] 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.
- [4] Freestanding signs may not exceed fifty (50) square feet in size and twenty (20) feet in height.
- [5] All signs shall meet the general requirements of Section 326.



---

**Section 333. Signs Permitted in the U-1 District**

**[a]** The university properties which are zoned U-1 shall comply with the following sign regulations:

- [1] Buildings are permitted one non illuminated attached sign to identify the building.
- [2] The use of individual metal letters affixed to the building, (as in current usage) is encouraged.
- [3] Sign area may not exceed one (1) square foot per linear foot of building frontage (not to exceed one hundred twenty (120) square feet maximum).
- [4] All signs shall meet the general requirements of Section 326.
- [5] University properties which have one or more property lines contiguous with non university property shall comply with all sign regulations applicable to the adjoining non university property.

**Section 334. 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 zone.
- 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 sixteen (16) square feet in area. Awning signs may be attached at the face of, side of, or under the awning. No signs may be attached to the awning support structures. Signs which are projecting or are suspended under a awning and/or cantilevered roof shall be at least eight (8) feet above the sidewalk at their lowest point. Signs which are attached to the face or side of a awning may not exceed twelve (12) inches in height.
- g. All signs shall meet the general requirements of Section 326.

### **Section 335. Marquee Sign Regulations**

**[a]** Theaters, museums, auditoriums, cable vision central offices, fairgrounds and other entertainment facilities are permitted one (1) changeable copy marquee in addition to their two (2) permitted signs.

**[b]** 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.

**[c]** 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.

### **Section 336. 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) 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 [c] (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 326 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 337. 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] Portable signs shall not be allowed for political use.
  - [5] Any political sign which is determined to be a hazard or infringement to the public health, safety and welfare is prohibited.

**Section 338. Elevated Merchandise Regulations**

**[a]** Merchandise raised from the ground for the purpose of advertising shall be set back from the property line in accordance with the building set-back requirements for the district in which the business is located. This requirement shall not apply to merchandise which is stacked from the ground up.

**Section 339. Temporary Sign Regulations**

**[a]** Temporary signs must conform to all regulations of this section. These signs shall not be required to obtain a sign permit but must be registered with the administrator. Information required to register a temporary sign will be name and address of the sign owner, date of erection of sign, date for removals of sign, and description of sign (size, shape and material of construction).

**[b]** It is the intent of this section to allow use of community marquee signs for special events of a religious, charitable, civic, fraternal or political nature. These signs may be erected provided that:

- [1] The size of any such sign shall not exceed twenty four (24) square feet in area.
- [2] The signs are not illuminated.

- [3] The signs may not be displayed earlier than thirty (30) days prior to the event to which they pertain and must be removed within seven (7) days after the event.
- [4] Only one sign per premise is allowed, except during an election year when the display of political advertising shall be liberally allowed.

**[c]** Businesses which are newly established or have changed locations may display a temporary sign provided that:

- [1] The size of any such sign is not in excess of twenty four (24) square feet in area.
- [2] The sign may be displayed for a period of sixty (60) days. This sixty day period may begin no earlier than sixty days prior to the opening date of the business nor later than thirty (30) days after the certificate of occupancy is issued by the building inspector.
- [3] Only one such sign is allowed per premise, however this one sign may be used in addition to other permitted signs.

**[d]** 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:

- [1] The size of such sign shall not exceed twenty four (24) square feet.
- [2] The signs are not illuminated.
- [3] The signs are displayed for a period of ten (10) days only.
- [4] Only one (1) sign per premise is allowed.
- [5] A business establishment may receive registration for temporary signs for four (4) or less separate events during a twelve month period. An interval of thirty (30) days shall separate each event.

#### **Section 340. Exceptions and Modifications**

**[a]** Where a business establishment elects to erect only one sign, 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 326.

**[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 rule shall apply to attached signs only.
- [2] This rule 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 pertains to the district in which it is located.
- [4] If the business has a freestanding sign this rule 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 a special use permit provided that:

- [1] The additional signs must be attached or projecting signs.
- [2] The combined area of the additional sign 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, which because of building design, road construction or other circumstances beyond the control of the business establishment, cannot feasibly erect a sign in a permitted location, may be granted a special use permit to place the sign in an otherwise illegal location, provided that:

- [1] The business establishment provides sufficient information indicating the circumstances which prevent the location of a sign in a permitted location and a finding by the board of adjustment that the circumstances do exist in fact.
- [2] The area of the sign shall not exceed the area permitted for the type sign in the district in which the business is located.
- [3] The applicant shall submit a sketch of the proposed sign showing location.
- [4] The board of adjustment finds that the sign and its location is in harmony with the building and surrounding area.
- [5] The application meets all applicable requirements of Article IV.

**[e]** Businesses located in the B-1 district may erect a freestanding sign provided that:

- [1] All applicable requirements of Section 326 are met, and;
- [2] A minimum of forty (40) feet (setback) is provided between any building and freestanding sign, and;
- [3] No freestanding signs shall exceed ten (10) feet in height, and except as allowed under [5] below, and;
- [4] No freestanding 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;
- [5] 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 twenty (20) feet.
- [6] No sign shall be placed in a public right-of-way.

---

**Section 341. Maintenance, Relocation and Obsolete and Abandoned 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 non conforming may not be relocated except upon removal of all non conforming features of the sign.

**[c]** 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., with the exception of political signs, which shall be removed within seven (7) days after elections.



- [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. Reserved**

**Section 343. Reserved**

**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 other than the U-1 district 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.

**[b]** The presumptions established by this article are that: (i) a development must comply with the parking standards set forth in Subsection [e] to satisfy the requirement stated in Subsection [a], and (ii) any development that does not meet these standards is in compliance. However, the Table of Parking Requirements is only intended to establish a presumption and should be flexibly administered, as provided in Section 347.

**[c]** Uses in the Table of Parking Requirements (Subsection [e]), are indicated by a numerical reference keyed to the Table of Permissible Uses, Section 165. When determination of the number of parking spaces required by this table results in a requirement of a fractional space, any fraction of one half or less may be disregarded, while a fraction in excess of one half shall be counted as one parking space.

**[d]** The council recognizes that the Table of Parking Requirements set forth in Subsection [e] cannot and does not cover every possible situation that may arise. Therefore in cases not specifically covered, the permit issuing authority is authorized to determine the parking requirements using this table as a guide.

**[e]** Table of Parking Requirements.

Use	Parking Requirement
1.110 1.120	2 spaces per dwelling unit.
1.200	2 spaces per dwelling unit.
1.300	2 spaces per one bedroom unit. 3 spaces per two bedroom unit. 4 spaces per three bedroom unit. 1 space per unit for units limited to the elderly.
1.400	3 spaces for every five beds except for uses exclusively serving children under 16, in which case 1 space for every three beds.
1.510	2 spaces for each bedroom
1.520 1.530	1 space for each room to be rented plus additional space (according to other sections of this table) for restaurant or other facilities.

1.540	1 space per resident, except none required in the B-1 district.
2.111	1 space per 200 square feet of gross floor area.
2.112	1 space per 250 square feet of gross floor area, except 1 space per 350 square feet of gross floor area in the B-1 district.
2.120 2.130	1 space per 400 square feet of gross floor area.
2.210	1 space per 200 square feet of gross floor area.
2.220 2.230	1 space per 400 square feet of gross floor area.
3.110	1 space per 200 square feet of gross floor area.
3.120	1 space per 400 square feet of gross floor area.
3.130	1 space per 150 square feet of gross floor area.
3.210	1 space per 200 square feet of gross floor area.
3.220	1 space per 400 square feet of gross floor area.
3.230	1 space per 400 square feet of gross floor area within main building plus reservoir land capacity equal to 5 spaces per window (10 spaces if window serves two stations).
4.110	1 space per 400 square feet of gross floor area.
4.120 4.200	1 space for every two employees on the maximum shift except that, if permissible in the commercial districts, such uses may provide 1 space per 200 square feet of gross floor area.
5.110	1.75 spaces per classroom in elementary schools, 5 spaces per classroom in secondary schools.
5.120	1 space per 100 square feet of gross floor area.
5.130	1 space per 150 square feet of gross floor area.
5.200	1 space for every four seats in the portion of the church building to be used for services, plus spaces for any residential use as determined in accordance with the parking requirements set forth for residential uses, plus 1 space for every 200 square feet of gross floor area designed to be used neither for services nor residential purposes.
5.300 5.400	1 space per 300 square feet of gross floor area.
6.110	1 space for every three persons that the facilities are designed to accommodate when fully utilized, plus 1 space for every 200 sq. ft of gross floor area used in a manner not subject to such a calculation.

6.120	1 space for every four seats except in the B-1 district, none are required.
6.130	1 space for every four seats.
6.210 6.220	1 space per 200 square feet of area within enclosed buildings, plus 1 space for every three persons that the outdoor facilities are designed to accommodate when used to the maximum capacity.
7.100	1 space per bed or 1 space per 150 square feet of gross floor area, whichever is greater.
7.200	3 spaces for every five beds.
8.100	1 space per 100 square feet of gross floor area.
8.200 8.300	1 space per 100 square feet of gross floor area, plus 1 space for every four outside seats.
8.400	1 space per 100 square feet of gross floor area, plus 1 space for every four outside seats, plus reservoir lane capacity equal to 5 spaces per drive in window.
9.0	1 space per 250 square feet of gross floor area.
10.210 10.220	1 space for every two employees on the maximum shift but not less than 1 space per 5,000 square feet of area devoted to storage (whether inside or outside).
11.0	1 space per 200 square feet of gross floor area.
12.0	1 space per 200 square feet of gross floor area.
13.0	1 space per 200 square feet of gross floor area.
14.0	1 space for every two employees on maximum shift.
15.100 15.200	1 space per 200 square feet of gross floor area.
15.300	1 space for every two employees on maximum shift.
16.0	1 space 200 square feet of gross floor area.
19.0	1 space per 1,000 square feet of lot area used for storage, display or sales.
20.0	1 space per 100 square feet of gross floor area.
22.0	1 space per employee, plus 1 space per 200 sq. ft. gross floor area.
24.0	1 space per 200 square feet of gross floor area.
25.0	1 space per 200 square feet of gross floor area.

---

**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:

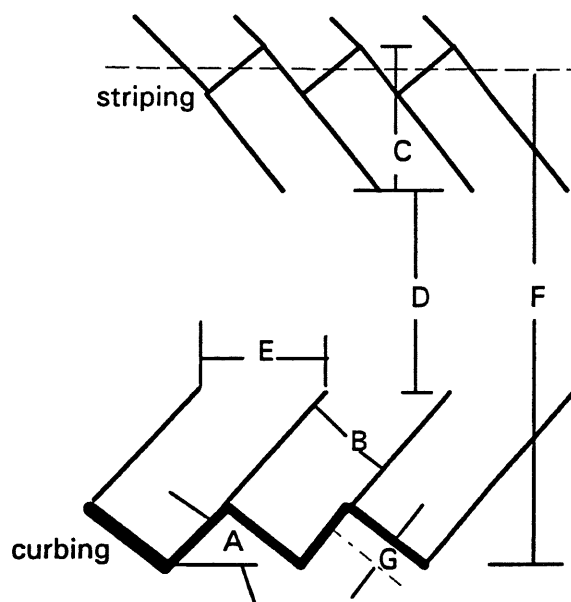
- [1] Multi-family uses may provide up to fifty (50) percent of the parking spaces for compact cars.
- [2] All other uses may provide up to thirty five (35) percent of the parking spaces for compact cars.

**[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.



Schematic Diagram of Parking Geometry



**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**

<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		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.

---

**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. Reserved**

**Section 356. Reserved**

**Section 357. Reserved**



## Article XX Screening and Trees

### Part I Screening

#### Section 358. Council Findings Concerning the Need for Screening Requirements

[a] The town council finds that:

- [1] Screening between two lots lessens the transmission from one lot to another of noise, dust, and glare.
- [2] Screening can lessen the visual pollution that may otherwise occur within an urbanized area. Even minimal screening can provide an impression of separation of spaces, and more extensive screening can shield entirely one use from the visual assault of an adjacent use.
- [3] Screening can establish a greater sense of privacy from visual or physical intrusion, the degree of privacy varying with the intensity of the screening.
- [4] The provisions of this part are necessary to safeguard the public health, safety and welfare.

#### Section 359. General Screening Standard

[a] Every development shall provide sufficient screening so that:

- [1] Neighboring properties are shielded from any adverse external effects of that development.
- [2] The development is shielded from the negative impacts of adjacent uses such as parking lots, streets or railroads.

[b] Screening shall be located and maintained so as not to interfere with vehicular and pedestrian traffic.

**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 the Screening Use Classification in Section 361.
  - [2] Use the Table of Screening Requirements in Section 362 to determine the appropriate letter designation for each abutting yard.
  - [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 screening requirements are established for uses elsewhere in this ordinance.

**[b]** The table set forth in Section 362, in conjunction with the explanations in Section 363 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 364.

**[c]** If, when the analysis described in Subsection [a] indicates that screening is required for an existing use, but the required screening is not in place, then this lack of screening shall constitute a nonconforming situation, subject to the provisions of Article VIII of 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 (6.210 and 6.220); nature areas; wildlife sanctuaries; and accessory uses including recreation and storage.
- [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 (1.500), excluding hotels, motels (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); manufacturing, processing, creating, repairing, renovating, painting, cleaning, assembling of goods, merchandise and equipment (4.0); recreation, amusement, entertainment activity conducted entirely within building or substantial structure (6.100); institutional residence or care or confinement facilities (7.0); restaurants, bars, nightclubs (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); telecommunication towers and related structures (18.0); open air markets and horticultural sales (19.0); funeral home (20.0); nursery schools, day care centers (22.0); bus station, train station (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).

## **Section 362. Table of Screening Requirements**

**[a]** The Table of Screening Requirements shall be used to determine screening requirements between adjacent land uses.

**[b]** Three basic types of screening are hereby established and are used as the basis for the table: Type "A", Opaque Screening; Type "B", Semi-Opaque Screening; and Type "C", Aesthetic Screening.

Proposed Land Use Class	Adjacent Permitted Land Use Classification				Adjacent Zone with Nonconforming Use		Adjacent Public or Private Street	Railroad
	I	II	III	IV	Residential	Non-Residential		
<b>II</b>	A	C	C	C	B	C	C	B
<b>III</b>	A	B	C	C	B	C	C	C
<b>IV</b>	A	A	B	C	A	B	A	C

[c] Screening, utilities, pedestrian ways and landscaping materials shall be located in the bufferyard, which consists of a horizontal distance from the property line. Roadways may cross bufferyards with a minimum spacing of one crossing per one hundred (100) feet. Where a parcel adjoins a developed parcel with no plantings or is located along a street, aesthetic bufferyard shall have a width of eight (8) feet with trees placed twenty (20) feet on center. Where the board of adjustment issues a special use permit for sideline-to-sideline construction, the bufferyard requirement shall not apply. The required bufferyard width for each type of screening shall be:

Screening Type	Required Width of Bufferyard (in feet)
Type "A" Opaque	25
Type "B" Semi-Opaque	15
Type "C" Aesthetic	4

[d] Vegetation located on adjoining property may be applied toward the bufferyard screening requirements with the approval of the community appearance commission. Such approval will be contingent upon the filing of a landscape easement, signed by the owner of the adjoining property, with the Registrar of Deeds, specifying the area to be set aside and committing the owner of the property to maintaining the vegetation until such time the uses on either property no longer require a bufferyard or screen.

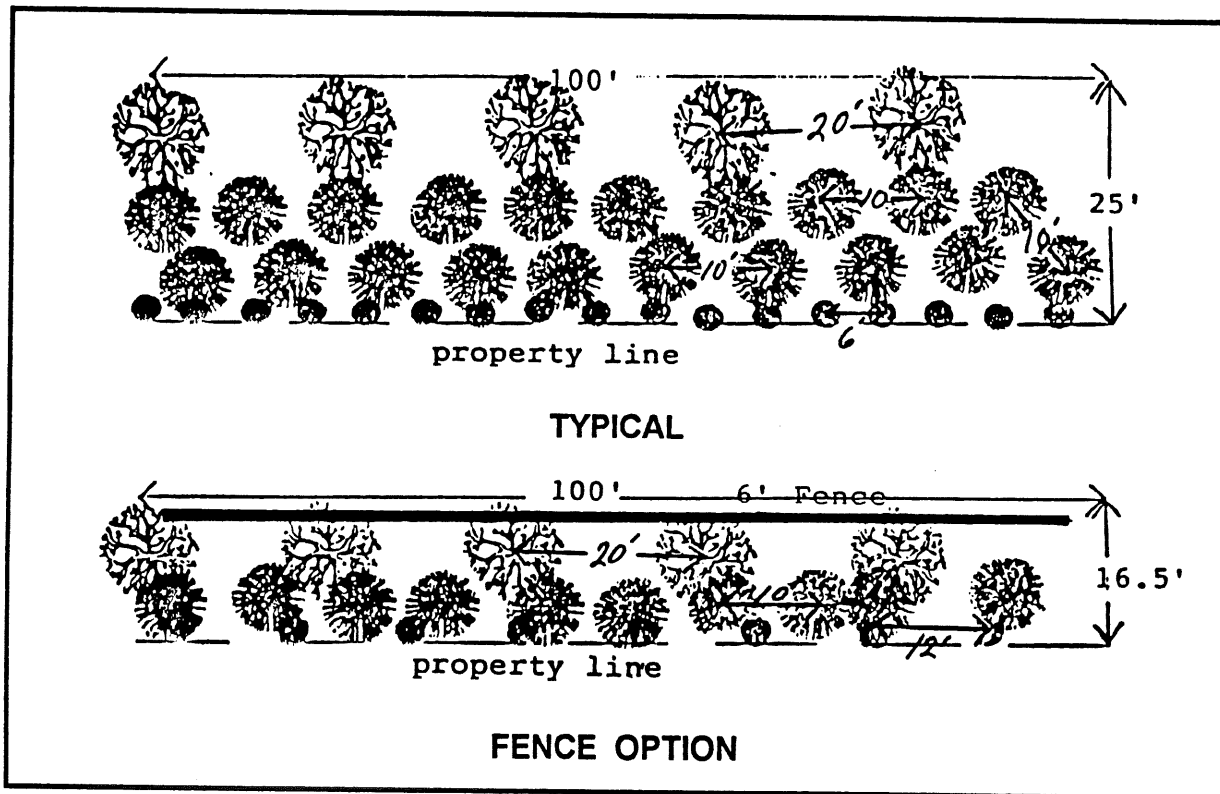
**Section 363. Description of Screening**

**[a] Type "A", Opaque Screen:**

- [1] An opaque screen is intended to exclude all visual contact between uses and to create a strong impression of spatial separation. The opaque screen may be composed of a wall, fence, landscaped earth berm, planted vegetation, or existing vegetation. Compliance of planted vegetative 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. The opaque portion of the screen must be opaque in all seasons of the year. At maturity, the portion of intermittent visual obstructions should not contain any completely unobstructed openings more than ten (10) feet wide. The portion of intermittent visual obstructions may contain deciduous plants. Suggested planting patterns that will achieve this standard are shown in Subsection [a] [2].

<b>Planting Type</b>	<b>Number per 100 ft.</b>	<b>Spacing of Plantings</b>	<b>Size at Planting</b>	<b>Size at Maturity</b>
Evergreen Shrubs	15	6 ft. on center	1.5 ft.	4 ft.
Evergreen Trees	20	10 ft. on center	6 ft.	25 ft.
Deciduous Trees	5	20 ft. on center	8 ft.	35 ft.

[2] Examples of the Type "A", Opaque Screen are shown below.

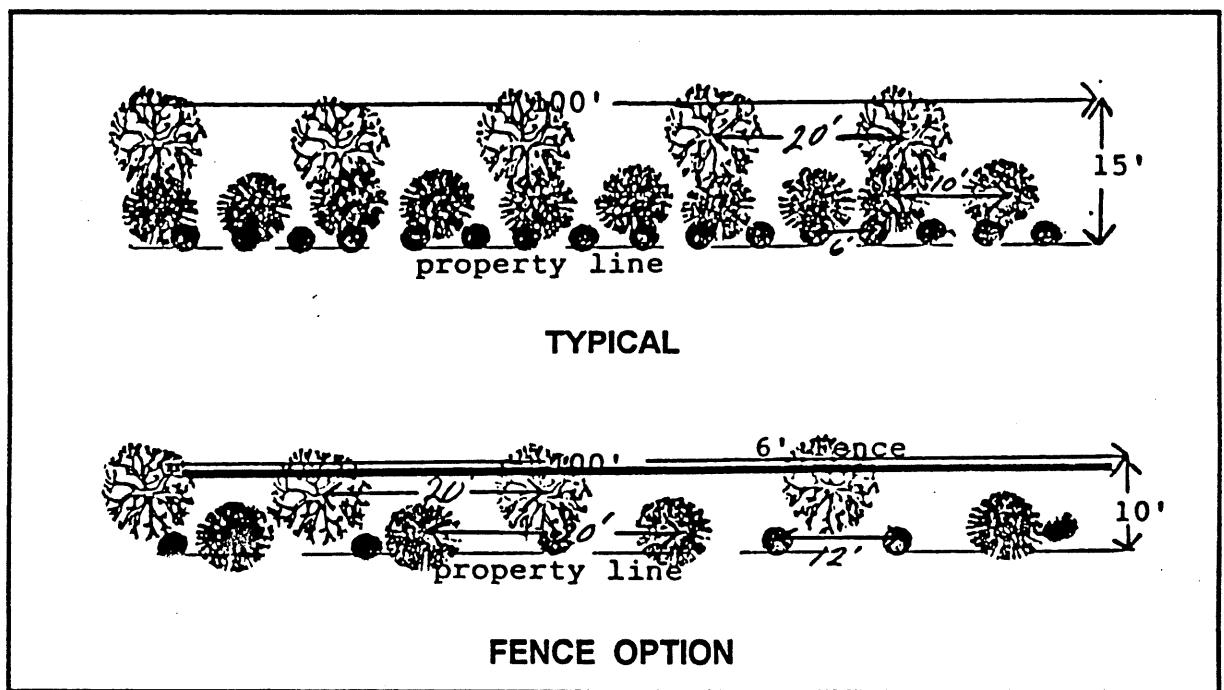


[b] Type "B", Semi-Opaque Screen:

- [1] The semi-opaque screen is intended to partially block visual contact between uses and to create a strong impression of the separation of spaces. The semi-opaque screen may be composed of a wall, fence, landscaped earth berm, planted vegetation or existing vegetation. Compliance of planted vegetative 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. At maturity, the portion of intermittent visual obstructions should not contain any completely unobstructed openings more than ten (10) feet wide. The zone of intermittent visual obstruction may contain deciduous plants. Suggested planting patterns that will achieve this standard are shown in Subsection [b] [2].

Planting Type	Number per 100 ft.	Spacing of Plantings	Size at Planting	Size at Maturity
Evergreen Shrubs	15	6 ft. on center	1.5 ft.	4 ft.
Evergreen Trees	10	10 ft. on center	6 ft.	25 ft.
Deciduous Trees	5	20 ft. on center	8 ft.	35 ft.

[2] Examples of the Type "B", Semi-Opaque Screen are shown below.

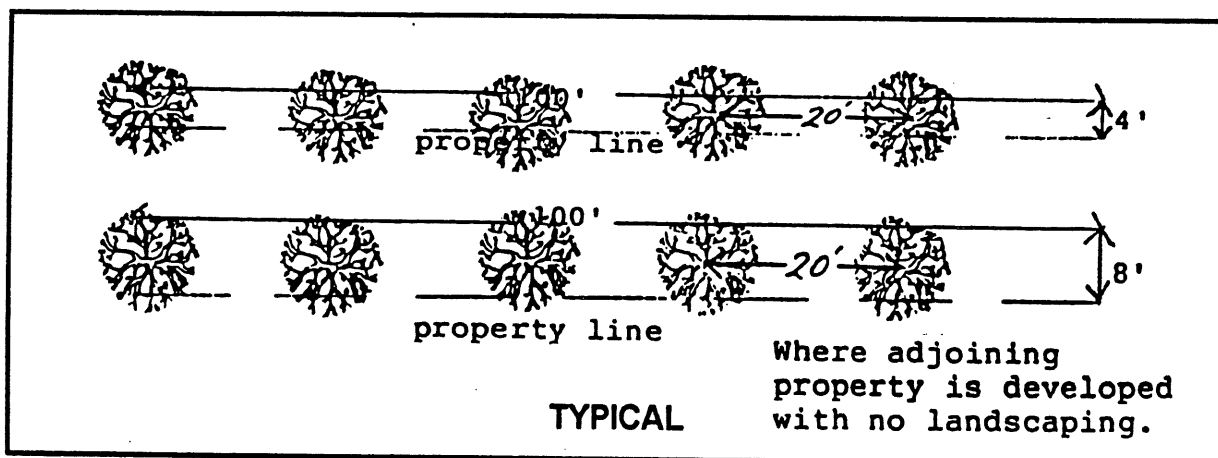


[c] Type "C", Aesthetic Screen:

[1] The Aesthetic screen is intended to create the impression of a separation of spaces without necessarily eliminating visual contact between the spaces. It may be composed of a landscaped earth berm, planted vegetation or existing vegetation. Compliance of planted vegetative 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. The screen may contain deciduous plants. Suggested planting patterns which will achieve this standard are shown in Subsection [c] [2].

Planting Type	Number per 100 ft.	Spacing of Plantings	Size at Planting	Size at Maturity
Evergreen Shrubs	15	6 ft. on center	1.5 ft.	4 ft.
Evergreen Trees	5	20 ft. on center	8 ft.	35 ft.
Deciduous Trees	5	20 ft. on center	8 ft.	35 ft.

[2] Example of the Type "C", Aesthetic Screen is shown below.



**[d]** The installation of an opaque wall or fence with a minimum height of six (6) feet shall reduce the number of evergreen plantings required by fifty percent (50%) and the bufferyard width by thirty percent (30%). When a fence or wall is used to augment a vegetative buffer, such wall or fence shall:

- [1] Not be a part of any building or structure,
- [2] Must be visually opaque, and
- [3] Must comply with the following appearance criteria:
  - a. Be constructed with new uniform materials from end to end and from top to bottom so as to present a uniform appearance.
  - b. Be constructed to be sturdy enough to withstand storm wind loads and the general destructive tendencies of annual weather patterns.
  - c. Be constructed so as to have a useful life of ten (10) years or more.
  - d. Be maintained in a constant state of good repair.
  - e. Be constructed of materials and in a manner generally accepted as proper in the building industry or by North Carolina Building Codes.

#### **Section 364. Flexibility in Administration Required**

**[a]** The council recognizes that because of the wide variety of types of developments and the relationships between them, it is neither possible nor prudent to establish inflexible screening requirements. Therefore, as provided in Section 360, the permit issuing authority may permit deviations from the presumptive requirements of Section 362 and may either require more intensive or allow less intensive screening whenever it finds such deviations are more likely to satisfy the standard set forth in Section 359 without imposing unnecessary costs on the developer.

**[b]** Without limiting the generality of Subsection [a], the permit issuing authority may modify the presumptive requirements for:

- [1] Commercial developments located adjacent to residential uses in business zoning districts.
- [2] Commercial uses located adjacent to other commercial uses within the same zoning district.

- [3] Uses located within planned unit developments (for screening requirements within planned residential developments, see Section 178.)

[c] Whenever the permit issuing authority allows or requires a deviation from the presumptive requirements set forth in Section 362, it shall enter on the face of the permit the screening requirement that it imposes to meet the standard set forth in Section 359 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 a presumption established by Section 362 is erroneous, it shall initiate a request for an amendment to the Table of Screening Requirements in accordance with the procedures set forth in Article XXI.

### **Section 365. 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 interpreted in the light of Section 363.

[b] When two or more principal uses are combined to create a combination use, screening shall not be required between the component principal uses unless they are clearly separated physically and screening is determined to be necessary to satisfy the standard set forth in Section 359.

### **Section 366. Subdivisions**

[a] When undeveloped land is subdivided and undeveloped lots only are sold, the subdivider 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 other requirements of Part I of this article.

### **Section 367. Screening for Nonconforming Uses**

[a] When a change in use occurs and the new use is the same or a lower use classification then the previous use as found in Section 361, then the applicant shall not be required to comply with the screening requirements of this article.



[b] When a change in use occurs and the new use is a higher land use classification then the previous use as found in Section 361, then the applicant shall comply to the extent reasonable with the provisions of this article.

### **Section 368. Maintenance of Screening and Landscape Plantings**

[a] Screening required by this article, including the shading provisions listed in Part II, shall be maintained in accordance with these requirements:

- [1] The landscape planner shall inspect all landscaping materials for overall health, as well as compliance with required specifications and approved landscape and site plans prior to installation. The inspection may also include, at the discretion of the landscape planner, soil tests as needed to ensure proper soil type, drainage, alkalinity and other factors relevant to the health and longevity of the landscaping materials. No vegetation shall be planted in the subsoil without amenities added as determined by a soil test. The landscape planner is authorized to reject all unsatisfactory materials and soils on the site.
- [2] Landscaping shall not be installed or retained in any location which constitutes a hazard or infringement to the public health, safety and welfare. Landscaping shall not obstruct the view of motorists using any street, private driveway, parking aisles or the approach to any street intersection so as to constitute a traffic hazard or a condition dangerous to the public safety.
- [3] Whenever any planting areas required by this article are adjacent to parking or vehicular circulation areas, the planting areas shall be protected from vehicular intrusion, or damage from excessive vehicles or fuels.
- [4] All landscaping planting areas shall be stabilized from soil erosion immediately upon planting and shall be maintained for the duration of the use.
- [5] The owner is responsible for maintaining all required plant material in good health. Any dead, unhealthy or missing plants must be replaced with vegetation which conforms with the initial planting standards of this article within one (1) planting season.

- [6] Overstory trees shall be a minimum height of eight (8) feet at planting with a minimum expected height of thirty five (35) feet at maturity. Understory trees shall be a minimum height of six (6) feet at planting with a minimum expected height of twenty five (25) feet at maturity. Shrubs shall be a minimum height of eighteen (18) inches at planting with a minimum expected height of thirty (30) inches at maturity. Ground cover shall be any shrub-like plant which does not meet the size requirements of shrubs.

#### **Section 369. Use Before Completion of Screening Requirements**

[a] In cases when because of weather conditions or when certain plant materials are unavailable it would be unreasonable to require the permit recipient to comply with all of the screening requirements of this ordinance, the administrator may authorize the commencement of the intended use or occupancy of buildings if the permit recipient provides a performance bond or other security satisfactory to the administrator to ensure that all of these screening requirements will be fulfilled within a reasonable period (not to exceed twelve (12) months).

#### **Section 370. Reserved**

---

## Part II      Trees

### Section 371. Council Findings and Declaration of Policy on Shade Trees

**[a]** The council finds that:

- [1] Trees are proven producers of oxygen, a necessary element for human survival,
- [2] Trees appreciably reduce the ever increasing environmentally dangerous carbon dioxide content of the air and play a vital role in purifying the air we breathe,
- [3] Trees transpire considerable amounts of water each day and thereby purify the air much like the air washer devices used on commercial air conditioning systems,
- [4] Trees have an important role in neutralizing waste water passing through the ground from the surface to ground water tables and lower aquifers,
- [5] Trees, through their root systems, stabilize the ground water tables and play an important and effective part in soil conservation, erosion control and flood control,
- [6] Trees are an invaluable physical, aesthetic and psychological counterpoint to the urban setting, making urban life more comfortable by providing shade and cooling the air and land, reducing noise levels and glare, and breaking the monotony of human developments on the land, particularly parking areas, and
- [7] For the reasons indicated in Subdivision [6], trees have an important impact on the desirability of land and therefore on property values.

**[b]** Based upon the findings set forth in Subsection [a], the council declares that it is not only desirable but essential to the health, safety and welfare of all persons living or working within the town's planning jurisdiction to protect certain existing trees and, under the circumstances set forth in this article, to require the planting of new trees in certain types of developments.

**[c]** Trees shall be located and maintained so as not to interfere with vehicular and pedestrian traffic.

---

**Section 372. Required Trees Along Dedicated Streets**

**[a]** The required minimum street yard shall be eight (8) feet, measured perpendicular to the road or street right-of-way. All street yards must have vegetative cover. An average of one overstory tree per forty (40) feet of road frontage is required. Innovative design in tree arrangement is encouraged. However, the minimum spacing between street yard trees shall be ten (10) feet and the maximum spacing shall be seventy five (75) feet. Trees, existing or planted, must be a minimum of eight (8) feet tall, six and one quarter (6.25) inches in circumference and two (2) inches in caliper measured six (6) inches above grade. The expected height of the tree at maturity shall be thirty five (35) feet, with a crown width of thirty (30) feet or greater.

**[b]** If two street yards cross, only one is counted. Driveways are not calculated into the square footage of street yards. No more than fifteen (15) percent of the street yard shall be covered with an impervious surface which may be used for walkways, fountains, or walls, but not parking, storage, service, display or loading areas. When trees are planted pursuant to this section, the developer shall choose trees that meet the standards set forth in Appendix B. All trees along dedicated streets are to be in accordance with the Town of Boone Master Tree Plan.

**Section 373. Preservation of Existing Trees and Vegetation**

**[a]** Historic trees with drip lines outside the building footprint shall be retained in all areas not used for building and paving. Developers may appeal to the board of adjustment, as provided in Section 106, the retention of trees they feel will cause an unnecessary hardship upon the development of the parcel. Significant trees shall be retained to the greatest extent possible on all sites.

- [1] It shall be the responsibility of all zoning permit applicants for new construction to submit a tree survey of the parcel proposed for development. The tree survey shall be drawn to scale and accurately designate the species, location and circumference of all historic trees located on the parcel, and all trees being retained for credit as provided for in Subsection [c].
- [2] A significant tree is any healthy tree with a circumference of twenty five (25) inches or more, measured four and one half (4.5) feet above grade. A historic tree is any healthy tree with a circumference of seventy five (75) inches or more, measured four and one half (4.5) above grade.

- [3] 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 with verifiable expertise in such matters. If such evaluation determines the tree will not remain in good health under new conditions proposed for the site, the administrator shall permit the removal of the tree (s).

**[b]** A protected ground area shall be established for all existing trees and shrubs to be credited toward new plantings. All trees designated for preservation shall be marked with surveyors ribbon and all protected ground areas shall be designated with some form of fencing materials, erected in a secure manner, at a minimum height of three (3) feet, prior to issuance of a grading permit.

- [1] Protected ground areas for trees shall consist of the area within the vertical line extending from the outermost portion of the tree canopy to the ground (drip line). Protected ground areas for shrubs shall consist of an area twice the diameter of the shrub in question.
- [2] Fill materials may be placed within the protected ground areas if the following devices are installed and precautions are taken.
- a. No metal tracked vehicles shall be permitted within the protected area;
  - b. No fill materials shall be placed within four (4) feet of the tree trunk;
  - c. Horizontal and vertical aeration pipes shall be installed in accordance with the requirements of the administrator;
  - d. All aeration pipes shall be covered with washed stone and straw. The washed stone shall be eight (8) inches in depth and extend a minimum of one and one half (1.5) feet on each side of the pipe;
  - e. All vertical aeration pipes shall have vented caps; and
  - f. No structures shall be permitted within the protected area unless approved by the administrator.
- [3] No fill materials shall be placed within any protected ground area until installation of required devices has been inspected and approved by the administrator.

**[c]** Preservation of a site's existing vegetation shall be credited to the required landscaping of a site as follows:

- a. one sixth (1/6) of the sum of the circumference of all preserved trees greater than two (2) inches in diameter as measured at four and one half (4.5) feet above grade. The tree credit equals the sum of the circumference of all preserved trees multiplied by 0.166.
- b. Shrubbery may be credited to landscaping requirements at the discretion of the Community Appearance Commission, but may not be credited to trees for internal landscaping or bufferyards.
- c. Any credits awarded shall become null and void in the event that preserved vegetation is destroyed by man or an act of God. If such vegetation is destroyed, the property owner shall be required to replace and distribute such vegetation as per the requirements of this article. Should the administrator determine that the distribution of planting materials in accordance with this article will cause the failure to meet other provisions of this ordinance, the property owner may submit an alternative landscaping plan to the Community Appearance Commission for approval.

#### **Section 374. Trees in Parking Areas**

**[a]** Approval of a landscape plan is required for all new vehicle accommodation areas (parking areas), with the exception of single family homes. Plant materials suitable for use are listed in Appendix B. All existing nonconforming parking areas proposed for expansion or improvement, which are subject to the provisions of Article VIII, shall be required to meet the standards of this section at a rate of seventy five percent (75%). For example, a new parking area is required to provide one (1) tree per two thousand (2,000) square feet and one (1) shrub per seven hundred fifty (750) square feet; whereas, an existing parking area shall provide one (1) tree per twenty five hundred (2500) square feet and one (1) shrub per nine hundred thirty eight (938) square feet

**[b]** The landscape plan shall contain the following information:

- [1] Existing and proposed landscaping, including landscaping and screening required by this article; the location, species, size in circumference one half (1.5) foot above grade, and height of new trees in the planting area that will comply with this section; the location and dimensions of planting areas, street yards, and parking areas; and the number, spacing, size and species of planting material, an indication of the size of walls, earth berms and fences; provisions for watering, soil stabilization, plant protection and maintenance access;
- [2] The number, location, species, height and size in circumference four and one half (4.5) feet above grade of existing natural trees between the principal building and public street right-of-way which are to be maintained or preserved for credit; and
- [3] The location and description of any barriers to be erected to protect any vegetation from damage both during and after construction.

**[c]** All parking areas, temporary or permanent (not including parking structures) shall provide and maintain landscaped planting areas within the interior of or adjacent to, or both, the parking area. Landscaped planting areas are to be located within or adjacent to the parking area as tree islands, at the end of parking bays, inside seven (7) foot wide or greater medians, or between rows of cars. The number and shape of landscaped planting areas shall be at the discretion of the owner; however, no parking space shall be located father than sixty five (65) feet from the trunk of an overstory tree. Trees and shrubs required for parking areas may be planted within buffer yards or street yards.

- [1] Trees shall be required at a minimum rate of one (1) for every two thousand (2000) square feet of total parking area. Shrubs shall be required at a rate of one (1) shrub per seven hundred fifty (750) square feet. All trees and shrubs are to be planted within landscaped planting areas that are a minimum of two hundred fifty (250) square feet with a minimum dimension of seven (7) feet. Trees, existing or planted, must be a minimum of eight (8) feet tall, six and one quarter (6.25) inches in circumference and two (2) inches in caliper measured six (6) inches above grade. Expected height at maturity shall be thirty five (35) feet with a crown width of thirty (30) feet or greater.

- [2] Shrubs, existing or planted, must be a minimum of eighteen (18) inches tall and must reach a minimum height of thirty (30) inches within three (3) years. There shall be no gaps greater than ten (10) feet between required shrubs. No more than forty percent (40%) of the shrubs may be deciduous.

[d] Parking areas, unless located on or within a structure, shall be separated from the exterior wall of a structure, exclusive of pedestrian entrance ways or loading areas, by a landscaped planting area of at least four (4) feet in width. Shrubs shall be required within the area at a minimum rate of one (1) per six (6) linear feet, eighteen (18) inches minimum height at planting and reach a minimum height of thirty (30) inches within three (3) years. No more than forty percent (40%) may be deciduous. The use of understory or ornamental deciduous or evergreen trees is encouraged in appropriate situations.

### **Section 375. Protection of Trees During Construction**

[a] The permit recipient shall be responsible for ensuring that all existing trees, specifically shown on approved plans as being retained to provide screening or shading, are protected during construction from removal, destruction, or injury. The permit recipient shall ensure that, before any excavation takes place on the site, a barrier is erected around the drip line of all such trees sufficient, and to put on notice all construction personnel that the area within the drip line of such trees is not to be disturbed.

[b] If a violation of Subsection [a] occurs, and as a result a tree is removed or dies within two years after a certificate of occupancy is issued for that portion of a development where such tree is or was located, then the permit recipient (or his successor) shall be required to replace the tree with one at least of equal diameter, up to a diameter of four (4) inches. Such replacement must take place within one (1) year after the death or removal of the tree occurs, and this obligation shall be a continuing condition of the validity of the permit.



---

**Section 376. Use Before Completion of Tree Planting Requirements**

**[a]** In cases when because of weather conditions or when certain plant materials are unavailable it would be unreasonable to require the permit recipient to comply with all of the tree planting requirements of this ordinance, the administrator may authorize the commencement of the intended use or occupancy of buildings if the permit recipient provides a performance bond or other security satisfactory to the administrator to ensure that all of these tree planting requirements will be fulfilled within a reasonable period (not to exceed twelve (12) months). The permit recipient shall also agree in writing that he or his successors or assigns shall provide the required planting within the periods specified in the performance bond or other security, as a condition for obtaining occupancy for the principal use so long as the principal use shall continue. The permit recipient shall also agree that the principal use shall be discontinued should the required planting not be provided as specified in the approved landscape plan. Violation of these provisions shall constitute an illegal occupancy of the principal use.

**Section 377. Reserved**



## Article XXI Amendments

### Section 378. Amendments in General

[a] Amendments to the text of this ordinance or to the zoning map may 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] Whenever a request to amend this ordinance is initiated by the town council, the planning commission, the board of adjustment, the community appearance commission or the town administration, the town attorney in consultation with the planning staff shall draft an appropriate ordinance and present that ordinance to the council so that a date for a public hearing may be set.

[b] Any other person may also 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,
- [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.

**[c]** Upon receipt of a petition as provided in Subsection [b], the administrator shall either:

- [1] Treat the proposed amendment as one initiated by the town administration and proceed in accordance with Subsection [a] if he 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 an ordinance should be drafted and a public hearing set in accordance with Subsection [d].

**[d]** Upon receipt of a proposed ordinance as provided in Subsection [a], the council may establish a date for a public hearing on it. Upon receipt of a petition for an ordinance amendment as provided in Subsection [b], the council may summarily deny the petition or set a date for a public hearing on the requested amendment and order the attorney, in consultation with the administrator, to draft an appropriate ordinance.

**[e]** Upon establishment of a date for the public hearing, the administrator shall prepare an analysis of the proposed petition to determine its conformity with the comprehensive plan, and based on the findings, prepare a written report and recommendation. The report shall be available no later than seven (7) days prior to the date set for the public hearing, and shall be submitted to the planning commission and council. Failure of the administrator to prepare a report within the prescribed time period shall be construed as a favorable recommendation.

### **Section 380. Hearing Required: Notice**

**[a]** No ordinance that amends any of the provisions of this ordinance may be adopted until a public hearing has been held on such ordinance.

**[b]** The town council and planning commission shall meet in joint session to hold the public hearing. Public hearings on proposed ordinance amendments will be held on the second Thursday of February, May, August and November. A record of the public hearing will be kept by the town clerk and submitted to the planning commission and council as soon as practical following the public hearing. If the mayor, in consultation with the chair of the planning commission, finds that an emergency exists, the council may schedule a public hearing at a date other than the times specified above.

[c] The administrator shall publish a notice of the public hearing on any ordinance that amends the provisions of this ordinance 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 minor map amendments, the administrator shall mail written notice of the public hearing to the record owners for tax purposes of all properties whose zoning classification is changed by the proposed amendment as well as the owners of all properties any portion of which is within one hundred fifty (150) feet of the property rezoned by the amendment.

[e] The planning staff shall also post notices of the public hearing in the vicinity of the property rezoned by the proposed amendment and take any other action deemed by the planning staff to be useful or appropriate to give notice of the public hearing on any proposed amendment.

[f] The notice required or authorized 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] If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment,
- [4] State that the full text of the amendment can be obtained from the town clerk, and
- [5] State that substantial changes in the proposed amendment may be made following the public hearing.

[g] The planning staff shall make every reasonable effort to comply with the notice provisions set forth in this section. However, it is the council's intention that no failure to comply with any of the notice provisions (except those set forth in Subsection [b]) shall render any amendment invalid.

### **Section 381. Planning Commission Consideration of Proposed Amendments**

[a] At its next regularly scheduled meeting following the public hearing, the planning commission shall review the proposed amendment, the record of the public hearing, and the administrator's report and shall submit a written recommendation to the council.

**[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]** The planning commission shall submit its recommendation to the council as soon as possible, but no later than thirty five (35) days following the date of the public hearing. Failure of the planning commission to submit a recommendation to the council within the prescribed time limit shall be construed as a favorable recommendation.

### **Section 382. Council Action on Amendments**

**[a]** At its first regular scheduled meeting following the receipt of the recommendation from the planning commission, the council shall review the amendment request. The council shall consider the planning commission recommendation, the record of the public hearing and the recommendation of the administrator.

**[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]** The town council shall take action on a request within sixty (60) days after receipt of the recommendation of the planning commission.

### **Section 383. 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 384. Protest to Zoning District Changes**

**[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 membership.

**[b]** To trigger the three-fourths vote requirement, the petition must:

- [1] Be signed by the owners of twenty (20) percent or more either of (i) the lots included in a proposed change, or (ii) the lots within one hundred (100) feet of either side or the rear of the tract to be rezoned, or (iii) the lots directly opposite the tract to be rezoned and extending one hundred (100) feet from the street frontage of such opposite lots.
- [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 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 provide by the town clerk and contain all the information requested on this form.

**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 Use Districts and Conditional Use Permits**

**[a]** Property may be placed in a conditional use district (bearing the designation CU) 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 use district without approval by the Council of State.

**[b]** Any proposal for CU district rezoning and its accompanying request for a conditional use permit shall be heard and considered simultaneously. If the city council should determine that the property involved in the proposal should be rezoned and the conditional use permit issued, it shall adopt an ordinance rezoning the property and authorizing the issuance of the conditional use permit.

**[c]** Requests for conditional use permits shall be processed and considered in the same procedure as set forth in Section 380 for zoning amendments and the voting shall be the same as required in zoning matters.

**[d]** In granting a conditional use permit, the town council may impose additional restrictions and requirements as it may deem necessary in order that the purpose and intent of this ordinance are served, public welfare secured and substantial justice done. If all requirements and conditions are accepted by the petitioner, the town council shall authorize the issuance of the conditional use permit, otherwise the permit shall be denied. Any conditional use permit so authorized shall be perpetually binding upon the property included in such permit unless substantially changed or amended by the town council as provide for in Subsection 386 [e].

**[e]** The town council may change or amend any conditional use permit, after a public hearing, upon recommendation by the planning commission and subject to the same consideration as provided for in this section for the original issuance of a conditional use permit. No proposal to amend or change any conditional use permit shall be considered within twelve (12) months of the date of the original authorization of the permit or within twelve (12) months of hearing any previous proposal to amend or change the permit.

**Section 387. Reserved**

**Section 388. Reserved**

**Section 389. Reserved**



## 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, sign, special use or conditional 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 the planning 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, special use or conditional 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, special use or conditional 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 conditional or 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.





## Appendix B Guide for Landscaping

### B 1 Guide for Protecting Existing Trees and Vegetation

Section 373 provides for the preservation of existing trees and vegetation when land is developed. To better ensure the survival of existing trees, the developer should heed the following guidelines (in addition to the mandatory requirements of Section 373):

- [1] Protect trees with fencing and armoring during the entire construction period. The fence should enclose an area ten (10) feet square with the tree at the center.
- [2] Avoid compaction of the soil around existing trees due to heavy equipment. Do not pile dirt or other materials beneath the crown of the tree.
- [3] Keep fires or other sources of extreme heat well clear of existing trees.
- [4] Repair damaged roots and branches immediately. Exposed roots should be covered with topsoil. Severed limbs and roots should be painted. Whenever roots are destroyed, a proportional amount of branches must be pruned so the tree doesn't transpire more water than it takes in. Injured trees must be thoroughly watered during the ensuing growing year.
- [5] Prune all existing trees that will be surrounded by paving to prevent dehydration.

### B 2 Standards for Street and Parking Lot Trees

Trees planted in compliance with Article XX shall have most or all of the following qualities. The trees recommended in Section B 5 represent the best combinations of these characteristics.

- [1] Hardiness
  - a. Resistance to extreme temperatures.
  - b. Resistance to drought.
  - c. Resistance to storm damage.

- d. Resistance to air pollution.
  - e. Ability to survive physical damage from human activity.
- [2] Life Cycle
- a. Moderate to rapid rate of growth.
  - b. Long life.
- [3] Foliage and Branching
- a. Tendency to branch high above the ground.
  - b. Wide spreading habit.
  - c. Relatively dense foliage for maximum shading.
- [4] Maintenance
- a. Resistance to pests.
  - b. Resistance to plant disease.
  - c. Little or no pruning requirements.
  - d. No significant litter problems.

### **B 3 Guide for Planting Trees**

The trees recommended in Section B 5 have minimal maintenance requirements. However, all trees must receive a certain degree of care, especially and immediately after planting. To protect an investment in new trees, the developer should ensure that the following guidelines are followed when planting:

- [1] The best times for planting are early spring and early fall. Trees planted in the summer run the risk of dehydration.
- [2] Plant all trees at least three and one half feet (3.5 ft.) from the end of head-in parking spaces to prevent damage from car overhang.
- [3] Dig the tree pit at least one foot wider than the root ball and at least six inches deeper than the ball's vertical dimension.
- [4] Especially in areas where construction activity has compacted the soil, the bottom of the pit should be scarified or loosened with a pick ax or shovel.

- [5] After the pit is dug, observe subsurface drainage conditions. Where poor drainage exists, the tree pit should be dug at least an additional twelve (12) inches and the bottom should be filled with course gravel.
- [6] Backfill should include a proper mix of soil, peat moss, and nutrients. All roots must be completely covered. Backfill should be thoroughly watered as it is placed around the roots.
- [7] Immediately after it is planted, the tree should be supported with stakes and guy wires to hold it firmly in place as its root system begins to develop. Staked trees will become stronger more quickly. Remove stakes and ties after one year.
- [8] Spread at least three inches of mulch over the entire excavation in order to retain moisture and keep down weeds. An additional three inch saucer of mulch should be provided to form a basin around the trunk of the tree. This saucer helps catch and retain moisture.
- [9] The lower trunks of new trees should be wrapped with burlap or paper to prevent evaporation and sun scald. The wrapping should remain on the tree for at least one year.
- [10] Conscientious post planting care, especially watering, pruning and fertilizing, is a must for street and parking lot trees. Branches of new trees may be reduced by as much as a third to prevent excessive evaporation.

#### **B 4                    Guide for Planting Shrubs**

Shrubs planted for screening purposes should be given a proper culture and sufficient room in which to grow. Many of the guidelines for tree planting listed in Section B 3 also apply to shrubs. However, because specific requirements vary considerably between shrub types, this appendix does not attempt to generalize the needs of all shrubs. For detailed planting information on individual species refer to Landscape Plants of the Southeast by R. Gordon Halfacre and Anne R. Shawcroft, or any other reliable reference source on shrubs.

## B 5 Lists of Recommended Trees and Shrubs

The following lists indicate plantings which will meet the screening and tree requirements of Article XX of the Unified Development Ordinance. The lists are by no means comprehensive and are intended merely to suggest the types of flora which would be appropriate for screening and tree planting purposes. Plants were selected for inclusion on these lists according to four principal criteria: (i) general suitability for the climate and soil conditions of this area, (ii) ease of maintenance, (iii) tolerance of urban conditions, and (iv) availability from area nurseries. When selecting new plantings for a particular site, a developer should first consider the types of plants which are thriving on or near that site. However, if an introduced species has proven highly effective for screening or shading in this area, it too may be a proper selection.

### [a] Small Trees for Partial Screening

- |                          |                             |
|--------------------------|-----------------------------|
| [1] River Birch          | [8] American Holly*         |
| [2] American Hornbeam    | [9] Golden Rain Tree        |
| [3] Eastern Redbud       | [10] Crape Myrtle           |
| [4] Flowering Dogwood    | [11] Sourwood               |
| [5] Washington Hawthorn* | [12] Carolina Cherry-Laurel |
| [6] Russian Olive*       | [13] Callery Pear           |
| [7] Mountain Siverbell   | [14] Tatarian Maple         |

\* Suitable for use in salt prone areas

### [b] Large Trees for Evergreen Screening

- [1] Deodar Cedar
- [2] Southern Magnolia
- [3] Carolina Hemlock

**[c] Large Trees for Shading**

[1] Norway Maple*	[8] Eastern Red Oak
[2] Red Maple	[9] Willow Oak
[3] Ginkgo	[10] Scarlet Oak
[4] Honey Locust	[11] Laurel Oak
[5] Sweet Gum	[12] Littleleaf Linden*
[6] London Plane-Tree	[13] Mountain Magnolia*
[7] Sycamore	[14] American Arborvitae*

\* Suitable for use in salt prone areas

**[d] Small Shrubs for Evergreen Screening**

[1] Glossy Abelia	[6] Convexa Japanese Holly
[2] Warty Barberry	[7] India Hawthorn
[3] Wintergreen Barberry	[8] Azaleas
[4] Dwarfed Horned Holly	[9] Rhododendrons
[5] Littleleaf Japanese Holly	[10] Japanese Yew

**[e] Large Shrubs for Evergreen Screening**

[1] Hedge Bamboo	[6] Japanese Privet
[2] Thorny Elaengus	[7] Fortune Tea Olive
[3] Burford Holly	[8] Red Photinia
[4] Yaupon Holly	[9] Lauretinus Viburnum
[5] Laurel or Sweet Bay	

**[f]** Assorted Shrubs for Broken Screening

- |     |                    |      |                     |
|-----|--------------------|------|---------------------|
| [1] | Japanese Barberry  | [7]  | Drooping Leucothoe  |
| [2] | Fringetree         | [8]  | Winter Honeysuckle  |
| [3] | Border Forsythia   | [9]  | Star Magnolia       |
| [4] | Vernal Witch Hazel | [11] | Northern Bayberry   |
| [5] | Common Witch Hazel | [11] | Judd Viburnum       |
| [6] | Pfitzer Juniper    | [12] | Doublefile Viburnum |

## Appendix C Conditional or Special Use Permit Board Consideration Worksheet

**Applicant:**

**Property Location:**

**Proposed Use of Property:**

### **I Completeness of Application**

- [1] The application is complete.
- [2] The application is incomplete in the following ways:

### **II Compliance with Ordinance Requirements**

- [1] The application complies with all applicable requirements of the Unified Development Ordinance.
- [2] The application is not in compliance with the following requirements of the Unified Development Ordinance.

### **III Granting the Application**

The application is granted, subject to the following conditions:

- [1] The applicant shall complete the development strictly in accordance with the plans submitted to and approved by this board, a copy of which is filed in the Planning and Inspections Department.
- [2] If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of no effect.

---

**IV Denying the Application**

- [1] The application is denied because it is incomplete for reasons set forth above in I.
- [2] The application is denied because it fails to comply with the ordinance requirements set forth above in II.
- [3] The application is denied because, if completed as proposed, the development more probably than not:
  - a. Will materially endanger the public health or safety for the following reasons:
  - b. Will substantially injure the value of adjoining or abutting property for the following reasons:
  - c. Will not be in harmony with the area in which it is to be located for the following reasons:
  - d. Will not be in conformity with the Comprehensive Plan, the Thoroughfare Plan, or other plans officially adopted by the council for the following reasons:



**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 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.