

ARTICLE 15 LIMITED USE REQUIREMENTS

15.01	Manufactured Home (Class A and Class B).....	15-2
15.02	Manufactured Home Park	15-3
15.03	1.07 Duplex; 1.08-1.10 Townhouse; 1.11-1.13 Multi-Family Dwelling; 1.14-1.16 Multi-Family Dwelling In Mixed Use (unless specifically excluded)	15-7
15.04	Multi-Family in Mixed Uses	15-9
15.05	Homestay Rental	15-14
15.06	Family Care Home	15-18
15.07	Family Care Institution, Halfway House Category 1, Halfway House Category 2	15-18
15.08	Reserved	15-18
15.09	Fraternity and Sorority Dwelling	15-18
15.10	Boarding House	15-19
15.11	Home for Survivors of Domestic Violence.....	15-19
15.12	Shelter for Homeless Category 1 and Shelter for Homeless Category 2	15-20
15.13	Bed and Breakfast Category 1 and Bed and Breakfast Category 2	15-20
15.14	Vacation Rental	15-22
15.15	Airport/Landing Strip, Heliport, Helistop	15-25
15.16	Utility Facility	15-25
15.17	Wireless Communication Facilities.....	15-25
15.18	Qualified Small Wireless Facilities.....	15-38
15.19	Child Daycare (Large and Center) and Adult Daycare (Large and Center)	15-45
15.20	Kennel and Veterinary Office/Hospital	15-46
15.21	Retail Store 25,000 Square Feet or Greater (Use 11.18).....	15-46
15.22	Open Air Markets	15-47
15.23	Vehicle Sales and Service	15-48
15.24	Equipment Sales and Service.....	15-48
15.25	Boat or Marine Craft Sale and Service.....	15-48
15.26	Impound Lot/Towing Service	15-49
15.27	Indoor Shooting Range	15-49
15.28	Campground and Recreational Vehicle Park	15-51
15.29	Community Garden	15-52
15.30	Garden.....	15-52
15.31	Forestry	15-52
15.32	Microbrewery and Brewpub	15-52
15.33	Brewery/Distillery.....	15-53
15.34	Brewery/Distillery, Other	15-53
15.35	Wineries	15-53
15.36	Extraction of Earth Materials	15-53
15.37	Machine/Welding Shop.....	15-54
15.38	Manufacturing.....	15-54
15.39	Parking Lot/Park and Ride	15-56
15.40	Parking Structure.....	15-56
15.41	Self-Storage Facilities	15-56

15.42	Outdoor Storage (Principal Use); Recycling Drop-off Station; Recycling and Salvage	15-57
15.43	Electronic and Internet Gaming	15-57
15.44	Adult Establishment	15-58
15.45	Secondary Suite (Accessory).....	15-59
15.46	Home Occupation (Accessory)	15-59
15.47	Accessory Dwelling Unit (Accessory).....	15-60
15.48	Drive-Through (Accessory)	15-62
15.49	Outdoor Display (Accessory)	15-62
15.50	Outdoor Storage (Accessory)	15-62
15.51	Outdoor Dining (Accessory).....	15-62
15.52	Automated Teller Machines (ATM), Freestanding (Accessory).....	15-63
15.53	Produce Stand (Accessory).....	15-63
15.54	Poultry (Accessory).....	15-63
15.55	Small Livestock (Accessory)	15-63
15.56	Large Livestock (Accessory)	15-64
15.57	Bees (Accessory).....	15-64
15.58	Gardens (Accessory)	15-64
15.59	Swimming Pools, Spas, and Hot Tub (Accessory)	15-64
15.60	Caretaker's Residence (Accessory).....	15-65
15.61	Vehicular Gate (Accessory).....	15-65
15.62	Temporary Uses	15-66
15.63	College- or University-Operated Community Enterprise	15-75
15.64	Solar Energy Systems, Accessory (A-28).....	15-76
15.65	Electric Vehicle Charging Stations, Accessory (A-29) and Principal (11.37)	15-77

15.01 Manufactured Home (Class A and Class B)

15.01.01 Manufactured Home "Class A" is a structure, constructed after June 15, 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, transportable in one or more sections, which in the traveling mode is eight feet (8') or more in width, or forty feet (40') or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with a continuous permanent masonry foundation (not pierced except for required ventilation and access) and connected to the required utilities for systems contained therein and satisfies the following criteria:

- A.** The pitch of the home's roof is a minimum vertical rise of one foot (1') for each five feet (5') of horizontal run, and the roof is finished with a type of shingle that is commonly used in standard residential construction;
- B.** The exterior siding consists of wood, hardboard, aluminum, or vinyl covering, with reflectivity in no case exceeding the reflectivity of gloss white paint, comparable in composition, appearance, and durability to the exterior siding compatible with standard residential construction; and

- C. The tongue, axles, transporting lights, and removable towing apparatus are removed after placement on the lot and before occupancy.

15.01.02 Manufactured Home “Class B” is a structure, constructed after June 15, 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, transportable in one or more sections, which in the traveling mode is eight feet (8’) or more in width, or forty feet or more (40’±) in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without a continuous permanent masonry foundation (not pierced except for required ventilation and access) and connected to the required utilities for systems contained therein, but that does not satisfy the criteria necessary to qualify as “Class A” (10.01.02-A). Skirting is required for “Class B” manufactured homes.

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

15.02 Manufactured Home Park

15.02.01 Plan Requirements: In addition to the other plan requirements of the Ordinance, an applicant for a Zoning Permit to establish a manufactured home park must submit a detailed plan which specifies the following:

- A. Name of the manufactured home park (approval required by Fire Marshall)
- B. Location and dimensions of every manufactured home space, including total number of spaces; and
- C. Location and dimensions of every street (street names required for approval by the Fire Marshall) and vehicle accommodation area; and
- D. Recreation Space; and
- E. Landscape buffers; and
- F. Office location; and
- G. Storage building(s) utilized by the park.

15.02.02 General Requirements for the Manufactured Home Park

- A. There shall be at least one (1) entrance sign identifying the park which meets the requirements of Article 26.
- B. There shall be a designated office which may be a manufactured home.
- C. There shall be a designated space on the grounds for mail service for the residents of manufactured home park.
- D. Storage buildings utilized by the park for materials and equipment must be located a minimum of twenty-five feet (25’) from any residential unit within the park and a minimum of twenty-five (25’) feet from any property line.

E. Streets:

1. No individual manufactured home space may have direct vehicular access to a public street.
2. Access to each manufactured home space must be provided by a private street constructed to the standards as set forth in Article 23.
3. All streets in the manufactured home park intersecting another street shall have a stop sign that conforms to the NC Department of Transportation specifications.
4. Each street shall have a permanent street sign installed with an approved (Fire Marshall approval required) designated name identifying each street.

F. Parking:

1. Two (2) off-street parking spaces must be provided within each manufactured home space.
2. Parking spaces shall be constructed to the standards as set forth in Article 24 Parking.
3. Off-street parking areas shall be at least four feet (4') away from any unit.
4. An applicant may utilize on-street parking if the private street within the manufactured home park is designed and constructed to accommodate on-street parking.
5. A combination of off-street and on-street parking is allowed.

G. All manufactured home spaces must be set back at least twenty-five feet (25') from all public rights-of-way and property lines.

H. Landscaping for the manufactured home park shall be provided in accordance with Article 31 Landscape Standards.

I. Recreation space:

1. A minimum of 5% of the parcel shall be provided as recreation space for residents of the park.
2. In general, required recreation space shall have a least dimension of twenty-five feet (25), an average dimension of fifty feet (50'), and a minimum area of 2,500 square feet. Smaller dimensions are acceptable if:
 - a. Less than 2500 square feet of recreation area is required, or
 - b. The recreation area is a suitably improved roof area or enclosed floor area, or
 - c. The anticipated needs of the residents require smaller facilities, such as tot lots or shuffle board courts, or
3. The dedication of a greenway easement may be used to satisfy the requirements for recreational space.

4. Outdoor recreation area for common use should be located twenty feet (20') or more from any residential windows at the same general level.
5. Recreation areas shall be maintained in a safe and sanitary manner.

J. Utilities:

1. All utilities must be installed underground in accordance with Article 22.
2. The source of the water supply system shall be the public water system.
3. The source of the sewer system shall be the public sewer system.
4. Solid waste and recycling enclosures shall be provided in accordance with Section 22.13.

K. The park operator must maintain a register containing a record of all occupants. The register must contain the following information:

1. Name, address, and space number of each occupant; and
2. The date the manufactured home entered the park.

L. Recreational vehicles shall not be used for residential purposes.

M. Maintenance:

1. Grounds and buildings of the manufactured home park shall be kept free of debris, trash, and litter to prevent the infestation of rodents, flies, mosquitos, and other pests.
2. Grounds within the manufactured home park, including manufactured home spaces, shall be maintained to prevent the growth of ragweed, poison ivy, poison oak and other weeds.
3. Grounds within the manufactured home park shall have proper drainage to prevent the accumulation of water.

15.02.03 General Requirements for the Manufactured Home Space

- A.** Each manufactured home must be placed and maintained in accordance with the plan filed in accordance with Subsection 15.02.01.
- B.** No more than one manufactured home may be parked or set up in a manufactured home space.
- C.** Each space must be graded and grassed to prevent erosion and provide adequate storm drainage away from the manufactured home.
- D.** Each space shall have a solid surface where the home will be placed.
- E.** Each manufactured home space shall be clearly established on the ground by permanent monuments or markers.

- F. Each manufactured home dwelling must be set up in accordance with the standards established by NC Department of Insurance and a Certificate of Occupancy shall be obtained.
- G. Setbacks:
 - 1. The manufactured home (and any additions) must be set back at least ten feet (10') from the edge of the private street pavement.
 - 2. The manufactured home (and any additions) shall be set back from any other manufactured home within the manufactured home park by twenty feet (20').
 - 3. The manufactured home (and any additions) must be set back at least ten feet (10') from the rear of the manufactured home space.
- H. No manufactured home may extend beyond its own manufactured home space.
- I. Manufactured home additions: Prefabricated structures specifically designed by the manufactures as extensions and any other additions meeting NC Building Code may be added to any manufactured dwelling, provided that the minimum setback between the homes of twenty feet (20') can be met and the proper Zoning and Building Permits are obtained.
- J. All entrances/exits of the manufactured home shall have steps.
- K. Accessory storage buildings are permissible on a manufactured home space provided:
 - 1. Accessory storage buildings must be fully contained on the manufactured home space for which the storage building is intended.
 - 2. Accessory storage buildings shall be located to the rear of the manufactured home space and in no case shall the accessory building extend past the manufactured home toward the street.
 - 3. Accessory buildings shall be setback a minimum of five feet (5') from the manufactured home and a minimum of seven feet (7') from any manufactured home space boundary.

15.02.04 Existing Manufactured Home Parks: Compliance of the existing manufactured home parks with the requirements of this Ordinance shall be triggered by the costs of any site improvements within the manufactured home park.

- A. For purposes of complying with Article 7, the simple act of replacing one manufactured home with another does not trigger the required site improvements except in cases of manufactured homes located in Special Flood Hazard Areas.

(Ord. 20160751, 03-16-2017; Ord. PL04727-050721; 07-01-2021)

**15.03 1.07 Duplex; 1.08-1.10 Townhouse; 1.11-1.13 Multi-Family Dwelling;
1.14-1.16 Multi-Family Dwelling In Mixed Use (unless specifically
excluded)**

15.03.01 Applicable standards described in this Section are required for Uses 1.07-1.16 and apply to all of the following:

- A.** New construction, whether such construction constitutes a new development or an expansion of an existing development;
- B.** Multi-family dwelling units created by a change in use of a portion or all of an existing development to multi-family use; and
- C.** Renovation or replacement of a portion or all of an existing multi-family development when the costs of renovation or replacement trigger the requirements of Article 7 for compliance with this Ordinance.

15.03.02 This Section shall not apply to:

- A.** Multi-family dwelling units in mixed-use building(s) constructed pursuant to and in accordance with the requirements of Section 15.04,
- B.** Multi-family dwelling units in single use buildings within a mixed-use project constructed pursuant to and in accordance with the requirements of Section 15.04, if:
 - 1. The development is approved through a Conditional District B1 General Business, B2 Neighborhood Business, B3 General Business rezoning process; and
 - 2. No phasing of construction is proposed or approved unless:
 - a. The commercial portions of the development will be constructed as part of the initial phase; or
 - b. All phases approved prior to the construction of the phase in which the commercial portions of the development are completed, together allow the construction of no more than one-third (1/3) the number of multi-family dwelling units which are approved for the development as a whole; or
 - c. The applicant provides adequate assurances in the form of financial commitments which will guarantee that all commercial portions of the development will be completed within the approved vesting period. For purposes of this alternative, by example only and not by way of exclusion, an irrevocable letter of credit from an appropriate financial institution in favor of the Town in a sufficient amount to cover 125% of the projected costs of construction, said projection sealed by a North Carolina licensed engineer, is considered such a guarantee.

15.03.03 Each new multi-family development shall meet the following standards:

- A. A townhouse style design and a mixture of unit configuration and sizes per development shall be encouraged. No one type of dwelling units, as defined by the number of bedrooms, shall comprise more than 50% of the total units.
- B. Parking shall be limited to a maximum of two (2) spaces per unit and a clearly designated parking area for visitors.
 - 1. The square footage of the parking designated for visitors may not exceed ten percent (10%) of the total parking area. A minimum of twenty-five percent (25%) of units shall have a garage or carport.
 - 2. If freestanding, garages and carports shall be architecturally integrated with the development. To the greatest extent practicable, parking shall be located behind or underneath proposed building(s).
- C. A livability space ratio of .50 must be met for the development. Fifty percent (50%) of the required livability space shall be designated to a defined area exclusively for the use of ground floor units. This space must consist of a common yard with accompanying private outdoor space for each ground level unit, or individual yards contiguous with the unit served. Either configuration must provide direct access from all ground floor units. The remaining livability space shall be designated for the use of the development as a whole as recreation space and shall be located so as to provide for direct auditory, visual, and physical access from the dwelling units served.
- D. On-site property management or an owner's association shall be required.
- E. Recreation space:
 - 1. A minimum of 5% of the parcel shall be provided as recreation space for residents of the park.
 - 2. In general, required recreation space shall have a least dimension of twenty-five feet (25'), an average dimension of fifty feet (50'), and a minimum area of 2,500 square feet. Smaller dimensions are acceptable if:
 - d. Less than 2500 square feet of recreation area is required, or
 - e. The recreation area is a suitably improved roof area or enclosed floor area, or
 - f. The anticipated needs of the residents require smaller facilities, such as tot lots or shuffle board courts, or
 - 3. The dedication of a greenway easement may be used to satisfy the requirements for recreational space.
 - 4. Outdoor recreation area for common use should be located twenty feet (20') or more from any residential windows at the same general level.
 - 5. Recreation areas shall be maintained in a safe and sanitary manner.

15.03.04 Each residential building shall meet the following standards:

- A. The maximum building height shall be three (3) stories of occupied space, and in no case shall the building exceed fifty feet (50') in total height including the roof or the maximum in the particular zoning district, whichever is less.
- B. **Roof Requirements:**
 - 1. If a pitched roof is proposed, the pitched roof area may be used as attic or storage space.
 - 2. If a flat roof is proposed, fifty percent (50%) of the roof area must be used as livability space.
- C. The front entrance of each unit on the first floor must be at ground level to the greatest extent practicable.

15.03.05 Each dwelling unit shall meet the following standards:

- A. The bedroom to bathroom ratio of each unit within the development shall be limited as follows:
 - 1. Efficiency unit and one (1) bedroom unit: one (1) bathroom.
 - 2. Two (2) bedroom unit: one (1) or two (2) bathrooms, with no less than one bathroom with common access.
 - 3. Three (3) bedroom unit: Two (2) bathrooms with no less than one (1) bathroom with common access.
 - 4. Four (4) or more bedroom unit: Three (3) bathrooms with no less than two (2) bathrooms with common access from a hall.
- B. In every unit with two (2) or more bedrooms, a designated master suite must be included and shall be at least twenty-five percent (25%) larger than every other bedroom and not less than 144 square feet excluding closet space.
- C. Dedicated storage space of at least fifty square feet (50 ft²) per unit must be provided for units without garages. Any storage space which is not within or attached to the building containing the units served by the space must be architecturally integrated with the development.
- D. Occupancy of each unit shall be limited to (2) two unrelated persons.

(Ord. 20150028, 11-19-2015; Ord. 20160438, 03-16-2017; Ord. 20160751, 03-16-2017; Ord. PL01265-011618, 03-22-2018; Ord. PL02634-060519, 11-21-2019)

15.04 Multi-Family in Mixed Uses

15.04.01 Multi-family residential uses (Use 1.14, 1.15 and 1.16) are allowed in the B1, B2 and B3 zoning districts when the criteria in this Section are met.

- A. For purposes of this Section, "commercial" shall include the following uses: 3.08 Motel, 3.09-3.11 Hotel, 4.03 Funeral Home Establishment, 4.05 Post Office, 5.01 Government

Cultural Facility, 5.02-5.03 Government Neighborhood Cultural Facility, 5.04-5.06 Recreation Facility, 5.07-5.09 Event Venue, 5.12 Police Substation, 5.16 Government Facility, 8.0 Assembly, 9.0 Education, 10.02 Child Daycare Center, 10.04 Adult Daycare Center, 10.5 All Other Daycare, 11.0 General Sales and Service, 12.0 Recreation, 14.0 Manufacturing, 16.01 Mini-Storage, 17.0 Transportation, and 19.0 Particular Activities which pose Particular Concerns about Public Health.

- B.** To the extent this Section conflicts with other Articles of this Ordinance, this Section shall control.
- C.** “Commercial use” and “street level commercial land use” as referred to in this section 15.04, means only space in a building used or to be used for commercial uses unrelated to the residential use of the building or development. By way of clarification and not as a limitation, the following uses may not be counted as “commercial use”: amenities operated entirely or in the main for residents (including but not limited to swimming pools, gyms, etc.); required recreation space; space used to operate and maintain the residential portion of the development, including leasing, management, and/or maintenance-related office space; and/or common areas of the residential units.
 - 1. Notwithstanding the foregoing, only parking spaces located in a single-use parking structure (not containing residential units below or above) may be counted as “street level commercial land use.”
- D.** A minimum of 60% of the street facing street level building facade shall be comprised of transparent, non-reflective windows.
- E.** Pedestrian weather protections such as awnings or canopies are encouraged along public streets provided they do not encroach into the roadway. Awnings or canopies which encroach above a public sidewalk shall obtain an encroachment agreement from the Town of Boone.
- F.** No one type of dwelling units, as defined by the number of bedrooms, shall comprise more than 50% of the total units.
- G.** The bedroom to bathroom ratio of each unit within the development shall be limited as follows:
 - 1. Efficiency unit and one-bedroom unit: one bathroom.
 - 2. Two-bedroom unit: one or two bathrooms, with no less than one bathroom with common access.
 - 3. Three-bedroom unit: two bathrooms with no less than one bathroom with common access.
 - 4. Four or more-bedroom unit: three bathrooms with no less than two bathrooms with common access from a hall.
- H.** In every unit with two or more bedrooms, a designated master suite must be included and shall be at least 25% larger than every other bedroom and not less than 144 square feet excluding closet space.

- 15.04.02** Multi-family residential uses, either as the result of new construction or conversion, are allowed in the Central Business District (B1) only if the projects in which they are included meet all the following criteria:
- A.** Each project shall provide primary street level commercial land uses (i.e. retail, office, restaurant) of at least fifty percent (50%) of the square footage of the footprint of each building on the primary street level. For developments located on lots which abut more than one public street in the Central Business District, each additional street level floor shall provide commercial uses of at least 30% of that level's square footage. For purposes of this Subsection, the "primary street" shall be determined according to the following order: King Street, Howard Street, Depot Street, all other streets. For example, if a project is located on a lot that abuts both King Street and Howard Street, King Street shall be considered the "primary street" while for a project which abuts Howard Street and Depot Street, Howard Street shall be considered the "primary street" and so on.
 - B.** The entire frontage of the primary street level of the building abutting the street shall provide commercial uses. Required entrances for ingress and egress to secondary uses are permitted along said frontage so long as they are no larger than necessary to meet building code and safety requirements for ingress and egress. Commercial uses on the non-primary street level(s) shall front on the non-primary street.
 - C.** The entire primary street level floor of the building shall be constructed to commercial standards in accordance with North Carolina Building Code Group A, B, E or M.
 - D.** New projects on property which was vacant as of February 1, 2018 shall be at least two floors above the primary street level.
 - E.** Buildings facades shall be oriented to each public street and shall have a primary entrance door facing each abutting public sidewalk.
 - F.** A minimum of 30% of non-primary street level facing building facades shall be comprised of transparent, non-reflective windows.
 - G.** Surface parking shall be located away from each public street to the extent possible, and if practical, to the rear of the principal building.
 - H.** Structured parking is permitted to the rear or interior of the building or below the street level floor.
 - I.** Building facades may be no further than 0'-0" from the established street setback line, except where necessary to provide landscaped courtyards, plazas, pocket parks, other pedestrian oriented amenities, or when there would be interference with public utilities.
 - J.** The minimum building footprint shall be 50% of the total gross square feet of the lot.

15.04.03 Multi-family residential uses, either as the result of new construction or conversion, are allowed in the Neighborhood Business District (B2) only if the projects in which they are included meet all the following criteria:

- A. Each project shall provide street level commercial land uses (i.e. retail, office, restaurant) of at least 100% of the street-level floor square footage.
- B. Buildings facades shall be oriented to the public street and shall have a primary entrance door facing the public sidewalk.
- C. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.
- D. Structured parking is permitted but shall be located to the rear or below street level commercial uses.
- E. In the area between the primary façade and the street the applicant is encouraged to preserve existing significant or historic trees, to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, and other pedestrian oriented amenities.
- F. Pedestrian weather protection such as awnings or canopies count toward the recreation space requirements found in Section 16.05 of this Ordinance.
- G. All development shall comply with the landscape standards set forth in Article 31 except that Type “A” interior landscape buffers may be provided regardless of adjacent land use classifications.

15.04.04 Multi-family residential uses, either as the result of new construction or conversion, are allowed in the General Business District (B3) only if the projects in which they are included meet the following:

- A. Multi-family uses wholly or partially on property zoned B3 General Business within the Corridor Districts.
 - 1. Mixed Use Building(s):
 - a. Each building shall fully consist of street level commercial uses (i.e. retail, office, and restaurant).
 - b. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line. Structured parking is permitted but shall be located to the rear or under street level commercial uses.
 - c. In the area between the primary façade and the street the applicant is encouraged to preserve existing significant or historic trees, to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, and other pedestrian oriented amenities.
 - 2. Single Use Building(s)

- a. Single use multi-family building(s) are only allowed as part of a mixed-use project if approved through the Conditional District B3 General Business rezoning.
 - b. A mixed-use project shall meet the following criteria:
 - i. Each project shall fully consist of street level commercial uses (i.e. retail, office, and restaurant) of 100% of the street level gross floor area on every building which fronts a corridor protected by the Corridor District. In addition, at least 50% of the total gross floor area of all buildings located within the Corridor District shall fully consist of commercial uses. This requirement may be satisfied if the commercial floor area is distributed among buildings or within one building.
 - ii. The street level floor of all buildings within the Corridor District shall be built to commercial standards in accordance with North Carolina Building Code Group A, B, E, or M.
 - iii. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.
 - iv. Structured parking is permitted but shall be located to the rear or below the commercial uses.
 - v. In the area between the primary façade and the street the applicant is encouraged to preserve existing significant or historic trees, to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, and other pedestrian oriented amenities.
- B. Multi-Family Uses wholly or partially on Property Zoned B3 General Business Outside the Corridor District but Proximate to Major Streets.**
- 1. For the purposes of this Section “major street” refers to collector and arterial streets.
 - 2. “Proximate” shall mean any building wholly or partially within 200 feet of the centerline of a major street.
 - 3. Mixed Use Building(s)
 - a. Mixed use building(s) shall meet the same requirements as described in Subsection 15.04.04(A)(1).
 - 4. Single Use Building(s)
 - a. Single use multi-family building(s) are only allowed as part of a mixed-use project.
 - b. A mixed-use project shall meet the following criteria:

- i. Each project shall consist of street level commercial uses (i.e. retail, office, and restaurant) of 100% of the street level gross floor area on every building which fronts a major street. In addition, at least 25% of the total gross floor area of all buildings wholly or partially located within 200 feet of the centerline of a major street shall consist of commercial uses. This requirement may be satisfied if the commercial floor area is distributed among buildings or within one building.
 - ii. For any floor containing a commercial use the entire floor shall be built to commercial standards in accordance with North Carolina Building Code Group A, B, E, or M.
 - iii. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.
 - iv. Structured parking is permitted but shall be located to the rear or below the commercial uses.
 - v. In the area between the primary façade and the street the applicant is encouraged to preserve existing significant or historic trees, to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, and other pedestrian oriented amenities.
- C. Multi-Family Uses wholly or partially on property zoned B3 General Business in all other areas.**
1. Multi-family uses not part of a mixed use development may be allowed if an applicant demonstrates that within ¼ mile (1,320 feet) of the borders of the lot that is to be developed there exists commercial uses with gross floor area square footage equal to the gross floor area square footage of the proposed multi-family project. If this standard cannot be met, then the proposed project must meet the requirements in Subsection 15.04.04(B) above.
- D. Recreation space shall be provided for multi-family developments in the B3 district as provided at Section 15.03.03(F).**

(Ord. 20160751, 03-16-2017; Ord. PL01340-022718, 04-26-2018; Ord. PL01817-082318, 04-10-2019; Ord. PL04727-050721; 07-01-2021)

15.05 Homestay Rental

A homestay rental is defined as a resident-occupied dwelling or dwelling unit with up to two guest rooms that are used, offered, and/or advertised (through an online platform or any other media) for transient overnight lodging accommodations for compensation for any period of less than one month and where the use is subordinate and incidental to the main residential use of the property. A homestay rental is considered a "Lodging" use under this UDO. Any use that comes within the purview of another use under this ordinance

(e.g., motel, hotel, boarding house, etc.) shall be governed by the terms of that use and not as a homestay rental.

- 15.05.01** Every homestay rental operator must first apply for and procure a zoning permit from the Town. Zoning permits must be renewed annually. Upon application for an initial permit and for each renewal, the applicant must demonstrate compliance with all applicable provisions of this section on such forms as may be provided by the Administrator.
- 15.05.02** The homestay operation shall be managed and carried on by a person who: 1) is a full-time resident of the property; and 2) is present during the homestay term for the entire time lodgers are staying at the property. To be a "full time resident," the person must reside on the property on a permanent basis, and it must be the person's primary home. A person can have only one homestay permit at any one time.
- 15.05.03** For purposes of this homestay ordinance, a person can only have one primary, full-time residence, and the homestay must be operated from that primary, full time residence. In order to be "present during the homestay term," the full-time resident shall be at the property overnight and not away on vacation, visiting friends or family, travelling out of town for business or personal reasons, etc. during the homestay term. However, the full-time resident may be temporarily absent from the property for purposes related to normal residential activities such as shopping, working, attending class, etc. A minimum of two documents establishing proof of residency shall be supplied from an approved list of documents.
- 15.05.04** The maximum number of guest rooms used as a homestay rental is two (2) per detached single-family, two-family, or three-family dwelling unit located on a single lot. In addition, up to two guest rooms may be located in an accessory dwelling unit if the accessory structure and accessory residential use are lawful under the UDO with respect to the property at issue.
- 15.05.05** The maximum number of overnight guests for any dwelling used as a homestay rental is the greater of (i) two (2) adults and any number of children under those adults' care, or (ii) two occupants per guest room. The occupancy limit shall be posted prominently within the short-term rental and be included in property listings on online platforms or any other media.
- 15.05.06** A homestay rental operator shall ensure that the primary responsible renter of a homestay rental is at least twenty-one (21) years old.
- 15.05.07** Cooking facilities are not permitted in any bedroom. For the purpose of this regulation, cooking facilities include any refrigerator in excess of seven cubic feet; any stovetop range that operates on 220-volt electric service; any appliance that operates on natural gas; or any cooktop, whether integrated into a countertop or a separate appliance, which contains more than two cooking surfaces or burners.
- 15.05.08** No signs advertising the property as a rental are allowed.

- 15.05.09** No displays of goods, products, services, or other advertising may be visible from outside of the dwelling.
- 15.05.10** In residential zoning districts, homestay renters shall not utilize the premises for holding special events or large gatherings. The rental operator shall inform renters of this regulation and of the applicability of the town’s noise ordinance (Chapter 82 of the Code of Ordinances), which regulates nuisance noises and makes it unlawful to create, cause, or allow the continuance of any unreasonably loud noise, particularly during nighttime, which interferes with neighboring residents’ reasonable enjoyment of their properties.
- 15.05.11** The premises shall not be used for any home occupation that allows employees, customers, clients or patrons to visit.
- 15.05.12** Homestay rental operators shall comply with all applicable State and local laws, including those relating to fire and building codes, smoke detecting and carbon monoxide detecting equipment, and housing codes.
- 15.05.13** Homestay rental operators are responsible for and must ensure that any and all occupancy taxes and other applicable taxes due under law as a result of their rental activities are remitted to the proper tax authorities, whether through their online platform service or by personally remitting the required taxes. The town shall require evidence of payment of such taxes as part of the application and permitting process, and may also conduct audits of homestay rental permittees, as it sees fit in its sole discretion, in order to ensure payment of all such applicable taxes.
- 15.05.14** The zoning permit number authorizing the homestay rental shall be conspicuously posted on (i) all advertisements for homestay rentals, and (ii) on the subject property in a place that is conspicuous from the exterior of the property.
- 15.05.15** A homestay rental must provide at least one (1) dedicated parking space per guest room, which may not be located on any street right of way and must conform to all applicable parking regulations of this ordinance.
- 15.05.16** Except as specifically set forth herein, a dwelling or dwelling unit must comply with all UDO requirements applicable to the primary residential use.
- 15.05.17** Homestay rental operators must carry insurance that covers the homestay use and homestay renters.
- 15.05.18** Homestay rental permits are not transferrable. Every person wishing to operate a homestay rental must apply for and obtain the required permit prior to beginning operation of a homestay rental.
- 15.05.19** **Revocation of Permit.** The Administrator shall revoke a homestay rental permit following a written determination that an operator of the homestay rental has been:
- A.** Convicted of violating any of the following criminal laws on the homestay rental premises within the prior three-year period: Article 10 (*kidnapping*), Article 10A

(human trafficking), or Article 27 (*prostitution*) of Chapter 14 of the North Carolina General Statutes;

- B. Convicted of committing a violent felony as defined at N.C. Gen. Stat. §14-7.7 on the homestay rental premises within the prior three-year period.
- C. Convicted of violating any of the following criminal laws on the homestay rental premises within the prior 365-day period:
 - 1. Article 3 of Chapter 18B of the North Carolina General Statutes (sale, possession and consumption of alcohol)
 - 2. N.C. Gen. Stat. §14-71.1 (possession of stolen goods)
 - 3. N.C. Gen. Stat. §14-292 (unlawful gambling)
- D. Received within a 365-day period two or more “Verified Violations” of any combination of the following, occurring on the homestay rental premises:
 - 1. Any Town Code zoning regulation.
 - 2. Any noise regulation set forth at Town Code Chapter 82.
 - 3. Any nuisance prohibited by Town Code Chapter 80.

A Verified Violation means a determination made by a code enforcement official, law enforcement officer, or judge, following notice of violation being issued by the Town Code and opportunity to respond to the noticed alleged offenses and an order or other mandate issued to the owner or any other person imposing a sanction or requiring further actions to comply with the Town Code, including, without any limitation, the payment of civil penalties or administrative fees, or implementation of corrective measures, or cessation of activities, or conviction of a criminal offense. A verified violation that is appealed continues as a verified violation unless it is overturned on appeal. If the violation is reinstated on a further appeal, it resumes its status as a verified violation.

- E. Once lawfully revoked, a new permit for a homestay rental cannot be issued or re-instated for the premise for a period of 365 days, except that in case of revocation under (A) or (B) above a new permit cannot be issued or re-instated for the premise for three years unless the person convicted of the criminal violation is no longer a resident, manager or operator of the homestay rental.

15.05.19 Compliance period; existing nonconformities

- A. Homestay operators in operation as of June 30, 2022 must apply for a permit as required in this section 15.05 on or before December 31, 2022 and must come into compliance with this section by June 30, 2023.
- B. Any existing homestay rental not conforming under this section 15.05 must be brought into compliance with this ordinance or cease operation by June 30, 2023.

- C. Any person seeking to begin operation of a homestay rental after June 30, 2022 must first apply for and obtain a homestay rental permit as required under this section 15.05.

15.05.20 Petition for Exemption. Residents of Neighborhood Conservation Districts or other adversely impacted residents may petition Council if they support a prohibition on homestay rentals in their neighborhood.

(Ord. 20150028, 11-19-2015; Ord. PL04727-050721; 07-01-2021; Ord. PL05168-100621; 12-08-2021)

15.06 Family Care Home

15.06.01 A Family Care Home shall not be located within one-half mile of another Family Care Home.

15.06.02 A Family Care Home shall provide adequate supervision in light of the number and needs of the residents and security concerns for the use.

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

15.07 Family Care Institution, Halfway House Category 1, Halfway House Category 2

15.07.01 A Family Care Institution shall not locate within one-half (.5) mile of any Family Care Home or a Family Care Institution.

15.07.02 A Family Care Institution, Halfway House Category 1 and Halfway House Category 2 shall provide adequate supervision in light of the number and needs of the residents and security concerns for the use.

15.07.03 Without limiting the applicability of other Ordinance requirements, a Family Care Institution, Halfway House Category 1, Halfway House Category 2 are subject to Article 25 Community Appearance Standards as well as Article 31 Landscape Standards.

(Ord. PL03076-090919, 11-19-2019; Ord. PL04727-050721; 07-01-2021)

15.08 Reserved

(Ord. PL00479-050817, 07-20-2017; Ord. PL03076-090919, 11-19-2019; Ord. PL04727-050721; 07-01-2021)

15.09 Fraternity and Sorority Dwelling

15.09.01 A Fraternity and Sorority Dwelling shall provide adequate supervision in light of the number and needs of the residents and security concerns for the use.

15.09.02 Without limiting the applicability of other Ordinance requirements, a Fraternity and Sorority Dwelling is subject to Article 25 Community Appearance Standards as well as Article 31 Landscape Standards.

15.09.03 A Fraternity and Sorority Dwelling shall contain a minimum of 250 square feet for each resident.

15.09.04 A Fraternity and Sorority Dwelling shall be located within one-half (.5) mile of the school of which it is affiliated.

(Ord. PL00479-050817, 07-20-2017; Ord. PL04727-050721; 07-01-2021)

15.10 Boarding House

15.10.01 A Boarding House shall provide adequate supervision in light of the number and needs of the residents and security concerns for the use.

15.10.02 Without limiting the applicability of other Ordinance requirements, a Boarding House is subject to Article 25 Community Appearance Standards as well as Article 31 Landscape Standards.

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

15.11 Home for Survivors of Domestic Violence

15.11.01 A Home for Survivors of Domestic Violence shall not be located within one-half (.5) mile of any other Home for Survivors of Domestic Violence.

15.11.02 A Home for Survivors of Domestic Violence shall provide adequate supervision in light of the number and needs of the residents and security concerns for the use.

15.11.03 A Home for Survivors of Domestic Violence shall meet the buffer and street-yard requirements as outlined in Article 31 except that the Administrator is allowed flexibility in either increasing or decreasing the buffer and street-yard requirements in order to protect the residents of the home.

15.11.04 A Home for Survivors of Domestic Violence shall be operated by a non-profit organization recognized by the Internal Revenue Service and that is registered by the State of North Carolina.

15.11.05 Staff shall be present at all times. In addition, Staff shall be trained in emergency procedures (including CPR and first aid), safety plans and procedures used by the home.

15.11.06 The organization operating the home must receive domestic violence funding from the North Carolina Department of Administration's Council for Women/Domestic Violence Commission.

15.11.07 The home shall have a security plan which outlines all security measures taken by the home to assure the safety of the residents of the home and the neighborhood.

15.11.08 Before a Zoning Permit is issued this security plan shall be submitted to the Administrator and approved by the Town of Boone Police Department.

15.11.09 Before a Zoning Permit is issued the home's security measures shall be physically inspected by the Town of Boone Police Department to determine accuracy with the submitted security plan. After the initial inspection, each home shall be inspected annually by the Town of Boone Police Department.

15.11.10 Thirty (30) days prior to amending the approved security plan, the organization shall submit to the Administrator the proposed modifications which are subject to approval from the Boone Police Department.

15.11.11 The home shall be equipped with a monitored alarm system or an alternative measure that will ensure the immediate response of emergency services in the event of an emergency.

15.11.12 The overnight occupancy of the home shall be limited to no more than 13 persons.

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

15.12 Shelter for Homeless Category 1 and Shelter for Homeless Category 2

15.12.01 A Shelter for Homeless Category 1 and Shelter for Homeless Category 2 shall not be located within one-half (.5) mile of any other Shelter for Homeless Category 1 and Shelter for Homeless Category 2.

15.12.02 A Shelter for Homeless Category 1 and Shelter for Homeless Category 2 shall provide adequate supervision and security for the number and needs of the residents. Staff shall be trained in emergency procedures (including CPR and first aid), safety plans and procedures used by the facility.

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

15.13 Bed and Breakfast Category 1 and Bed and Breakfast Category 2

15.13.01 Bed and Breakfast Category 1

- A.** A maximum of fifty percent (50%) of the gross floor area of the dwelling unit may be used for the Bed and Breakfast, Category 1 establishment. Only the floor areas of the bedroom and bathroom areas used by the Bed and Breakfast guests shall be considered in floor area calculations.
- B.** Without limiting the applicability of other Ordinance requirements, a Bed and Breakfast is subject to Article 25 Community Appearance Standards as well as Article 31 Landscape Standards.
- C.** The residence used for Bed and Breakfast, Category 1 establishments shall be occupied by the owner or managing agent during the time the Bed and Breakfast is open for business.
- D.** No display of goods, products, services, or other advertising shall be visible from outside the building.
- E.** Signage shall be limited to a single on premise sign, not to exceed four square feet (4 ft²).
- F.** No activities other than lodging, a morning meal, and an afternoon and/or evening refreshment shall be provided.
- G.** Activities shall be provided for overnight guests only.

- H. A maximum of one (1) non-resident of the dwelling may be employed on a full-time basis.
- I. Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.
- J. Parking:
 - 1. Off street parking shall be provided as set forth in Article 24.
 - 2. Parking shall be on the same lot on which the Bed and Breakfast establishment is located.
 - 3. Parking shall be located at the rear of the lot and screened with a Type A buffer from adjacent properties and from the street.
- K. The length of stay of guests shall not exceed twenty-one (21) days.
- L. Only existing single-family dwellings in the B1 and B2 zoning districts shall be allowed to be used as a Bed and Breakfast.

15.13.02 Bed and Breakfast Category 2

- A. Without limiting the applicability of other Ordinance requirements, a Bed and Breakfast Category 2 is subject to Article 25 Community Appearance Standards as well as Article 31 Landscape Standards.
- B. The Bed and Breakfast, Category 2 shall be occupied by the owner or managing agent during the time the Bed and Breakfast is open for business.
- C. No display of goods, products, services, or other advertising shall be visible from outside the building.
- D. Activities other than lodging, a morning meal, and an afternoon and/or evening refreshment may be provided.
- E. Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.
- F. Parking:
 - 1. Off street parking shall be provided at one (1) space per guest room plus one (1) additional space for every two guest rooms. Dining areas open to the public must provide an additional 12 spaces for every 1000 square feet of dining area or part thereof.
 - 2. Parking shall be on the same lot on which the Bed and Breakfast establishment is located.
 - 3. Parking shall be located at the rear of the lot.

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

15.14 Vacation Rental

A vacation rental is defined as a single-family detached dwelling, a two-family detached dwelling or a multi-family dwelling unit with up to six guest rooms that is used, offered, and/or advertised (through an online platform or any other media) for transient overnight accommodations for any period of less than one month. A vacation rental is considered a "Lodging" use under this UDO. Vacation rentals do not include homestay rentals (as defined herein). A vacation rental includes any residential dwelling or dwelling unit, or portion thereof, provided to renters for any period of less than one month that does not qualify as a homestay rental under this ordinance; provided, that any use that comes within the purview of another use under this ordinance (e.g., motel, hotel, boarding house, etc.) shall be governed by the terms of that use and not as a vacation rental.

Notwithstanding the foregoing, the full-time resident of a dwelling unit (as defined at section 15.05.02 above) may rent out his or her dwelling unit for up to two weeks in any calendar year and such rental shall not be deemed a vacation rental under this section 15.14 but rather shall be considered an incidental use of the dwelling that does not require approval or permitting under this Article.

15.14.01 Every vacation rental operator must first apply for and procure a zoning permit from the Town. Zoning permits must be renewed annually. The zoning permit number authorizing the short-term rental shall be conspicuously posted on (i) all advertisements for short-term rentals, and (ii) on the subject property in a location easily viewable from the exterior of the structure provided, that if the permit number cannot be viewed from a private or public street, it shall be displayed where it can be viewed from the public or private street adjoining the primary façade of the dwelling unit.

15.14.02 A vacation rental is required to provide at least one (1) parking space per bedroom, which may not be located on any street right of way and must conform to all applicable parking regulations of this ordinance. In the RA Residential Agriculture zoning district, parking should be to the side or rear of the vacation rental dwelling.

15.14.03 A vacation rental operator shall ensure that the primary responsible renter of a vacation rental is at least twenty-one (21) years old.

15.14.04 Without limiting the applicability of other Ordinance requirements, a vacation rental is subject to Article 31 Landscape Standards.

15.14.05 In the R3 Multiple-Family, B1 Central Business, B2 Neighborhood Business, and B3 General Business zoning districts, only single-family detached dwellings and two-family detached dwellings existing as of January 1, 2014 may be converted to vacation rental.

15.14.06 Cooking facilities are not permitted in any bedroom. For the purpose of this regulation, cooking facilities include any refrigerator in excess of seven cubic feet; any stovetop range that operates on 220-volt electric service; any appliance that operates on natural gas; or any cooktop, whether integrated into a countertop or a separate appliance, which contains

more than two cooking surfaces or burners. This shall not prohibit cooking facilities within a one-room studio vacation rental. For the purpose of this regulation, a studio shall be a single-room rental with a sleeping area, living area and kitchen/eating area in one consolidated room.

- 15.14.07** No signs advertising the property as a rental are allowed.
- 15.14.08** In residential zoning districts, renters of vacation rentals shall not utilize the premises for holding special events or large gatherings. The rental operator shall inform renters of this regulation and of the applicability of the town's noise ordinance (Chapter 82 of the Code of Ordinances), which regulates nuisance noises and makes it unlawful to create, cause, or allow the continuance of any unreasonably loud noise, particularly during nighttime, which interferes with neighboring residents' reasonable enjoyment of their properties.
- 15.14.09** The premises shall not be used for a home occupation that allows employees, customers, clients or patrons to visit.
- 15.14.10** For any building that contains multiple dwelling units, no more than 5% of the dwelling units or two dwelling units, whichever is greater, may be operated as a vacation rental in any single building. Permits shall be issued on a first-come, first-served basis based on the initial application date, and thereafter may be renewed. If a permit lapses before renewal, a renewal application shall be treated like an initial application for purposes of this paragraph.
- 15.14.11** Vacation rental operators shall comply with all applicable State and local laws, including those relating to fire and building codes, smoke detecting and carbon monoxide detecting equipment, and housing codes.
- 15.14.12** Vacation rental operators are responsible for and must ensure that any and all occupancy taxes and other applicable taxes due under law as a result of their rental activities are remitted to the proper tax authorities, whether through their online platform service or by personally remitting the required taxes. The town shall require evidence of payment of such taxes as part of the application and permitting process, and may also conduct audits of vacation rental permittees, as it sees fit in its sole discretion, in order to ensure payment of all such applicable taxes.
- 15.14.13** The rental operator or the operator's employee, management company, or other agent must be available to respond to complaints by renters or neighbors and to emergencies within two (2) hours at all times that a rental is occupied. A method will be provided for concerned citizens to make complaints or report emergency situations.
- 15.14.14** If the primary structure on a property qualifies for vacation rental use, a lawful accessory dwelling structure on the same property also may be used for vacation rental. The operators of such a vacation rental may, at any given time, offer for short-term rental either the single-family dwelling unit or the accessory apartment, or both units. The simultaneous rental of both the single-family dwelling unit and the accessory apartment to more than

one party under separate contracts is prohibited. The units may, however, be rented out together to one party under a single contract.

15.14.15 Vacation rental operators must carry insurance that covers the rental use and renters.

15.14.16 Vacation rental permits are not transferrable. Every person wishing to operate a vacation rental must apply for and obtain the required permit prior to beginning operation of the rental.

15.14.17 **Revocation of Permit.** The Administrator shall revoke a vacation rental permit following a written determination that an operator of the facility has been:

- A.** Convicted of violating any of the following criminal laws on the short-term rental premises within the prior three-year period: Article 10 (*kidnapping*), Article 10A (*human trafficking*), or Article 27 (*prostitution*) of Chapter 14 of the North Carolina General Statutes;
- B.** Convicted of committing a violent felony as defined at N.C. Gen. Stat. §14-7.7 on the short-term rental premises within the prior three-year period.
- C.** Convicted of violating any of the following criminal laws on the rental premises within the prior 365-day period:
 - 1. Article 3 of Chapter 18B of the North Carolina General Statutes (*sale, possession and consumption of alcohol*)
 - 2. N.C. Gen. Stat. §14-71.1 (possession of stolen goods)
 - 3. N.C. Gen. Stat. §14-292 (unlawful gambling)
- D.** Received within a 365-day period two or more “Verified Violations” of any combination of the following, occurring on the short-term rental premises:
 - 1. Any Town Code zoning regulation.
 - 2. Any noise regulation set forth at Town Code Chapter 82.
 - 3. Any nuisance prohibited by Town Code Chapter 80.

A Verified Violation means a determination made by a code enforcement official, law enforcement officer, or judge, following notice of violation being issued by the Town Code and opportunity to respond to the noticed alleged offenses and an order or other mandate issued to the owner or any other person imposing a sanction or requiring further actions to comply with the Town Code, including, without any limitation, the payment of civil penalties or administrative fees, or implementation of corrective measures, or cessation of activities, or conviction of a criminal offense. A verified violation that is appealed continues as a verified violation unless it is overturned on appeal. If the violation is reinstated on a further appeal, it resumes its status as a verified violation.

- E. Once lawfully revoked, a new permit for a short-term rental cannot be issued or re-instated for the premise for a period of 365 days, except that in case of revocation under (A) or (B) above a new permit cannot be issued or re-instated for the premise for three years unless the person convicted of the criminal violation is no longer a resident, manager or operator of the short-term rental.

15.14.17 Compliance period; existing nonconformities

- A. The owner of any un-permitted vacation rental in operation as of June 30, 2022 must apply for a permit as required in this section 15.14 on or before December 31, 2022 and must come into compliance with this section by June 30, 2023.
- B. Any existing, un-permitted vacation rental not conforming under this section 15.14 must be brought into compliance with this ordinance or cease operation by June 30, 2023.
- C. Any person seeking to begin operation of a vacation rental after June 30, 2022 must first apply for and obtain a vacation rental permit as required under this section 15.14.

(Ord. PL04727-050721; 07-01-2021; Ord. PL05168-100621, 12-08-2021)

15.15 Airport/Landing Strip, Heliport, Helistop

- 15.15.01** Federal Aviation Administration (FAA) approval must be submitted with the Special Use Permit application.

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

15.16 Utility Facility

- 15.16.01** Utility facilities in or adjoining residential zoning districts must maintain district setback, be fenced (unless totally enclosed within a structure), and either be screened from view or designed to have a residential appearance.
- 15.16.02** Equipment producing noise or sound may not exceed 60 decibels at any adjoining property line.

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

15.17 Wireless Communication Facilities

- 15.17.01** This Section 15.17 applies to wireless communications facilities that are not “qualifying small wireless facilities” (which are governed by Section 15.18), that are not micro wireless facilities, and that are not exempted in Section 15.17.04. Any terms used herein that are not defined at Article 34 shall have the meaning set forth at Part 3 (“Wireless Telecommunications Facilities”) of Chapter 160D of the North Carolina General Statutes.

- 15.17.02** The purpose of this section is to:

- A. Minimize the impacts of wireless communications facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;

- B. Encourage the location and co-location of wireless communications facilities equipment on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures;
- C. Encourage coordination between suppliers of wireless communications facilities services in the Town and its planning jurisdiction;
- D. Accommodate the growing demand for wireless services and the resulting need for wireless communications facilities;
- E. Regulate in accordance with all applicable federal and state laws;
- F. Establish review procedures to ensure that applications for wireless communications facilities are reviewed and acted upon within a reasonable period of time or any specific period of time required by law;
- G. Protect the unique aesthetics of the Town while meeting the needs of its citizens and businesses to enjoy the benefits of wireless communications services; and
- H. Encourage the use of existing buildings and structures as locations for wireless communications facilities infrastructure as a method to minimize the aesthetic impact of related infrastructure.
- I. It is not the purpose or intent of this section to prohibit or have the effect of prohibiting wireless communication services; unreasonably discriminate among providers of functionally equivalent wireless services; regulate the placement, construction or modification of wireless communications facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the wireless communications facility does or will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the Town must approve under state or federal law. The provisions of this Section are in addition to, and do not replace, any obligations an applicant may have under any franchises, licenses, encroachments, or other permits issued by the Town.

15.17.03 General Considerations and Limitations

- A. Wireless communications facilities are permitted in accordance with the Table of Permissible Uses.
- B. New wireless support structures are prohibited in the public rights of way.
- C. The following are the Town's preferences for wireless communications facility locations, in descending order of preference:
 - Collocations on Existing Wireless Support Structures, Transmission Towers and Utility Poles
 - Stealth (Concealed) Wireless Facility Attached to Existing Building/Structure
 - New Stealth (Concealed) Wireless Support Structure

- New Non-Stealth Wireless Support Structure - monopole
 - New Non-Stealth Wireless Support Structure - lattice-type
- D. The co-location of facilities and/or use of stealth technology shall be considered a mitigating factor to a variance request and may be justification for the request.

15.17.04 Compliance with Law; Exemptions.

- A. Nothing in this ordinance shall be interpreted to excuse compliance with, or to be in lieu of any other requirement of state or local law, except as specifically provided herein. Without limitation, the provisions of this ordinance do not permit placement of wireless communications facilities on privately-owned utility poles or wireless support structures, or on private property, without the consent of the landowner or any person who has an interest in the property.
- B. The following are exempt from the requirements in this Section 15.17:
1. Any wireless communications facilities below ninety (90) feet when measured from ground level which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission and used exclusively for amateur radio operations.
 2. Satellite dishes.
 3. Removal or replacement of an antenna or equipment on an existing wireless support structure or base station that does not change the physical dimensions of the wireless support structure or base station, or defeat any of the concealment elements of the wireless support structure or base station.
 4. Routine maintenance of existing facilities, including activities associated with regular and general upkeep of transmission equipment, and the replacement of existing wireless communications facilities with facilities of the same size (so long as any of the concealment elements of the facilities are not defeated).
 5. A temporary wireless communications facility, (1) upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the Town; except that such facility must comply with all federal and state requirements and must be removed at the conclusion of the emergency; or (2) if necessary to continue providing service while a wireless support structure or other structure upon which the existing wireless communications facility has been placed, such as a building or water tank, is undergoing maintenance, replacement, or reconstruction during which it will be impossible or unsafe to operate the existing wireless communications facility; except that (i) the temporary facility must be located on site and no taller than the existing wireless support structure or other structure; (ii) the temporary facility must meet the setback requirements of section 15.17.07(C); (iii) the temporary facility must comply with all federal and state requirements; and (iv) the temporary

facility must be removed within sixty (60) days of the conclusion of the maintenance, replacement, or reconstruction, or within one (1) year, whichever is shorter, unless the time is extended by the Planning Director for good cause shown.

6. Public safety facilities or installations required for public safety on public or private property, including transmitters, repeaters, and remote cameras so long as the facilities are designed to match the supporting structure.

15.17.05 Eligible Facilities Requests and Collocations. Collocation and eligible facilities requests, as defined in G.S. 160D-931 or 47 U.S.C. 1455, shall be processed in accordance with G.S. 160A-400.52, 160D-933, and/or federal laws and regulations as appropriate. In approving any eligible facilities request, the Town solely intends to comply with a requirement of federal law or state law and not to grant any property rights or interests except as compelled by federal or state law. Without limitation, approval does not exempt applicant from, or prevent Town from, opposing a proposed modification that is subject to complaint under the National Historic Preservation Act or the National Environmental Policy Act. Collocations are only permitted as provided in Sections 15.24.06 and 15.24.07.

15.17.06 Collocations on Existing Wireless Support Structures and Electric Transmission Towers

- A. The collocation of additional wireless facilities on existing, freestanding wireless support structures shall be consistent with the existing concealment method, if applicable, of the freestanding wireless support structure.
- B. **Height.** The top of the additional wireless facility may not exceed the highest point of the existing wireless facilities on the freestanding wireless support structure.
- C. For purposes of wireless facility collocations governed by Section 15.17 or 15.18, an existing electric transmission tower shall be considered an existing wireless support structure.
- D. An existing electric transmission tower that is being replaced with a taller transmission tower for the primary purpose of hosting wireless facilities is subject to all applicable regulations of Section 15.17 and 15.18 related to wireless support structures.

15.17.07 Stealth (Concealed) Wireless Facilities Attached to Existing Building or Structure.

- A. Stealth wireless facilities, including any feed lines, antennas, and accessory equipment, must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
- B. A structure utilized to support a wireless facility must be allowed within the underlying zoning district. Structures may include, but are not limited to: flagpoles, bell towers, clock towers, dormers, crosses, monuments, parapets, and steeples.
- C. Attached stealth wireless facilities shall be allowed as a permitted accessory use in all non-residential zoning districts, and on residentially-zoned land used for non-residential purposes. Unless otherwise allowed above, stealth wireless facilities shall

be prohibited in all other residential zoning districts.

- D. If located in the right-of-way of any public road or street, stealth antennae shall be located on an existing utility pole which does not exceed a height of thirty-five (35) feet above the immediate surrounding ground. Stealth antennae located on an existing utility pole, whether inside or outside of the right-of-way, shall not be higher than ten (10) feet above the highest point of the pole.
- E. The ground-mounted components of stealth antennae, whether inside or outside of the right-of-way, shall be located flush to grade where necessary to avoid inconveniencing the public, or creating a hazard; and to the extent permitted aboveground, shall otherwise be appropriately camouflaged to blend in with the surroundings, and non-reflective paints shall be used.
- F. **Height.** The top of the stealth wireless facility may not be more than ten (10) feet above the top of the building or structure to which it is attached.

15.17.08 Non-Stealth Wireless Facilities

- A. Non-stealth wireless facilities are prohibited in the public right-of-way.
- B. Except as provided at subsection 15.17.06 for collocations on existing wireless support structures, non-concealed wireless facilities shall only be allowed on transmission towers. The top of a stealth wireless facility may not be more than ten (10) feet above the tower to which it is attached.

15.17.09 Concealed (Stealth) Wireless Support Structures

- A. **Design Considerations and Visibility.** Concealed (stealth) wireless support structures shall be designed to complement the physical landscape in which they are to be located. Examples of stealth wireless support structures that may be compatible include but are not limited to faux pine trees, unipoles/slick sticks, bell towers, etc. New stealth wireless support structures shall be configured and located in a manner that shall minimize adverse effects including visual impacts on the landscape, horizon, and adjacent properties. New freestanding stealth wireless support structures shall be designed to be compatible with adjacent structures and landscapes with specific design considerations such as architectural designs, scale, color, and texture.
- B. **Setbacks.** The following setback requirements are established to mitigate potential safety and aesthetic impacts upon surrounding properties.
 - 1. Setbacks shall be measured from the base of the wireless support structure.
 - 2. The minimum setback from each property line shall be 120% of the height of the tower, or 100 feet, whichever is greater.
 - 3. The minimum setback from the centerline of a natural gas line easement for gas lines measuring eight inches in diameter or greater shall be 120% of the height of the tower, or 85 feet, whichever is greater.

- C. Height.** The maximum permitted overall height for stealth wireless support structures is ten (10) feet above the maximum height allowed in the zoning district.
- D. Monopine/Faux Trees.** A monopine or faux tree wireless support structure shall be considered concealed if the following criteria are met. If the following criteria are not met, then the proposed structure will be considered non-concealed for regulatory purposes.
 - 1. The wireless support structure is incorporated within an existing cluster of trees that measures, after any necessary grading or clearing for the facility, at least 1,000 square feet with no individual dimension of less than 25 feet and the entire qualifying cluster located on the lot or parcel.
 - 2. The structure shall be designed to match a species located within the existing cluster of trees, with the support structure to be designed as a tree trunk and antenna arrays flush-mounted and completely concealed by limbs, branches, and leaves.
 - 3. Limbs, branches, and leaves shall cover at least the upper 50% of the support structure, and shall cover any of the support structure that extends above the average tree line of the cluster of trees.
 - 4. The overall height of the wireless support structure may not exceed the height of the tallest tree in the existing cluster.
 - 5. An easement or other binding legal agreement must be provided by the applicant that demonstrates to the Administrator's satisfaction that the cluster of trees surrounding the wireless structure will not be disturbed for so long as the wireless support structure should exist.
- E.** A special use permit shall be required for any stealth wireless support structure that is greater than 50 feet in overall height and located within 400 feet of the property line of any property used or zoned for single family residential purposes.

15.17.10 Freestanding Non-Stealth Wireless Support Structures

- A.** The following setback requirements are established to mitigate potential safety and aesthetic impacts upon surrounding properties.
 - 1. Setbacks shall be measured from the base of the wireless support structure.
 - 2. The minimum setback from each property line and road right-of-way shall be 200 feet or two times the overall height of the structure, whichever is greater.
 - 3. The minimum setback from the centerline of a natural gas line easement for gas lines measuring eight inches in diameter or greater shall be 120% of the overall height of the structure, or 85 feet, whichever is greater.
- B. Height.** The maximum permitted overall height for non-stealth wireless support structures is twenty (20) feet higher than the maximum building height allowed in the

district.

- C. A special use permit shall be required for any non-stealth wireless support structure that is (i) greater than 60 feet in overall height or (ii) within 400 feet of the property line of any property used or zoned for single family residential purposes.

15.17.11 Additional Requirements and Standards for All Wireless Support Structures

A. Existing Wireless Support Structures. New antennae may be co-located upon wireless support structures that exist on the effective date of this Ordinance. A request for an increase in height for an existing wireless support structure shall require issuance of a special use permit, if a special use permit would be required to erect a new wireless support structure at the requested height.

B. Collocation Required. All freestanding wireless support structures shall be engineered and constructed to accommodate no less than three (3) antenna arrays if the location is not a major mountain ridge.

C. General Development Standards

1. Design and Neighborhood Compatibility

- a. The exterior appearance of all associated support structures and buildings shall be compatible with the other buildings in the surrounding area. Wireless communications facilities shall be blended with the natural surroundings as much as possible. Except when otherwise required by applicable federal or state regulations, colors and materials shall be used that are compatible with the surrounding area and usually shall be light gray. Wireless communications facilities shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.
- b. Lighting on wireless support structure shall not be permitted except as required by federal and state regulations and shall not exceed required minimums. The permit-issuing authority may require the applicant to apply to the Federal Aviation Administration (FAA) for compliance with FAA standards for a dual lighting system rather than a red and white marking pattern, when the permit-issuing authority determines such a marking pattern would cause aesthetic blight due to the visibility of the wireless support structure.
- c. Support buildings located in any residential district may not be used as an employment center for any worker. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments.
- d. No advertising sign or logo shall be permitted on any wireless communications facility.

- e. Equipment compounds shall not be used for as storage yards, including but not limited to for storage of any excess equipment or hazardous materials, nor be used as habitable space.

2. Buffering and Screening

- a. All fences and walls shall be screened in accordance with the requirements of Chapter 31 of this Ordinance.
- b. The base of the wireless support structure and each guy anchor shall be surrounded by an opaque fence or wall at least eight (8) feet in height.

D. Neighborhood Meeting. At the time of submitting an application for a proposed wireless support structure that requires approval as a special use, the applicant shall submit written documentation that they have conducted a neighborhood meeting, to which owners of property within four hundred (400) feet of the subject property have been invited, to explain the proposed facility and answer questions. Documentation should include the time, date, and location of the meeting; a list of meeting attendees; a brief summary of any presentations and/or information discussed; and questions/concerns expressed by neighboring landowners.

E. Balloon Test. A balloon test shall be required for all wireless support structures that require approval as a special use. The balloon test shall be required prior to the submittal of photo simulations in order to illustrate the proposed height of the wireless support structure. The applicant shall arrange to raise a colored balloon no less than three (3) feet in diameter at the maximum height of the proposed wireless support structure, and within twenty-five (25) horizontal feet of the center of the proposed wireless support structure.

The applicant shall meet the following for the required balloon test:

- 1. Applicant must inform the Planning Department and abutting landowners within four hundred (400) feet of the subject property in writing of the date and times, including alternative date and times, of the test at least fourteen (14) days in advance.
- 2. The date, time, and location, including alternative date, time and location, of the balloon test shall be advertised in a locally distributed paper by the applicant at least seven (7) but no more than fourteen (14) days in advance of the test date.
- 3. The balloon shall be flown at the required height for at least four (4) consecutive hours during daylight hours on the date chosen. The applicant shall record the weather conditions during the balloon test.

F. Availability of Existing Structures. No new freestanding wireless support structure shall be permitted unless the applicant demonstrates that no existing or previously approved wireless support structure can reasonably be used for the wireless communications facility placement instead of the construction of a new wireless

support structure; that residential, historic, and designated scenic areas cannot be served from outside the area; or that the proposed height of a new wireless support structure or initial wireless communications facility placement or a proposed height increase of a substantially changed wireless support structure, or replacement wireless support structure, is necessary to provide the applicant's designed service. Collocation on an existing wireless support structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the wireless support structure is unwilling to enter into a contract for such use at fair market value.

G. Blue Ridge Parkway view shed protection. If a new or taller wireless support structure is proposed 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 structure 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 wireless support structure.

H. Setback Reductions

1. In considering an application for special use for wireless communications facilities, the Board of Adjustment may grant a reduction of the minimum required setbacks listed in this Section 15.17 upon consideration of circumstances or aspects which reduce the off-site effects of the facility on adjacent properties. Such circumstances or aspects may include, but are not limited to: topography; berms; the proximity of existing or potential uses; existing vegetation and improvements made or proposed to the site to obscure or reduce the visibility of the wireless support structure from adjacent properties; the concentration of existing and/or proposed wireless support structures in the area; and whether the height, design (including structural features), placement or other characteristics of the proposed wireless support structure could be modified to have a less intrusive impact.
2. Requests under this sub-section may be approved provided that such action is not inconsistent with the general purposes and applicable approval criteria of this Ordinance. The Board of Adjustment, in considering any request(s) for reduction of the minimum required setbacks under this Section, shall consider any unique circumstances for such a request(s).

I. Conditions. Notwithstanding any of the standards of this Section, the Board of Adjustment may require any other reasonable conditions to mitigate the impact of the wireless support structure on adjacent properties and uses including, but not limited to, conditions or modifications related to the style, height, and design of the facility.

J. Siting on Mountain Ridges

1. Locating a wireless facility on a major mountain ridge shall be considered as a last resort and justifying documentation shall be provided.

2. A wireless support structure located on any major mountain ridge shall be monopole and no taller than the vegetative canopies immediately surrounding the base of the tower.
- K. Wireless support structures shall be designed to meet the ANSI/EIA/TIA-222-G (as minimum one-half inch (1/2") of solid radial ice. In no case shall the design wind speed be less than specified in Section 1609 of the North Carolina Building Code.
- L. Lighting on wireless support structure shall not be permitted except as required by federal and state regulations.

15.17.12 Outside Experts and Disputes

- A. Review by an outside consultant shall be required for all facilities requiring approval of a special use permit. The fee for review by the outside consultant shall be collected together with the application fee for the special use permit. Additional reasonable and cost based fees may be imposed for costs incurred should the applicant amend its application. Selection of the outside consultant shall be at the sole discretion of the Town.
- B. If an applicant for a wireless communications facility claims that one (1) or more standards of this Ordinance are inconsistent with federal law as applied to a particular property, or would prohibit the effective provision of wireless communications within the relevant market area, the decision-making body may require that the application be reviewed by a qualified engineer for a determination of the accuracy of such claims. Any costs shall be charged to the applicant.

15.17.13 Standard Conditions and Requirements Applicable to All Wireless Communications Facilities

- A. Wireless communications facilities shall be permitted in accordance with the Table of Principal Uses.
- B. Grading shall be limited to only the area necessary for the wireless communications facilities and equipment compound, and access to the facility.
- C. Documentation, sealed by a registered professional engineer with wireless communications expertise, shall be provided indicating that the new facility, or the modification of an existing facility, complies with the following. Such compliance shall be maintained throughout the life of the facility.
 1. That the American National Standards Institute (ANSI) requirements for the proposed improvements are met; and
 2. All applicable building, structural, electrical, and safety codes and with all other laws codifying objective standards reasonably related to health and safety shall be met.
- D. Applicants must obtain all other required permits, authorizations, approvals,

agreements, and declarations that may be required for installation, modification, and/or operation of the proposed facility under federal, state, or local law, rules, or regulations, including but not limited to encroachment agreements and FCC approvals. An approval issued under this Section is not in lieu of any other permit required under the UDO or Town Code, nor is it a franchise, license, or other authorization to occupy the public right-of-way, or a license, lease, or agreement authorizing occupancy of any other public or private property. It does not create a vested right in occupying any particular location, and an applicant may be required to move and remove facilities at its expense consistent with other provisions of applicable law. An approval issued in error, based on incomplete or false information submitted by an applicant or that conflicts with the provisions of the UDO, is not valid. No person may maintain a wireless communications facility in place unless required state or federal authorization remain in force.

- E. All wireless communications facilities and related equipment, including but not limited to fences, cabinets, poles, and landscaping, shall be maintained in good working condition over the life of the use. This shall include keeping the structures maintained to the visual standards established at the time of approval. The wireless communications facility shall remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than thirty (30) calendar days from the date of notification by the Town. All the wireless communications facility equipment must be removed upon the expiration/termination/revocation of the approval and/or when no longer in operation, whichever occurs first.

In public rights-of-way, damaged or deteriorated components must be corrected within five (5) business days of notification. If a wireless communications facility or portions of a wireless communications facility are taken out of service, the components must be removed within thirty (30) business days of being taken out of service, and affected facilities restored to their prior condition.

- F. The landowner (s) or applicant shall submit a certification letter from a North Carolina certified land surveyor or licensed engineer which verifies that structure height complies with the approved development plan.
- G. Any approval issued by the Town for a new wireless support structure or a collocation that is a substantial change shall be conditioned on the construction of the approved facilities within twenty-four (24) months.
- H. The applicant or owner shall maintain onsite at the wireless communications facility contact information for all parties responsible for maintenance of the facility.
- I. The owner of a freestanding wireless support structure shall maintain general liability insurance for the structure in the amount of at least \$1,000,000; and shall, as part of the original site plan application, site plan amendments, and any subsequent

modifications, provide documentation demonstrating compliance with this requirement.

- J.** Wireless communications facilities, whether operating alone or in conjunction with other facilities, shall not generate radio frequency emissions in excess of the standards established by the Federal Communications Commission, nor shall they interfere with public safety communications or normal radio and television reception.
- K.** After written notice to the applicant and/or owner, the Town may require the relocation, at the applicant/owner's expense and according to the then-existing standards for wireless communications facilities, of any wireless communications facility located in the public right-of-way, as necessary for maintenance or reconfiguration of the right-of-way or for other public projects, or take any other action or combination of actions necessary to protect the health and welfare of the Town.
- L.** The owner of a freestanding wireless support structure shall at all times maintain general liability insurance for the structure in the amount of at least \$1,000,000; and shall, as part of the original site plan application, site plan amendments, and any subsequent modifications, provide documentation demonstrating compliance with this requirement. In addition, said owner shall supply the following to the Administrator on an annual basis no later than March 30 of each year: (i) current contact information for service of notice; and (2) a Certificate of Insurance demonstrating the maintenance of insurance as required by this subsection.
- M.** Wireless communications facilities placed in the public right of way must comply with all applicable provisions of the Town's Code of Ordinances relating to encroachments.
- N.** No portion of a wireless communications facility may be placed in the public right-of-way in a manner that:
 - 1. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference;
 - 2. Results in ground-mounted, above-ground equipment cabinets in the public right-of-way associated with the support structure that are ten percent (10%) larger in height or overall volume than other equipment cabinets in the same area; or
 - 3. Involves placement of pole-mounted equipment whose lowest point is lower than eight (8) feet above ground level.
- O.** The applicant shall be required to provide documentation certifying compliance with all applicable federal and state regulations.
- P.** 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

wireless facility site.

- Q.** Signage shall be limited to a sign identifying the owner(s) and operator(s) of the tower, an emergency telephone number and any other signage as required by any government agency shall be placed in a clearly visible location on the premises of the tower.
- R.** Any wireless communications facility shall be removed within one hundred eighty (180) days of the date on which it ceases to be operable or in active use. The owner of the facility shall remove the facility within 90 days of receipt of a notice of abandonment from the Administrator. After such time has elapsed, if the facility has not been removed, enforcement action shall commence.

15.17.14 Applications requiring special use permit approval. The following shall be required, as applicable, in addition to the findings normally required for approval of special use permits, in order for the Board of Adjustment to approve the special use permit.

- A.** Evidence that it is not reasonably feasible to collocate new antennas and equipment on an existing wireless support structure or structures or utility poles within the applicant's geographic search ring. Collocation on an existing support structures or utility poles is not reasonably feasible if collocation is technically or commercially impractical, or the owner of the existing support structures or utility poles is unwilling to enter into a contract at fair market value.
- B.** That the use of existing facilities would prevent the provision of personal wireless services in the area to be served by the proposed facility.
- C.** In determining whether a wireless communications facility is in harmony with the area, and the effects on and general compatibility of a facility with adjacent properties, the approving authority shall consider the aesthetic effects of the facility as well as factors that mitigate the aesthetic effects.
 - 1. Documentation of balloon tests and other methodologies used to simulate the height and appearance of the proposed wireless communications facility shall be provided by the applicant, along with descriptions of the locations, distances, and vantage points that formed the basis of the simulation(s).
 - 2. Factors that the approving authority may consider in determining the aesthetic effects of a proposed wireless communications facility include:
 - a. The protection of the view in sensitive or particularly scenic areas and areas specially designated in adopted plans such as unique natural features, scenic roadways, and historic sites;
 - b. The concentration of wireless communication facilities in the proposed area; and,
 - c. Whether the height, design, placement, or other characteristics of the proposed wireless communication facilities could be modified to have a less

intrusive visual impact.

- D. The approving authority shall not make a determination on the electromagnetic field (EMF) effects of the wireless communications facility on the health of the public. Documentation that certifies that the facility meets or exceeds applicable American National Standards Institute (ANSI) standards as adopted by the FCC in order to protect the public from unnecessary exposure to electromagnetic radiation shall be sufficient. This shall not preclude other issues regarding the health, safety, and welfare of the public from being considered in order to satisfy the finding.

15.17.15 Variances. Technical dimensional requirements shall not prohibit or have the effect of prohibiting the provision of personal wireless services contrary to the mandates of federal law. Per Article 6 of this UDO, Applicants may seek variances to technical dimensional requirements that an applicant claims have the effect of prohibiting the provision of personal wireless services.

15.17.16 Submittal Requirements

- A. In addition to the submittal requirements of Appendix A, as may be applicable, applications for proposed wireless communications facilities shall also include maps, reports, and documents as specified by the Planning Director. At a minimum, this information shall describe the facility with regard to its proposed location, design, and operation; and, if applicable, a clear statement that the request is being made as an eligible facilities request under state law and/or federal law.
- B. If, as part of review by an outside expert, additional submittal information is determined to be necessary in order to review the application for compliance with this Ordinance, such information shall be required regardless of the items initially submitted with the application.

15.17.17 Nonconforming Setbacks for Existing Wireless Support Structures. Wireless support structures that do not meet the minimum required setbacks from lots that were created after the construction of the wireless support structure shall be deemed conforming with regard to setbacks for the purposes of Section 15.17.

Note: Refer to Section 16.05 for requirements associated with creating lots from an existing lot or parcel that contains a wireless support structure (stealth or non-stealth).

(Ord. PL02336-030719, 05-09-2019; Ord. PL04727-050721; 07-01-2021)

15.18 Qualified Small Wireless Facilities

15.18.01 The purpose of this section is to:

- A. Minimize the impacts of small wireless facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;
- B. Encourage the location and collocation of small wireless facilities equipment on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, and to

reduce the need for additional antenna-supporting structures;

- C. Encourage coordination between suppliers of small wireless facilities;
- D. Accommodate the growing demand for wireless services and the resulting need for small wireless facilities;
- E. Regulate in accordance with all applicable federal and state laws;
- F. Establish review procedures to ensure that applications for small wireless facilities are reviewed and acted upon within a reasonable period of time or any specific period of time required by law;
- G. Protect the aesthetics of the Town while meeting the needs of its citizens and businesses to enjoy the benefits of wireless communications services; and
- H. Encourage the use of existing buildings and structures as locations for small wireless facilities infrastructure so as to minimize the aesthetic impacts of related infrastructure.
- I. It is not the purpose or intent of this section to prohibit or have the effect of prohibiting wireless communications services; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of wireless communications facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the small wireless facility does or will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the town must approve under state or federal law. The provisions of this Section are in addition to, and do not replace, any obligations an applicant may have under any franchises, licenses, encroachments, or other permits issued by the Town.

15.18.02 Siting. To protect the aesthetics of the Town, to minimize new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures, the Town prefers that small wireless facilities be located outside the public right-of-way; collocated on existing utility poles or wireless support structures; concealed; and have their accessory equipment mounted on the utility pole or wireless support structure. These preferences are intended as guidance for development of an application for small wireless facilities.

15.18.03 Applicability; Compliance with Law; Exemptions; Application Process

- A. The standards established herein shall apply only to qualifying small wireless facilities, qualifying utility poles, and qualifying town utility poles, as defined herein. Nothing in this ordinance shall be interpreted to excuse compliance with, or to be in lieu of, any other requirement of state or local law, except as specifically provided herein. Without limitation, the provisions of this ordinance do not permit placement of small wireless facilities on privately-owned utility poles or wireless support structures, or on private property, without the consent of the landowner or any person who has an interest in

the property.

B. The following categories of small wireless facilities are exempt from the requirements set forth in this Section 15.18:

1. Any wireless communications facility below sixty-five (65) feet when measured from ground level which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission and used exclusively for amateur radio operations.
2. Satellite dishes.
3. Eligible facilities requests that satisfy the requirements set forth in Section 15.17.05.
4. Routine maintenance of small wireless facilities; the replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or town utility poles in compliance with all applicable laws or regulations by or for a communications service provider authorized to occupy the Town rights-of- way and who is remitting taxes under G.S. 105-164.4(a)(4c) or (a)(6).
5. A temporary small wireless facility, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the Town; except that such facility must comply with all federal and state requirements and must be removed at the conclusion of the emergency.
6. Public safety facilities or installations required for public safety on public or private property, including transmitters, repeaters, and remote cameras so long as the facilities are designed to match the supporting structure.
7. A small wireless facility located in an interior structure or upon the site of any stadium or athletic facility, provided that the small wireless facility complies with applicable codes.

C. Application process.

1. Applicants for any qualifying small wireless facilities, qualifying utility poles, and qualifying town utility poles subject to this Section 15.18 shall complete an application as specified in form and content by the Town.
2. An application shall be deemed complete unless the Administrator provides notice otherwise in writing to the applicant within 30 days of submission or within such other time frame as the applicant and Administrator may mutually agree. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

3. The application shall be deemed approved if not approved or denied within 45 days from the time the application is deemed complete or such other time frame as the applicant and Administrator may mutually agree.
4. An application may be denied only on the basis that it does not meet any one of the following: (i) the city's applicable codes; (ii) local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment; (iii) public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way; or (iv) historic preservation requirements. The Administrator must document the basis for a denial, including the specific code provisions on which the denial was based and send the documentation to the applicant on or before the day the application is denied. The applicant may cure the deficiencies identified and resubmit the application within 30 days of the denial without paying an additional application fee. The Administrator shall approve or deny the revised application within 30 days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

15.18.04 Collocation of Small Wireless Facilities. Collocation of small wireless facilities on land used as single-family residential property or vacant land that is zoned for single-family development, and any small wireless facility that extends more than ten (10) feet above the utility pole, town utility pole, or wireless support structure on which it is collocated, are subject to Section 15.17.

Notwithstanding the foregoing, replacement of an existing streetlight for which the Town is financially responsible with a streetlight capable of including a collocated, concealed small wireless facility is permitted on land used as single-family residential property or vacant land that is zoned for single-family development, pursuant to the requirements of Section 15.18.05.

Collocations of qualifying small wireless facilities are subject to the following requirements:

- A. Height.** Each new small wireless facility shall not extend more than ten (10) feet above the utility pole, town utility pole, or support structure on which it is collocated.
- B. Public Safety.** In order to protect public safety:
 1. Small wireless facilities shall cause no signal or frequency interference with public safety facilities or traffic control devices and shall not physically interfere with other attachments that may be located on the existing pole or structure.
 2. A structural engineering report prepared by an engineer licensed by the State of North Carolina, certifying that the host structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of

antennae and other equipment, extensions, and appurtenances associated with the installation.

3. A traffic and pedestrian management plan must be submitted for any installation that requires work in the public right-of-way.
4. No portion of a small wireless facility may be placed in the public right-of-way in a manner that:
 - a. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference; or
 - b. Involves placement of pole-mounted equipment lowest point is lower than eight (8) feet above ground level.
5. An abandoned small wireless facility shall be removed within one hundred eighty (180) days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the town may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is 180 days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the town reasonable evidence that it is diligently working to place such wireless facility back in service

C. Objective Design Standards.

1. No advertising signs or logos are permitted on small wireless facilities.
2. Small wireless facilities shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable federal or state regulations. Small wireless facilities shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.

D. Stealth and Concealment. All small wireless facilities shall be stealth facilities. Antenna and accessory equipment must be shrouded or otherwise concealed.

E. Screening, Landscaping, and Spacing Requirements for Ground Equipment. Ground equipment shall be screened, to the extent possible, with evergreen plantings or other acceptable alternatives approved by the Planning Director.

F. Historic Preservation. Small wireless facilities located in a designated historic district

or on property designated as a landmark (pursuant to G.S. Chapter 160D, Part 4) shall be required to obtain a Certificate of Appropriateness.

G. Applicable Codes. Small wireless facilities must meet applicable codes.

15.18.05 Existing Utility Poles and Town Utility Poles Associated with Small Wireless Facilities. The maintenance, modification, operation, or replacement of existing qualifying utility poles and qualifying town utility poles associated with small wireless facilities are subject to the following requirements:

A. Height. Each modified or replacement utility pole or town utility pole shall not exceed (i) forty (40) feet above ground level on property zoned for or used as single-family residential property, or in the right-of-way adjacent to such property, where existing utilities are installed underground; or (ii) fifty (50) feet above ground level on all other property. Each new small wireless facility shall not extend more than ten (10) feet above the associated utility pole, town utility pole, or wireless support structure on which it is collocated.

B. Small Wireless Facilities. All requirements of Section 15.18.05 apply to small wireless facilities located on a utility pole, town utility pole, or wireless support structure.

C. Public Safety. In order to protect public safety:

1. No replacement utility poles or town utility poles associated with a small wireless facility are permitted in the clear zone as defined in the Town's Standard Specifications & Details Manual unless such replacement pole is breakaway rated.
2. No portion of a utility pole or town utility pole associated with a small wireless facility may be placed in the public right-of-way in a manner that:
 - a. Results in the obstruction of pedestrians or vehicular or bicycle access, or of sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference; or
 - b. Involves placement of pole-mounted equipment whose lowest point is lower than eight (8) feet above ground level.

D. Objective Design Standards. Utility poles or town utility poles associated with a small wireless facility shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable federal or state regulations. Utility poles or town utility poles associated with a small wireless facility shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.

E. Stealth and Concealment. All small wireless facilities shall be stealth facilities. Antenna

and accessory equipment must be shrouded or otherwise concealed.

- F. Historic Preservation.** Utility poles or town utility poles associated with a small wireless facility located in a designated historic district or on property designated as a landmark (pursuant to G.S. Chapter 160D, Part4) shall be required to obtain a Certificate of Appropriateness.
- G. Applicable Codes.** Utility poles and town utility poles associated with a small wireless facility must meet applicable codes.

15.18.06 New Utility Poles Associated with Small Wireless Facilities

- A.** New poles are prohibited consistent with the Town’s undergrounding requirements as set forth at Section 22.09 of this Ordinance.
- B.** In the event a new pole is proposed for an area where undergrounding requirements do not apply, the following provisions apply:
 - 1. Unless a new pole replaces an existing pole in substantially the same location, to the extent practicable, poles shall be installed at least 300 feet from any existing or proposed pole. Any wireless services providers desiring to install poles less than 300 feet apart or desiring to install a new pole within 300 feet of an existing pole shall demonstrate to the town’s satisfaction why such placement is necessary.
 - 2. Poles shall be designed pursuant to town standards or the applicable utility’s standard, and function as street light poles, utility poles, or traffic signal poles in consultation with the town or the applicable utility, and shall be incorporated into the applicable utility or signaling system.
 - 3. All requirements, standards and limitations of subsections 15.25.04 and 15.25.05 apply to new utility pole installations.

15.18.07 Standard Conditions

- A.** Applicants must obtain all other required permits, authorizations, approvals, agreements, and declarations that may be required for installation, modification, and/or operation of a proposed facility under federal, state, or local law, rules, or regulations, including but not limited to encroachment agreements and FCC approvals. An approval issued under this Section is not in lieu of any other permit required under the UDO or Town Code, nor is it a franchise, license, or other authorization to occupy the public right-of-way, or a license, lease, or agreement authorizing occupancy of any other public or private property. It does not create a vested right in occupying any particular location, and an applicant may be required to move and remove facilities at its expense consistent with other provisions of applicable law. An approval issued in error, based on incomplete or false information submitted by an applicant or that conflicts with the provisions of the UDO is not valid. No person may maintain a small wireless facility in place unless required state or federal authorization remains in force.

- B. All small wireless facilities and related equipment, including but not limited to fences, cabinets, poles, and landscaping, shall be maintained in good working condition over the life of the use. This shall include keeping the structures maintained to the visual standards established at the time of approval. The small wireless facility shall remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than thirty (30) calendar days from the date of notification by the Town. In public rights-of-way, damaged or deteriorated components must be corrected within five (5) business days of notification.
- C. The applicant shall submit a certification letter from a North Carolina certified land surveyor or licensed engineer which verifies that structure height complies with the approved development plan.
- D. The applicant or owner shall maintain onsite at the facility contact information for all parties responsible for maintenance of the facility.
- E. Small wireless facilities, whether operating alone or in conjunction with other facilities, shall not generate radio frequency emissions in excess of the standards established by the Federal Communications Commission.
- F. After written notice to the applicant and/or owner, the Town may require the relocation, at the applicant/owner's expense, of any small wireless facility, and the associated utility pole, town utility pole, or wireless support structure on which it is collocated, located in the public right-of-way, as necessary for maintenance or reconfiguration of the right-of-way or for other public projects, or take any other action or combination of actions necessary to protect the health and welfare of the Town.
- G. Collocation or modification of small wireless facilities on an existing non-conforming wireless support structure or base station shall not be construed as an expansion, enlargement, or increase in intensity of a non-conforming structure and/or use, provided that the collocation or modification constitute an eligible facilities request.

(Ord. PL02336-030719, 05-09-2019; Ord. PL04727-050721; 07-01-2021)

15.19 Child Daycare (Large and Center) and Adult Daycare (Large and Center)

15.19.01 Without limiting the applicability of other Ordinance requirements, these uses are subject to Article 31 Landscape Standards.

15.19.02 Outdoor Playground Areas

- A. Outdoor playground areas shall be fenced with a six (6) foot opaque fence.
- B. To the extent practical, outdoor playground areas shall be located away from low-density residential zoning districts.

15.19.03 To the extent practical, parking areas for Child Daycare Centers and Adult Daycare Centers shall be located to away from low-density residential zoning districts. If a choice must be

made between a playground area and a parking area being located near a low-density residential zoning district, the playground shall generally be preferred.

- 15.19.04** A Child Daycare (Large and Center) and an Adult Daycare (Large and Center) are not allowed to be located together in one structure.
- 15.19.05** An Adult Daycare (Large and Center) shall not be located within five hundred (500) feet of a Child Daycare (Large and Center).
- 15.19.06** A College- or University- operated Child Daycare Center shall initially demonstrate to the Administrator, and thereafter provide for the duration of its operation, adequate stacking capacity within the site to accommodate at all times vehicular drop-off and pick-up of children without causing any back-up of such vehicular traffic into any public street(s) serving the Center.

(Ord. PL02336-030719, 05-09-2019; Ord. PL04085-072720; Ord. PL04727-050721; 07-01-2021)

15.20 Kennel and Veterinary Office/Hospital

- 15.20.01** All outdoor kennels must be located to the side or rear of the principal building and shall be fenced with an opaque fence no less than six feet (6') tall.

(Ord. PL02336-030719, 05-09-2019; Ord. PL04727-050721; 07-01-2021)

15.21 Retail Store 25,000 Square Feet or Greater (Use 11.18)

- 15.21.01 Applicability:** The requirements in this Section apply to the following:
 - A.** Any newly created retail store with a gross floor area 25,000 square feet or greater, either by proposed expansion or new construction; and
 - B.** Any new retail tenant with a gross floor area 25,000 square feet or greater within existing development.
- 15.21.02** Use 11.18 shall not exceed a gross floor area of 150,000 square feet.
- 15.21.03** Use 11.18 having a gross floor area ranging between 25,000 and 150,000 square feet shall provide a Community Impact Analysis. This assessment shall be prepared by an independent consultant, qualified by education and experience, chosen by the applicant and approved by the Town, and shall include projected impacts on public services and infrastructure. The analysis shall be submitted for review by the permit-issuing authority. The permit-issuing authority shall review the projected impacts and recommended mitigation measures determined by the analysis and may require the applicant to mitigate any of the projected impacts.
- 15.21.04** Outdoor display areas associated with Use 11.16 shall not exceed ten percent (10%) of the gross floor area of the structure. All areas utilized for outdoor display shall be clearly indicated on all permit applications. Outdoor display must be located in areas specifically designed for outdoor sales and is prohibited in or on designated exterior walkways, parking areas, driveways, and landscape areas.

(Ord. 20140384, 08-18-2014; Ord. PL00264-021317, 03-16-2017; Ord. PL01388-032818, 04-26-2018, Ord. PL02336-030719, 05-09-2019; Ord. PL04727-050721; 07-01-2021)

15.22 Open Air Markets

15.22.01 Open air markets shall be classified as recurring open-air markets, accessory open-air markets or temporary open-air markets.

15.22.02 Recurring Open-Air Market:

- A.** A recurring open-air market is an open-air market which does not qualify as an accessory or temporary open-air market.
- B.** A recurring open-air market shall meet all Ordinance requirements, including, the principal building setback requirements for the district in which the open-air market is located and landscape buffers.
- C.** A recurring open-air market must have the written permission of the owner or the entity in control of the property on which the itinerant merchant is located.
- D.** A recurring open-air market shall provide rest room facilities for merchants and customers.
- E.** A recurring open-air market must demonstrate approval by the Fire Marshal and must meet relevant requirements of the North Carolina Building Code and must obtain all necessary driveway permit approvals.

15.22.03 Accessory Open Air Market:

- A.** An accessory open-air market is an accessory use on a lot with another principal use and which occurs no more than twelve (12) times, each lasting no more than three (3) days, in any twelve (12) month period on the same lot and only operates during daylight hours.
- B.** An accessory open-air market must have the written permission of the owner or the entity in control of the property on which the itinerant merchant is located.
- C.** An applicant for a temporary open-air market must submit a site plan showing the locations of the merchants and may not be situated to encroach into any existing landscape buffer.
- D.** A temporary open-air market shall not encroach upon or disturb traffic movements and pedestrian circulation either within the site or on the adjacent streets and sidewalks.
- E.** An accessory open-air market shall meet setback requirements in which it is located.
- F.** In residential zoning districts, an accessory open-air market is only allowed on a lot with an approved, conforming non-residential use.
- G.** An accessory open-air market shall provide rest room facilities for merchants and customers.

H. An accessory open-air market must demonstrate approval by the Fire Marshal and must meet relevant requirements of the North Carolina Building Code.

I. If the above standards are met, no additional Ordinance requirements are applicable.

15.22.04 Temporary Open-Air Market:

A. See Subsection 15.62 for additional requirements for temporary open-air markets.

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

15.23 Vehicle Sales and Service

15.23.01 A permanent sales office must be located on site.

15.23.02 All vehicles shall be displayed in their normal traveling configuration.

15.23.03 A raised display is allowed subject to the following:

A. Each display may not exceed ten feet (10') in height (as measured from natural grade to top of vehicle or display structure whichever is higher), and

B. The number of raised displays may not exceed one (1) per every 100 feet of primary public way and may not be placed within any landscape buffer and cannot interfere within any required sight distance.

C. Raised displays may only be placed along the primary public way.

15.23.04 Outdoor public address systems (PA) are not allowed.

15.23.05 All nonoperational vehicles, other than those present for scheduled repair, and all non-licensed vehicles must be screened from all public streets with an opaque fence with a height no less than six feet (6').

15.23.06 An impound lot that may occasionally sell a vehicle does not qualify as a "vehicle sales and service" use.

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

15.24 Equipment Sales and Service

15.24.01 A permanent sales office must be located on site.

15.24.02 All vehicles shall be displayed in their normal traveling configuration.

15.24.03 Outdoor public address systems (PA) are not allowed.

15.24.04 All nonoperational vehicles, other than those present for scheduled repair, and all non-licensed vehicles must be screened from all public streets with an opaque fence with a height no less than six feet (6').

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

15.25 Boat or Marine Craft Sale and Service

15.25.01 A permanent sales office must be located on site.

15.25.02 All boats/equipment shall be displayed in their normal traveling configuration. No vehicles shall be parked or stored as a source of parts.

15.25.03 All nonoperational boats, other than those present for scheduled repair, and all non-licensed boats must be screened from all public streets with an opaque fence with a height no less than six feet (6').

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

15.26 Impound Lot/Towing Service

15.26.01 All impounded vehicles must be screened from all public streets with an opaque fence with a height no less than six feet (6').

15.26.02 Storage of impounded vehicles must be set back at least twenty feet (20') from all street rights-of-way.

15.26.03 Adequate security shall be provided to protect impounded vehicles.

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

15.27 Indoor Shooting Range

15.27.01 No indoor shooting range may be authorized or permitted under this Section unless it also meets all requirements imposed by Section 130.01 of the Town of Boone Municipal Code.

15.27.02 Noise. The sound level for all indoor shooting ranges must be controlled in such way that there is no sound emanating from any activities within the building in which the range is located that are audible to the human ear of a person of normal hearing at any border of the tax parcel upon which the range is located, as shown on the tax maps of the Watauga County Tax Administration.

A. If the administrator receives noise complaints from two or more individuals within a 30-day period alleging that activities within the indoor shooting range are producing noise levels in violation of this Section, the administrator will perform a minimum of two site inspections on separate occasions. If the administrator concurs with the complainants that the indoor use has caused or is causing continuous, frequent or repetitive noise, that the use will be found to be in violation of this ordinance.

15.27.03 Odors. No indoor shooting range may emit any continuous, frequent or repetitive odor or any odor-causing substance or compound which is detectable beyond the lot line of the property on which the use is located.

A. For the purposes of establishing initial compliance with this Section, the existence of an odor will be presumed when the lowest mean concentration of the odor-causing substance or compound in the air exceeds published odor threshold values. In order to demonstrate initial compliance with this Section, an odor assessment which accurately represents the concentrations of odor-causing substances or compounds present at the property boundary may be required by the permit-issuing authority. The assessment must adequately reflect the emission rates of the proposed use, source

heights, receptor distance from the source and the effects of buildings, terrain features and other relevant environmental considerations.

- B. For the purposes of maintaining continuous compliance with this Section, odor assessments involving field sampling may be required by the administrator even after a special use permit has been granted.
- C. If the administrator receives odor complaints from two or more individuals within a 30-day period alleging that a use is in violation of this Section, the administrator will perform a minimum of two site inspections on separate occasions. If the administrator concurs with the complainants that a use has caused continuous, frequent or repetitive odors, that use will be found to be in violation of this ordinance.

15.27.04 Construction Standards

- A. Any building in which an indoor shooting range is proposed or operated must meet accepted national standards for the design and construction of an indoor shooting range, and must be designed and constructed in such a way as to eliminate any significant risk of injury to a patron of the range, or a member of the public either inside or outside the range, during the normal operation and use of the range. Such design and construction in accordance with these standards must be certified by a professional architect and/or professional engineer, who must be licensed by the State of North Carolina and in good standing, and who must be experienced or specifically trained, and skilled, in the design and construction, respectively, of indoor shooting ranges.
- B. An indoor shooting range must be constructed and maintained in such way that the structure will contain within the portion(s) of the building in which firearms are discharged, a fired projectile with the greatest structure-penetrating characteristics which is proposed to be fired within the range. Such construction in accordance with this standard must be certified by a professional architect and/or professional engineer, licensed by the State of North Carolina and in good standing, who is experienced or specifically trained, and skilled, in the construction of indoor shooting ranges.

15.27.05 Emissions

- A. Any building in which an indoor shooting range is proposed or operated must be designed and constructed in such way that no lead or other toxic particulate will leave the structure itself or the portion(s) of the structure used for the discharge of firearms. Such design and construction in accordance with this standard must be certified by both a professional architect and professional engineer, each of whom must be licensed by the State of North Carolina and in good standing, and each of whom must be experienced or specifically trained, and skilled, in the design and construction, respectively, of toxin collection systems for indoor shooting ranges. In addition, the applicant for a special use permit must provide manufacturing

information which affirmatively demonstrates that the toxin collection system(s) to be used will meet this standard.

- B.** For the purposes of maintaining continuous compliance with this Section, emissions assessments involving field sampling at the owner’s expense may be required by the administrator on repeated occasions and the owner of the property shall comply with any such requests. In addition, the administrator may, with or without advance notification and with such frequency as to ensure that this standard is continuously met, obtain testing samples from inside and/or outside the indoor shooting range, to measure compliance. The owner and operator of an indoor shooting range must fully comply with requirements and recommendations of the manufacturer of the toxin collection system(s).

15.27.06 When a shooting range is proposed for a particular property, other uses proposed for the same property or application should be closely scrutinized for compatibility, the Town ordinarily disfavoring the combination of an indoor shooting range and other activities designed to attract persons to the property other than those attending the shooting range.

15.27.07 Violation of any of the provisions of this Section, once an indoor shooting range has been issued a special use permit and/or certificate of occupancy, if it involves regulations designed to protect the health or safety of the public, as determined by the Administrator, shall give rise to an immediate suspension of the special use permit and/or certificate of occupancy, and, following notice and an opportunity for a hearing in accordance with this ordinance, permanent revocation of the special use permit and/or certificate of occupancy.

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

15.28 Campground and Recreational Vehicle Park

15.28.01 A proposed park or campground must be at least 5 acres in area.

15.28.02 All spaces must be set back at least fifty feet (50') from all public street rights of way and property lines.

15.28.03 Buildings, structures, and utility facilities must meet the district setback requirements.

15.28.04 Spaces must be at least 2,000 square feet.

15.28.05 Spaces must be designated on the ground by permanent markers or monuments.

15.28.06 All spaces must be located on ground above the base flood elevation and graded to prevent water from ponding.

15.28.07 Driveways meeting all applicable standards must be provided for each space. Additionally, each recreational vehicle space must have an all-weather surface that is at least ten feet (10') wide by thirty feet (30') long.

15.28.08 A public water supply is required.

- 15.28.09** The park may contain a retail sales counter or coin operated machines for the park residents' use only. Any retail sales must be conducted within an enclosed structure and no exterior advertising is allowed.
- 15.28.10** The sale of recreational vehicles within the park is prohibited.
- 15.28.11** Permanent sleeping quarters shall not be permitted within the park, however, one (1) permanent dwelling may be allowed for the park manager or operator. The dwelling site must be designated on the site plan.

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

15.29 Community Garden

- 15.29.01** A community garden must meet the parking requirements of Article 24 but must provide no fewer than two (2) off-street parking spaces.
- 15.29.02** A five foot (5') undisturbed buffer shall be provided along the perimeter of the cultivated area.
- 15.29.03** In low density residential districts, users are restricted to residents within a ¼ mile of the community garden.
- 15.29.04** A community garden shall be placed or designed to minimize impacts to adjacent properties, including run-off of water and chemicals.

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

15.30 Garden

- 15.30.01** Gardens do not require development permits.
- 15.30.02** A garden shall be placed or designed to minimize impacts to adjacent properties, including run-off of water and chemicals.

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

15.31 Forestry

- 15.31.01** Forestry activity is only allowed on forestland that is taxed on the basis of its present-use value as forestland under Article 12 of Chapter 105 of the General Statutes or conducted in accordance with a forest management plan that is prepared or approved by a forester registered in accordance with Chapter 89B of the General Statutes.
- 15.31.02** Trees within a required landscape street yard may not be removed during any forestry activity.
- 15.31.03** Forestry activity may limit the availability of development permits. See Subsection 4.01.01.

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

15.32 Microbrewery and Brewpub

- 15.32.01** Outdoor storage is not allowed.

15.32.02 Shipping for distribution of the malt or distilled beverage and receiving of stock and supplies for the production of the malt or distilled beverage is prohibited between the hours of 9 p.m. and 6 a.m.

15.32.03 All visible emission, odor (related to the production of the malt or distilled beverage), air pollution, noise and dust standards set forth for Manufacturing in Section 15.38 must be met.

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

15.33 Brewery/Distillery

15.33.01 Outdoor storage is not allowed.

15.33.02 All visible emission, odor, air pollution, noise and dust standards set forth for Manufacturing in Section 15.38 must be met.

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

15.34 Brewery/Distillery, Other

15.34.01 All outdoor storage must be screened in accordance with Section 16.57.

15.34.02 All visible emission, odor, air pollution, noise and dust standards set forth for Manufacturing in Section 15.38 must be met.

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

15.35 Wineries

15.35.01 All outdoor storage must be screened in accordance with Section 15.50.

15.35.02 All visible emission, odor, air pollution, noise and dust standards set forth for Manufacturing in Section 15.38 must be met.

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

15.36 Extraction of Earth Materials

15.36.01 The extraction of earth materials (mining or quarrying operations), including the onsite sale of products shall conform to the following requirements:

- A.** Permanent roads, defined as those to be used in excess of one (1) year, within the excavation site shall be surfaced with a dust free material, such as soil cement, bituminous concrete.
- B.** 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.
- C.** A security fence at least six feet (6') high shall be installed where the proposed extraction takes place within 300 feet of a dwelling, school, church, hospital, commercial or industrial building, public building, or public land.

- D. Spoil piles and other accumulations of byproducts shall not be created to a height more than thirty-five feet (35') above the original contour and shall be so graded that the vertical slope shall not exceed a forty-five-degree (45°) angle.

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

15.37 Machine/Welding Shop

- 15.37.01 All operations shall be conducted wholly within fully enclosed structures.
- 15.37.02 Deliveries and shipping shall be between 6 a.m. and 9 p.m.
- 15.4374.03 Unless located in the M1 Zoning District, no outside storage is allowed. In the M1 Zoning District, Subsection 15.38.02 shall apply.
- 15.37.04 The standards of subsections 15.45.04 – 15.45.09 shall apply.

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

15.38 Manufacturing

- 15.38.01 Manufacturing operations shall be conducted wholly within fully enclosed structures.
- 15.38.02 Land area utilized for outdoor storage shall not exceed twenty-five percent (25%) of gross floor area of all buildings within the development.
 - A. Outdoor storage shall be fully screened from view with an opaque screen from all streets and shall be located to the side or rear of the principal building.
- 15.38.03 The Administrator may require verification that the manufacturing operation will meet the performance standards set forth in this Section. Such verification may be made by the manufacturer or qualified expert.
- 15.38.04 **Visible Emissions.** No manufacturing operation is permitted that will produce visible emissions from a stationary source that exceeds an average plume opacity of ten (10) percent.
 - A. The plume opacity of visible emissions from all industrial uses shall be determined by the methods and procedures outlined in the Code of Federal Regulations, Title 40, Part 60 – “Standards of Performance for New Stationary Sources”.
 - B. All measurements will be taken at the point of emission.
 - C. Water vapor which is free of pollutants shall not be considered in measuring opacity.
- 15.38.05 **Odors.** No manufacturing operation shall emit any continuous, frequent or repetitive odor or odor causing substance or compound which is detectable beyond the lot line of the property on which the use is located.
 - A. For the purposes of establishing initial compliance with this Section, the existence of an odor will be presumed when the lowest mean concentration of the odor causing substance or compound in the air exceeds published odor threshold values. In order to demonstrate initial compliance with this Section, an odor assessment which accurately

represents the concentrations of odor causing substances or compounds present at the property boundary may be required by the permit-issuing authority. The assessment must adequately reflect the emission rates of the proposed use, source heights, receptor distance from the source and the effects of buildings, terrain features and other relevant environmental considerations.

- B. For the purposes of maintaining continuous compliance with this Section, odor assessments involving field sampling may be required by the administrator.
- C. If the administrator receives odor complaints from two or more individuals within a 30-day period alleging that a use is in violation of this Section, the administrator will perform a minimum of two site inspections on separate occasions. If the administrator concurs with the complainants that a use has caused continuous, frequent or repetitive odors, that use will be found to be in violation of this ordinance.

15.38.06 Air Pollution.

- A. Any manufacturing operations that emits any “air contaminant” as defined in NC G.S. 143-213 (2) shall comply with applicable state standards concerning air pollution, as set forth in the North Carolina air pollution control law.
- B. No zoning or special use permit may be issued with respect to any development 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 applicant, or that the applicant will be eligible to receive such permits and that the development is otherwise in compliance with applicable air pollution laws.

15.38.07 Electrical Disturbances or Interference

- A. No manufacturing operation shall create any electrical disturbance that adversely affects any operations or equipment other than those of the creator of such disturbance, or [2] Otherwise cause, create, or contribute to the interference with electronic signals (including television and radio broadcasting transmissions) to the extent that the operation of any equipment not owned by the creator of such disturbance is adversely affected.

15.38.08 Noise. The sound level for all manufacturing operations, measured beyond the lot line of the property on which the use is located, may not exceed 65 dbA between 6:00 a.m. and 10:00 p.m., or 45 dbA between 10:00 p.m. and 6:00 a.m. Measurements shall be a time-weighted average over any one-hour period. No one-hour time-weighted average may exceed the 65 or 45 dbA thresholds described in this paragraph.

- A. For the purpose of this Section, noise shall be defined as sound produced directly in connection with light industrial operations, including associated vehicular noise, and audible to the human ear.
- B. Noise shall be measured with a sound level meter (set to the Aweighted scale) which complies with the standards set forth in the “American Standard Specification of

General Purpose Sound Level Meters,” American National Standards Institute. (ANSI S1. 4-1961).

15.38.09 Dust. No industrial use shall create, or cause to be created, any dust which is detectable beyond the lot line of the property on which the use is located.

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

15.39 Parking Lot/Park and Ride

15.39.01 See Section 31.09 for regulations specific to parking lots.

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

15.40 Parking Structure

15.40.01 See Section 25.03 for regulations specific to parking structures.

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

15.41 Self-Storage Facilities

15.41.01 Facilities can only be used for storage of materials and must not be used for assembly, fabrication, processing or repair.

15.41.02 Storage of hazardous, toxic, explosive substances, or any other substance requiring a 704 placard, is prohibited.

15.41.03 Self-storage units accessed by customers on site must be constructed with the compartment doors facing internally.

15.41.04 All warehouse compartment doors accessed by customers on site must open on an internal access driveway having a minimum paved width of twenty feet.

15.41.05 A 100% opaque fence with a minimum of height of six feet and a maximum height of eight feet shall be provided around the portion of the property used for the storage. Fences shall be constructed of wood, brick, stone or other similar materials, but also must be architecturally compatible with any proposed structure.

15.41.06 If the storage facility has a locked and keyed entrance, two staging spaces of at least 35 feet must be located outside of the public right-of-way.

15.41.07 The following activities shall be prohibited on the premises:

- A.** Commercial, wholesale or retail sales, flea markets, peddling, garage sales or other similar types of activities. However, the management of the self-storage mini-warehouse complex may conduct an auction or sale of abandoned or stored materials to settle unpaid storage bills consistent with North Carolina law.
- B.** Habitation of storage units by humans or animals.

15.41.08 Outdoor storage of items other than storage containers shall not exceed 25% of the total land area and must be secured and screened in accordance with Section 15.50.

15.41.09 Storage facilities that use temporary portable storage containers may only leave the portable storage containers in parking and loading areas the length of time it takes to place them in the secured storage area, not to exceed twenty-four (24) hours. Temporary portable storage containers may not be used for on-site advertising.

15.41.10 Storage facilities that store temporary portable storage containers outside of a fully enclosed building may not stack the units unless the units are substantially screened by the required fence, and the fence together with existing mature landscape material or topography result in an opaque screen so that the stacked units are not visible to adjacent landowners or from a public way.

(Ord. PL00982-092517, 12-21-2017; Ord. PL04727-050721; 07-01-2021)

15.42 Outdoor Storage (Principal Use); Recycling Drop-off Station; Recycling and Salvage

15.42.01 A 100 percent opaque fence between six and eight feet (6'-8') in height shall be provided around the perimeter of the area used for outdoor storage.

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

15.43 Electronic and Internet Gaming

15.43.01 An Electronic and Internet Gaming use shall not be located on a lot which is within 2,640 feet of another lot containing an Electronic and Internet Gaming Use as measured from the closest edge of each lot to the other lot.

15.43.02 An Electronic and Internet Gaming use shall not be located on a lot which is within 1,000 feet from a lot upon which a religious assembly, school, library, public park, playground, or daycare center is located as measured from the closest edge of each lot to the other lot.

15.43.03 No Electronic and Internet Gaming use shall be located on any lot which is within 1000 feet from any residential zoning district or residential uses within a mixed-use development as measured from the closest edge of each lot to the other lot.

15.43.04 No more than one (1) Electronic and Internet use may be located on the same lot.

15.43.05 No Electronic and Internet Gaming use may operate between the hours of 10:00 p.m. and 8:00 a.m.

15.43.06 No development permits shall be issued for Electronic and Internet Gaming uses until all required privilege and other licenses are obtained and all required fees have been paid.

15.43.07 A Certificate of Occupancy shall not be issued until the Electronic and Internet Gaming use meets any applicable Federal, State or County requirements, including any requirements of the Appalachian Regional Health Department.

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

15.44 Adult Establishment

- 15.44.01** The requirements of this Section shall apply to all adult establishments as outlined in N. Gen. Stat. Chapter 26A.
- 15.44.02** Separation Requirements:
- A.** No lot containing an adult establishment shall be within 1000 feet of another lot containing an adult establishment.
 - B.** No lot on which an adult hotel or adult motel is located shall be within 2000 feet of another lot containing an adult establishment.
 - C.** No adult establishment shall be located on any lot whose property line is within 1,000 feet of the property line of a religious assembly, school, library, public park or playground, daycare center (except a home daycare center), or residential zone.
 - D.** 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.
- 15.44.03** No more than one (1) adult establishment shall be located within the same structure or portion thereof.
- 15.44.04** Except for adult hotels and motels, no adult establishment may provide sleeping quarters.
- 15.44.05** 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.
- 15.44.06** All signage shall meet the standards of Article 26. 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 square feet (80 ft²) total. Provided, however, in no case shall signage cover more than ten percent (10%) of the area of any building face.
 - C.** A site plan showing the location and number of attached sign(s) must be submitted to the Administrator prior to the issuance of any sign permits to verify compliance with this Section.
 - D.** Promotional materials for advertising shall not be visible to the public from pedestrian sidewalks or walkways.
- 15.44.07** The adult establishment must meet all other applicable provisions of this Ordinance.

15.44.08 The Board of Adjustment shall have no authority to modify or grant variances from the separation distance requirements imposed by this Section.

15.44.09 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.

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

15.45 Secondary Suite (Accessory)

15.45.01 All landowners wishing to have an accessory secondary suite must submit a notarized statement, which has been recorded at the Watauga County Register of Deeds, acknowledging the following:

- A. The principal use of the structure is for a single-family dwelling.
- B. The only occupants who will utilize the structure will be “family”.
- C. The secondary suite will not be used as an “accessory dwelling”.
- D. That the landowner acknowledges that to have an accessory dwelling unit, they must obtain proper zoning and building permits.

15.45.02 A secondary suite proposed for the R3, OI, B1, B2, and B3 zoning districts shall only be allowed in single family dwelling which were in existence as of January 1, 2014.

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

15.46 Home Occupation (Accessory)

15.46.01 A Home Occupation may be 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, and
- 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, and
- C. No external evidence of the conduct of the home occupation shall be visible, other than a sign as permitted in Article 26, and
- D. The home occupation shall not generate traffic volumes or parking area needs greater than would normally be expected in a residential neighborhood, and
- 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, and

- F. The on premise sale and delivery of goods which are not the products of the home occupation are prohibited.

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

15.47 Accessory Dwelling Unit (Accessory)

15.47.01 An accessory dwelling unit may be permitted only when of the following standards is met:

- A. The owner of the dwelling unit resides in the primary residence or the accessory dwelling unit at least ninety percent (90%) of the year, a “year” understood and defined as the preceding twelve (12) month period ending on the date of the application or any inquiry by the administrator.
 - 1. In situations in which an applicant seeks to initiate the use of an accessory dwelling unit and there has been no prior occupancy of either dwelling unit, the owner shall make a written declaration of the intention to reside in the primary residence or the accessory dwelling unit at least ninety percent (90%) of the year, and the written declaration shall acknowledge that should the owner’s residency ever fall below ninety percent (90%) of any subsequent rolling twelve (12) month period, the zoning permit shall be revoked and the right to use the accessory dwelling unit shall cease. The Town shall retain the original declaration and acknowledgment, and a copy of each shall be provided to the owner.
 - 2. The owner and all tenants of the lot comply with all registration and other requirements of Section 15.47, *above*, and for lots not located in a neighborhood conservation district, the owner also notifies all tenants of UDO occupancy limitations.
 - a. In situations in which an applicant seeks to initiate the use of an accessory dwelling unit and there has been no prior occupancy of either dwelling unit, the owner shall make a written declaration of the intention to comply with all registration and other requirements of Section 15.47, *above*, and for lots not located in a neighborhood conservation district, to notify all tenants of UDO occupancy limitations.
 - b. The written declaration shall acknowledge that should the owner or tenants fail to comply with all registration and other requirements of Section 15.47, *above*, or the requirements of this Subsection, the zoning permit shall be revoked and the right to use the accessory dwelling unit shall cease.

- c. An owner who does not reside on the lot for the period described in Subsection 15.47.01(A)(1), *above*, may only allow others to reside on the lot pursuant to a written lease and shall file a copy with the Town. The lease must include provisions that the tenant(s) must comply with the Town's noise ordinance and the Town's occupancy limitations and that violation of the Town's noise ordinance or occupancy limitations shall be considered a material violation of the lease and shall result in the termination of the lease and tenancy.
- 15.47.02** On a single lot, an accessory dwelling unit may have no more than one (1) single family dwelling and one (1) accessory dwelling unit.
- 15.47.03** The occupancy of an accessory dwelling unit shall be limited to no more than two (2) unrelated persons or four (4) members of a family.
- 15.47.04** The owner of an accessory dwelling unit shall provide adequate off-street parking in compliance with Article 24 for the accessory dwelling unit to the side or to the rear of the primary residence.
- A.** In no case shall a front yard area be converted to parking or used to satisfy off-street parking requirements. For purposes of this Section, the "front yard area," "side" or "rear" of the primary residence shall be determined by the location of the street referenced in the physical address of the lot, with the portion of the primary residence closest to said street considered "the front" without regard to the orientation or main entrance of the primary residence.
- 15.47.05** The accessory dwelling unit shall not be served by a driveway separate from any driveway serving the primary residence.
- 15.47.06** An attached accessory dwelling unit shall be designed so that the appearance of the primary residence remains that of a single-family dwelling. The accessory dwelling unit entrance shall be located on the side or in the rear of the single-family residence.
- 15.47.07** An accessory dwelling unit shall be clearly subordinate to the primary residence.
- A.** The floor area of an attached accessory dwelling unit may not be more than fifty percent (50%) of the floor area of the primary residence and may never exceed 800 square feet.
- B.** The floor area of a detached accessory dwelling unit may not be more than fifty percent (50%) of the floor area of the primary residence and may never exceed 600 square feet.
- 15.47.08** Detached accessory dwelling unit are those which are not attached to the primary residence.
- A.** A detached accessory apartment may be located over a garage, workshop, studio or similar structure or built as a free-standing cottage.
- B.** Every detached accessory apartment must be architecturally compatible with the primary residence.

- C. A detached accessory apartment shall be located to the side or rear of the primary residence and its front most point may be no closer to the fronting street than the front most point of the primary residence.
- D. A two-story detached accessory apartment may be allowed only when the primary residence is 1 ½ stories or more.

15.47.09 An accessory dwelling unit must comply with all applicable land use intensity ratios, and the exemption in Section 16.01, *infra*, shall not apply.

15.47.10 At any time when an accessory dwelling unit no longer complies with all applicable requirements of this Section, the zoning permit allowing the use shall be revoked and the right to use the accessory dwelling unit shall cease.

(Ord. 20160438, 03-16-2017; Ord. PL04727-050721; 07-01-2021)

15.48 Drive-Through (Accessory)

15.48.01 A drive-through must be located to the side or rear of the building.

15.48.02 Drive-through lanes must contain a stacking area equal to five (5) standard parking spaces.

15.48.03 Drive-through lanes must not interfere with parking aisles or spaces.

15.48.04 Drive-through lanes must be located, to the extent practical, to avoid the infiltration of headlights and vehicular noise into residential zoning districts.

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

15.49 Outdoor Display (Accessory)

15.49.01 Outdoor display shall not impede pedestrian or automobile traffic.

15.49.02 Use of a parking lot for outdoor display requires a zoning permit.

- A. An applicant must demonstrate that remaining parking fully meets the requirements of this Ordinance.

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

15.50 Outdoor Storage (Accessory)

15.50.01 Outdoor storage shall not impede pedestrian or automobile traffic.

15.50.02 A one-hundred percent (100%) opaque fence between six and eight feet (6'-8') in height shall be provided around the perimeter of the area used for outdoor storage.

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

15.51 Outdoor Dining (Accessory)

15.51.01 Outdoor dining areas shall not impede pedestrian or automobile traffic.

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

15.52 Automated Teller Machines (ATM), Freestanding (Accessory)

- 15.52.01** Freestanding ATM's shall be architecturally compatible with the principal structure on the lot.
- 15.52.02** May have no more than four dedicated parking spaces per machine.
- 15.52.03** Signage must meet the requirements of Article 26.
- 15.52.04** Must not impede pedestrian or automobile circulation.
- 15.52.05** Must have at least a four (4) foot landscaped buffer around the perimeter of the ATM structure.

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

15.53 Produce Stand (Accessory)

- 15.53.01** Produce stands must be located on private property and not in the public right-of-way.
- 15.53.02** Produce stands are not subject to landscaping and community appearance standards.

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

15.54 Poultry (Accessory)

- 15.54.01** The keeping of poultry as an accessory use does not require development permits.
- 15.54.02** Roosters are prohibited. No lot shall contain more than five (5) hens.
- 15.54.03** All poultry shall be contained within a fully fenced area.
- 15.54.04** Poultry areas shall be kept sanitary.
- 15.54.05** Poultry areas shall not be located to the front of any principal building.
- 15.54.06** The keeping of poultry as an accessory use is limited to legally established single-family dwellings.

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

15.55 Small Livestock (Accessory)

- 15.55.01** The keeping of small livestock as an accessory use does not require a zoning permit.
- 15.55.02** Up to two (2) small livestock may be kept as pets.
- 15.55.03** Small livestock shall be contained within a fully fenced area.
- 15.55.04** All areas where the small livestock are kept shall be kept sanitary.
- 15.55.05** The keeping of small livestock as an accessory use is limited to legally established single-family dwellings.

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

15.56 Large Livestock (Accessory)

- 15.56.01** The keeping of large livestock as an accessory use does not require development permits.
- 15.56.02** There may be no more than two (2) large livestock for every acre of grazing area.
- 15.56.03** Large livestock shall be contained within a fully fenced area.
- 15.56.04** All areas where the large livestock are kept shall be kept sanitary.

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

15.57 Bees (Accessory)

- 15.57.01** The keeping of bees as an accessory use does not require development permits.
- 15.57.02** No lot may contain more than five (5) hives.
- 15.57.03** Hives must be screened with an opaque fence at least six feet (6') high and must provide adequate security and signage to prevent inadvertent entry.
- 15.57.04** A water source must be provided.
- 15.57.05** A bait hive placed ten (10') to thirty feet (30') away and at least ten feet (10') above the hives shall be provided.
- 15.57.06** The hive shall be placed at ground level or securely attached to an anchor or stand.
- 15.57.07** The hive shall be removed if the owner no longer maintains the hive or if removal is necessary to protect the health, safety and welfare of the public.

(Ord. PL00981-092517, 03-22-2018; Ord. PL04727-050721; 07-01-2021)

15.58 Gardens (Accessory)

- 15.58.01** Accessory gardens do not require development permits.
- 15.58.02** An accessory garden shall be placed or designed to minimize impacts to adjacent properties, including run-off of water and chemicals.

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

15.59 Swimming Pools, Spas, and Hot Tub (Accessory)

- 15.59.01** Enclosure required:

A. In order to protect unattended children from the risk of drowning:

1. All below-ground outdoor swimming pools, hot tubs, or spas having a depth of eighteen inches (18") or greater at the deepest point shall be completely surrounded by a fence or wall with a height of no less than four feet (4'). The fence or wall may be made of any suitable and durable material. The fence or wall shall be designed so that a four and one-half inch (4 ½") diameter sphere cannot pass through any opening. The principal or accessory building may be used as part of such enclosure.

2. All above-ground swimming pools shall maintain gates at access points into the pool.
3. All gates shall have self-closing and self-latching devices that keep the gate or door closed at all times when not in actual use. However, the door of any building that furnishes part of the enclosure need not be so equipped.
4. Exemption: A portable spa or hot tub with a safety cover that complies with ASTM ES13 entitled "Emergency Standard Performance Specifications for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas, and Hot Tubs", 1989 edition, is exempt from the requirements of this Section.
5. Such uses shall meet the setback requirements for accessory structures.

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

15.60 Caretaker's Residence (Accessory)

- 15.60.01** A caretaker's residence may be allowed as an accessory use provided the following standards are met:
- A. The caretaker's residence shall be clearly accessory to the principal use; and
 - B. The residence shall be occupied by a bona fide caretaker or watchman employed by the principal use on the property; and
 - C. There shall be nor more than one (1) caretaker's residence on the property and it shall be occupied by no more than one (1) family; and the living quarters shall be limited to one (1) floor and constructed so that the exterior of the premises provides a development style uniform with the main structure.
- 15.60.02** The caretaker's residence shall be subject to all applicable intensity and setback requirements.

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

15.61 Vehicular Gate (Accessory)

- 15.61.01** No vehicular gate shall be allowed on any public street.
- 15.61.02** A vehicular gate may be permitted so long as:
- A. The primary purpose of the gate is to provide safety and security for the area located beyond the gate by regulating access of motor vehicles to that area; and
 - B. The vehicular gate shall be staffed twenty-four (24) hours a day so that police and all emergency vehicles will be allowed immediate access without delay, unless all emergency service providers find that such staffing is not necessary; and
 - C. The vehicular security gate is maintained in good operating conditions.

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

15.62 Temporary Uses

15.62.01 General Regulations:

- A. Unless otherwise provided here in, all listed temporary uses are required to obtain a zoning permit in compliance with the regulations of this Section.
- B. Unless expressly permitted no sign may be erected in conjunction with a temporary use.
- C. Only those improvements and modifications minimally necessary for the temporary use to function are permitted.
- D. In the event the landowner fails to remove a temporary structure within the described time frames after the zoning permit authorizing its use has been terminated, the Town may remove the said temporary structure at the expense of the owner, and may seek to recover through collection efforts or a civil action against the owner, the costs of removal, court costs and attorney fees.
- E. A sight triangle ten feet (10') by seventy feet (70') must be observed at all intersections of driveways or streets with adjacent streets.
- F. Temporary uses shall not be subject to the requirements of Article 25 Community Appearance Standards unless provided in this Section.
- G. No required existing landscape buffer may be disturbed for any temporary use.
- H. All temporary uses shall meet all applicable NC Building Codes.
- I. Unless otherwise provided herein, the land use intensity ratios of Section 16.01 shall apply.
- J. Unless otherwise provided herein, landscaping is not required for temporary uses.

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

15.62.02 Temporary Family Health Care Structure: A temporary family health care structure may be permitted as provided in the Table of Temporary Uses, as a temporary use on a lot with Use 1.110 Single-family detached, one dwelling unit per lot, subject to the following conditions:

- A. Occupancy of the structure shall be limited to the caregiver or the mentally or physically impaired person requiring a substantial amount of personal care or attention based on a certified medical need.
- B. The temporary family health care structure shall meet all minimum building spacing requirements set forth in Subsection 16.09.
- C. The temporary family health care structure shall be placed on the lot in such manner that it meets all required setbacks.

- D. No more than one (1) accessory temporary family health care structure per lot shall be allowed.
- E. The applicant must provide a certification by a qualified medical provider that the temporary family health care structure is needed to take care of a mentally or physically impaired person who lives on the same lot who is in need of personal or medical attention.
- F. The location, placement, and type of the temporary family health care structure must be selected so as to minimize any negative effects on adjacent properties.
- G. A permit shall be valid for a period of one (1) year. Applications for extensions for an additional one (1) year period must be filed between thirty (30) to sixty (60) days prior to the expiration of the permit. For each new extension the applicant must demonstrate continuing compliance with this Section and a new certification in accordance with Subsection 16.69.02(F) must be submitted. The applicant can continue to apply for extensions so long as all other requirements of this Section are met.
- H. Upon expiration of the permit or the cessation of the conditions giving rise to the permit, the temporary structure shall be removed from the property within sixty (60) days.

15.62.03 Temporary Construction or Repair Dwelling: A temporary construction or repair dwelling may be permitted as a temporary use while either a Use 1.111 (site built or modular structures) or 1.200 (two-family residences) is being constructed or repaired, subject to the following conditions:

- A. Upon completion, the dwelling under construction or repair must be the principal residence of the owner of the lot.
- B. Only Class A and B manufactured homes may be used as temporary construction or repair dwellings.
- C. The permit may not be issued until the owner of the lot has received a building permit for the construction or repair of the non- temporary dwelling.
- D. The temporary construction or repair dwelling shall be placed on the lot in such manner that it meets all required setbacks.
- E. A permit shall be valid for a period of one (1) year but may be extended for up to two (2) consecutive six (6) month periods upon an application filed no later than thirty (30) days before the end of each permit period. Each extension shall require a finding by the Administrator that significant progress is being made in completing the construction or repair.
- F. The temporary construction or repair dwelling shall be removed within thirty (30) days upon:

1. Expiration of the permit.
2. Expiration or lapse of the building permit for the dwelling under construction or repair.
3. Issuance of a certificate of occupancy or certificate of compliance, as appropriate, for the dwelling under construction or repair.

G. The land use intensity ratios of Section 16.01 do not apply to a temporary construction or repair dwelling.

15.62.04 Temporary Construction Trailer: A temporary construction trailer may be permitted as a temporary use for a temporary office, security shelter or shelter for materials or tools (but not for residential purposes or sales office) incident to construction or development of the premises upon which the temporary construction trailer is located subject to the following conditions:

- A. Temporary construction trailers may only be located on a lot upon which a valid zoning or building permit has been issued.
- B. A temporary construction trailer shall be located at least ten feet (10') away from all road rights-of-way and property lines.
- C. A temporary construction trailer may not be used for residential purposes.
- D. The permit shall be valid for two (2) years from the date of issuance or for a maximum of thirty (30) days after the issuance of a certificate of occupancy, whichever is less; provided however, if the project is multi-family or nonresidential in nature, the temporary use permit may be extended if the approved project is not yet completed and the applicant requests an extension within ninety (90) days prior to the expiration of the permit period. Each such extension may be for one (1) year. The applicant can continue to apply for extensions so long as all other requirements of this Section are met.
- E. The land use intensity ratios of Section 16.01 do not apply to a temporary construction trailer.

15.62.05 Temporary Mobile Medical Unit: A temporary mobile medical unit may be permitted as a temporary recurring use accessory to an existing medical use subject to the following conditions:

- A. A temporary mobile medical unit must be accessory to the principal medical use and related to the care provided by the principal medical use.
- B. A temporary mobile medical unit must be located on the same lot as the principal medical use.
- C. A temporary mobile medical unit may be recurring but shall be limited to one (1) forty-eight (48)-hour period per week.

- D. A temporary mobile medical unit shall not encroach upon or disturb traffic movements and pedestrian circulation either within the site or on the adjacent streets and sidewalks.
- E. A temporary mobile medical unit shall not be subject to Section 16.01 or to Subsection 16.07. Setbacks for temporary mobile medical units shall be ten feet (10') from any street rights-of-way and five feet (5') from any interior boundary.
- F. Landscape buffers must be provided to the extent possible in the setback areas adjacent to the temporary mobile medical unit.
- G. No building may be constructed in association with the temporary mobile medical unit, and none is authorized by a permit for a temporary mobile medical unit.

15.62.06 Temporary Classroom: A temporary structure serving as expansion space for a classroom may be permitted as a temporary use to Use 9.05 Elementary School and Use 11.23 Hospital subject to the following conditions:

- A. A temporary classroom must be accessory and related to the principal use on the lot.
- B. A temporary classroom shall only be allowed at a density that does not exceed one temporary classroom for every five (5) acres.
- C. The temporary classroom shall be placed on the lot in such manner that it meets all required setbacks.
- D. The location, placement, and type of the temporary classroom must be selected so as to minimize any negative effects on adjacent properties.
- E. The land use intensity ratios of Section 16.01 do not apply to a temporary classroom.
- F. Landscape buffers must be provided to the extent the temporary classroom is adjacent to properties not associated with the principal use for the lot for which the temporary classroom serves.
- G. Article 25 Community Appearance Standards shall not apply to temporary classrooms.
- H. The permit shall be valid for three (3) years for Use 11.23 Hospital and ten (10) years for Use 9.05 Elementary School from the date of issuance. The temporary use permit may be extended subject to the following conditions:
 - 1. A one (1) year extension is allowed if a building permit for an approved project for permanent construction which would replace the need for the temporary classroom has been issued prior to the expiration of the temporary permit; and
 - 2. The applicant requests an extension within ninety (90) days prior to the expiration of the temporary permit period.

15.62.07 Temporary Portable Storage Containers: Placement and use of temporary portable storage container are subject to the following conditions and limitations:

- A. Use. Temporary portable storage containers:**
1. Shall only be used for storage of goods and materials.
 2. Storage of hazardous, toxic, or explosive substances, or any other substance requiring a 704 placard is prohibited.
 3. Commercial, wholesale or retail sales, flea markets, peddling, garage sales or other similar types of activities is prohibited.
 4. Habitation of storage units by humans or animals is prohibited.
 5. Shall be placed only on the lot for which the temporary portable storage container is being used.
 6. The following principal use categories which may use portable storage containers in the day-to-day operation of the business are exempt from the requirements set forth in Subsection 15.62.07: Use 14.0 Manufacturing, 16.0 Storage, Use 17.0 Transportation, and Use 18.08 Waste Related Uses.
 7. Property zoned M1 Manufacturing is exempt from the requirements set forth in Subsection 15.62.07.
- B. Number allowed.**
1. Single-family and two-family dwellings units are limited to two (2) temporary portable containers at any given time.
 2. Multi-family developments and mixed-use developments with multi-family dwelling units are allowed at least two (2) temporary portable containers and can have more so long as the total number of temporary portable containers does not exceed 1 container for every 20 dwelling units.
 3. Non-residential commercial developments are allowed at least two (2) temporary portable containers and can have more so long as the total number of temporary portable containers does not exceed 5% of the total vehicular surface area for the total development.
- C. Duration of use.**
1. Single-family and two-family dwelling units may utilize a temporary portable storage container for a period of fourteen (14) consecutive days, with one (1) fourteen (14) day renewal provided a Building Permit has been issued at the address the container is located, up to two (2) times per calendar year.
 2. Each dwelling unit in multi-family and mixed-use developments may utilize a temporary portable storage container for a period of seven (7) consecutive days, up two (2) time per calendar year.

3. Non-residential commercial uses may utilize a temporary portable storage container for a period of sixty (60) consecutive days, up to two (2) times per calendar year.
 4. In any district, a temporary portable storage container being used in connection with or to accommodate the repair, modification or construction of a structure or development may be utilized for the duration of a building permit on the same parcel.
 5. The time, in all instances, shall run from the time of delivery of the container to the time of removal.
- D. Placement.** A temporary portable storage container:
1. Is subject to and shall be placed on a lot so as to comply with all interior setback requirements
 2. Shall be placed so as to minimize negative impacts on adjacent property.
 3. Shall not be placed on a street, sidewalk or trail or within any right-of-way.
 4. Shall be placed within a vehicular surface area though it shall not be placed in any location that would interfere with vehicular or pedestrian circulation or cause reduced visibility at street intersections.
 5. Shall adhere to all applicable building and fire code regulations for the purpose of ensuring safe passage for fire protection, to and from structures, and access to utility shut-off valves.
 6. Shall not be located in any required landscaped area.
 7. May not be stacked on top of each other outside of the provider's storage facility.
- E. Signage:** A sign displaying the container provider contact information is required to be attached to the container. There are no limitations on the amount of signage that can be displayed on a container, however, signage is limited to provider information and cannot include advertisements for any other product or service.
- F. Permitting:**
1. A zoning permit is not required for use of a temporary portable storage container at a dwelling unit.
 2. Non-residential commercial users are required to obtain a zoning permit for any utilization of a temporary portable storage unit for more than 14 consecutive days.

(Ord. PL00982-092517, 12-21-2017; Ord. PL03942-060520, 07-14-2020)

15.62.08 Temporary Staging: Temporary staging is permitted subject to the following conditions:

- A.** Elements used in the staging, other than protective fencing, shall be placed on the lot in such manner that it meets all required setbacks.

- B. The location and placement of the staging area must be placed so as to minimize any negative effects on adjacent properties.
- C. The land use intensity ratios of Section 16.01 do not apply to temporary staging.
- D. The temporary staging area cannot be located on public property unless undertaken by the landowner.
- E. Applicant must have express written permission of landowner to be located at the property.
- F. All elements related to the temporary staging must be removed by the next business day following the issuance of a Certificate of Occupancy or Certificate of Completion for the project in which the staging area was permitted for.

15.62.09 Non-Fixed Site Event Venue

- A. A zoning permit is required for a non-fixed site event.
- B. No more than one (1) event is allowed on a lot per year.
- C. Sufficient parking shall be provided either on site or proof that adequate off-site parking has been acquired.
 - 1. Off-site parking may not leave the host use with inadequate parking.
- D. Adequate security and traffic control shall be provided.
- E. Restroom facilities shall be provided for patrons.
- F. The lot must be maintained in a sanitary state during the event and must be cleaned immediately following the event.
- G. A temporary structure may be permitted subject to the following conditions:
 - 1. The temporary structure shall be placed on the lot in such manner that it meets all required setbacks.
 - 2. The location, placement, and type of the temporary structure must be placed so as to minimize any negative effects on adjacent properties.
 - 3. The land use intensity ratios of Section 16.01 do not apply to a temporary structure.
 - 4. Such structure shall not be erected more than forty-eight (48) hours before the event and must be taken down no later than the next business day following the event.

15.62.10 Carrier-On-Wheels (COW)

- A. The Administrator may allow a COW for providing communications during an emergency in any zoning district.

- B. The Administrator may allow a COW in the O1, B2, B3, U1 or M1 zoning districts for special events if the following conditions are met:
 - 1. The COW may only be erected twenty-four (24) hours in advance of the event.
 - 2. The COW must be taken down immediately following the event, not to exceed twenty-four (24) hours.
 - 3. The COW may not be erected for more than seventy-two (72) hours.
 - 4. The applicant must provide a copy of liability insurance at the time of application.
 - 5. The COW must be fully contained on the property where the event is occurring. A fall-zone equal to the height of the COW must be provided.
 - 6. The COW shall be placed on the lot in such manner that it meets all required setbacks.
 - 7. The land use intensity ratios of Section 16.01 do not apply to a COW.

15.62.11 Yard Sale

- A. Yard sales are not required to obtain a zoning permit.
- B. A yard sale is allowed 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.
- C. Yard sales are allowed to have signage in compliance with Section 26.16.
- D. The land use intensity ratios of Section 16.01 do not apply to a yard sale.
- E. Yard sale participants must have express written permission of landowner to be located at the property.

15.62.12 Itinerant Merchant

- A. An itinerant merchant is required to obtain a privilege license from Town Hall prior to undertaking any retail activity.
- B. An itinerant merchant may not stay on one (1) lot for more than seventy-two (72) hours in a one (1) week period unless the itinerant merchant is participating in an approved Open-Air Market.
- C. An itinerant merchant may not locate on public property, other than public sidewalks, without written permission.
- D. Unless operating in an Open-Air Market, an itinerant merchant must have the written permission of the owner or the entity in control of the property on which the itinerant merchant is located.
- E. An itinerant merchant is not required to obtain a zoning permit, and if the above standards are met, no additional Ordinance requirements are applicable.

15.62.13 Temporary Open-Air Markets

- A. A temporary open air market is one which does not involve land disturbing activity and is the only principal use on a lot and occurs no more than eight (8) times, each lasting no more than three (3) days, in any twelve (12) month period on the same lot and only operates during daylight hours.
- B. An applicant for a temporary open-air market must submit a site plan showing the locations of the merchants.
- C. A temporary open-air market must have the written permission of the owner or the entity in control of the property on which the itinerant merchant is located.
- D. A temporary open-air market shall not encroach upon or disturb traffic movements and pedestrian circulation either within the site or on the adjacent streets and sidewalks.
- E. A temporary open-air market shall provide rest room facilities for merchants and customers.
- F. A temporary open-air market must demonstrate approval by the Fire Marshal and must meet relevant requirements of the North Carolina Building Code and must obtain all necessary driveway permit approvals.
- G. If the above standards are met, no additional Ordinance requirements are applicable.

15.62.14 Temporary Use 9.01 Public Colleges and Universities – Leased “Swing” space

- A. Use 9.01 Public Colleges and Universities may be allowed within the B3, O/I and M1 zoning districts on a temporary basis subject to the following regulations:
 - 1. The particular activity for which a temporary permit is sought must be compatible with other uses allowed within the base zoning district and must meet all requirements of the UDO; *provided* that in no event are residential uses allowed.
 - 2. The applicant must demonstrate sufficient parking and/or transit to serve the planned use. Without limiting the generality of the foregoing, academic classes shall only be approved if the applicant can demonstrate that sufficient parking or transit is provided to the site to accommodate the number of students using the facility.
 - 3. The temporary activity must be conducted pursuant to a lease between the applicant and a private landowner. The lease term may not exceed the duration of the temporary use permit.
 - 4. Signage is allowed subject to the zoning district requirements of UDO Article 26.
 - 5. In the OI and M1 districts, the following additional regulations apply:
 - a. The applicant must submit documentation clearly demonstrating that it has in place a plan to provide permanent space for the use within the time allotted for the temporary use permit. *Provided, however,* that this provision will not

- apply in the event that (i) the use at issue is of its nature time-limited (for example, in the case of a time-limited grant creating a temporary facility need) or (ii) the need for space for the use arises as the result of a force majeure event, such as a fire or flood.
- b. The permit shall be valid for five (5) years from the date of issuance. Upon a showing of unanticipated and extraordinary circumstances delaying plans to permanently accommodate the temporary use, the permit may be extended one (1) time for an additional two (2) years provided the applicant requests the extension within 90 days prior to the expiration of the permit.
 - c. The applicant is permitted to lease the same property for a different temporary use subsequent to the termination of a temporary use permit for another use.
6. In the B3 district, Temporary Use 9.01 shall be allowed until June 30, 2029. After that date, the authorization of Temporary Use 9.01 in the B3 district shall automatically expire without requiring any further action by Town Council, and no such use shall thereafter be permitted in the B3 district. In the B3 district, Temporary Use 9.01 shall be allowed for a development governed by a special use permit or conditional district permit as to which the proposed temporary activities are comparable to the principle uses already allowed under that special use permit or conditional district, as determined by the Administrator. In other cases, landowners may seek modification of the zoning approval to allow for Temporary Use 9.01 in the usual manner provided for requested modifications pursuant to Article 9.

(Ord. PL1019-092917, 12-21-2017; Ord. PL02408-040419, 05-09-2019; Ord. PL04727-050721; 07-01-2021; Ord. PL04727-050721; 07-01-2021)

15.63 College- or University-Operated Community Enterprise

15.63.01 College- or university-operated community enterprises may be allowed within the B1 zoning district subject to the following regulations:

- A. The activities involved in the use must be the same as activities of uses allowed as of right in the zoning district.
- B. The organization operating the community enterprise shall clearly demonstrate that the enterprise is dedicated to meeting the civic, cultural, or informational needs of the community as a whole as opposed to the needs of the college or university alone.
- C. No lot containing a college- or university-operated community enterprise shall be located within 1,000 feet of another lot containing a college- or university– operated community enterprise.
- D. The use must be conducted pursuant to a lease between the applicant and a private owner not affiliated with a college or university.

(Ord. PL02068-110118, 12-18-2018; Ord. PL04727-050721; 07-01-2021; Ord. PL04727-050721; 07-01-2021)

15.64 Solar Energy Systems, Accessory (A-28)

A. General Requirements

1. Solar energy systems as described in this Section are permissible in all zoning districts as an accessory use to a permitted principal use subject to the standards for accessory uses in applicable zoning districts and the specific criteria set forth herein.
2. Solar energy systems that are in disrepair, have not been in use for 180 consecutive days, are not in the process of repair and can be seen from a public street shall be considered abandoned and shall be removed by the property owner.
3. The costs associated with the installation of a solar energy system shall not trigger compliance with or otherwise be counted in the calculations set forth at Subsection 7.05.02.

B. Rooftop Solar Energy Systems

1. The highest point of a rooftop solar energy system shall be permitted to exceed the district height limit of up to fifteen feet (15') above the rooftop to which it is attached. Roof-mounted solar energy systems are not subject to the limitations in Subsection 14.03.07(G).

C. Ground-mounted Solar Energy Systems

1. All ground-mounted solar energy systems shall meet the building street setback requirement of fifteen feet (15') from the street right-of-way line and seven feet (7') from any interior lot line.
2. The maximum lot coverage of a ground-mounted energy system shall not exceed ten percent (10%) of the lot.
3. A ground-mounted solar energy system must be clearly subordinate to the principal structure in all dimensional aspects and shall not exceed fifteen feet (15') in height.
4. A ground-mounted solar energy system shall not be located in an easement unless expressly allowed.
5. Applicants are allowed five percent (5%) of additional impervious surface before additional stormwater requirements, set forth in Article 21, are required.
6. Ground-mounted solar energy systems are not allowed within any required landscape buffer.

(Ord. PL05272-110121, 12-08-2021)

15.65 Electric Vehicle Charging Stations, Accessory (A-29) and Principal (11.37)

A. General Requirements

1. An electric vehicle charging station shall only be installed in standard-size parking space(s).
2. Every electric vehicle charging station and associated parking space(s) shall be installed outside of the public right-of-way.
3. Wheel stops, bollards, or other barriers shall be placed between the electric vehicle charging space and the equipment unless the equipment is designed to be impact-resistant. Alternatively, there shall be a minimum distance of two (2) feet between the curb and the electric vehicle charging equipment.
 - a. The installation of an electric vehicle charging station and any protective measures shall not reduce the size of the parking space.
 - b. Any cords shall be retractable or have a place to hang the connector and cord sufficiently out of the electric vehicle charging space.
 - c. Any cords connecting the charger to a vehicle shall be configured so that they do not cross a driveway, sidewalk, or passenger unloading area.
4. Electric vehicle charging station equipment may encroach 20% into any required landscape buffer provided the equipment shall be placed outside of the critical root zone for any tree.
5. The costs associated with the installation of an electric vehicle charging station shall not trigger compliance with or otherwise be counted in the calculations set forth at Subsection 7.05.02.

B. Electric Vehicle Charging Stations (Accessory Use, A-29)

1. Electric vehicle charging stations installed as accessory uses are exempt from any appearance, landscaping, or stormwater requirement.

C. Electric Vehicle Charging Stations (Principal Use, 11.37)

1. Canopies or other structures associated with Use 11.37 shall meet all setbacks required for the district.
2. When Use 11.37 is created through the conversion of parking spaces in an existing development:
 - a. The applicant shall provide reliable and persuasive evidence (which may include but is not necessarily limited to a parking demand analysis prepared by a qualified engineer) demonstrating that sufficient parking for the development remains after the removal of the parking for the electric vehicle charging station use.
 - b. Two-hundred square feet (200 sq. ft.) of additional impervious surface is allowed before additional stormwater requirements outlined in Article 21 are required.
3. Use 11.37 electric vehicle charging stations shall meet all other ordinance requirements for commercial development.

(Ord. PL05272-110121, 12-08-2021)