

# ARTICLE 1 GENERAL PROVISIONS

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## **1.01 Short Title**

**1.01.01** This Ordinance shall be known and may be cited as the Town of Boone Unified Development Ordinance or "UDO."

## **1.02 Authority**

**1.02.01** This Ordinance is adopted pursuant to the authority contained in the North Carolina Constitution and the North Carolina General Statutes.

## **1.03 Purpose**

**1.03.01** Purposes of this Ordinance are to:

- A.** Promote the health, safety, and general welfare within the Town of Boone and its environs; and

- B.** Strive to implement the policies and goals contained within officially adopted plans, including the Comprehensive Plan, and other related plans; and
- C.** Ensure adequate light, air, privacy, and access to property.

(Ord. PL01298-020218, 04-19-2018)

**1.04 Goals**

**1.04.01** Goals of this Ordinance are to:

- A.** Preserve and protect areas and landmarks of historic significance; and
- B.** Protect water quality; and
- C.** Protect designated water supply watersheds; and
- D.** Prevent degradation of natural drainage areas; and
- E.** Strive to minimize public and private losses due to flood conditions within Special Flood Hazard Areas; and
- F.** Strive to minimize public and private losses due to slope failure caused by land disturbance of steep and very steep slopes; and
- G.** Preserve and protect the scenic beauty and natural environment of the Town's hillside areas; and
- H.** Preserve and protect the overall quality of life for residents and visitors; and
- I.** Preserve and protect the character of established residential neighborhoods; and
- J.** Maintain economically vibrant as well as attractive business and commercial areas; and
- K.** Encourage signage that maintains, enhances, and is compatible with the beauty and unique character of the Town; and
- L.** Facilitate the creation of an attractive environment; and
- M.** Retain and expand the Town's employment base; and
- N.** Facilitate safe and efficient movement of motorists, pedestrians and cyclists; and
- O.** Encourage public transit; and
- P.** Encourage walkability and bikeability; and
- Q.** Support public health through provision of convenient exercise opportunities; and
- R.** Maintain orderly and compatible land-use and development patterns; and
- S.** Encourage environmentally responsible development practices; and
- T.** Promote rehabilitation and reuse of older buildings; and
- U.** Maintain a range of housing choices and options; and
- V.** Establish clear and efficient development review and approval procedures; and

- W. Protect community property values; and
- X. Protect and balance private property rights; and
- Y. Bring about eventual improvement or elimination of nonconformities in order to preserve the integrity of this Ordinance and the character of the Town of Boone and its extraterritorial jurisdiction.

**1.05 Jurisdiction**

- 1.05.01** 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 of Boone as depicted on the official zoning map of the Town of Boone, which is incorporated by reference herein.
- 1.05.02** A copy of a map showing the boundaries of the Town's planning jurisdiction shall be available for public inspection in the Planning and Inspections Department.
- 1.05.03** **Split Jurisdiction.** If a parcel of land lies within the planning and development regulation jurisdiction of the Town of Boone and Watauga County, the local governments may, by mutual agreement pursuant to Article 20 of Chapter 160A of the General Statutes and with the written consent of the landowner, assign exclusive planning and development regulation jurisdiction under this Ordinance for the entire parcel to any one of those local governments. Such a mutual agreement shall only be applicable to development regulations and shall not affect taxation or other non-regulatory matters. The mutual agreement shall be evidenced by a resolution formally adopted by each governing board and recorded with the Watauga County Register of Deeds within 14 days of the adoption of the last required resolution.
- 1.05.04** **Pending Jurisdiction.** After consideration of a change in jurisdiction has been formally proposed, the Town of Boone may receive and process proposals to adopt development regulations and any application for development approvals that would be required in that local government if the jurisdiction is changed. No final decisions shall be made on any development approval prior to the actual transfer of jurisdiction to the Town of Boone. Acceptance of jurisdiction, adoption of development regulations, and decisions on development approvals may be made concurrently and may have a common effective date.

(Ord. PL00147-010417, 02-16-2017; Ord. PL04727-050721, 07-01-2021)

**1.06 Effective Date**

- 1.06.01** The provisions of this Ordinance are hereby adopted and effective, as amended, on this date July 1, 2021.

(Ord. PL04727-050721, 07-01-2021)

**1.07 Relationship to Existing Zoning, Subdivision, Soil Erosion and Sedimentation Control Ordinances**

**1.07.01** 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 enactments 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.

**1.08 Relation to Comprehensive Plan and Other Officially Adopted Plans**

**1.08.01** It is the intention of the Town of Boone to administer this Ordinance in accordance with the town's current, adopted comprehensive plan and other officially adopted plans. This plan sets forth the goals and policies which serve as the basic policy guide for development in The Town of Boone.

**1.08.02** The goal of the Council is to implement officially adopted plans; however, it recognizes that this is a process that requires continued study and analysis and may occur in stages. While the Council reaffirms its commitment that this Ordinance and any amendment to it be in conformity with adopted plans, 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 such plans.

(Ord. PL01298-020218, 04-19-2018; Ord. PL04727-050721, 07-01-2021)

**1.09 No Use or Sale of Land or Buildings Except in Conformity with Ordinance Provisions**

**1.09.01** Except as authorized by Article 7 Nonconformities of this Ordinance, 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.

**1.10 Relationship to Fire Code, Water and Sewer Use Code and Other Pertinent Town Code Provisions**

**1.10.01** No development may be undertaken pursuant to this Ordinance until the applicant has demonstrated compliance with all applicable Town Code provisions, including but not limited to the North Carolina State Building Code: Fire Prevention Code, as it may be amended from time to time, with all optional sections which have been adopted by the Town, and the Town's Water and Sewer Use Code, all of which are incorporated by reference herein. NOTE: Any applicant for development approvals is hereby advised, but not required, to directly confer with all pertinent Town departments before submitting any proposed development application so as to avoid the unnecessary expenditure of funds to plan a development which although generally compliant with the specific provisions of this Ordinance, is prohibited by another such code; see Section 4.04.

(Ord. PL04727-050721, 07-01-2021)

**1.11 Fees**

**1.11.01** Reasonable fees sufficient to cover the costs of administration, inspection, publication of notices and similar matters may be charged to applicants for zoning permits, zoning permit extensions, special use permits, subdivision plat approval, zoning amendments, variances, interpretations and other administrative mechanisms. The amount of fees charged shall be approved by Council.

**1.11.02** Fees established in accordance with Subsection 1.11.01 shall be paid upon submission of the application.

**1.11.03** Only the Town Manager or Council has the authority to waive fees according to adopted criteria.

**1.12 Severability**

**1.12.01** The sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any such section, paragraph, sentence, clause, or phrase is invalidated by any court of competent jurisdiction such invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Ordinance to the extent that their purposes may still be served.

**1.13 Notices**

**1.13.01** The Administrator shall give written notice of any decision to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

**1.13.02** Unless otherwise prescribed herein, delivery of a notice on a party shall be accomplished as follows:

**A. Natural Person:**

1. By electronic notice to the person; or
2. By delivering the notice to the person or by leaving a copy thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or
3. By delivering the notice to a person of suitable age and discretion, in a management position, owned or operated by the natural person; or
4. By delivering a copy of the notice to an agent authorized by appointment or by law to be served or to accept service of process; or
5. By mailing a copy of the notice, by regular, certified or registered mail, with or without return receipt requested, addressed to the party to be served at the address designated in the records of the Watauga County Tax Administration

unless the Administrator has actual and direct knowledge that the party resides at a different address, in which case the notice shall be addressed accordingly; or

6. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the notice, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. As used in this Ordinance, "delivery receipt" includes an electronic or facsimile receipt.

**B. Domestic or Foreign Corporation:**

1. By electronic notice to the officer, director, or managing agent of the corporation;  
or
2. By delivering a copy of the notice to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office; or
3. By delivering a copy of the notice to an agent authorized by appointment or by law to be served or to accept service of process; or
4. By mailing a copy of the notice, by regular, registered or certified mail, with or without return receipt requested, addressed to the officer, director or agent to be served at the address designated in the records of the Watauga County Tax Administration, if any, unless the Administrator has actual and direct knowledge that the party receives mail at a different address, in which case the notice shall be addressed accordingly.
  - a. If no address is on file with the Watauga County Tax Administration, the Administrator may direct the notice to the address of the principal place of business listed with the North Carolina Secretary of State and if none is listed, at a contact address listed on the company's website.

or

5. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the notice, addressed to the officer, director, or agent to be served, delivering to the addressee, and obtaining a delivery receipt. As used in this Ordinance, "delivery receipt" includes an electronic or facsimile receipt.

**C. Partnerships:**

1. By electronic notice to any general partner or to any attorney-in-fact or agent; or
2. By delivering a copy of the notice to any general partner, or to any attorney-in-fact or agent; or
3. By mailing a copy of the notice, regular, registered or certified mail, with or without return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent to be served at the address designated in the records of the Watauga County Tax Administration, if any, unless the Administrator has actual

and direct knowledge that the party receives mail at a different address, in which case the notice shall be addressed accordingly.

- a. If no address is on file with the Watauga County Tax Administration, the Administrator may direct the notice to the address of the principal place of business listed with the North Carolina Secretary of State and if none is listed, at a contact address listed on the company's website.

or

4. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the not, addressed to any general partner or to any attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt. As used in this Ordinance, "delivery receipt" includes an electronic or facsimile receipt; or
5. By leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office.

**D. Other Unincorporated Associations and Their Officers:**

1. By electronic notice to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society; or
2. By delivering a copy of the notice to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office; or
3. By delivering a copy of the notice to an agent authorized by appointment or by law to be served or to accept service of process; or
4. By mailing a copy of the notice, regular, registered or certified mail, with or without return receipt requested, addressed to the officer, director, agent or member of the governing body to be served at the address designated in the records of the Watauga County Tax Administration, if any, unless the Administrator has actual and direct knowledge that the party receives mail at a different address, in which case the notice shall be addressed accordingly.
  - a. If no address is on file with the Watauga County Tax Administration, the Administrator may direct the notice to the address of the principal place of business listed with the North Carolina Secretary of State and if none is listed, at a contact address listed on the company's website.

or

5. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the notice, addressed to the officer, director, agent, or member of the governing body to be served as specified in this Ordinance, delivering to the addressee, and obtaining a delivery receipt. As used in this sub-subdivision, "delivery receipt" includes an electronic or facsimile receipt.

**E. Service by publication on party that cannot otherwise be served:** A party that cannot with due diligence be served by personal delivery, United States mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) may be served by publication. Service of notice by publication shall consist of publishing a notice once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location of the party then in a newspaper circulated in Watauga County.

#### **1.14 Computation of Time**

**1.14.01** 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.

**A.** If the last day is a Saturday, Sunday, legal holiday or other day that the Town Offices are closed, that day shall be excluded.

**B.** When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and legal holidays, shall be excluded.

**1.14.02** 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.

**1.14.03** Except for appeals to the Board of Adjustment or protest petitions, any materials received after 3:00 p.m. will be considered to have been received the next business day.

#### **1.15 Rules of Language and Construction**

**1.15.01** For the purposes of interpreting the general language and sentence construction of this Ordinance, the following rules of construction apply unless the context clearly indicates otherwise

**A. Meaning of Words:** Words defined in this Ordinance must be interpreted as defined. Words that are not defined are given their ordinary and common meaning.

**B. Tenses and Usage**

1. Words used in the singular include the plural. The reverse is also true.

2. Words used in the present tense include the future tense. The reverse is also true.

3. The terms "must," "will," "shall" and "may not" are mandatory.



4. When used with numbers, “up to x,” “not more than x” and “a maximum of x” all include “x.”
5. Words importing the masculine gender include the feminine and neuter. The reverse is also true.

**1.16 Minimum Requirements**

**1.16.01** In the interpretation and application of this Ordinance, unless otherwise stated, all provisions are considered to be minimum requirements.

**1.17 Literal Interpretations**

**1.17.01** The language of this Ordinance must be read and interpreted literally.

**1.18 References**

**1.18.01** Any reference to an article, section, or paragraph means an article, section, or paragraph of this Ordinance, unless otherwise expressly stated.

**1.18.02** The term “Council” as used alone, shall refer to the Boone Town Council.

**1.18.03** The term “Board” as used alone, shall refer to the Board of Adjustment.

**1.18.04** The term “Commission” as used alone, shall refer to the Planning Commission.

**1.19 Provisions Included in "This Ordinance"**

**1.19.01** All references to compliance with “this Ordinance” are inclusive of all provisions in this Ordinance unless otherwise expressly excluded.

**1.20 Headings and Illustrations**

**1.20.01** Headings and illustrations are provided for convenience and reference only and do not define or limit the scope of any provision of this Ordinance. In case of any difference of meaning or implication between the text of this Ordinance and any heading, drawing, table, figure, or illustration, the text governs.

**1.21 Current Versions and Citations**

**1.21.01** All references to other Town, County, State, or Federal regulations in this Ordinance are intended to be references to the most current versions and citations for those regulations, unless otherwise expressly stated. When the referenced regulations have been repealed and not replaced by other regulations, requirements for compliance are no longer in effect.

**1.22 Lists and Examples**

**1.22.01** Unless otherwise expressly stated, lists of items or examples that use “including,” “such as,” or similar terms are intended to provide examples only. They are not to be construed as exhaustive lists of all possibilities.

**1.23 Calculations and Rounding**

**1.23.01** Unless otherwise expressly stated in this Ordinance, all calculations that result in a part or fraction of a whole number must be rounded as follows:

- A.** Any fractional result of less than 0.5 must be rounded down to the next (lower) consecutive whole number; and
- B.** Any fractional result of 0.5 or more must be rounded up to the next consecutive (higher) whole number.

**1.24 Determination of Value; Project Cost**

**1.24.01** The value of a development shall be presumed to be the development’s tax value unless rebutted by a certified appraisal of current value or recent, actual purchase price.

- A.** An appraisal may be acceptable if it is completed within two (2) years prior to submittal and evaluates the development in its “as is” condition.
- B.** A purchase price is recent if transacted within two (2) years.

**1.24.02** Project costs are any monetary expenditures incurred or estimated to be incurred in order to complete the project for the development at issue.

- A.** Project cost does not include:
  - 1. The price of the land, or
  - 2. Furniture, or
  - 3. Inventory items related to the operation of a business.

(Ord. PL04727-050721, 07-01-2021)

**1.25 Conflict with Private Agreements and Controls**

**1.25.01** This Ordinance is not intended to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, or development approvals adopted or issued pursuant to law. The Town has no responsibility for monitoring or enforcing private agreements.

**1.26 Annexation**

**1.26.01** If any portion of the territory subject to county jurisdiction is annexed by the Town in accordance with NCGS 160A, Article 4A, county regulations and powers of enforcement remain in effect until:

- A.** The Town has adopted regulations for the annexed or extraterritorial area; or
- B.** A period of sixty (60) days has elapsed following the effective date of annexation.

(Ord. PL04727-050721, 07-01-2021)

**1.27 Corrections of Scrivener Errors and Changed Reference Citations**

**1.27.01** Without further approval by Town Council being required and provided that any such correction clearly does not change the meaning of the Ordinance, the Planning Director is authorized to correct the following in the Ordinance: typographical, spelling, grammatical, or numerical reference errors; errors in section or page numbering; corrections to conform to changes in citations for internal or external references; and other similar, non-substantive corrections.

(Ord. PL03449-123119, 02-20-2020)

**1.28 Building Design Elements**

**1.28.01** "Building design elements" as used within this Ordinance means exterior building color; type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; the number and types of rooms; and the interior layout of rooms. The phrase "building design elements" does not include any of the following: (i) the height, bulk, orientation, or location of a structure on a zoning lot, (ii) the use of buffering or screening to minimize visual impacts, to mitigate the impacts of light and noise, or to protect the privacy of neighbors, or (iii) regulations adopted pursuant to this Article governing the permitted uses of land or structures subject to the North Carolina Residential Code for One- and Two-Family Dwellings.

**1.28.02** Any regulation relating to building design elements adopted under this Ordinance may not be applied to any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings except under one or more of the following circumstances:

- A. The structures are located in an area designated as a local historic district pursuant to Part 4 of Article 9 of this Chapter.
- B. The structures are located in an area designated as a historic district on the National Register of Historic Places.
- C. The structures are individually designated as local, State, or national historic landmarks.
- D. The regulations are directly and substantially related to the requirements of applicable safety codes adopted under G.S. 143-138.
- E. Where the regulations are applied to manufactured housing in a manner consistent with G.S. 160D-908 and federal law.
- F. Where the regulations are adopted as a condition of participation in the National Flood Insurance Program.

**1.28.03** Regulations prohibited by this subsection may not be applied, directly or indirectly, in any zoning district or conditional district unless voluntarily consented to by the owners of all the property to which those regulations may be applied as part of and in the course of the process of seeking and obtaining a zoning amendment or a zoning, subdivision, or

development approval, nor may any such regulations be applied indirectly as part of a review pursuant to G.S. 160D-604 or G.S. 160D-605 of any proposed zoning amendment for consistency with an adopted comprehensive plan or other applicable officially adopted plan.

(Ord. PL04727-050721, 07-01-2021)