TOWN OF BOONE
PLANNING AND INSPECTIONS
680 WEST KING STREET, SUITE C
BOONE, NORTH CAROLINA 28607
828.268.6960

Unified Development Ordinance

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www.townofboone.net

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TITLE I GENERAL PROVISIONS

Article 1 GENERAL PROVISIONS

1.01 Short Title

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

1.02 Authority

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

1.03 Purpose

1.03.01 Purposes of this Ordinance are to:

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

B. Strive to implement the policies and goals contained within officially adopted plans, including the Comprehensive Plan, the Boone 2030 Land Use Plan and other related plans; and

C. Ensure adequate light, air, privacy, and access to property.

1.04 Goals

1.04.01 Goals of this Ordinance are to:

A. Preserve and protect areas and landmarks of historic significance; and

B. Protect water quality; and

C. Protect designated water supply watersheds; and

D. Prevent degradation of natural drainage areas; and

E. Strive to minimize public and private losses due to flood conditions within Special Flood Hazard Areas; and

F. Strive to minimize public and private losses due to slope failure caused by land disturbance of steep and very steep slopes; and

G. Preserve and protect the scenic beauty and natural environment of the Town's hillside areas; and

H. Preserve and protect the overall quality of life for residents and visitors; and

I. Preserve and protect the character of established residential neighborhoods; and

J. Maintain economically vibrant as well as attractive business and commercial areas; and

K. Encourage signage that maintains, enhances, and is compatible with the beauty and unique character of the Town; and

L. Facilitate the creation of an attractive environment; and

M. Retain and expand the Town's employment base; and

N. Facilitate safe and efficient movement of motorists, pedestrians and cyclists; and

O. Encourage public transit; and

P. Encourage walkability and bikeability; and

Q. Support public health through provision of convenient exercise opportunities; and

R. Maintain orderly and compatible land-use and development patterns; and

S. Encourage environmentally responsible development practices; and

T. Promote rehabilitation and reuse of older buildings; and

U. Maintain a range of housing choices and options; and

V. Establish clear and efficient development review and approval procedures; and

W. Protect community property values; and

X. Protect and balance private property rights; and

Y. Bring about eventual improvement or elimination of nonconformities in order to preserve the integrity of this Ordinance and the character of the Town of Boone and its extraterritorial jurisdiction.

1.05 Jurisdiction

1.05.01 This Ordinance shall be effective throughout the Town's planning jurisdiction. The Town's planning jurisdiction comprises the area within the corporate boundaries of the Town of Boone and the Town's extraterritorial jurisdiction (ETJ) as depicted on the official zoning map of the Town of Boone, which is incorporated by reference herein.

1.05.02 A copy of a map showing the boundaries of the Town's planning jurisdiction shall be available for public inspection in the Planning and Inspections Department.

1.06 Effective Date

1.06.01 The provisions of this Ordinance are hereby adopted and effective, as amended, on this date January 1, 2014.

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

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

1.08 Relation to Comprehensive Plan, Boone 2030 Land Use Plan and Other Officially Adopted Plans

1.08.01 It is the intention of the Council that this Ordinance implement the planning policies adopted by the Council for the Town and its extraterritorial planning area, as reflected in the Comprehensive Plan.

1.08.02 The goal of the Council is to implement the Boone 2030 Land Use Plan and other officially adopted plans; however, it recognizes that this is a process that requires continued study and analysis and may occur in stages. While the Council reaffirms its commitment that this Ordinance and any amendment to it be in conformity with adopted plans, the Council hereby expresses its intent that neither this Ordinance nor any amendment to it may be challenged on the basis of any alleged nonconformity with such plans.

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

1.09.01 Except as authorized by Article 7 Nonconformities of this Ordinance, no person may use, occupy, or sell any land or buildings or authorize or permit the use, occupancy, or sale of land or buildings under his control except in accordance with all of the applicable provisions of this Ordinance.

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

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

1.11 Fees

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

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

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

1.12 Severability

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

1.13 Notices

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

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

A. Natural Person:

1. By electronic notice to the person; or
2. By delivering the notice to the person or by leaving a copy thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or
3. By delivering the notice to a person of suitable age and discretion, in a management position, owned or operated by the natural person; or
4. By delivering a copy of the notice to an agent authorized by appointment or by law to be served or to accept service of process; or
5. By mailing a copy of the notice, by regular, certified or registered mail, with or without return receipt requested, addressed to the party to be served at the address designated in the records of the Watauga County Tax Administration unless the Administrator has actual and direct knowledge that the party resides at a different address, in which case the notice shall be addressed accordingly; or
6. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the notice, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt. As used in this Ordinance, "delivery receipt" includes an electronic or facsimile receipt.

B. Domestic or Foreign Corporation:

1. By electronic notice to the officer, director, or managing agent of the corporation; or

2. By delivering a copy of the notice to an officer, director, or managing agent of the corporation or by leaving copies thereof in the office of such officer, director, or managing agent with the person who is apparently in charge of the office; or

3. By delivering a copy of the notice to an agent authorized by appointment or by law to be served or to accept service of process; or

4. By mailing a copy of the notice, by regular, registered or certified mail, with or without return receipt requested, addressed to the officer, director or agent to be served at the address designated in the records of the Watauga County Tax Administration, if any, unless the Administrator has actual and direct knowledge that the party receives mail at a different address, in which case the notice shall be addressed accordingly.

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

   or

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

C. Partnerships:

1. By electronic notice to any general partner or to any attorney-in-fact or agent; or

2. By delivering a copy of the notice to any general partner, or to any attorney-in-fact or agent; or

3. By mailing a copy of the notice, regular, registered or certified mail, with or without return receipt requested, addressed to any general partner, or to any attorney-in-fact or agent to be served at the address designated in the records of the Watauga County Tax Administration, if any, unless the Administrator has actual and direct knowledge that the party receives mail at a different address, in which case the notice shall be addressed accordingly.

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

   or

4. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the not, addressed to any general partner or to any

attorney-in-fact or agent authorized by appointment or by law to be served or to accept service of process in its behalf, delivering to the addressee, and obtaining a delivery receipt. As used in this Ordinance, "delivery receipt" includes an electronic or facsimile receipt; or

5. By leaving copies thereof in the office of such general partner, attorney-in-fact or agent with the person who is apparently in charge of the office.

D. Other Unincorporated Associations and Their Officers:

1. By electronic notice to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society; or
2. By delivering a copy of the notice to an officer, director, managing agent or member of the governing body of the unincorporated association, organization or society, or by leaving copies thereof in the office of such officer, director, managing agent or member of the governing body with the person who is apparently in charge of the office; or
3. By delivering a copy of the notice to an agent authorized by appointment or by law to be served or to accept service of process; or
4. By mailing a copy of the notice, regular, registered or certified mail, with or without return receipt requested, addressed to the officer, director, agent or member of the governing body to be served at the address designated in the records of the Watauga County Tax Administration, if any, unless the Administrator has actual and direct knowledge that the party receives mail at a different address, in which case the notice shall be addressed accordingly.

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

   or

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

E. Service by publication on party that cannot otherwise be served: A party that cannot with due diligence be served by personal delivery, United States mail, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) may be served by publication. Service of notice by publication shall consist of publishing a notice once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if

there is no reliable information concerning the location of the party then in a newspaper circulated in Watauga County.

1.14 Computation of Time

1.14.01 Unless otherwise specifically provided, the time within which an act is to be done shall be computed by excluding the first and including the last day.

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

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

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

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

1.15 Rules of Language and Construction

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

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

B. Tenses and Usage

1. Words used in the singular include the plural. The reverse is also true.
2. Words used in the present tense include the future tense. The reverse is also true.
3. The terms “must,” “will,” “shall” and “may not” are mandatory.
4. When used with numbers, “up to x,” “not more than x” and “a maximum of x” all include “x.”
5. Words importing the masculine gender include the feminine and neuter. The reverse is also true.

1.16 Minimum Requirements

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

1.17 Literal Interpretations

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

1.18 References

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

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

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

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

1.19 Provisions Included in "This Ordinance"

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

1.20 Headings and Illustrations

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

1.21 Current Versions and Citations

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

1.22 Lists and Examples

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

1.23 Calculations and Rounding

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

A. Any fractional result of less than 0.5 must be rounded down to the next (lower) consecutive whole number; and

B. Any fractional result of 0.5 or more must be rounded up to the next consecutive (higher) whole number.

1.24 Determination of Value

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

A. An appraisal may be acceptable if it is completed within two (2) years prior to submittal and evaluates the development in its "as is" condition.

B. A purchase price is recent if transacted within two (2) years.

1.25 Conflict with Private Agreements and Controls

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

1.26 Annexation

1.26.01 If any portion of the territory subject to county jurisdiction is annexed by the Town or taken into the Town's extraterritorial jurisdiction by act of the General Assembly or in accordance with NCGS 160A, Article 4A or NCGS 160A-360, county regulations and powers of enforcement remain in effect until:

A. The Town has adopted regulations for the annexed or extraterritorial area; or

B. A period of sixty (60) days has elapsed following the effective date of annexation or extension of extraterritorial jurisdiction.

Article 2 ADMINISTRATIVE MECHANISMS

2.01 Board of Adjustment

2.01.01 The Board is a quasi-judicial body which acts on specified appeals, variances, major subdivision preliminary plat approval and special use permit requests. Except for major subdivision preliminary plat approval, the decisions by the Board represent the final decision by the Town.

2.01.02 Appointment and Terms of Board of Adjustment

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

1. Number of Town Members: Five (5) regular members of the Board of Adjustment and five (5) alternates shall reside within the Town (hereafter, "resident members").

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

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

of the ETJ falls below a full fraction of the Town's population divided by the total membership of the Board of Adjustment, respectively.

C. Appointment of Members to the Board of Adjustment

1. **Town Appointments:** All Town members of the Board shall be appointed by the Town Council following the procedures of Section 35.01 of the Municipal Code.
2. **ETJ Appointments:**

   a. **Council Procedure:** When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the ETJ and the increased population requires that a new ETJ member be appointed, the Town Council shall adopt a resolution requesting that the Watauga County Board of Commissions appoint a qualified person as a member. Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Watauga County Board of Commissioners. If, after a protracted time, the Council has received a single application or no applications, it may nevertheless request that the Watauga County Board of Commissioners proceed with an appointment.

   b. **Watauga County Board of Commissioners Procedure:** The Watauga County Board of Commissioners shall consider the choices directed to it by the Council. If the Watauga County Board of Commissioners is unwilling to appoint either of the two applicants submitted by the Town Council, it may appoint a person of its own choosing. However, before appointing a new person to the Board, the Watauga County Board of Commissioners must hold a public hearing on the selection.

      i. **Notice:** Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area.

      ii. **Qualifications:** The Watauga County Board of Commissioners shall select appointees only from those who apply at or before the public hearing and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and Ordinances relating to the regulation of development within the Town planning jurisdiction, who agrees to apply in good faith the Town's Unified Development Ordinance and Comprehensive Plan, and who expresses a willingness to serve on the Board. If, despite good faith efforts, enough qualified residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the Watauga County

Board of Commissioners may appoint other residents of the county who are otherwise qualified, including residents of the Town to fill these seats.

iii. The Commissioners shall make the appointment within forty-five days following the public hearing. If the Watauga County Board of Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ.

D. Avoidance of Conflicts of Interest: In making appointments to the Board, both the Town Council and the Watauga County Board of Commissioners shall consider the employment of current Board members and alternates, and their spouses, and shall strive to create such employment diversity upon the Board so as to minimize the likelihood that a conflict of interest with regard to a particular case will prevent the Board from assembling a full Board of eight (8) members or five (5) members, according to the quorum requirements to hear the case. Therefore, in order to be appointed to the Board, an applicant must provide the Town or County with information concerning his or her employment and that of his or her spouse, if any.

E. Term: Regular members and alternates shall be appointed for three (3) year staggered terms, but may continue to serve until their successors have been appointed. Vacancies may be filled for the unexpired terms only. Members may be reappointed to successive terms without limitation.

F. Absences:

1. Absences due to sickness, death or other emergencies of like nature shall be recognized as excused absences and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board. In the event of a long illness or other such cause for prolonged absence, however, as determined by the Administrator and confirmed by the Council, the member shall be replaced.

   a. Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal.

2. Regular Board members shall be automatically removed for unexcused failure to attend three (3) consecutive meetings or for unexcused failure to attend fifty percent (50%) of the regular meetings in any twelve (12) month period. For example, if a member misses six (6) of twelve (12) meetings during a twelve month period and two (2) of the absences are due to the member’s illness, the member will be recorded as having missed four (4) of ten (10) meetings. Alternate members shall likewise be removed for unexcused failure to attend or participate in three (3) consecutive meetings for which the member's attendance is requested.

3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.

4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.

G. Residency: All members must be residents within the Town corporate limits or ETJ. If a regular or alternate resident member moves outside the Town, or if an ETJ regular or alternate member moves outside the ETJ, that shall constitute a resignation from the Board.

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

I. Resignation: A member of the Board may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.

J. Removal: The Administrator or a member of the Town Council may propose removal of a member for good cause related to the performance of Board duties.

1. Before removal, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

2.01.03 Meetings of the Board of Adjustment

A. Schedule: At a time which it establishes, the Board shall conduct a monthly meeting to be held so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Continuation meetings may be scheduled without additional advertising if the date, time, and location of the meeting is adopted and announced by the Board at a duly advertised meeting.

B. Rules of Procedure: The Board shall conduct its meetings in accordance with its duly adopted Rules of Procedure so long as they are not inconsistent with the provisions of this Ordinance or State law. The Rules of Procedure may address any of the following:

1. Scheduling and order of cases before the Board; and

2. Representation; and

3. Intervention of a person other than the applicant or appellant who has a special and substantial interest in the outcome of the case to fully participate as a party in the hearing; and

4. Pre-hearing procedures; and

5. Hearing procedures; and
6. Admissibility of evidence; and
7. Decision-making procedures; and
8. Length of meetings; and
9. Special meetings; and
10. Meeting decorum pursuant to Subsection 6.01.07(B); and
11. Such other matters as may be needed for the effective and proper functioning of the Board.

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

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

2.01.04 Board of Adjustment Officers

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

1. The Board shall designate the Chair and Vice-Chair of any subcommittee.

B. If neither the Chair nor the Vice-Chair are present, the presiding officer shall be elected by majority vote.

C. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

2.01.05 Duties of the Board of Adjustment

A. The Board is a quasi-judicial body that shall hear and decide:

1. Appeals from any order, decision, requirement, interpretation, or determination made by the Administrator, as provided in Article 6 Board of Adjustment Hearings.
2. Applications for special-use permits, as provided in Article 6 Board of Adjustment Hearings.
3. Applications for variances, as provided in Article 6 Board of Adjustment Hearings.

4. Applications for major subdivision preliminary plat approval, as provided in Article 6 Board of Adjustment Hearings.
5. Appeals of the grant or denial of an application for a Certificate of Appropriateness by the Historic Preservation Commission.
6. Any other matter the Board is required to act upon by any other Town Ordinance.

B. Limitations on the Powers of the Board of Adjustment

1. No individual member of the Board shall purport to speak or act on behalf of the Board without action by the Board or authorization in the Board's duly adopted Rules of Procedure explicitly authorizing the member to speak or act on its behalf.
2. No individual member of the Board, or the Board itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Board to speak or act on its behalf.
3. Without an express grant of authority or explicit authorization by the Council, no individual member of the Board, or the Board itself, may direct Staff to take action requiring the expenditure of Town funds.
4. The Board shall not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Board on tasks assigned by the Town Council or its designee.
5. The Board may create subcommittees or working groups within its membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources must be approved by the Town Manager or his or her designee.

2.02 Planning Commission

2.02.01 The Planning Commission is an advisory board which makes recommendations to Council on future growth and development issues that affect the Town. The Planning Commission reviews and makes recommendations to the Council pursuant to Subsection 2.02.06.

2.02.02 Appointment and Terms of Planning Commission Members

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

1. Number of Town Members: Eight (8) members of the Planning Commission shall reside within the Town. To the extent a qualified person can be found, one of the Town members shall be a resident of Boone and a full-time student of Appalachian State University.

2. Number of ETJ Members: Five (5) members shall reside within the Town's extraterritorial planning area (hereafter "ETJ"). Should the Town's ETJ be expanded or the ratio of the population of the ETJ relative to the population of the Town increase or decrease, in accordance with N. C. Gen. Stat. §160A-362 and as specified herein, the Town will adjust the number of members from the ETJ in order to maintain proportional representation based on population for residents of the ETJ. There shall be at all times at least one representative of the ETJ on the Planning Commission.

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

C. Appointment of Members to the Planning Commission:

1. **Town Appointments:** All Town members of the Planning Commission shall be appointed by the Town Council following the procedures of Section 35.01 of the Municipal Code.

2. **ETJ Appointments:**

   a. **Council Procedure:** When an ETJ member vacancy exists as the result of the expiration of a term, resignation, or because a new area is brought into the

ETJ and the resulting increased population requires that a new ETJ member be appointed, the Town Council shall adopt a resolution requesting that the Watauga County Board of Commissions appoint a qualified person to serve as a member. Prior to adopting the resolution, when it pertains to positions created by vacancy due to the expiration of a term or resignation of a member, the Town Council may itself solicit applications for the position, and it may transmit its two top choices for each position to the Watauga County Board of Commissioners. If, after a protracted time, the Council has received a single application or no applications, it may nevertheless request that the Board of Commissioners proceed with an appointment.

b. **Watauga County Board of Commissioners Procedure:** The Watauga County Board of Commissioners shall consider the choices directed to it by the Council. If the Board of Commissioners is unwilling to appoint either of the two applicants submitted by the Town Council, it may appoint a person of its own choosing. However, before appointing a new person to the Planning Commission, the Watauga County Board of Commissioners must hold a public hearing on the selection.

i. **Notice:** Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area.

ii. **Qualifications:** The Watauga County Board of Commissioners shall select appointees only from those who apply at or before the public hearing and are otherwise qualified. A qualified person is one who lives in the ETJ, who expresses a willingness to familiarize herself with the Town's UDO, Comprehensive Plan and all other duly adopted plans and Ordinances relating to the regulation of development within the Town planning jurisdiction, and who expresses a willingness to serve on the Planning Commission. If, despite good faith efforts, enough qualified residents of the ETJ cannot be found to fill the seats reserved for residents of such area, then the Watauga County Board of Commissioners may appoint other residents of the county who are otherwise qualified, including residents of the Town to fill these seats.

iii. The Commissioners shall make the appointment within forty-five days following the public hearing. If the Watauga County Board of Commissioners fails to make an appointment within ninety (90) days after receiving a resolution from the Town Council requesting that it be made, the Council may make the appointment, but the person appointed shall reside in the ETJ.

D. Term: Planning Commission members shall generally be appointed for four (4) year staggered terms, but members may continue to serve until their successors have

been appointed. The Appalachian State University student member shall serve a term of one (1) year. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur only for the unexpired remainder of the term.

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

E. Absences:

1. Absences due to sickness, death or other emergencies of like nature shall be recognized as excused absences and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board.
   a. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings.
   b. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced.
   c. Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal.
2. Planning Commission members shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the regular meetings in any twelve month period.
3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.
4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.

F. Residency: All members must be residents within the Town corporate limits or ETJ. If a resident member moves outside the Town or if an ETJ member moves outside the ETJ, that shall constitute a resignation from the Planning Commission, effective upon the date a replacement is appointed by the Council.

G. Resignation: A member of the Planning Commission may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.

H. Removal: The Administrator or a member of the Town Council may propose removal of a member for any other good cause related to the performance of Board duties.

1. Before removal, the member shall be given an opportunity to appear before the Town Council to address the issues involved.

2.02.03 Meetings of the Planning Commission

A. Schedule: The Planning Commission shall conduct a meeting no less than quarterly, or more often as it shall determine or require, to be held so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Continuation meetings may be scheduled without additional advertising if the date, time, and location of the meeting is adopted and announced by the Commission at a duly advertised meeting.

1. The Planning Commission shall also attend any public hearing on proposed Ordinance amendments. These public hearings will be scheduled no less frequently than on a quarterly basis in February, May, August and November.

B. Rules of Procedure: Since the Commission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Article 6. However, it shall conduct its meetings so as to obtain necessary information and to promote the free and full exchange of ideas.

1. In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Planning Commission, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question or if no one is designated the Commission can elect a presiding officer by majority vote.
2. The agenda shall include only those matters within the responsibilities and powers of the Planning Commission as provided herein.
   a. Absent an emergency matter, which can be placed upon the agenda by a unanimous vote of those present, only matters on the published agenda may be acted upon by the Commission.
   b. Issues considered under agenda items entitled, "other matters" or similar language shall only be for information, and other items or issues for information may be added to the agenda by majority vote of those present.
3. Meetings of the Planning Commission or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.
4. The business of the Planning Commission or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Planning Commission or subcommittee shall be respectful to each other and shall avoid interrupting each other.

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

1. Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin Board for that purpose in Town Hall, unless a longer notice is required by this Ordinance or State law. If an agenda has been distributed to members of the Commission, it shall also be posted.

    a. An "official meeting" occurs whenever a regularly scheduled meeting of the Planning Commission or subcommittee occurs, whether or not a quorum is present, or a "special meeting" when a majority of the Planning Commission or subcommittee meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business.

    b. "Deliberate" includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision.

    c. An "emergency meeting" is one that concerns generally unexpected circumstances which require the immediate consideration of the Planning Commission or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

2. A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.

3. Minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or subcommittee.

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

D. Speakers: At any meeting of the Planning Commission or subcommittee, if the meeting is opened for public comment, any person wishing to address the body or subcommittee shall state his or her name and whether or not he or she is a resident of the Town or ETJ.

1. Speakers shall be recognized in the order in which they have signed up.

2. Unless a different time limit is adopted by the Planning Commission or subcommittee, no member of the public shall be allowed to speak for more than five minutes.

3. Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Commission or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.

4. All persons addressing the Commission or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

2.02.04 Quorum and Voting

A. A quorum is necessary for the Planning Commission to take official action.

1. A quorum shall consist of at least seven (7) members.

B. All actions or recommendations of the Planning Commission or subcommittee are only effective or adopted upon majority vote of the members present, following a motion and second.

1. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Council, the committee, task force, or advisory body shall not only report the action or recommendation adopted, but the vote by which it was adopted.

2. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.

3. A roll call vote shall be taken upon the request of any member.

4. ETJ members may vote on all matters considered by the Commission, regardless of the location of the property affected.

2.02.05 Planning Commission Officers

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

B. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

2.02.06 Powers and Duties of Planning Commission

A. The Planning Commission may:

1. Make studies of the area within its jurisdiction and surrounding areas; and
2. Determine objectives to be sought in the development of the study area; and
3. Prepare and adopt plans for achieving these objectives; and
4. Develop and recommend to the Council policies, Ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner. The Planning Commission shall not, however, have the power to "initiate" changes to this Ordinance, as the term "initiate" is used in, Section 9.02; and
5. Advise the Council concerning the use and amendment of means for carrying out plans; and
6. Make findings and recommendations to the Council concerning proposed zoning text and map amendments, as provided for and in compliance with Section 9.05; and
7. Review and either approve or deny proposed minor subdivision requests when a portion of the land to be subdivided lies within a Designated Water Supply Watershed District, based upon application of Articles 5 and 29 of this Ordinance; and
8. Perform any other related duties that the Council may direct.

B. Limitations on Powers of the Planning Commission

1. No individual member of the Planning Commission shall purport to speak or act on behalf of the Commission without action by the Commission explicitly authorizing the member to speak or act on its behalf; and
2. No individual member of the Planning Commission, nor the Planning Commission itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Commission to speak or act on its behalf; and

3. Without an express grant of authority or explicit authorization by the Council, no individual member of the Planning Commission, nor the Commission itself, shall direct Staff to take action requiring the expenditure of Town funds; and

4. The Planning Commission shall not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Planning Commission on tasks assigned by the Town Council or it's designee; and

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

2.02.07 Advisory Committees

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

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

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

Administrator shall notify in writing any member for whom one more absence will trigger removal. In addition, the Administrator or a member of the Council may propose removal of a member for any other good cause related to the performance of committee duties, but before removal on that basis, the member shall be given an opportunity to appear before the Council to address the issues involved.

C. Nothing in this Section shall prevent the Council from establishing independent advisory groups, committees, or commissions to make recommendations on any issue directly to the Council.

2.03 Community Appearance Commission

2.03.01 The Community Appearance Commission is an advisory board which makes recommendations to Council on visual appearance, community beautification, and landscape development that affect the Town and reviews development requests pursuant to Subsection 2.03.06.

2.03.02 Appointment and Terms of Community Appearance Commission Members

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

B. **Terms**: Community Appearance Commission members shall be appointed for three (3) year staggered terms.

1. Members may continue to serve until their successors have been appointed.
2. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur for the unexpired remainder of the term.
3. Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

C. **Absences:**

1. Absences due to sickness, death or other emergencies of like nature shall be recognized as excused absences and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Board.
   a. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member’s illness, the member will be recorded as having missed four of ten meetings.
   b. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced.
   c. Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal.
2. Community Appearance members shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the regular meetings in any twelve month period.
3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.

4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.

D. Resignation: A member of the Community Appearance Commission may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.

2.03.03 Meetings of the Community Appearance Commission

A. Schedule: The Community Appearance Commission shall conduct a meeting no less than quarterly, or more often as it shall determine or require, to be held so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Continuation meetings may be scheduled without additional advertising if the date, time, and location of the meeting is adopted and announced by the Community Appearance Commission at a duly advertised meeting.

B. Rules of Procedure: Since the Commission has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Article 6. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

1. In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Community Appearance Commission, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question or if no one is designated the Commission can elect a presiding officer by majority vote.

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

   a. Absent an emergency matter, which can be placed upon the agenda by a unanimous vote of those present, only matters on the published agenda may be acted upon by the Commission.

   b. Issues considered under agenda items entitled, "other matters" or similar language shall only be for information, and other items or issues for information may be added to the agenda by majority vote of those present.

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

4. The business of the Community Appearance Commission or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Community Appearance Commission or

subcommittee shall be respectful to each other and shall avoid interrupting each other.

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

1. Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin board for that purpose in Town Hall, unless a longer notice is required by this Ordinance or State law. If an agenda has been distributed to members of the Commission, it shall also be posted.

    a. An "official meeting" occurs whenever a regularly scheduled meeting of the Community Appearance Commission or subcommittee occurs, whether or not a quorum is present, or when a majority of the Community Appearance Commission or subcommittee meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business.

    b. "Deliberate" includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision.

    c. An "emergency meeting" is one that concerns generally unexpected circumstances which require the immediate consideration of the Community Appearance Commission or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

2. A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.

3. Minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or subcommittee.

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

D. Speakers: At any meeting of the Community Appearance Commission or subcommittee, if the meeting is opened for public comment, any person wishing to address the body or subcommittee shall state his or her name and whether or not he or she is a resident of the Town or ETJ.

1. Speakers shall be recognized in the order in which they have signed up.

2. Unless a different time limit is adopted by the Community Appearance Commission or subcommittee, no member of the public shall be allowed to speak for more than five minutes.

3. Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Community Appearance Commission or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.

4. All persons addressing the Community Appearance Commission or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

2.03.04 Quorum and Voting

A. A quorum is necessary for the Community Appearance Commission to take official action.

1. A quorum shall consist of a simple majority of the appointed members.

B. All actions or recommendations of the Community Appearance Commission are only effective or adopted upon majority vote of the members present, following a motion and second.

1. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Council or Planning Commission, the Community Appearance Commission shall not only report the action or recommendation adopted, but the vote by which it was adopted.

2. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.

3. A roll call vote shall be taken upon the request of any member.

2.03.05 Community Appearance Commission Officers

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

B. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

2.03.06 Powers and Duties of the Community Appearance Commission

A. The Community Appearance Commission may:

1. Make studies and recommend to the Council plans, goals, and objectives relating to the visual appearance, community beautification, landscape development, and redevelopment of the Town's planning area; and
2. Develop and recommend to the Council policies, Ordinances, administrative procedures, and other means for carrying out plans for community beautification in a coordinated and efficient manner. The Community Appearance Commission shall not, however, have the power to “initiate” changes to this Ordinance, as the term “initiate” is used in Section 9.02; and
3. Respond to requests made by the Administrator for recommendations concerning the suitability of site landscaping for proposed special use permits; and
4. Upon request of the Administrator, review and approve or reject requests for approval of alternative means to address the Community Appearance Standards of Article 25, as well as when such approval is a condition adopted by the Board in connection with the issuance of a special use permit or one adopted by the Council in a conditional zoning determination; and
5. Perform any other duty assigned by the Council which is authorized pursuant to N.C. Gen. Stat. § 160A-452.

B. Limitations on Powers of the Community Appearance Commission

1. No individual member of the Commission shall purport to speak or act on behalf of the Commission without action by the Commission explicitly authorizing the member to speak or act on its behalf; and
2. No individual member of the Commission, nor the Commission itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Commission to speak or act on its behalf; and

3. Without an express grant of authority or explicit authorization by the Council, no individual member of the Commission, nor the Commission itself, shall direct Staff to take action requiring the expenditure of Town funds; and

4. The Community Appearance Commission shall not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Community Appearance Commission on tasks assigned by the Town Council or its designee; and

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

2.04 Historic Preservation Commission

2.04.01 The Historic Preservation Commission is responsible for the inventory of historical, architectural and culturally significant properties within the Town of Boone corporate limits and ETJ. The Historic Preservation Commission also makes recommendations to Council to promote, enhance and preserve the character and historic landmark or district in the Town's planning area. The Historic Preservation Commission operates pursuant to Subsection 2.04.06.

2.04.02 Appointment and Terms of Historic Preservation Members

A. Number of Members: There shall be a Historic Preservation Commission consisting of seven members, all appointed by the Town Council.

1. All members must be residents of the Town's planning jurisdiction, with no fewer than five (5) member's residents of the Town and up to two (2) member's residents of the Town's extraterritorial planning jurisdiction (hereafter "ETJ").
2. Two (2) Town Council members shall serve on the Commission.
3. At least four (4) of the members of the Commission shall have demonstrated special interest, experience, or education in history, architecture, archaeology, or related fields, and to the extent persons may be found with the stated qualifications, the Town Council shall seek to appoint two persons with significant experience or knowledge in historic preservation, one person with significant experience or knowledge in building construction, and one person with significant experience or knowledge in architecture. The required special interest, experience or education for four members, and the specialized experience or knowledge to meet these goals may be held by a Town Council member or any other member of the Commission.

B. Terms:

1. Other than Town Council Members, Historic Preservation Commission members shall be appointed for three (3) year staggered terms, but members may continue to serve until their successors have been appointed.
2. Town Council members shall be appointed for one (1) year terms.
3. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur only for the unexpired remainder of the term.
4. Except for Town Council members who may serve as many terms as appointed, members may be appointed to no more than two (2) successive terms, but a former member may be reappointed following a one-year period of non-membership.

C. Absences:

1. Absences due to sickness, death or other emergencies of like nature shall be recognized as excused absences and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Commission.

   a. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings.

   b. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced.

   c. Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal.

2. Historic Preservation members shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the regular meetings in any twelve month period.

3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.

4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.

D. Residency: All members must be residents within the Town corporate limits or ETJ. If a resident member moves outside the Town of if an ETJ member moves outside the planning jurisdiction that shall constitute a resignation from the Historic Preservation Commission, effective upon the date a replacement is appointed by the Council.

E. Resignation: A member of the Historic Preservation Commission may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.

2.04.03 Meetings of the Historic Preservation Commission

A. Schedule: The Historic Preservation Commission shall conduct a meeting no less than quarterly, or more often as it shall determine or require, to be held so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Continuation meetings may be scheduled without additional advertising if the date, time, and location of the meeting is adopted and announced by the Historic Preservation Commission at a duly advertised meeting.

B. Rules of Procedure: The Historic Preservation Commission shall conduct its meetings in accordance with its duly adopted rules of procedures so long as they are not

inconsistent with the provisions of this Ordinance or State law, and the Commission shall comply with the requirements of Article 8. The Commission shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas. When exercising authority over any individual property in accordance with Sections 8.03 and 8.06 of this Ordinance, it shall conduct itself in a quasi-judicial manner.

1. In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Historic Preservation Commission, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question or if no one is designated the Commission can elect a presiding officer by majority vote.
2. The agenda shall include only those matters within the responsibilities and powers of the Historic Preservation Commission as provided herein.
    a. Absent an emergency matter, which can be placed upon the agenda by a unanimous vote of those present, only matters on the published agenda may be acted upon by the Commission.
    b. Issues considered under agenda items entitled, “other matters” or similar language shall only be for information, and other items or issues for information may be added to the agenda by majority vote of those present.
3. Meetings of the Historic Preservation Commission or subcommittee shall proceed in the following order: adoption of an agenda, approval of the minutes, unfinished business, new business, informal discussion, and public comment, when public comment is to be accepted. By majority vote of the members in attendance, the order of business may be altered.
4. The business of the Historic Preservation Commission or subcommittee shall be conducted in such manner as to afford all members an opportunity to speak. However, no member shall generally address the body until first recognized by the Chair, and members of the Historic Preservation Commission or subcommittee shall be respectful to each other and shall avoid interrupting each other.

C. Open Meetings: At all times the Historic Preservation Commission shall conduct its meetings in compliance with the North Carolina Open Meetings law, codified as N.C. Gen. Stat. §§ 143-318.9 et seq. (hereafter, “the law”). At a minimum, all meetings of the Historic Preservation Commission or any subcommittee, advisory group, or working group of the Commission, by whatever name or designation (hereafter referred to as a “subcommittee”) shall require all of the following:

1. Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin board for that purpose in Town Hall, unless a longer notice is required by this

Ordinance or State law. If an agenda has been distributed to members of the Commission, it shall also be posted.

a. An "official meeting" occurs whenever a regularly scheduled meeting of the Historic Preservation Commission or subcommittee occurs, whether or not a quorum is present, or when a majority of the Historic Preservation Commission or subcommittee meet, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business.

b. "Deliberate" includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision.

c. An "emergency meeting" is one that concerns generally unexpected circumstances which require the immediate consideration of the Historic Preservation Commission or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

2. A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.

3. Minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Commission or subcommittee.

a. Minutes of the Historic Preservation Commission or subcommittee shall be subject to revision and adoption by the group as a whole.

2.04.04 Quorum and Voting

A. A quorum is necessary for the Historic Preservation Commission to take official action.

1. A quorum shall consist of a simple majority of the appointed members.

B. All actions or recommendations of the Historic Preservation Commission are only effective or adopted upon majority vote of the members present, following a motion and second.

1. In the case of a divided vote on any question on which the Commission is required to act, the record shall include the vote of each member. When such action is to be reported to the Council or Planning Commission, the Historic Preservation Commission shall not only report the action or recommendation adopted, but the vote by which it was adopted.

2. Proxy voting is not allowed, but a member who cannot be physically present may participate in the meeting by electronic or telephonic means so long as the member can hear all deliberations and proceedings of the Commission, and the members of the Commission can hear the member.

3. A roll call vote shall be taken upon the request of any member.
4. All members may vote on all matters considered by the Commission, regardless of the location of the property.

2.04.05 Historic Preservation Commission Officers

A. Unless the Town Council designates the Chair and Vice-Chair of the Historic Preservation Commission, it shall retain the power to choose its own Chair and Vice-Chair.

1. The Historic Preservation Commission shall designate the Chair and Vice-Chair of any subcommittees.
2. The people so designated shall serve in these capacities for terms of one (1) year, with eligibility for unlimited re-appointment.
3. Vacancies in these offices shall be filled for the unexpired terms only.

B. The Chair and Vice-chair may take part in all deliberations and vote on all issues.

2.04.06 Powers and Duties of Historic Preservation Commission

A. The Historic Preservation Commission shall, in accordance with the procedures of Article 8 of this Ordinance, have the following powers:

1. Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance; and
2. Recommend to the Town Council areas to be designated by Ordinance as "Historic Districts;" modification of Historic District boundaries; and individual structures, buildings, sites, areas, or objects to be designated by Ordinance as "Landmarks”; and
3. Recommend to the Town Council criteria and procedures for the protection and preservation of Historic Districts and Landmarks; and
4. Recommend to the Town Council that designation of any area as an Historic District or part thereof, or designation of any building, structure, site, area, or object as a Landmark, be revoked or removed for cause; and
5. Conduct educational programs with respect to historic properties and districts within its jurisdiction, including but not limited to programs of recognition for significant historic properties, and programs to educate property owners of possible tax benefits associated with historic designation; and
6. Cooperate with the State, federal, and local governments in pursuance of the preservation and protection of areas and properties deemed to be of special significance in terms of their history, prehistory, architecture and /or culture, and contract, when authorized by the Town Council, with the State of North Carolina or the United States of America, or any agency of either for that purpose; and

7. Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof, provided that no member, employee or agent of the Commission may enter any private building or structure without the express consent of the owner or occupant thereof; and
8. Prepare and recommend the official adoption of a preservation element as part of the municipality's comprehensive plan; and
9. Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, and identify and propose preservation alternatives to owners; and
10. Perform any other related duties that the Council may direct.

B. Limitations on Powers of the Historic Preservation Commission

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

2.05 Tree Board

2.05.01 The Tree Board is an advisory board which makes recommendations, studies and educational programs relating to the urban forest within the Town's jurisdiction pursuant to Subsection 2.05.05.

2.05.02 Appointment and Terms of Tree Board Members

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

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

B. Terms: Tree Board members shall be appointed for two [2] year staggered terms, but members may continue to serve until their successors have been appointed.

1. Vacancies which occur for reasons other than the expiration of term shall be filled as they occur for the unexpired remainder of the term.
2. Members may be appointed to no more than three successive terms. A former member may be reappointed following a one-year period of non-membership.

C. Absences:

1. Absences due to sickness, death or other emergencies of like nature shall be recognized as excused absences and such absences and the meetings missed for such excused absences shall not be counted in the calculations toward automatic removal from the Commission.
   a. For example, if a member misses six of twelve meetings during a twelve month period and two of the absences are due to the member's illness, the member will be recorded as having missed four of ten meetings.
   b. In the event of a long illness or other such cause for prolonged absence, as determined by the Administrator and confirmed by the Council, the member shall be replaced.
   c. Council may take specific action to excuse the absences and reappoint a member after being informed by the Administrator of the member's removal.
2. Tree Board members shall be automatically removed for failure to attend three (3) consecutive meetings or for failure to attend fifty percent (50%) of the regular meetings in any twelve month period.

3. The Administrator shall notify in writing any member for whom one more absence will trigger removal.

4. The Administrator shall notify the member and Town Council when a member has exceeded the allowable number of unexcused absences.

D. Resignation: A member of the Tree Board may resign by notifying the Mayor, Town Manager, or Administrator. A resignation shall be effective at the time a replacement member has been appointed unless the member declares a date certain in the resignation.

2.05.03 Meetings of the Tree Board

A. Schedule: The Tree Board shall conduct a meeting no less than quarterly (in order to meet the requirements of Tree City USA), or more often as it shall determine or require, to be held so long as there are items for its consideration, and it may schedule additional meetings ("continuation meetings" and "special meetings"), as necessary, so long as all notice requirements are met. Continuation meetings may be scheduled without additional advertising if the date, time, and location of the meeting is adopted and announced by the Tree Board at a duly advertised meeting.

B. Rules and Procedure: Since the Board has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Article 6. However, it shall conduct its meetings so as to obtain necessary information and to promote the free and full exchange of ideas.

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

1. Notice of all official meetings, other than an emergency meeting, by posting of the date and time of the meeting at least 48 hours in advance on the bulletin Board for that purpose in Town Hall. If an agenda has been distributed to members of the Tree Board or subcommittee, it shall also be posted.

   a. An "official meeting" occurs whenever a regularly scheduled meeting of the Tree Board or subcommittee occurs, whether or not a quorum is present, or when a majority of the Tree Board meets, whether in person or by electronic means such as conference call or e-mail, to conduct a hearing, deliberate, take action, or otherwise transact public business.

   b. "Deliberate" includes examining, weighing or reflecting upon the reasons for or against a possible decision and also includes the collective acquisition and exchange of facts preliminary to a decision.

   c. An "emergency meeting" is one that concerns generally unexpected circumstances which require the immediate consideration of the Tree Board

or subcommittee. In the event of an emergency meeting, a local news medium must be notified prior to the meeting of the date, time and subject matter of the meeting.

2. A meeting which is open to the public, except as to a closed session conducted in accordance with the law for a reason authorized by the law.

3. Full and accurate minutes of the meeting, a copy of which shall be provided to the Town Clerk, once they are approved by the Tree Board or subcommittee.

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

D. In the absence of the Chair, the Vice-Chair shall conduct any meeting of the Tree Board, and in the absence of both officers, the Mayor may designate a person to act as Chair for the meeting in question or if no one is designated the Board can elect a presiding officer by majority vote.

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

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

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

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

1. If there is a signup sheet provided, speakers shall be recognized in the order in which they have signed up.

2. Unless a different time limit is adopted by the Tree Board or subcommittee, no member of the public shall be allowed to speak for more than five minutes.

3. Should more than one person wish to make substantially the same comments regarding the same subject, or where a group of persons supports or opposes the same positions, the presiding officer may require that all such persons designate a spokesperson for their group to address the Tree Board or subcommittee, and the presiding officer may allot a larger amount of time for the presentation of the group position by the spokesperson.

4. All persons addressing the Tree Board or subcommittee shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. Should any person present during a public comment period substantially interfere with the ability of a person offering public comment or engage in behavior which violates norms of accepted decorum, or should a person offering public comment engage in behavior which violates norms of accepted decorum, after warning such person(s) and, except in a situation where there is a risk of harm to any person present, providing such person(s) the opportunity to alter the behavior to bring it into conformity with norms of accepted decorum, the presiding officer may direct that such person(s) be removed from the meeting.

2.05.04 Quorum and Voting

A. A quorum shall consist of a simple majority of the appointed members.

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

C. A roll call vote shall be taken upon the request of any member.

2.05.05 Tree Board Officers

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

B. The Chair and Vice-Chair may take part in all deliberations and vote on all issues.

2.05.06 Powers and Duties of the Tree Board

A. The Tree Board may:

1. Make studies and recommend to the Council plans, goals, and objectives relating to the urban forest of the Town.

2. Develop and recommend to the Council policies, Ordinances, administrative procedures, plans and other means for maintaining the Town's urban forest program. The Tree Board, shall not, however, have the power to “initiate” changes to this Ordinance, as the term “initiate” is used in Section 9.02.
3. Develop public education programs which inform the public on matters concerning the betterment of trees and related resources.
4. Coordinate and/or conduct special projects for the betterment of the urban forest.

B. Limitations on Powers of the Tree Board

1. No individual member of the Board shall purport to speak or act on behalf of the Board without action by the Board explicitly authorizing the member to speak or act on its behalf.
2. No individual member of the Board, or the Board itself, shall purport to speak or act on behalf of the Town without action by the Council explicitly authorizing the member or empowering or authorizing the Board to speak or act on its behalf.
3. Without an express grant of authority or explicit authorization by the Council, no individual member of the Board, or the Board itself, shall direct Staff to take action requiring the expenditure of Town funds.
4. The Tree Board shall not create any group external to its membership without the explicit approval and or appointment of the Town Council. When deemed appropriate the Town Council will appoint a group(s) to advise the Tree Board on tasks assigned by the Town Council or its designee.
5. The Tree Board may create subcommittees or working groups within its membership without explicit approval of the Town Council providing that these groups do not require ongoing resources. Where ongoing resources are requested the assignment of these resources shall be approved by the Town Manager or his or her designee.

2.06 Land Use Administrator

2.06.01 Land Use Administrator

A. Except as otherwise specifically provided, primary responsibility for administering and enforcing this Ordinance may be assigned by the Town Manager to one or more individuals. The person or persons to whom these functions are assigned shall be referred to in this Ordinance as the "Land-use Administrator" or "Administrator". The term "Planning Director", "Staff" or "Planning and Inspections Staff" is sometimes used interchangeably with the term "Administrator".

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B. When enforcing this Ordinance, the Council recognizes that there may be instances where the Administrator should be given the authority to approve limited deviations to some provisions of the Ordinance. The Administrator may approve a deviation only after the applicant has submitted documentation to demonstrate that one of the following conditions exists:

1. A surveying error has occurred that has created a situation in which the applicant is unable to comply with the requirements of the Ordinance.
2. The configuration of the lot and location of existing structures is such that the applicant is unable to comply with the requirements of the Ordinance and that the deviation being requested will not have a detrimental effect upon any adjacent property owner.
3. Due to unique circumstances related to the development being proposed, the applicant is able to demonstrate that strict compliance with the Ordinance will not be in the best interests of the Town and that the deviation being requested will not have a detrimental effect upon any adjacent property owner.
4. The applicant has agreed to take measures that would ameliorate the effects of the deviation and the owners of all property located within 150' have agreed in writing to the deviation being requested.

C. A request for deviation shall be made before the permit is issued. Deviations may only be approved to the extent authorized below to the following provisions of the Ordinance:

1. Deviations from the requirements of Section 16.01 Schedule of Land Use Intensity Regulations provided the deviation shall not exceed ten percent (10%) of any requirements.
2. Deviations from the setback requirements of Section 16.07. Accessory Structure Setback Requirements provided the deviation shall not exceed ten percent (10%) of any requirements.

D. The authority given to the Administrator to grant such deviations shall be construed to be permissive and not mandatory. The decision of the Administrator, as to whether

or not to grant a deviation, shall constitute the final decision of the Town and is not appealable. In the event a deviation is not approved, the applicant shall have the right to request a variance from the Board.

2.06.02 Interpretations

A. Zoning Map Interpretations: The Administrator is authorized to interpret the zoning map and disputed questions of zoning district boundary lines.

1. A zoning map interpretation shall only be made upon proper application.
2. Where uncertainty exists as to the boundary of districts as shown on the Official Zoning Map, the following rules shall apply:
   a. A boundary indicated as approximately following the centerline of an alley, street, highway, stream or railroad shall be construed to follow such centerline;
   b. A boundary indicated as approximately following a lot line, corporate limit, or extraterritorial boundary line, shall be construed as following such line, limit or boundary;
   c. A boundary indicated as following the shoreline or the centerline of a stream, river, lake, or other bodies of water shall be construed to follow such shoreline or centerline, and in the event of change in the shoreline or centerline, the boundary shall be construed as moving with the actual shoreline or centerline;
   d. A boundary indicated as approximately following the designated limit of a special flood hazard area shall be construed as following such limit;
   e. Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map;
   f. Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

B. Text Interpretation: The Administrator is authorized to interpret Ordinance text.

1. A text interpretation shall only be made upon proper application.
2. Where uncertainty exists as to any meaning of this Ordinance, the provisions of Article 1 shall be used for guidance.

C. Advisory Opinions Regarding Nonconformities: Except during the investigation of an alleged violation or in the course of evaluating an application, the Administrator shall not render an advisory opinion regarding the legality or effects of nonconformities.

2.06.03 Planning Director

A. The Planning Director is the administrative head of the Planning and Inspections Department.

2.06.04 Floodplain Administrator

A. The Administrator or his/her designee, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of Article 30.

2.07 Public Works Director

2.07.01 The Public Works Director is the administrative head of the Public Works Department.

2.07.02 When referenced in this Ordinance, references to the Public Works Director shall include his or her designee.

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2.08 Town Council

2.08.01 Town Council

A. In considering proposed changes in the text of this Ordinance or in the zoning map, the Council acts in its legislative capacity and must proceed in accordance with the requirements of Article 9.

B. Unless otherwise specifically provided in this Ordinance, in considering amendments to this Ordinance or the zoning map, the Council shall follow the regular, voting, and other requirements as set forth in other provisions of the Code of Boone, the Town Charter, North Carolina General Statutes and the North Carolina Constitution.

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Article 3 RESERVED

TITLE II REVIEW AND APPROVAL PROCEDURES

Article 4 PERMITS

4.01 Permits

4.01.01 Permits Required

A. Property may not be used, altered or changed, nor may clearing, grading, or excavation commence, nor signs, buildings or other structures be constructed, erected, moved or altered except in accordance with and pursuant to the issuance of a valid permit.

B. Physical improvements to land to be subdivided may commence upon preliminary plat approval and the issuance of a valid zoning permit authorizing such work.

C. No development permit shall be issued within:

1. Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought; or
2. Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the Town regulations.

4.01.02 Process Overview:

A. Permits needed to authorize a proposed development, will be issued under this Ordinance only after a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this Ordinance if completed as proposed. Plans and applications which are approved are incorporated into any permit issued, as are representations made by the applicant, and except as otherwise provided in Section 4.16, all development shall occur strictly in accordance with such approved plans applications, and representations.

1. For purposes of this Ordinance, “development” shall include the use or occupancy of any land or structure, the construction, erection, alteration of moving of any structure and land disturbing activity.
2. Revisions which affect the intent of the design or the capacity of the system shall require prior written approval by the Town.
3. Plans shall be submitted in accordance with the requirements listed in Appendix A.

B. All permits shall be issued in the name of the applicant, and shall identify the property involved, and the proposed use. The permit shall incorporate by reference the plans

submitted and representations made, and shall recite any special conditions or requirements imposed by the permit issuing authority.

4.02 No Occupancy, Use, or Sale of Lots Until Requirements Fulfilled

4.02.01 Issuance of a zoning permit authorizes the recipient to commence work designed to use, alter, change, clear, grade, excavate, construct, erect, move, or alter signs, buildings or other structures or to make necessary improvements to a subdivision.

A. The intended use may not be commenced, no building may be occupied, no structure may be used, and in the case of subdivisions, no lot may be sold until all of the requirements of this Ordinance and all additional requirements imposed pursuant to the issuance of a zoning, special use permit, preliminary plat or conditional zoning district approval have been complied with, and the applicant has obtained one or more of the following as required: Certificate of Compliance, Certificate of Occupancy, Certificate of Completion and Certificate of Zoning Compliance.

1. **Certificate of Compliance**: A Certificate of Compliance certifies compliance with applicable building, mechanical, plumbing, electrical, fire protection or gas codes. It does not alone authorize occupancy or use of any building, structure or land.

2. **Certificate of Occupancy:** A Certificate of Occupancy may only be issued following issuance of Certificates of Compliance when necessary. A Certificate of Occupancy certifies compliance of a building with all applicable requirements of the UDO and other relevant State and local laws. No building may be occupied or used until a Certificate of Occupancy is issued. A Certificate of Occupancy is inclusive of a Certificate of Zoning Compliance and a Certificate of Compliance.

3. **Certificate of Completion**: A Certificate of Completion may only be issued following issuance of Certificates of Compliance when necessary. A Certificate of Completion certifies compliance of a structure other than a building with all applicable requirements of the UDO and other relevant State and local laws. A structure which requires a Certificate of Completion may not be used until the certificate is issued. A Certificate of Completion is inclusive of a Certificate of Zoning Compliance.

4. **Certificate of Zoning Compliance**: A Certificate of Zoning Compliance certifies, when neither a Certificate of Completion nor a Certificate of Occupancy is needed, compliance with all applicable requirements of the UDO and other relevant State and local laws. A Certificate of Zoning Compliance authorizes a use.

B. The Administrator shall retain the authority to withhold building or zoning permits and withhold or revoke any Certificate of Compliance, Certificate of Occupancy, Certificate of Completion or Certificate of Zoning Compliance which has been improvidently issued until all relevant requirements of State law and this Ordinance have been met.

4.03 Who May Submit Permit Applications

4.03.01 An application will be accepted only from a person having the legal authority to take action in accordance with the permit or the subdivision plat approval.

A. An application shall be made by the owner or the agent of the owner accompanied by proof of agency.

B. When a person other than the owner of the property applies for a permit or approval including a lessee or a person who has contracted to purchase the property, the application must be accompanied by the written approval of the property owner or other proof of authority.

C. No application may be accepted on behalf of a non-human entity unless it is registered and in good standing with the North Carolina Secretary of State, or such other authority as legally mandated.

D. When an application involves development on multiple properties owned by multiple owners, it must be accompanied by proof of authority or permission of all owners.

E. Property owners, or their agents or assigns, are responsible for ensuring that provisions of this UDO are adhered to; including activities contracted for, or performed by those under their employ.

4.03.02 The Administrator shall require an applicant to submit evidence of his authority to submit the application in accordance with Subsection 4.03.01.

4.04 Staff Consultation Before Formal Application

4.04.01 Even if not required, to minimize development planning costs, avoid misunderstandings or misinterpretation**s**, and ensure compliance with the requirements of this Ordinance, a pre-application consultation between the applicant and Staff is strongly encouraged.

4.04.02 Upon request or as mandated, the Administrator shall meet with the applicant as soon as feasible to review the proposed application.

4.05 Applications

4.05.01 **Application Submittals:** An application is considered submitted when the:

A. An application form provided by the Administrator is fully completed with information included or attached which enables the Administrator to discern what approval is being sought, and

B. The application is signed by a person with lawful and established authority to submit the application, and

C. all required fees are paid, and

D. The application is delivered to the Administrator.

4.05.02 **Incomplete Applications**: An application must be completed to the satisfaction of the Administrator and all requested supplemental documentation provided in accordance

with this Section before the permit issuing authority is required to consider the application.

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

1. Within twenty (20) business days of submission of an application, the Administrator shall direct a written list of all supplemental documentation, required by the Ordinance or needed by the Administrator or the reviewer in each other pertinent department to evaluate the application for its compliance with the UDO and all other duly adopted requirements of the Town.

    a. Said list shall be hand delivered to the applicant, mailed by first class mail or electronic mail to the name and address of the applicant, as they are stated on the application.

    b. Receipt by the applicant shall be inferred three days after the date of mailing.

2. Following receipt of the written list, the applicant shall have thirty (30) calendar days to provide all supplemental documentation requested by the Administrator, which shall be considered provided when actually delivered to the Administrator.

    a. If an applicant fails to timely provide all supplemental documentation, the application shall be deemed withdrawn and no further consideration will be given to it.

3. Following the timely provision of all supplemental documentation by the applicant, the Administrator may request additional supplemental documentation, using the same method as stated in Subsection 4.05.02(A)(1), and the applicant shall again have thirty (30) calendar days to provide all additional requested information or the application shall be deemed withdrawn.

4. This process may be repeated until all materials needed by the Administrator or other department reviewer to evaluate the application's compliance with the requirements of the UDO and all other duly adopted requirements of the Town have been provided.

    a. There may be no more than a total of three requests for information by the Administrator with respect to any one application;

    b. At each stage of a series of requests by the Administrator, should an applicant fail to provide all requested information, the application shall be deemed withdrawn and no further consideration will be given to it.

5. The burden of submitting all materials needed for a full evaluation of an application at all times nevertheless remains upon the applicant.

B. With respect to applications for which the Board of Adjustment is the permit issuing authority, unless the application has been deemed withdrawn pursuant to this Section, if the applicant demands that the application be scheduled for consideration before the Board, it shall be so scheduled, and the Board shall decide whether the application is complete.

4.05.03 **Application Complete:** Subject to Subsection 4.05.02, an application is complete when it contains all of the information that is necessary for the permit issuing authority to decide whether the development, if completed as proposed, will comply with all of the requirements of this Ordinance and all other duly adopted requirements of the Town.

A. The presumption established by this Ordinance is that all of the information set forth in Appendix A is necessary to satisfy the requirements of this Section.

1. However, it is recognized that each development is unique, and therefore the permit issuing authority may allow less information or require more information to be submitted according to the needs of the particular case.

2. For applications submitted to the Town Council or Board of Adjustment, the applicant may rely in the first instance on the recommendations of the Administrator as to whether more or less information than that set forth in Appendix A should be submitted.

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

1. However, whenever this Ordinance requires a certain element of a development to be constructed in accordance with the detailed requirements set forth in one or more of these appendices, then no construction work on such element may be commenced until detailed construction drawings have been submitted to and approved by the Administrator. Failure to observe this requirement may result in permit revocation, denial of final subdivision plat approval, or other penalty as provided in Article 12.

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

1. The development proposes to have an access to the public road system within 100' of the STOP bar of any traffic control signal; or
2. The development proposes to have an access to the public road system within 200' of the STOP bar of any traffic control signal and based upon Institute of Transportation Engineers (ITE) trip generation rates is projected to generate eighty (80) or more exiting trips during any one (1) hour period of any day; or
3. The development proposes to have access to any public road at a location where sight distance in any direction along the road is less than 500'; or
4. The development proposes access onto a public road that does not have a paved width of at least eighteen feet (18'); or
5. The development proposes access to a public road that currently operates at a level of service of D or less and based upon ITE trip generation rates is projected to generate 1,500 weekday trips; or
6. The Administrator or Public Works Director determines that the proposed project will have a potential negative impact on the public road system due to the size of the project or existing transportation system; or determines that there are safety concerns with the driveway location and design.

If a traffic impact analysis is performed and that analysis concludes that improvements are required to the transportation system; the applicant may be required to complete those improvements in connection with the project as a condition of issuing a permit. Unless an agreement is executed by the Town in which the time for the improvement is specified the improvement shall be completed prior to issuance of a certificate of occupancy. The fact that the obligation to construct lies with the applicant does not preclude the Town from entering into an agreement to participate if that will be in the interest of the Town.

4.06 Staff Consultation After Application Submitted

4.06.01 Upon receipt of an application and all necessary supplemental documentation and materials, the Administrator shall:

A. review the application and confer with the applicant regarding Staff's interpretation of the applicable requirements of this Ordinance, and

B. that the applicant has submitted all of the information that the applicant intends to submit, and

C. that the application represents precisely and completely what the applicant proposes to do.

4.06.02 **Applications Requiring Hearings:** The Administrator shall place an application on the agenda of the appropriate Board or Commission as soon as feasible after the applicant has provided all information requested by the Administrator or the applicant, in writing,

refuses to provide requested information and demands the application be forwarded to the appropriate Board or Commission for action.

A. If the Administrator believes that the application is incomplete, the Administrator shall recommend to the appropriate Board or commission that the application be denied on that basis, and shall provide detailed information to the appropriate Board or commission as to the elements, supplemental documentation or materials which the Administrator believes are lacking.

B. Except for an application for conditional district rezoning, if an application is submitted for zoning approval and the site specific development plan or accompanying details of the plan are materially different from the site specific development plan or accompanying details presented to Council in connection with an application for an allocation of vested rights to connect to the Town's water or sewer system, the Administrator must treat the application as an application for a special use permit.

1. A "material" difference shall consist of any "minor modification", if the modification relates to a detail or characteristic of the UDO the application which was specifically discussed in the hearing before the Council, or any "major modification."

4.07 Applications to be Processed Expeditiously

4.07.01 Recognizing that inordinate delays in acting upon applications may impose unnecessary costs on the applicant, the Town shall make reasonable efforts to process applications as expeditiously as possible, consistent with the need to ensure that all development conforms to the requirements of this Ordinance and all other duly adopted requirements of the Town.

4.08 Zoning Permits

4.08.01 Following the submission of a complete application for a zoning permit including all duly requested supplemental documentation, the Administrator shall issue the zoning permit unless the Administrator concludes that:

A. The requested permit is not within the Administrator's jurisdiction, or

B. If completed as proposed in the application, the development will not comply with one or more requirements of this Ordinance or any other duly adopted requirements of the Town.

4.08.02 The permit is issued when the earlier of the following takes place:

A. A copy of the fully executed permit is delivered to the applicant; or,

B. The applicant has been notified that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions.

C. For purposes of this Section, delivery is accomplished when a notice or permit is hand-delivered to the applicant or his representative or three (3) days after the notice of permit is deposited in the U.S. Mail, addressed to the applicant or his representative at the address provided on the application.

4.08.03 A proposed development which otherwise is allowable by right but has extraordinary impacts as defined herein shall require a special use permit and shall be processed accordingly.

4.08.04 A proposed development has an extraordinary impact if the Administrator determines:

A. Applicable firefighting or law enforcement capabilities are inadequate to serve the development as proposed, or

B. The proposed development will have a substantial, negative impact on an environmentally sensitive area as defined by the U.S. Environmental Protection Agency or the N.C. Department of Natural Resources.

C. The proposed development will have a substantial, negative impact on adjacent properties and the provisions of the Ordinance designed to address those impacts are clearly inadequate.

4.08.05 Should the Administrator exercise his authority pursuant to this Section, the Board shall not deny the permit unless it cannot craft conditions which satisfactorily mitigate the substantial, negative impacts, or it determines that the plan as proposed does not have a substantial negative impact.

4.08.06 No person shall willfully resist, delay, or obstruct the Planning and Inspections Department, or its duly appointed agent, attempting to inspect a development that has made application for a development permit.

4.08.07 A condition of approval will be the right to physical inspection of the development. In the enforcement of this Ordinance, Staff may perform random independent inspections of the development to ensure compliance with the approved plan.

4.08.08 It shall be unlawful to deviate from the approved Zoning Permit unless the Administrator has provided written approval for the requested modification.
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4.08.09 Permit Extension

A. Unless expressly prohibited, the Administrator may extend a zoning permit for a period up to six (6) months if the Administrator concludes that:

1. The permit has not yet expired, and
2. The permit recipient has proceeded with due diligence and in good faith, and
3. Applicable regulations have not changed so substantially as to warrant a new application.

B. Permit extensions are not allowed for temporary zoning permits unless explicitly authorized.

C. Successive extensions may be granted for periods up to six (6) months upon the same findings.

4.08.10 Expiration of Zoning Permits

A. Zoning permits shall expire automatically if, within one (1) year after the issuance of such permits:

1. The use authorized by such permits has not commenced, or
2. Less than ten percent (10%) of the total cost of all clearing, grading, excavation, construction, erection or alteration authorized by such permits has been completed on the site.

B. If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period of one (1) year, then the permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 4.15.

4.09 Special Use Permits and Major Subdivision Preliminary Plat Approval

4.09.01 Special Use Permit: A special use permit must be approved by the Board of Adjustment according to the procedures set forth in Article 6 and the standards set forth in Section 6.02.

4.09.02 Major Subdivision Preliminary Plat Approval: A major subdivision preliminary plat must be approved by the Board of Adjustment according to the procedures set forth in Article 6 and the standards set forth in Section 6.02.

4.10 Uses Previously Approved by Conditional Use Permit

4.10.01 Amendments and modifications to uses currently subject to the terms and conditions of a previously approved conditional use permit, except those issued with conditional use zoning approvals, will be processed subject to the provisions of Section 4.16 dealing amendments and modifications to special use permits or major subdivision preliminary plat approvals.

4.11 Variance

4.11.01 A variance must be approved by the Board of Adjustment according to the procedures set forth in Article 6.

4.12 Authorizing Use, Occupancy, or Sale Before Completion or Dedication of Development

4.12.01 Before Completion: In cases when, because of weather conditions or other factors beyond the control of the permit recipient or applicant for subdivision, exclusive of financial hardship, it would be unreasonable to require the permit recipient to comply with all of the requirements of this Ordinance before commencing the intended use of

the property or occupying any buildings or selling any lots in a subdivision, the Administrator may authorize the commencement of the intended use or the occupancy of buildings or the sale of subdivision lots (insofar as the requirements of this Ordinance are concerned) subject to the following:

A. For a subdivision, the applicant must provide a surety bond, irrevocable letter of credit or cash (hereafter, the "performance guarantee"), at the choice of the applicant, in an amount which ensures compliance with all Ordinance requirements.

B. For all zoning permits, the applicant must provide an irrevocable letter of credit or cash, at the choice of the applicant, in an amount which ensures compliance with all Ordinance requirements.

C. The outstanding requirements to be bonded may not be related to conditions affecting safety; and

D. All of these outstanding requirements will be fulfilled within a reasonable period not to exceed twelve (12) months.

4.12.02 Before Dedication, Protection Against Defects

A. Whenever occupancy, use or sale is allowed before the completion of all facilities or improvements intended for dedication, then the performance guarantee that is posted shall guarantee that any defects in such improvements or facilities that appear within one (1) year after the dedication of such facilities or improvements is accepted shall be corrected.

B. Whenever all public facilities or improvements intended for dedication are installed before occupancy, use, or sale is authorized, then a performance guarantee shall be posted to guarantee to ensure that all defects in such utilities or improvements that occur within one (1) year after the offer of dedication of such facilities or improvements are corrected.

C. An engineer shall certify to the Town that all facilities and improvements to be dedicated to the Town have been constructed in accordance with the requirements of this Ordinance. This certification shall be a condition precedent to acceptance by the Town of the offer of dedication of such facilities or improvements.

4.13 Completing Developments in Phases

4.13.01 If a permit authorizes a development to be constructed in phases, the provisions of Sections 4.02 and 4.12 shall apply to each phase as if it were the entire development.

4.13.02 No phasing shall be approved unless the applicant submits plans that clearly show the various phases of the proposed development and the requirements of this Ordinance that will be satisfied with respect to each phase.

4.13.03 If a development that is to be built in phases includes improvements that are designed to relate to, benefit, or be used by the entire development (such as a swimming pool or

tennis courts in a residential development) then, as part of his application for development approval:

A. the applicant shall submit a proposed schedule for completion of such improvements; and

B. Once a schedule has been approved and made part of the permit by the permit issuing authority, no land may be used, no buildings may be occupied, and no subdivision lots may be sold except in accordance with the schedule approved as part of the permit.

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4.14 Vested Rights

4.14.01 A vested right shall be deemed established upon the valid approval of a site specific development plan, following notice and public hearing.

4.14.02 For purposes of these regulations, a site specific development plan shall constitute any one of the following approvals:

A. A special use permit or major subdivision preliminary plat approval granted by the Board, or

B. A conditional district rezoning granted by Council.

4.14.03 **Duration:** Except as provided for in Subsection 4.14.03(C), a right that has been vested as provided for in this Ordinance shall remain vested for a period of two years.

A. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.

B. A site specific development plan shall be deemed approved upon the effective date of the approval authority's action or Ordinance relating thereto.

C. The permit issuing authority may provide that rights vest for a period of time exceeding two (2) years but not exceeding five (5) years, inclusive of all amendments, modifications and phasing, where warranted in light of all relevant circumstances, including but not limited to, the size and phasing of the development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the approval authority at the time the site specific development plan is approved or modified.

4.14.04 The establishment of a vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type and intensity of use, or Ordinances or regulations that are general in nature and are applicable to all property subject to regulation by the Town, including, but not limited to building, fire, plumbing, electrical and mechanical codes.

A. Applicable new or amended regulations shall only become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this Ordinance.

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

4.14.06 **Termination:** A right that has been vested as provided for in this Ordinance shall terminate:

A. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed, or

B. With written consent of the affected landowner, or

C. Upon findings by the permit issuing authority, by Ordinance after notice and public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan, or

D. Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action, or

E. Upon findings by the permit issuing authority, by Ordinance after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan, or

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

G. Upon a failure by the permit holder to abide such terms and conditions as have been attached to the approval or otherwise required by this Ordinance.

4.14.07 Nothing in this Section is intended or shall be deemed to create any vested right other than those established pursuant to N.C. Gen. Stat. § 160A-385.1.

4.14.08 Any petition for voluntary annexation filed with the Town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any vested right with respect to the property subject to the petition has been established under G.S. 160A-

385.1 or G.S. 153A-344.1. A statement that declares that no vested right has been established, or the failure to sign a statement declaring whether or not a vested right has been established, shall be binding on the landowner and any such vested right shall be terminated.

4.15 Effect of Permit on Successors

4.15.01 Permits authorize the applicant to develop and use land and structures in a particular way. Such permits are transferable. However, so long as the land or structures or any portion thereof authorized by a permit continues to be used for the purposes for which the permit was granted, then:

A. No person (including successors and assigns of the person who obtained the permit) may make use of the land or structures except in accordance with all the terms and requirements of that permit, and

B. The terms and requirements of the permit run with the land and are binding on successors in interest.

4.16 Modification of Permits

4.16.01 A permit with vested rights pursuant to NC Gen. Stat. 160A-385.1 may be modified pursuant to the following Sections until such times as a Certificate of Occupancy is issued. Thereafter, any change to a completed development or phase of a development may only be considered on a new application. A new application shall always be determined by the permit issuing authority which approved the site specific development plan.

4.16.02 Insignificant modifications from zoning, major subdivision preliminary plat approval or special use permits are permissible and the Administrator may authorize such insignificant modifications subject to the following:

A. A modification is insignificant if it has no discernible impact on neighboring properties, the general public, or those intended to occupy or use the proposed development; and

B. Insignificant modifications may not:

1. Exceed ten percent (10%) of any measurable standard; or
2. Change the approved use(s); or
3. Modify a feature of an application which was central to the deliberations of the permit issuing authority; or
4. Modify an express condition of the permit issuing authority.

4.16.03 Minor modifications to zoning, major subdivision preliminary plat approval or special use permits are permissible with the approval of the permit issuing authority subject to the following:

A. Minor modifications are those that do not significantly change the essential character of the use(s) or activity that has been previously authorized; and

B. If a minor modification is approved, new conditions may be imposed in accordance with Section 4.09.

1. The applicant retains the right to reject such additional conditions by withdrawing his request for a modification and may then proceed in accordance with the previously issued permit.
2. An applicant who elects to withdraw an application for modification must do so prior before the final decision of the permit issuing authority.

4.16.04 Major modifications to zoning, major subdivision preliminary plat approval or special use permits will be processed as new applications.

A. Major modifications are those that change the essential character of the use or activity that has been previously authorized or proposes changes which exceed the limits for minor modifications.

B. A proposed change in use, a change in intensity or density exceeding ten percent (10%) of any measurable standard, or a modification to a feature of an application which was central to the approval by the permit issuing authority shall always be considered a major modification.

4.16.05 The Administrator shall determine whether modifications of permits fall within the categories set forth above in Subsections 4.16.02, 4.16.03, and 4.16.04.

A. The determination of the Administrator shall constitute the final decision of the Town and is not appealable.

4.16.06 An applicant requesting approval of changes shall submit a written request for such approval to the Administrator.

A. The request shall identify the proposed changes.

B. The request shall be processed in accordance with Section 4.05.

C. Approval of all changes shall be in writing.

4.17 Maintenance of Common Areas, Improvements, and Facilities

4.17.01 The recipient of any zoning, special use permit, preliminary or final plat approval, his successors and assigns, shall be responsible for maintaining all common areas, improvements, or facilities required by this Ordinance or any permit issued in accordance with its provisions, except and until those common areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority.

A. As illustration, private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended in accordance with Town Codes, and required vegetation and trees used for screening, landscaping, or shading must be properly maintained or replaced if they die or are destroyed.

4.17.02 A permit holder may create a property owners association or similar legal entity (association) to succeed to its responsibilities under this Section, so long as such association is established in accordance with Appendix A.

4.18 Design and Other Professionals

4.18.01 All professionals associated with an application shall be competent for the task undertaken, and licensed by and in good standing with the appropriate licensing Board in the State of North Carolina.

A. If problems with the project are encountered that result from the failure by a design professional to properly discharge his responsibilities, the Town may initiate appropriate action(s) including filing a complaint with the appropriate licensing Board and refusing to accept certifications regarding analysis of design or construction from the individual or firm.

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

4.18.03 If retaining walls are required, and a geotechnical engineer has performed a subsurface investigation, the design professional shall provide a statement that the report on the subsurface investigation was reviewed and recommendations incorporated into the design.

A. The design professional shall also require the geotechnical engineer to prepare a global slope stability analysis of the retaining walls.

B. The global slope stability analysis shall be submitted with the plans for the retaining walls.

4.18.04 Whenever the Administrator is considering and reviewing an application which involves data or representations within the exclusive purview of a professional in a particular field, the Administrator may demand a certified statement from an appropriate professional confirming that the data or representations are accurate and meet the requirements of this Ordinance.

4.18.05 Whenever the Administrator considered and reviewed an application which involved data or representations within the exclusive purview of a professional in a particular field, the Administrator shall require a certified statement from an appropriate professional confirming that the work was completed in compliance with the approved plans.

4.18.06 The Administrator shall require verification that plant material was installed by a landscape contractor registered in the State of North Carolina.

4.19 Project Manager

4.19.01 In order to provide adequate coordination of the various design professionals on all development projects, every project shall designate and identify a project manager.

A. Single family and two family projects involving less than ½ acre of land disturbing activity or commercial site improvements that involve no more than 2,500 square feet of land disturbing activity are exempt from this requirement.

4.19.02 The project manager shall be responsible for coordination of all design and construction monitoring activities related to the project. This shall include, but not be limited to~~,~~:

A. Coordination of design, including ensuring that adequate consideration is given in the design of recommendations made by professionals who performed preliminary exploration of site conditions, and

B. Monitoring of construction, and

C. Ensuring all final certifications indicating that the project was constructed in compliance with the approved design documents are completed.

4.19.03 Prior to issuance of a Certificate of Occupancy the project manager shall submit a certification that the project was constructed in accordance with the approved plans and specifications.

A. Attached to the project manager's final certification shall be all the certifications required from the design and other professionals as described in Section 4.18.

Article 5 SUBDIVISIONS

5.01 No Subdivision Without Plat Approval

5.01.01 No person may subdivide his land except in accordance with all of the provisions of this Ordinance. In particular, no person may subdivide his land unless and until a final plat of the subdivision has been approved in accordance with the provisions of this Article and recorded in the Watauga County Registry. Building permits required pursuant to G.S. 160A-417 shall be denied for lots that have been illegally subdivided.

5.01.02 The Watauga County Register of Deeds shall not record a plat of any subdivision within the Town's planning jurisdiction unless the plat has been approved in accordance with the provisions of this Ordinance.

5.01.03 The provisions of this Section shall not prohibit any owner or his agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not been properly approved or recorded with the Watauga County Register of Deeds, provided the contract does all of the following:

A. Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance; and

B. Plainly and conspicuously notifies the prospective buyer or lessee that:

1. A final subdivision plat has not been approved or recorded at the time of the contract, and
2. That no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, and
3. That changes between the preliminary and final plats are possible, and
4. That the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat; and

C. Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five (5) days after the delivery of a copy of the final recorded plat; and

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

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

5.02 Flood Damage Prevention

5.02.01 All subdivisions shall comply with Article 30 Flood Damage Prevention.

5.03 Water Supply Watershed Area

5.03.01 If the proposed minor subdivision plat is located in a designated Water Supply watershed, the Commission shall review the plat and shall approve, not approve, or conditionally approve based on the following findings:

A. It either is or is not a minor subdivision; and

B. It either does or does not meet the requirements of this Ordinance.

5.03.02 If the proposed major subdivision plat is located in a designated Water Supply watershed, the Commission shall review the plat and shall find that it does or does not meet the requirements of this Ordinance. Such findings of the Commission shall be forwarded to the Board for preliminary plat approval and if approved and completed, Council for final plat approval.

5.04 Design Standards

5.04.01 All lots shall meet the minimum standards set forth in this Ordinance.

5.04.02 Whenever a residential major subdivision that involves the creation of one or more new streets borders on or contains an existing proposed arterial street, no direct driveway access may be provided from the lots within this subdivision onto this street.

5.04.03 No final plat that shows lots served by private roads may be recorded unless the final plat contains the following notations:

"Further subdivision of any lot shown on this plat as served by a private road may be prohibited by the Town of Boone Unified Development Ordinance."

5.04.04 The recorded plat of any subdivision that includes a private road shall clearly state that such road is a private road. Further, the initial purchaser of a newly created lot served by a private road shall be furnished by the seller with a disclosure statement outlining the maintenance responsibilities for the road.

5.05 Exempt Divisions of Land

5.05.01 The following are not included within the definition of "subdivision" and are exempt from the subdivision procedures of this Article:

A. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the minimum standards set forth in this Ordinance.

B. The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved.

C. The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system corridors.

D. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards set forth in this Ordinance.

5.05.02 An exempt division of land must comply with the requirements of the applicable requirements of the Water Supply Watershed Overlay requirements.

5.05.03 No approval is required for an exempt division of land, however, certification of exempt status is required. A plat of an exempt division of land, if prepared, must be certified by the Administrator, in accordance with Appendix A, before it can be recorded in the Office of the Watauga County Register of Deeds.

5.06 Subdivision types

5.06.01 There are two types of subdivisions:

A. Minor, and

B. Major

5.06.02 A minor subdivision is any subdivision other than a major subdivision.

5.06.03 A major subdivision is one which involves:

A. The creation of eleven or more lots, regardless of whether the lots are created at one time or over an extended period of time; or

B. The creation of any new streets (either public or private); or

C. The creation or extension of a public water or sewer system, or

D. The installation of drainage improvements upon one (1) or more lots to serve one (1) or more other lots.

5.07 Minor Subdivision

5.07.01 Minor subdivisions are subject to a three (3) step approval process: sketch plan consultation (optional), preliminary plat approval, and final plat approval.

5.07.02 **Sketch Plan:** A sketch plan submittal is optional but is strongly encouraged for minor subdivisions.

A. A sketch plan is a plan prepared in advance of formal submittal for the purpose of receiving informal staff comments.

B. Although there are no minimum requirements for the content of a sketch plan, applicants are encouraged to provide as much detail as possible.

5.07.03 **Preliminary Plat:** A preliminary plat is required for all minor subdivisions.

A. The preliminary plat shall be submitted in accordance with Article 4.

B. The preliminary plat shall contain the information as described in Appendix A.

C. Administrator Review:

1. The Administrator must review the plat for conformance with the requirements of this Ordinance and may consult with other departments, agencies or officials by referral.
2. The Administrator must approve, approve with conditions, or deny the preliminary plat within the time specified within Article 4.
3. Preliminary plats approved by the Administrator may proceed toward final plat approval.
4. Plats denied or granted conditional approval by the Administrator may be appealed to the Board of Adjustment in accordance with Article 6.
5. Modifications to approved minor subdivision preliminary plats are subject the requirements in Section 4.16.
6. Minor subdivision preliminary plat approval remains valid for one (1) year and may be extended in accordance with the provisions of Section 4.14.

5.07.04 **Final Plat:** A final plat is required for all minor subdivisions.

A. Upon approval of a minor subdivision preliminary plat, the applicant is eligible to submit a final plat for approval.

B. The final plat shall be submitted in accordance with Article 4.

C. The final plat shall contain the information as described in Appendix A.

D. The final plat shall be prepared and certified by a North Carolina licensed professional land surveyor.

E. The final plat must conform to the approved preliminary plat.

F. The approved final plat shall be recorded within forty-five (45) days of approval by the Planning and Inspections Department or the approval shall be void.

5.08 Major Subdivision

5.08.01 Major subdivisions are subject to a four (4) step approval process: sketch plan consultation, preliminary plat approval, zoning permit for the construction of subdivision-related infrastructure, and final plat approval.

5.08.02 **Sketch Plan:** A sketch plan submittal is required for major subdivisions.

A. A sketch plan is a plan prepared in advance of formal submittal for the purpose of receiving informal staff comments.

B. Although there are no minimum requirements for the content of a sketch plan, applicants are encouraged to provide as much detail as possible.

5.08.03 **Preliminary Plat:** A preliminary plat is required for all major subdivisions.

A. The preliminary plat shall be submitted in accordance with Article 4.

B. The preliminary plat shall contain the information as described in Appendix A.

C. Board of Adjustment Review:

1. The Administrator shall present completed major subdivision preliminary plats to the Board in accordance with Article 4.
2. The Board must approve, approve with conditions, or deny the preliminary plat in accordance with Article 6.
3. If the major subdivision preliminary plat is granted approval with conditions, the applicant has thirty (30) calendar days to revise and resubmit the preliminary plat to the Administrator which incorporates the revised conditions.
    a. If all of the conditions have been met and the preliminary plat is otherwise unchanged, the Administrator must approve the preliminary plat.
    b. If the preliminary plat is not revised within thirty (30) calendar days to meet the approval conditions, or the applicant notifies the Administrator that no more revisions to the preliminary plat will be made, the Administrator shall deny the preliminary plat.
4. An applicant for a major subdivision preliminary plat denied by the Board may seek judicial review pursuant to Article 6.
5. A modification to an approved major subdivision preliminary plat is subject to the requirements of Section 4.16.
6. A major subdivision preliminary plat approval remains valid for two (2) years and may be extended in accordance with the provisions of Section 4.14. Once constructed the subsequent development of individual lots shall not require

modification of the subdivision plat approval unless explicitly required in the original approval or prior modification.

7. An applicant for a major subdivision preliminary plat approved by the Board may thereafter proceed with an application for a zoning permit in accordance with Article 4, for the construction of subdivision-related infrastructure.

8. All infrastructure approved through the preliminary plat process must be completed or the applicant must provide a performance guarantee per Section 4.12 prior to proceeding with Final Plat approval.

5.08.04 **Final Plat:** The final plat is proof that all the requirements of the preliminary plat have been met. A final plat is required for all major subdivisions.

A. Upon approval of a major subdivision preliminary plat, and completion of all required subdivision-related infrastructure as authorized by the preliminary plat approval, the applicant is eligible to submit a final plat for approval.

B. The final plat shall be submitted in accordance with Article 4.

C. The final plat shall contain the information as described in Appendix A.

D. The final plat shall be prepared and certified by a North Carolina licensed professional land surveyor.

E. The final plat must be in compliance with the approved preliminary plat.

F. Town Council shall approve the final plat if the subdivision improvements are consistent with this Ordinance and the preliminary plat approval.

G. The approved final plat shall be recorded within forty-five (45) days of approval by the Planning and Inspections Department or the approval shall be void.

5.09 Plat Approval Not Acceptance of Dedication Offers

5.09.01 Approval of a final plat does not constitute acceptance by the Town of the offer of dedication of any streets, sidewalks, parks or other public facilities shown on a plat. However, the Town may accept any such offer of dedication by resolution of the Council or by actually exercising control over and maintaining such facilities.

Article 6 BOARD OF ADJUSTMENT HEARINGS

6.01 Provisions Applicable to All Hearings

6.01.01 General Provisions

A. All hearings of the Board shall be conducted in a quasi-judicial manner as described herein.

B. Subject to the specific provisions of Section 6.04 as to appeals, the Board shall hear and decide every appeal and application within a reasonable time.

C. The Board's packet shall include the Administrator's analysis of the issues, identifying any information, documents, and adopted plans material to the case. The Administrator's analysis may also include recommendations as appropriate.

D. Each hearing conducted by the Board shall provide an opportunity for parties and interested members of the public to testify and offer competent evidence, but the Board may limit the time available for each person offering testimony and may exclude testimony and evidence which is cumulative or redundant.

E. Hearings shall be conducted in compliance with the Board's duly adopted Rules of Procedure.

F. The Town is considered a party in every hearing before the Board.

G. The Board may continue any hearing until a subsequent meeting and may keep a hearing open to take additional information up to the point a final decision is made.

6.01.02 Quorum

A. A quorum is necessary for the Board to take official action.

1. For cases involving property located in whole or in part in the ETJ, a quorum for the Board shall consist of seven (7) members.
2. For cases involving property located wholly with the Town's corporate limits, a quorum for the Board shall consist of five (5) members.

B. A member who has withdrawn from the meeting and left the premises shall not be counted as present for purposes of determining whether a quorum is present.

6.01.03 Voting

A. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused or has been allowed to withdraw from the meeting in accordance with this Section.

B. A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to:

1. A member having a fixed opinion prior to hearing the matter that is not susceptible to change;
2. Undisclosed ex parte communications;
3. A close familial, business, or other associational relationship with an affected person; or
4. A financial interest in the outcome of the matter.

C. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

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

E. Except as authorized in this Section, a motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.

F. A roll call vote shall be taken upon the request of any member.

G. Both ETJ and resident members must participate and vote on all matters coming before the Board involving property located in whole or in part in the ETJ. On all other matters coming before the Board, only resident members may participate and vote.

6.01.04 Notice of Hearing

A. The Administrator shall give notice of any hearing of the Board as follows:

1. **Contents of Notice:** Every notice shall state the date, time, and place of hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.
2. **Mailed Notice**: Notice shall be mail by depositing in the mail at least 10 days, but not more than twenty-five (25) days, prior to the date of the hearing to:
   a. The person or entity whose appeal, application, or request is the subject of the hearing;
   b. The owner of the property that is the subject of the hearing if the owner did not initiate the hearing;
   c. The owners of all parcels of land abutting the parcel of land that is the subject of the hearing;
   d. The owners of real property located within 150 feet of the subject lot(s);

e. The owners of any real property in a protected district, whose property boundary has triggered application of transitional zone standards; and

f. Any other persons who have submitted a written request for notice and intervening parties so long as the request for notice or intervention request have been filed prior to notification being mailed.

3. **Posted Notice:** At least ten (10) days, but not more than twenty-five (25) days prior to the date of the hearing, the Administrator shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The signs to be posted shall include the date, time and location of the hearing and shall direct the public to detailed information about the hearing.

6.01.05 Subpoenas

A. The Board through the Chair, or in the Chair's absence anyone acting as Chair, may subpoena witnesses and compel the production of evidence.

B. To request issuance of a subpoena, persons with standing must make a written request to the Chair, on a form provided by the Administrator, explaining why it is necessary for certain witnesses or evidence to be compelled.

C. The Chair shall issue requested subpoenas the Chair determines to be relevant, reasonable in nature and scope, and not oppressive.

D. The Chair shall rule on any motion to quash or modify a subpoena.

E. Decisions regarding subpoenas made by the Chair may be appealed to the full Board.

F. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

6.01.06 Modification of Applications After Distribution of Board Book Except Appeals of Staff Decisions.

A. Modification of Application Between Distribution of the Board Book and the Board Meeting:

1. **Modification in Response to Administrator's Recommendation or Request**: An applicant may not significantly modify an application between the distribution of the Board Book containing the Staff Report of the case and the Board meeting unless the proposed modification is in direct response to a specific request or recommendation by the Administrator.

a. A proposed modification, even in response to the Administrator's recommendation or request, shall be submitted to the Administrator prior to

the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification.

b. If the Administrator determines that the applicant did not submit the proposed modification prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the hearing being rescheduled until the next regularly scheduled meeting of the Board or withdrawal of the proposed modification.

2. **Insignificant or Minor Modifications in an Application**: An applicant may make a non-substantial modification to an application between the distribution of the Board book containing the Staff Report and the scheduled hearing.

   a. A proposed non-substantial modification shall be submitted to the Administrator prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification. However, if an applicant proposes an insignificant modification to an application during the scheduled hearing, and the Administrator indicates that adequate time exists to evaluate the insignificant modification can be fully evaluated with or without a recess by the Board, the modified application may be acted upon by the Board.

   b. If the Administrator determines that the applicant did not submit the proposed modification prior to the hearing in sufficient time for the Administrator to fully evaluate the impacts of the proposed modification, the applicant will be given the choice between the hearing being rescheduled until the next regularly scheduled meeting of the Board or withdrawal of the proposed modification.

3. **Major Modification of an Application**: An applicant seeking to significantly modify an application between the distribution of the Board Book containing the Staff Report of the case and the Board meeting, whether in response to Staff recommendations or self-initiated, must file a new application.

4. **Determination as to whether a Proposed Modification is Insignificant, Minor or Major:** The Planning Director shall make the determination as to whether a modification is “insignificant”, “minor” or “major” in accordance with Section 4.16. The determination of the Planning Director shall constitute the final decision of the Town and is not appealable.

B. Modification of Application In Response to Concerns & Issues Raised at the Hearing

1. In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board an applicant may agree to modify an application, including the plans and specifications submitted.

2. Unless such modification is so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed change without revised plans before it, the Board may approve the application with the condition that the permit will not be issued until plans reflecting the agreed upon changes are submitted and approved by the Administrator.

6.01.07 Testimony and Documentary Evidence

A. Oaths: All persons who present testimony to the Board shall be sworn. The Chair of the Board or any member temporarily acting as Chair, and the Clerk to the Board are authorized to administer oaths to witnesses in any matter coming before the Board.

1. Any person who, while under oath during a proceeding before the Board, willfully swears falsely is guilty of a Class 1 misdemeanor.

B. Speakers: At any meeting of the Board, when the meeting is opened for public testimony**:**

1. Speakers shall be recognized in the order in which they have signed up unless a different order is requested by the Board and agreed upon by the speakers.

2. Each speaker wishing to address the Board shall state his or her name and then shall be sworn.

3. All persons addressing the Board shall be treated respectfully by other persons in attendance at the meeting, and all speakers shall conduct themselves with proper decorum. The Board may address in its Rules of Procedures under what circumstances the presiding officer or Board may direct that a person who violates proper decorum may be removed, but the Chair shall have inherent authority to have removed a person who threatens other participants or member of the Board as well as any person whose behavior is so disruptive as to prevent the Board from continuing the hearing.

C. Competent Evidence: The Board may address the standards for authenticating and admitting evidence in its duly adopted Rules of Procedure.

1. The rules of evidence as applied in the trial division of the General Court of Justice do not strictly apply. However, no evidence shall be consider unless:

   a. The evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it; or

   b. The evidence was admitted without objection,

2. To be considered "competent", testimony shall generally meet the following:
   a. The witness has personal knowledge of the subject of the testimony; and
   b. The subject of the testimony is relevant to an issue involved in the hearing.
3. To be considered "competent", documentary evidence shall generally require authentication. A document is authenticated by one of the following methods:
   a. Certification, by signature, title and seal, of the person who is the custodian of the records; or
   b. Information within the document which establishes its origin and reliability; or
   c. Testimony by a person with personal knowledge of the documents origin and reliability.
4. If a copy is used in place of an original, testimony must be offered by a witness establishing the date and author of the document and confirming that such document is a true and accurate copy of the original document.
5. Photographs must be accompanied by testimony as to the date and place where the photograph was taken and a statement that the photograph fairly and accurately represents the subject is depicted.
6. Notwithstanding the forgoing, the term "competent evidence" shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:
   a. The use of property in a particular way would affect the value of other property; or
   b. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety; or
   c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

6.01.08 Burden of Presenting Evidence; Burden of Persuasion

A. Evidence: The burden of presenting evidence shall be upon the party or parties urging a particular position. However, at a minimum, the applicant or appellant must provide competent evidence which addresses every material issue.

B. Credibility: In making its decision the Board may explicitly or implicitly make credibility determinations regarding the testimony of any witness, and where the Board has concluded that the testimony of a particular witness is incredible or otherwise unreliable, it is not bound to accept that testimony and may not only reject it but, if warranted, may make a contrary finding from the facts asserted.

C. Persuasion: The burden of persuasion shall be on the applicant or appellant or other party or person advocating a particular position.

6.01.09 Decisions of the Board

A. The Board's decision shall resolve all contested facts and their application to the applicable standards. The decision shall include individual findings of fact which support its conclusions of law.

B. All findings and conclusions made by the Board shall be based upon competent, material, and substantial evidence presented at the hearing, including all information in the Board's packet, unless objected to by a party and excluded by the Board.

C. Each decision, including any conditions adopted by the Board, shall be reduced to writing and signed by the Chair or other authorized member of the Board.

D. The decision shall be effective upon filing with the Clerk of the Board.

E. The decision shall be delivered by personal delivery, electronic mail, or by first class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective.

1. The Clerk of the Board shall certify that proper notice shall be made.

F. Any conditions attached to an approval shall be entered on the face of any necessary zoning permit.

6.01.10 Reconsideration of Board Action

A. Whenever the Board denies an application for a special use permit, major subdivision preliminary plat approval or a variance, on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the Board at a later time unless the applicant clearly demonstrates that:

1. Circumstances affecting the subject property have substantially changed, or
2. New information is available that could not, with reasonable diligence, have been presented at a previous hearing and is submitted to the Administrator within thirty (30) days of the denial.
    a. The submission of purported new information under this Section shall not, however, toll the period during which an applicant may seek judicial review of the denial and does not extend the period within which an appeal must be taken.

B. Notwithstanding Subsection 6.01.10(A), the Board may at any time consider a new application affecting the same property as an application previously denied.

1. A new application is one that differs in some substantial way from the one previously considered.

6.01.11 Judicial Review

A. Every decision of the Board shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393.

B. A petition for review by the superior court shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with Subsection 6.01.09(E).

C. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

6.02 Special Use Permit, Transitional Zones and Major Subdivision Preliminary Plat Applications

6.02.01 An applicant for a special use permit or major subdivision preliminary plat approval must demonstrate all of the following:

A. The application is complete;

B. If completed as proposed, the development or subdivision:

1. Will comply with the requirements of this Ordinance;
2. Will not materially endanger the public health or safety;
3. Will not substantially injure the value of adjoining or abutting property;
4. Will be in harmony with the area in which it is to be located;
5. Will be in general conformity with the Comprehensive Plan, Boone 2030 Land Use Plan, and all other relevant plans officially adopted by the Town; and
6. In cases involving transitional zones, meets the standards of Subsection 6.02.02.

6.02.02 Transitional Zones

A. Transitional zones are hereby established and may apply to the procedures and evidence required for development in any existing zoning districts. The land within a transitional zone may be used as permitted in the underlying district, but only pursuant to the procedures and standards applicable to these zones, as created under this Section.

B. Transitional zones attach to each R1, R1A, RR, R2, and RA district, (hereinafter, “the protected district”) without regard to the current uses in that district. They are established for the purpose of creating special protections for residents of protected districts from the potential adverse impacts of certain potentially incompatible nearby development, based upon the legislative finding that the general requirements of this ordinance have not been sufficient to protect the residents of such protected districts from the adverse consequences of such developments and

that the variety of circumstances which may need to be ameliorated in the face of such development are not amenable to a "one size fits all" approach.

C. The location of a transitional zone shall be determined as follows.

1. For designated development in an adjacent zone, the transitional zone shall be measured from the closest point of the area used or disturbed for the development to the boundary of any protected district as measured from all points along that boundary, the nearest point controlling applicability of this Subsection.
2. For development subject to transitional zones within the protected districts, the transitional zone shall be measured from the closest point of the area used or disturbed for the development to the boundary of any protected lot, the nearest point controlling applicability of this Subsection.

D. The size of the transitional zone varies with the type of development proposed. The following are the transitional zones as shown in the Table of Principal Uses, Table of Accessory Uses, and Table of Temporary Uses:

1. T50: transitional zone equal to fifty feet (50')
2. T75: transitional zone equal to seventy-five feet (75')
3. T125: transitional zone equal to 125 feet
4. T200: transitional zone equal to 200 feet
5. T300: transitional zone equal to 300 feet

E. Whenever a permit is sought to authorize development within a transitional zone, and any area used or disturbed for the development will be located within the pertinent transitional zone, a special use permit is required. If any portion of the area used or disturbed for the development falls within the transitional zone the standards of this Section shall apply to the entire development. The Board may deny the application if the requirements of this Section are not met, or it may place reasonable conditions on the development, in addition to such conditions as may otherwise be reasonably imposed, specifically designed to mitigate the potential impacts identified herein.

F. In addition to all other requirements of this ordinance which pertain to the proposed development, including but not limited to those relating to the location and placement of structures, the type and quantity of landscape buffering, the type and location of lighting, and the size of setbacks, in order to meet the requirements of this Section, the applicant must also show:

1. That the planned development will effectively and to the greatest degree reasonably possible, mitigate the impacts of the proposed development upon the protected district, including but not limited to:

   a. noise impacts;

b. light impacts; and

c. any other predictable negative effect, including but not limited to:

i. negative visual effects;

ii. negative traffic effects; and

iii. negative health effects.

G. Because of the variable topography and characteristics of particular tracts of land within the Town's zoning jurisdiction, the solutions incorporated into the development plan by the applicant must be tailored to specifically address the characteristics of the particular location in relation to the protected district. Only if an applicant can demonstrate by clear and convincing evidence that the normal requirements of the ordinance are themselves sufficient to protect the protected district may the application be approved without additional measures being incorporated into the site specific development plan.
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6.02.03 Board of Adjustment Action on Special Use Permits and Major Subdivision Preliminary Plat Applications

A. Conclusions of Law: In deciding whether to approve or deny an application for a special use permit or a major subdivision preliminary plat, the Board shall proceed according to the following format:

1. The Board shall determine whether the application is complete.

a. The burden of presenting a complete application to the Board shall be upon the applicant. The fact that the Administrator believes the application is complete or the applicant has submitted all requested supplemental documentation to the Administrator shall not bind the Board to conclude that the application is complete. The Board is the final arbiter of whether an application is complete.

i. If the Board concludes that the application is incomplete in a hearing conducted following a demand by the applicant for immediate action by the Board pursuant to Subsection 4.06.02(A) or the applicant refuses to provide the information determined by the Board necessary to complete the application, the application shall be denied.

ii. If the Board otherwise concludes that the application is incomplete the Board may deny the application or may give the applicant an appropriate opportunity to complete the application if the applicant expresses an interest in timely supplementing the application to make it complete.

A. A motion to continue the hearing in order to afford the applicant an opportunity to complete the application shall state the location, date and time of the reconvened hearing.

B. A case continued under these circumstances shall not require the same Board identity at the reconvened hearing, as the applicant will be expected to present his full case at that time.

b. If an application includes features which must be approved by another Town board, commission or department, then such approvals must be obtained prior to the hearing.

2. If the Board concludes that the application is complete, the Board next shall consider whether the application complies with all of the applicable requirements of this Ordinance. If the Board concludes that an element of the application does not fully comply with this Ordinance but has a minimal effect on the issues before the Board, it may conditionally approve the application. If the Board concludes that the application does not comply with all applicable requirements of this Ordinance and conditions will not sufficiently cure the deficiencies or the Board concludes that the deficiency is material to the Board's approval, then the Board shall deny the application.

3. If the Board concludes that the application is complete and complies with this Ordinance, if completed as proposed, before it may approve the permit or subdivision it must find all the following:

a. The development or subdivision as proposed will not materially endanger the public health or safety, and

b. The development or subdivision as proposed will not substantially injure the value of adjoining or abutting property, and

c. The development or subdivision as proposed will be in harmony with the area in which it is to be located, and

d. The development or subdivision as proposed will be in general conformity with the Comprehensive Plan, Boone 2030 Land Use Plan, and all other relevant plans officially adopted by the Town.

B. Conditions: Even when a development or subdivision meets the criteria above, the Board may still impose conditions on an approval.

1. All conditions shall be reasonable and appropriate and shall be related to the predicted impacts of the development.

2. Unless the Board explicitly orders otherwise, every approval is conditioned upon the development being completed in accordance with the plans submitted by the applicant, the commitments and representations concerning the proposed

development made by the applicant and representatives at the public hearing, and final conformity with all requirements of the UDO.

3. The Board may attach to a special use permit a condition limiting the permit to a specified duration and in appropriate situations may provide additional process including another public hearing after the special use has begun to evaluate unanticipated impacts, provided such a condition shall not be employed to terminate a special use for which substantial construction or reconstruction has occurred.

4. Without limiting the foregoing, conditions should normally require measures to address impacts on the:

   a. public health or safety, and

   b. values of adjoining or abutting properties, and

   c. harmony with the area in which it is located, and

   d. in the case of Transitional Zones, noise, light, and other predictable negative effects such as visual, traffic and health.

6.02.04 **Voting**: The adoption of each conclusion of law under Subsection 6.02.03(A), which is required in order to issue the permit, authorize the preliminary plat or deny the application shall be by majority vote. Should any conclusion of law fail to be adopted, the application shall be denied.

6.02.05 Special Use Permits shall be recorded at the office of the Watauga County Register of Deeds.

6.03 Variances

6.03.01 A variance is specific to the lot and to the development for which it is requested and neither the nonconforming use of lands, buildings, or structures in the same zoning district; nor the permitted use of lands, buildings or structures in other zoning districts are grounds for the granting of a variance.

6.03.02 A variance granted must be specific and the minimum variance required.

6.03.03 Financial hardship alone does not constitute grounds for the granting of a variance.

6.03.04 The fact that a lot may be utilized for greater profit if the variance is granted is not grounds for the granting of a variance.

6.03.05 No change in permitted uses may be authorized by variance.

6.03.06 A variance may not enlarge or expand nonconformities.

6.03.07 In order to grant a variance, the Board must conclude based upon competent evidence:

A. Unnecessary hardship would result from the strict application of the Ordinance; however it shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; and

B. The hardship results from conditions that are peculiar to the property such as location, size or topography; however hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance; and

C. The hardship did not result from actions taken by the applicant or the property owner however the act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

D. The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured and substantial justice is achieved.

6.03.08 In granting variances, the Board may impose appropriate conditions reasonably related to the condition or circumstance that give rise to the variance and which will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

6.03.09 A variance may be granted for an limited or indefinite duration.

6.03.10 Water Supply Watershed Variances

A. Before a Water Supply Watershed Variance is heard by the Board, the Administrator shall notify in writing each local government having jurisdiction in the watershed as well as any entity using the watershed for water consumption.

1. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Administrator prior to a decision by the Watershed Review Board, which for this purpose shall be the Board of Adjustment. Such comments shall become a part of the record.

2. In considering the decision whether to recommend that a major variance from the requirements of Article 29 be granted, the Board shall apply the criteria of Subsection 6.03.07.

3. The Board may place appropriate conditions on the recommended approval of the major variance but they must be reasonably related to the variance.

B. If the Board recommends that a major variance be granted, the Administrator shall promptly prepare a preliminary record of the hearing and transmit it to the North Carolina Environmental Management Commission, (hereafter "EMC") for its consideration. The preliminary record shall include:

1. The variance application; and

2. The hearing notices; and

3. The evidence presented; and
4. Motions, offers of proof, objections to evidence, and rulings on them; and
5. Proposed findings and exceptions; and,
6. The proposed decision, including all recommended conditions to be added to the permit. Proposed conditions should be appropriate and reasonably related to the variance.

C. The Board shall take final action in accordance with the decision by the EMC:

1. If the EMC approves the variance as proposed, the Administrator shall prepare a final decision granting the recommended major variance and the Board shall adopt the decision at its next meeting.
2. If the EMC approves the variance but makes modifications to the recommended major variance, the Administrator shall prepare a final decision, in accordance with the action of the EMC, and the Board shall adopt the modified decision at its next meeting.
3. In the EMC denies the recommend major variance the Administrator shall prepare a final decision in accordance denying the major variance, and the Board shall adopt the denial at its next meeting.

6.03.11 Special Flood Hazard Area Variance

A. A Special Flood Hazard Area variances may be issued for:

1. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
2. Functionally dependent facilities if determined to meet the definition as stated in Article 34, provided such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
3. Any other requirements of Article 30.

B. Limitations on Variances:

1. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or Ordinances.
2. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
4. Variances shall only be issued prior to development permit approval.
5. Variances shall only be issued upon:
   a. A showing of good and sufficient cause;
   b. A determination that failure to grant the variance would result in exceptional hardship; and
   c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or Ordinances.

C. A written report addressing each of the factors in 6.03.11(D) shall be submitted by the applicant with the application for a variance.

D. The Board shall consider all technical evaluations, all relevant factors, all standards specified in other Sections of Article 30, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location as a functionally dependent facility, where applicable;
6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

11. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

E. Upon consideration of the factors listed in Subsection 6.03.11(D) and the purposes of this Article 30 Flood Damage Prevention, the Board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of Article 30.

F. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to $25 per $100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

G. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

6.03.12 **Voting**: The adoption of each conclusion of law under Subsection 6.03.07 and the granting of a variance shall require a four-fifths vote of the Board. Should any conclusion of law receive less than a four-fifths vote, the variance shall be denied.

6.03.13 Variances shall be recorded at the office of the Watauga County Register of Deeds.

6.04 Appeal of Administrative Decision

6.04.01 The Board shall hear and decide appeals from decisions of administrative officials charged with enforcement of the ordinance. For purposes of this Section a “decision" includes any final and binding order, requirement, or determination.

6.04.02 An appeal of an administrative decision is initiated by a person timely filing an Appeal to Administrative Decision application, in accordance with Article 4, accompanied by the required fee.

A. An appeal may be filed by any of the following:

1. A person who has an ownership interest in the property that is the subject of the decision being appealed.
2. A person who has a leasehold interest in the property that is the subject of the decision being appealed.
3. A person who has an interest created by easement, restriction or covenant in the property that is the subject of the decision being appealed.
4. A person who has an option or contract to purchase the property that is the subject of the decision being appealed.

5. A person who was the applicant for the decision in question.
6. Any other person who will suffer special damages as the result of the decision being appealed.
7. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.
8. The Town.

B. An appeal of an administrative decision, including the imposition of penalties, must be taken within thirty (30) days after the date of the receipt of the notice of the decision in the case of the owner or the applicant, or thirty (30) from actual or constructive notice by any other person with standing to appeal.

1. The date of receipt shall be conclusively presumed as three days after the notice of the decision or order appealed from has been deposited in the United States mail by the Administrator, with proper postage affixed, and addressed in accordance with the provisions of Section 1.13 except that an earlier date can be established by a return receipt for a certified mail notice. The date of receipt of an email is the date of transmission.
2. Constructive notice shall include, but shall not be limited to, any visible signs of the initiation of construction work on a site.
3. It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches (6”) high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten (10) days. Any such posting shall be the responsibility of the landowner or applicant, and verification of the posting shall be provided to the official who made the decision. Posting of signs however is not required.

C. An appeal is taken by filing a notice of appeal with the Town Clerk on the prescribed form, accompanied by the required fee. The notice of appeal shall state the grounds for the appeal, which should generally be sufficient to allow for a thorough understanding by the Board of the decision appealed.

D. The Clerk shall stamp the appeal with the date received and shall promptly transmit it to the Administrator. The Clerk shall maintain a chronological log of the appeals which are filed.

6.04.03 Once the appeal has been filed, the Administrator shall schedule a public hearing at the first available Board meeting and give public notice in accordance with Subsection 6.01.04.

A. The Administrator shall prepare a report detailing the facts relevant to the decision and shall transmit to the board all documents and exhibits constituting the record of the decision from which the appeal is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

6.04.04 Appeal Stays Enforcement Action:

A. An appeal of a decision of violation under Subsection 12.01.01 stays enforcement of the decision unless the Administrator who made the decision certifies to the Board after notice of appeal has been filed:

1. That because of the facts stated in an affidavit, a stay would cause imminent peril to life or property, or
2. Because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance.

B. The appellant shall be notified of the Administrator's certification.

C. Following certification, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.

D. If enforcement proceedings are not stayed, the appellant may file with the Administrator a request for an expedited hearing of the appeal.

1. The Board shall meet to hear the appeal within fifteen (15) days after such a request is filed.

E. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

F. The certification and stay procedures of this Section shall not apply with regard to the pursuit of criminal charges where appropriate.

6.04.05 Deviations from Matters Presented in Notice of Appeal: The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town

would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.

6.04.06 **Scope of Hearing:** The hearing shall be based on the record below and the scope of review shall be as follows:

A. The Board shall ensure that the rights of the appellant have not been prejudiced because the Administrator's findings, inferences, conclusions, or decisions were:

1. In violation of constitutional provisions, including those protecting procedural due process rights.
2. In excess of the statutory authority conferred upon the Town by ordinance.
3. Inconsistent with applicable procedures specified by statute or ordinance.
4. Affected by other error of law.
5. Unsupported by substantial competent evidence in view of the entire record.
6. Arbitrary or capricious.

B. When the issue before the Board is whether the Administrator erred in interpreting an ordinance, the Board shall review that issue de novo. The Board shall consider the interpretation of the Administrator, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.

6.04.07 The parties to an appeal that has been made under this Section may agree to mediation or other forms of alternative dispute resolution. If all parties confirm they wish to engage in alternative dispute resolution, the Board shall adjourn the hearing to give them a reasonable opportunity to do so.

6.04.08 **Decision**

A. The Board may reverse or affirm, wholly or in part, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Administrator who made the decision.

B. The Board may reduce the penalty imposed if it determines**:**

1. That the appellant has acted in good faith, and
2. That the failure of the appellant to correct a violation is the result of circumstances beyond the appellant's control, or
3. The Board makes other findings which make the amount of the presumptive civil penalty unfair under the circumstances of the particular case.

6.04.09 **Voting**: The decision shall be by majority vote.

6.05 Appeal of Decisions of Community Appearance and Historic Preservation Commissions

6.05.01 The Board shall hear and decide appeals of any decision by the Community Appearance Commission allowing or denying a deviation of Article 25 Community Appearance Standards, or any decision by the Historic Preservation Commission granting or denying a Certificate of Appropriateness.

6.05.02 An appeal is initiated by a person timely filing an Notice of Appeal, in accordance with Article 4, accompanied by the required fee.

A. An appeal may be filed by any of the following:

1. A person who has an ownership interest in the property that is the subject of the decision being appealed.
2. A person who has a leasehold interest in the property that is the subject of the decision being appealed.
3. A person who has an interest created by easement, restriction or covenant in the property that is the subject of the decision being appealed.
4. A person who has an option or contract to purchase the property that is the subject of the decision being appealed.
5. A person who was the applicant for the decision in question.
6. Any other person who will suffer special damages as the result of the decision being appealed.
7. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.
8. The Town.

B. An appeal must be taken within thirty (30) days after decision by the Commission.

C. An appeal is taken by filing a notice of appeal with the Administrator on the prescribed form, accompanied by the required fee. The notice of appeal shall state the grounds for the appeal, which should generally be sufficient information to allow for a thorough review by the Board.

D. The Administrator shall stamp the appeal with the date received

6.05.03 Once the application has been filed, the Administrator must schedule a public hearing at the first available Board meeting and give public notice in accordance with Section 6.01.04.

A. The Administrator shall prepare a report detailing the facts relevant to the decision and shall transmit to the board all documents and exhibits constituting the record of the decision from which the appeal is taken. The official shall also provide a copy of the record to the appellant.

6.05.04 Appeal Stays Commission Decision:

A. An appeal of a decision by the Community Appearance Commission allowing a deviation of Article 25 Community Appearance Standards, or a decision by the Historic Preservation Commission granting a Certificate of Appropriateness shall be stayed while the appeal is pending.

6.05.05 Burden of Proof: The burden of proof and burden of persuasion shall be on the party appealing the decision of the Commission.

6.05.06 Scope of Action: An appeal of a Commission decision shall be in the nature of certiorari. The hearing shall be based on the Commission record and the scope of review shall be as follows:

A. The Board shall uphold the decision of the Commission unless it finds the decision is:

1. In violation of constitutional provisions, including those protecting procedural due process rights.
2. In excess of the authority conferred upon the Commission by statute or ordinance.
3. Inconsistent with applicable procedures specified by statute or ordinance.
4. Affected by other error of law.
5. Unsupported by substantial competent evidence in view of the entire record.
6. Arbitrary or capricious.

B. The term "competent evidence," as used in this Section, shall not preclude reliance by the Commission on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if the evidence appears to be sufficiently trustworthy and was obtained under such circumstances that it was reasonable for the Commission to rely upon it.

6.05.07 Board Action

A. The Board may reverse or affirm, wholly or in part, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The Board shall have all the powers of the Commission which made the decision.

Article 7 NONCONFORMITIES

7.01 General Regulations

7.01.01 **Scope:** The regulations of this Article govern lots, uses, structures, signs and other aspects of development that came into existence lawfully but do not conform to one or more requirements of this Ordinance. A "nonconformity" as used herein, must always have been legally created or as result of an acquisition pursuant to Section 7.02.

7.01.02 **Continuance:** A nonconformity may be continued, enlarged or modified only in accordance with the provisions of this Article.

7.01.03 **Classification of Nonconformities**: Nonconformities are divided into the following categories:

A. Nonconforming Use

B. Nonconforming Lot

C. Nonconforming Sign

D. Nonconforming Situation

7.01.04 **Determination of Nonconforming Status**: The burden of establishing a legal nonconformity shall be solely upon the owner of such nonconformity.

7.01.05 **Duration:** Except as provided hereafter, a nonconformity runs with the land.

7.01.06 **Variance:** Where a variance or an insignificant deviation has been granted for a development standard or feature that does not otherwise conform to the requirements of this Ordinance, that development standard or feature shall be deemed conforming.

7.01.07 **Financial Hardship:** Financial hardship shall not be a basis for finding that compliance with this Article is not reasonably practicable or impossible.

7.01.08 **Determination of Practicability or Impossibility**: The Administrator shall make the final determination as to the extent compliance with the Ordinance is practicable and to the extent which it is impossible.

7.01.09 **Contiguous Ownership:** When possible, nonconforming lots must be combined with other undeveloped lots to create conforming lots. If full compliance can be achieved with the combination of contiguous lots in single ownership or control, no reduction in any standard authorized under this Article may be applied.

7.01.10 **Extent:** The extent or boundary of any nonconformity shall be based upon its condition, extent or location at the time it became nonconforming.

A. With respect to uses of open land, such as mining, in which a permit has been obtained from the State of North Carolina and the activity pursuant thereto has commenced prior to the time the use became nonconforming, the extent or

boundary or the nonconformity shall be considered the limits of land authorized for mining pursuant to the permit.

7.02 Nonconformities Created by Public Acquisition

7.02.01 A structure, situation or lot of record that is rendered nonconforming as a result of acquisition of a portion of the lot by an entity authorized and for the purposes described N.C. Gen. Stat. § 40A-3 shall be considered conforming only through a receipt of a Certificate of Conformity.

7.02.02 An application for a Certificate of Conformity shall be processed pursuant to Article 4 and shall include:

A. A legal description of the land subject to the public acquisition; and

B. The name and address of the owner of the land; and

C. The name and address of the acquiring entity and its representative; and

D. Proof of the public acquisition proceeding; and

E. A certified as-built survey, no greater than one year old, of the development subject to the acquisition proceeding. The survey must demonstrate:

1. The boundaries of the acquisition, and
2. All structures, including parking, and any other relevant development features.

and

F. A site plan, in compliance with Appendix A, indicating the post-acquisition development.

7.02.03 The Certificate of Conformity shall be issued if the following standards are met:

A. The site plan is designed for the development, consistent with the use requirements, which minimizes to the greatest degree practicable any nonconformities including but not limited to: lot dimensions, parking, landscaping, stormwater infrastructure, lighting, and pedestrian infrastructure.

B. The development can function adequately for the use.

C. If a change of use is proposed, it is approved by the appropriate permit issuing authority; provided, a new nonconforming use may not be allowed.

7.03 Nonconforming Use

7.03.01 A nonconforming use may continue indefinitely unless discontinued as described in Section 7.03.05.

7.03.02 Extension or Enlargement of a Nonconforming Use:

A. No increase in the volume, frequency or intensity of a nonconforming use is allowed.

B. A nonconforming use may not be expanded, enlarged, or extended to occupy a greater area of land or floor area.

1. A single-family dwelling (Use 1.01) may expand floor area of a principal structure but may not expand the footprint.

C. A nonconforming use may not be relocated, in whole or in part, to another portion of the subject lot.

7.03.03 Repair, Maintenance, and Change in Equipment:

A. Normal repair and maintenance may be performed to allow the continuation of a nonconforming use.

B. A change in equipment may be allowed as long as it does not result in an increase or expansion of activity.

7.03.04 Change of Use:

A. Any change of use may only be to a permissible use.

B. A change of use for an existing development which does not trigger transitional zone standards to a use which does trigger transitional zone standards may only be initiated by a special use permit or conditional district rezoning.

C. All other changes of use that do not involve any new development do not require increased compliance with current Ordinance standards.

D. All changes of use that involves new development are governed by Section 7.05.

7.03.05 Discontinuance of Nonconforming Use:

A. A nonconforming use that ceases operations for any reason for a period of 180 days within any twelve (12) month time period may not be reestablished. Any subsequent use of such land must be a permitted use. However, when a use is involuntarily discontinued because an essential structure is destroyed or damaged by fire, flood, wind, other act of God, the use shall not be considered discontinued so long as a building permit for the repair or restoration is issued within six (6) months and the use is resumed within twelve (12) months of the date the permit is issued. For nonconforming structures see Section 7.05.

B. Discontinuance of one nonconforming use in a development containing multiple principal nonconforming uses does not affect the right to maintain remaining nonconforming uses.

C. A use that is accessory to a principal nonconforming use may not be continued after the principal use has been discontinued, unless the use is also permissible as a principal use.

7.04 Nonconforming Lot of Record

7.04.01 A nonconforming lot of record can generally be used as proposed as if it were conforming.

A. When a use is proposed which requires a greater lot size than the minimum established for the district the use may not be approved.

7.04.02 The development plan for a nonconforming lot of record must be consistent with all use requirements, and must minimize the impacts of any existing nonconformity to the greatest degree practicable. No new nonconformity may be created.

7.04.03 **Setbacks:** Notwithstanding Subsection 7.03.02, no required setback may be reduced without the following findings by the permit issuing authority:

A. The lot cannot be developed for a permissible use without such deviation.

B. No significant adverse impact on surrounding properties or the public health or safety will result from the proposed development.

C. A proposed single-family dwelling (Use 1.01), conforming in all other respects except for area or width, which cannot meet the applicable minimum setbacks, may be approved with the following limitation: Absent a variance, there may be no reduction greater than fifty percent (50%) of a setback and the dwelling must be at least ten feet (10') from all other structures on an adjacent lot.

D. For all other developments which cannot meet the applicable minimum setbacks, absent a variance, there may no reduction greater than twenty percent (20%).

7.04.04 This Section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has no substantial structure upon it.

7.05 Nonconforming Situation

7.05.01 Alteration of a Nonconforming Situation:

A. Subject to Subsection 7.05.03, a nonconforming structure may be altered so long as no new nonconformity is created nor existing nonconformity increased.

7.05.02 Development which requires compliance with UDO:

A. Cost of development as referenced herein shall be measured by adding together the costs incurred in all development activity as proposed, together with the development activity other than normal maintenance and repair that has been permitted within the prior thirty-six (36) months.

B. All new structures or portions of structures must comply with all Ordinance requirements to the extent reasonably practicable. However, when a structure is destroyed or damaged by fire, flood, wind, other act of God, the structure may be repaired or restored to its original dimensions and conditions as long as the structure is not located in a Floodway or Special Flood Hazard Area and a building permit for the repair or restoration is issued within six (6) months and the structure is occupied within twelve (12) months of the date the permit is issued. A nonconforming structure damaged by other cause to such extent that repair, reconstruction or

restoration is expected to cost more than fifty percent (50%) of the total value of the structure, must be removed.

C. Compliance of existing development with the requirements of the Ordinance shall be triggered by the costs of proposed new development in accordance with the following tiers. The Administrator may require certification of the new development by a competent professional. The following tiers are cumulative in effect:

1. **Tier 1**: Repair, reconstruction, modification and alteration of a structure or development in which the cost is certified to exceed ten percent (10%) of the value of the development shall require compliance with the following, to the extent practicable:
   a. Bicycle parking in accordance with Section 24.09.
   b. Lighting in accordance with Section 25.05.
2. **Tier 2**: Repair, reconstruction, modification and alteration of a structure or development in which the cost is certified to exceed twenty-five percent (25%) of the value of the development shall require compliance with the following, to the extent practicable:
   a. Solid waste and recycling containers pursuant to Section 22.13.
   b. Signs pursuant to Article 26.
   c. Color requirements in accordance with Subsection 25.02.05.
   d. Landscape Standards pursuant to, with a priority given to shade tree installation.
3. **Tier 3**: Repair, reconstruction, modification and alteration of a structure or development in which the cost is certified to exceed fifty percent (50%) of the value of the development, or in the case of a structure located in a Floodway or Special Flood Hazard Area in which the cost exceeds fifty percent (50%) of the value of the structure, shall require compliance with the following, to the extent practicable:
   a. Drainage and stormwater requirements pursuant to Article 21.
   b. Pedestrian circulation and sidewalk requirements pursuant to Section 23.08.
   c. Parking requirements pursuant to Article 24.
   d. All other Community Appearance requirements of Article 25.
   e. Corridor District requirements pursuant to Article 14.
   f. Special Flood Hazard Area compliance pursuant to Article 31.
4. **Tier 4**: Repair, reconstruction, modification and alteration of a structure or development in which the cost is certified to exceed seventy-five (75%) of the

value of the development shall require compliance with all requirements of the UDO unless compliance is impossible.

7.05.03 Discontinuance of Nonconforming Structure:

A. A nonconforming building that is unused for any reason other than destruction by an act of God (which is governed by Subsection 7.05.02(B)), for a continuous period of twenty-four (24) months may no longer be used unless in compliance with all Ordinance requirements to the extent practicable.

B. A nonconforming structure, other than a building, which is the principal structure on a lot, which is unused for a continuous period of six (6) months, may no longer be used except in compliance with all Ordinance requirements to the extent practicable.

C. A nonconforming structure which is in such a state of disrepair or neglect so as to no longer function as intended may no longer be used and must be removed.

D. Discontinuance of one nonconforming structure in a development containing multiple principal nonconforming structures does not affect the right to maintain remaining nonconforming structures.

Article 8 HISTORIC PRESERVATION

8.01 Historic Districts

8.01.01 Designation of Historic Districts: Upon recommendation by the Historic Preservation Commission or on its own initiative the Council may designate Historic Districts as overlay districts in the Town's planning jurisdiction. However, no historic district shall be designated until:

A. An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in any such proposed district, and a description of the boundaries of such district has been prepared, and

B. The North Carolina Department of Cultural Resources, acting through the State Historic Preservation Officer or his or her designee, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its written analysis and recommendations to the Town within thirty calendar days after a written request for such analysis has been received by the Department of Cultural Resources shall relieve the Town of any responsibility for awaiting such analysis, and the Council may at any time thereafter take any necessary action to amend the zoning map.

8.01.02 Modification of Historic District Boundaries and Creation of Additional Districts.

A. After its initial designation of Historic Districts, should the Council wish to make changes in the boundaries of any such district subsequent to its initial establishment, or create additional districts within the jurisdiction, the investigative studies and reports required by Subsection 8.01.01 of this Section shall be prepared by the Historic Preservation Commission, and shall be referred to the Planning Commission for its review and comment. Changes in the boundaries of an initial district or proposal for additional districts shall also be submitted to the North Carolina Department of Cultural Resources in accordance with the provisions of Subsection 8.01.01.

B. On receipt of these reports and recommendations, the Council may proceed to amend the Town's zoning map in accordance with Article 9 of this Ordinance.

8.02 Landmarks.

8.02.01 Designation of landmarks.

A. The Council may adopt, amend or repeal Ordinances designating one or more historic landmarks. No property shall be recommended for designation as a historic landmark unless it is deemed and found by the Historic Preservation Commission to be of special significance in terms of its historical, prehistorical, architectural, or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

B. Each property designated as a landmark shall be identified in the Ordinance, along with the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural, or prehistorical value, including the land area of the property so designated, and any other information the Council deems necessary. For each building, structure, site, area, or object so designated as a historic landmark, the Ordinance shall require that the waiting period set forth in this Article be observed prior to its demolition. For each designated landmark, the Council may also provide for a suitable sign on the property indicating that the property has been so designated, and if the owner consents, the sign shall be placed upon the property. Otherwise, the sign shall be placed on a nearby public right-of-way.

8.03 Certificate of Appropriateness Required.

8.03.01 From and after the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on such landmark or within such district until after an application for a Certificate of Appropriateness has been submitted to and approved by the Historic Preservation Commission. Such a Certificate must also be issued by the Historic Preservation Commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving, or demolishing structures, which Certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this Article. A Certificate of Appropriateness shall be required whether or not a building or other permit is required.

8.03.02 For purposes of this Section, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. Such "exterior features" shall include historic signs, color, and significant landscape, archaeological, and natural features of the area.

8.03.03 In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size, and location of all such signs.

8.03.04 Except as provided in 8.03.05, the Historic Preservation Commission shall have no jurisdiction over interior arrangement and shall take no action under this Section except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district which would be incongruous with the special character of the landmark or district.

8.03.05 Notwithstanding Subsection 8.03.01, jurisdiction of the Historic Preservation Commission over interior spaces shall be limited to specific interior features of architectural, artistic or historical significance in publicly owned landmarks; and of privately owned historic landmarks for which consent for interior review has been given by the owner. Said consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the office of the Watauga County Register of Deeds and indexed according to the name of the owner of the property in the grantee and grantor indexes. The landmark designation shall specify the interior features to be reviewed and the specific nature of the Historic Preservation Commission's jurisdiction over the interior.

8.03.06 Prior to any action to enforce this Article, the Historic Preservation Commission shall:

A. Prepare and adopt rules of procedure, and

B. Prepare and adopt principles and guidelines not inconsistent with this Article for new construction, alterations, additions, moving and demolition within historic districts and relating to landmarks.

8.03.07 The Historic Preservation Commission may delegate to the Administrator, subject to detailed standards, review and approval of certain applications for a Certificate of Appropriateness. However, no application for a Certificate of Appropriateness may be denied without formal action by the Historic Preservation Commission taken in accordance with its duly adopted Rules of Procedure.

8.03.08 Prior to issuance or denial of a Certificate of Appropriateness the Historic Preservation Commission shall take such steps as may be reasonably required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the Historic Preservation Commission deems it necessary, it may hold a public hearing concerning the application.

8.03.09 All applications for Certificates of Appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the application for a Certificate of Appropriateness is filed, as defined by the Historic Preservation Commission's Rules of Procedure. As part of its review procedure, the Commission may view the premises and seek the advice of the North Carolina Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

8.03.10 An appeal may be taken to the Board of Adjustment from the Historic Preservation Commission's action in granting or denying any certificate in accordance with the procedures set forth in Article 6.

8.03.11 This Article shall apply to construction, alteration, moving and demolition by the State of North Carolina, its political subdivisions, agencies and instrumentalities, excluding the interiors of buildings or structures owned by the State of North Carolina. The State and its

agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under N.C. Gen. Stat. § 121-12(a) from any decision of the Historic Preservation Commission. The decision of the North Carolina Historical Commission shall be final and binding upon both the State and the Town of Boone Historic Preservation Commission.

8.04 Remedies

8.04.01 The Council or other party aggrieved may institute any appropriate action or proceedings to prevent unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to a designated building, structure, site, area or object.

8.05 Certain Changes Not Prohibited

8.05.01 Nothing in this Article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a landmark which does not involve a change in design, material or appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, moving or demolition of any such feature which the building inspector or similar official shall certify is required for public safety because of an unsafe or dangerous condition.

8.05.02 Nothing in this Article shall be construed to prevent a property owner from making any use of his property that is not prohibited by other law.

8.05.03 Nothing in this Article shall be construed to prevent a) the maintenance, or b) in the event of an emergency the immediate restoration, of any existing above-ground utility structure without approval by the Historic Preservation Commission.

8.06 Delay in Demolition of Landmarks and Buildings Within Historic District.

8.06.01 An application for a Certificate of Appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within the district may not be denied except as provided in Subsection 8.06.03.

A. However, the effective date of such a Certificate may be delayed for a period of up to 365 days from the date of approval.

1. This period of delay authorized by this Section shall be reduced by the Historic Preservation Commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay.

B. During such period the Historic Preservation Commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site.

C. If the Historic Preservation Commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition, or removal.

8.06.02 If the Historic Preservation Commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not yet been made by the Council, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the Historic Preservation Commission for a period of up to 180 days or until the Council takes final action on the designation, whichever occurs first.

8.06.03 An application for a Certificate of Appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places shall be denied except where the Historic Preservation Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

Article 9 AMENDMENTS

9.01 Amendments in General

9.01.01 Amendments to the text of this Ordinance (hereafter, "the UDO") or to the Town's officially adopted zoning map shall be made in accordance with the provisions of this Article.

9.02 Initiation of Amendments

9.02.01 Text Amendment

A. Only Council may initiate an amendment to this Ordinance. Staff and other Town entities (boards, commissions, advisory bodies, and other such entities), when they are charged or empowered with making recommendations to the Council regarding the text of the UDO, may make recommendations regarding potential desired changes to the UDO to the Council, but the preparation of the text of a proposed draft amendment shall only proceed after the Council has endorsed the policy objectives sought to be achieved with the recommendation and has acted to authorize preparation of a draft text amendment.

B. Whenever a request to amend the text of this Ordinance is initiated or authorized by the Council, the Town Attorney in consultation with the Administrator shall determine whether the proposed amendment represents substantive planning policy or procedural matters, such as enforcement procedures, amendment procedures and appeal procedures.

1. If the Town Attorney determines the proposed amendment represents a substantive planning policy, the Administrator shall draft the text of the proposed amendment in consultation with the Town Attorney. Before an amendment drafted by the Administrator is presented to the Council for consideration, the Town Attorney shall endorse and date the draft amendment with the following statement: Approved as to Form this __ day of ___, 20__, _____Town Attorney.

2. If the Town Attorney determines the proposed amendment represents a procedural matter, the Town Attorney shall draft the text of the proposed amendment in consultation with the Administrator. Before an amendment drafted by the Town Attorney is presented to the Council for consideration, the Administrator shall endorse and date the draft amendment with the following statement: Approved as to Planning Policy this __ day of ___, 20___, _____, Administrator.

C. Any other person may petition the Council to amend the text of this Ordinance. The petition shall be filed with the Administrator and shall include at a minimum:

1. The name, address, and phone number of the applicant, and

2. A summary of the specific objective of any proposed change in the text of this Ordinance.

D. Upon receipt of a petition the Administrator shall forward the petition to Council with or without written comment for a determination of whether a draft amendment should be prepared in accordance with Subsection 9.02.01(B).

E. Upon receipt of a draft amendment, should the Council act to proceed with its consideration, it shall establish a date for a public hearing.

1. The public hearing may be scheduled at a pre-arranged date, time and location, such as at a "quarterly public hearing," or at such other date, time and location authorized by the Council which will allow proper notice to issue in advance of the hearing.

F. No later than seven (7) days prior to the date set for the public hearing, the Administrator shall prepare an analysis of the proposed petition to assist the Planning Commission and Council in determining the conformity of the draft amendment with the Comprehensive Plan and any other officially adopted plan of the Town which relate to the proposed amendment.

9.02.02 General Map Amendments

A. Any person may petition the Council to amend the Zoning Map. The petition shall be filed with the Administrator and shall include at a minimum:

1. The name, address, and phone number of the applicant,
2. A description of the land affected by the proposed amendment, and
3. A description of the proposed map change.

B. Upon receipt of a petition, the Administrator shall forward the petition to Council to establish a date for a public hearing.

1. The public hearing may be scheduled at a pre-arranged date, time and location, such as at a "quarterly public hearing," or at such other date, time and location authorized by the Council which will allow proper notice to issue in advance of the hearing.

C. No later than seven (7) days prior to the date set for the public hearing, the Administrator shall prepare an analysis of the proposed petition to assist the Planning Commission and Council in determining the conformity of the draft amendment with the Comprehensive Plan and any other officially adopted plan of the Town which relate to the proposed amendment.

9.02.03 Conditional District Map Amendment

A. A property may be placed in a conditional district (bearing the designation CD) only in response to a petition by the owners of all property to be included.

1. No State owned property may be placed in a conditional district without prior approval by the Council of State.

B. The petition shall be filed with the Administrator and shall include at a minimum:

1. The name, address, and phone number of the applicant,
2. A description of the land affected by the proposed amendment, and
3. A description of the proposed map change, and
4. A site specific development plan and supporting documentation that specifies the actual use or uses intended for the property and any rules, regulations and conditions that, in addition to all predetermined Ordinance requirements, will govern the development and use of the property.

C. Upon receipt of a petition, the Administrator shall forward the petition to Council to establish a date for a public hearing.

1. The public hearing may be scheduled at a pre-arranged date, time and location, such as at a "quarterly public hearing," or at such other date, time and location authorized by the Council which will allow proper notice to issue in advance of the hearing.

D. No later than seven (7) days prior to the date set for the public hearing, the Administrator shall prepare an analysis of the proposed petition to assist the Planning Commission and Council in determining the conformity of the draft amendment with the UDO, the Comprehensive Plan and any other officially adopted plan of the Town which relate to the proposed amendment.

9.03 Hearing Required: Conduct of Hearing; Notice of Hearing

9.03.01 Hearing Required

A. Text, general and conditional district map amendments are a legislative process subject to judicial review.

B. No action that amends or repeals any of the provisions of the UDO may be adopted until a public hearing has been held on such.

9.03.02 Conduct of Hearing

A. The Council and Planning Commission shall meet in joint session to hold the public hearing, and a quorum of each body must be present.

B. Public hearings on proposed Ordinance amendments will be scheduled no less frequently than on a quarterly basis in February, May, August and November.

C. A record of the public hearing will be prepared by Staff and minutes of the hearing submitted to the Planning Commission and Council as soon as practical following the public hearing.

D. Public hearings shall be conducted in accordance with rules for the hearing adopted by the Council.

E. The Mayor or other presiding officer may, at a minimum:

1. Limit the length of time for each speaker, and
2. Require the designation of a spokesperson for groups of persons supporting or opposing the proposed amendment for the same reasons, and
3. Provide for the maintenance of order and order the removal from the hearing room of any person attempting to disrupt the hearing or to intimidate or belittle other speakers, and
4. Limit the number of persons in the hearing room at any one time, insofar as the number of persons wishing to attend the hearing exceeds the safe capacity of the hearing room.

9.03.03 Hearing Notice

A. Legal Ad: For all amendments, the Administrator shall publish a notice of the public hearing no less than once a week for two (2) successive weeks in a newspaper having general circulation in the area.

1. The notice shall be published for the first time not less than ten (10) days nor more than twenty five (25) days before the date fixed for the hearing.
2. In computing this period, the date of publication shall not be counted but the date of the hearing shall be.

B. Adjacent Property Owner Notification: With respect to general and conditional district map amendments, the Administrator shall mail written notice of the public hearing by first class mail to the owners, as shown on the listings of the Watauga County Tax Administration, of all properties whose zoning classification will be changed by the proposed amendment and owners of properties for which any portion is within 150 feet of the subject property.

1. Each notice shall be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing.
2. The person mailing such notices shall certify to the Council that fact, and such certificate shall be deemed conclusive in the absence of fraud. The certificate of mailing shall be included in the Administrator's analysis of the proposed petition to the Council and Commission.
    a. However, if the proposed zoning map amendment directly affects more than fifty (50) properties owned by a total of at least fifty (50) different property owners, the Council may direct notification, instead of by the aforesaid individually mailed notices, by publication of the notice described above, supra, alone, but the notice must be not less than one-half a newspaper page

in size and must be supplemented by individual notices by first class mail to property owners who reside outside the newspaper circulation area, according to the addressees listed on the most recent property tax listing for each affected property.

C. **Posting**: With respect to general and conditional district map amendments, the Administrator shall also post notices of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right of way within at least ten (10) but not more than twenty-five (25) days prior to the date of the public hearing.

1. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Administrator shall post sufficient notices to provide reasonable notice to interested persons.
2. In addition, the Administrator shall take any other action deemed by the Council or Administrator to be useful or appropriate or desirable to give notice of the public hearing.

D. Every notice required by this Section shall:

1. State the date, time, and place of the public hearing, and
2. Summarize the nature and character of the proposed change, and
3. Reasonably identify the property whose zoning classification would be affected by the amendment if the proposed amendment involves a change in zoning district classification, and
4. State that the full text of the proposed amendment can be obtained from the Town Clerk, and
5. State that substantial and insubstantial changes in the proposed amendment may be made following the public hearing.

9.04 Protest Petition

9.04.01 If a protest petition opposing a general or conditional district map amendment is filed in accordance with the provisions of this Section, then the proposed amendment may be adopted only by a favorable vote of three-fourths of the Council.

A. For the purposes of this Section, vacant positions on the Council and members who are excused from voting shall not be considered for calculation of the requisite supermajority.

9.04.02 To trigger the three-fourths vote requirement, the petition must meet all of the following:

A. Be signed by the owners of either:

1. Twenty percent (20%) or more of the area included in the proposed change, or

2. Five percent (5%) of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned.

B. Computation of Protest Petition Area:

1. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less.
2. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100 foot buffer shall be measured from the property line of that parcel.
3. In the absence of evidence to the contrary the Town may rely on the county tax listing to determine the 'owners' of potentially qualifying areas.

C. Property Owner Signature Required: When there are multiple owners of a single parcel, all owners must sign the protest petition for the parcel to be included in the calculation of the amount of property represented by the protest petition.

D. Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.

E. Be received by the Town Clerk in sufficient time to allow the Town at least two (2) normal working days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.

F. Be on a form provided by the Town Clerk and contain all the information requested on this form.

9.04.03 A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment.

9.04.04 Only those protest petitions that meet the qualifying standards set forth at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.

9.04.05 A protest petition shall not be applicable to the following:

A. Any amendment which initially zones property added to the Town's jurisdiction as a result of annexation or otherwise, or

B. Amendments to adopted conditional districts when the amendment does not:

1. Change the types of uses that are permitted within the district or
2. Increase the approved density for residential development, or
3. Increase the total approved size of nonresidential development, or
4. Reduce the size of any buffers or screening.

9.04.06 If a petition opposing a change in the zoning classification of any property is filed in accordance with the provisions of this Section, the Administrator shall announce to the Commission and Council receipt of such petition prior to accepting public comment at the public hearing.

9.05 Planning Commission Consideration of Proposed Amendments

9.05.01 At its next meeting following the public hearing, scheduled in accordance with Section 9.03, supra, the Commission shall review the proposed amendment and shall submit a written recommendation to the Council.

A. The Commission shall specifically advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan, the Boone 2030 Land Use Plan and other officially adopted plans that are applicable and whether the Commission recommends adoption of the proposed amendment.

B. In its report to the Council, the Commission may comment, as it deems appropriate, on any other matter related to the proposed amendment.

9.05.02 Additional testimony not presented at the public hearing may be considered by the Commission upon favorable vote of the majority of its members present.

9.05.03 No member of the Commission shall participate in the discussion or vote on any recommendations regarding any amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

9.06 Council Action on Amendments

9.06.01 Council Action After Referral to the Commission:

A. At any meeting following the receipt of the recommendation from the Commission or after thirty (30) days following referral of the proposed amendment to the Commission if the Commission fails to make a recommendation, the Council may proceed with its consideration of the proposed amendment.

B. The Council must take action, however, no later than sixty (60) days after the Commission adopts a recommendation.

C. A comment by the Commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Council, and

D. The Council is not bound by any other recommendation of the Planning Commission, including a recommendation that the proposed amendment be rejected.

9.06.02 Additional testimony not presented at the public hearing may be considered by the Council upon favorable vote of the majority of its members present.

9.06.03 When adopting or rejecting any zoning amendment, the Council shall adopt a statement describing whether its action is consistent with the Comprehensive Plan, the Boone 2030 Land Use Plan and other officially adopted plan that is applicable and explaining why the Council considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

9.07 Ultimate Issue Before Council on Amendments

9.07.01 In deciding whether to adopt a proposed amendment to this Ordinance, the central issue before the Council is whether the proposed amendment advances the public health, safety, or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the Mayor and be excluded. In particular, when considering proposed general use map amendments:

A. The Council shall not consider any representations made by the petitioner that if the change is granted the rezoned property will be used for only one of the possible range of uses permitted in the requested classification. Rather, the Council shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.

B. The Council shall only consider the impact of the proposed change on the public at large.

9.08 Action Subsequent to Council Decision

9.08.01 The Administrator shall notify the petitioner of the disposition of the amendment petition and file a copy of the decision in the office of the Planning and Inspections Department.

9.08.02 Any amendments pertaining to watershed protection must be filed with the North Carolina Division of Water Quality, North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.

9.08.03 In the case of approval of an amendment, all necessary changes to the Ordinance or zoning map shall be entered within fifteen (15) working days of the effective date of the amendment. The Administrator shall authenticate the entry of each amendment and shall maintain a record of the nature and date of the amendment.

9.09 Special Provisions for Conditional Districts

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

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

9.09.03 Specific conditions applicable to a conditional district may be proposed by the petitioner or the Town or its agencies, but only those conditions mutually agreed upon by the Town and the petitioner may be incorporated into the permit requirements.

A. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to Town Ordinances and the comprehensive plan or other plan and those that address the impacts reasonably expected to be generated by the development or use of the site.

9.09.04 Changes to an approved petition or to conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the zoning map and shall be processed as a new application.

A. Except for a proposed minor modification to a previously approved conditional zoning district, no proposal to amend or change any conditional district may be accepted nor considered within twelve (12) months of the date of the original approval of the conditional zoning district or within twelve (12) months of a hearing upon any previous proposal to amend or change the conditional district.

B. A minor modification is one which does not significantly change the essential character of the use or activity that has been previously authorized through the conditional district zoning approval.

C. The Administrator shall determine whether a proposed modification to a previously approved conditional district is a minor modification, and the determination of the Administrator shall constitute the final decision of the Town and is not appealable.

9.09.05 If a petition for conditional zoning is approved, a copy of the approval and all conditions relative to the approval, including site specific development plan(s), shall be kept on file in the Planning and Inspections Department office. A copy of the approval will also be recorded with the Watauga County Register of Deeds.

9.09.06 Should, by the end of the applicable vesting period, the property fail to develop in accordance with the terms and conditions of the conditional district approval, no subsequent use of the property shall be permitted without a new petition for zoning map amendment being filed.

9.09.07 Should a petition for a conditional district be denied, then no new petition for making similar use the same property shall be considered within twelve (12) months of the date of the original denial.

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

9.10 Previously Approved Conditional Use Zoning Districts

9.10.01 Applications for amendments to the use of property currently subject to the terms and conditions of a previously approved conditional use zoning district will be processed as new conditional district applications.

Article 10 RESERVED

Article 11 RESERVED

TITLE III ENFORCEMENT

Article 12 ENFORCEMENT

12.01 Violations

12.01.01 Any of the following shall constitute a violation of this Ordinance and shall be subject to the remedies and penalties provided for in this Ordinance and under State law:

A. Development without a permit; or

B. Development inconsistent with a permit; or

C. Violation by act or omission; or

D. Use violation; or

E. Subdivision violation; or

F. Continuance of a violation; or

G. Violation of incorporated codes and manuals; or

H. Violation of conditions of approval; or

I. Occupancy violation

12.02 Complaints Regarding Violations

12.02.01 Complaints alleging a violation of this Ordinance may be received from citizens, Staff or other concerned parties by filing a written, signed complaint form as provided by the Department. A Staff member may file a written complaint based upon personal observation, a verbal complaint and even an anonymous complaint (as deemed appropriate).

12.03 Persons Liable

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

12.03.02 No landlord may escape liability for an occupancy violation based upon a claimed lack of knowledge of the violation unless:

A. The lease of the property includes a provision which authorizes the landlord to terminate the lease early if the tenant violates the occupancy or zoning rules of the Town; and

B. The landlord takes prompt action to terminate the lease and/or tenancy of the tenants of the property when an occupancy violation has been confirmed by the Administrator.

12.04 Investigations

12.04.01 The Administrator may conduct investigations deemed necessary to carry out the duties prescribed in this Ordinance and, for this purpose, and enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this Ordinance.

12.04.02 The Administrator may require written statements, certificates, certifications, or the filing of reports relating to complaints or alleged violations of this Ordinance from the complainant or a person potentially liable.

A. The failure of a complainant to provide requested information may be interpreted as an indication that the complaint is without merit.

B. The failure of a person potentially liable to provide requested information may be interpreted as an admission of the violation.

12.05 Enforcement

12.05.01 **Initial Contact:** When the Administrator concludes that a violation of this Ordinance has occurred, he shall:

A. In the case of a repeat violator issue a Notice of Violation in accordance with Subsection 12.05.02; or

B. In the case of a sign violation involving a first time offender, serve a warning ticket on a responsible party, advising the person liable to take immediate corrective action, with the following limitations:

1. The Administrator may allow up to twenty-four (24) hours to take corrective action, or
2. Due to practicalities of sign removal or other circumstances beyond the control of the violator, the Administrator may afford the violator additional time, not to exceed five (5) days.

or

C. For all other violators and violations, attempt to contact the person liable, by telephone or in person, to discuss possible remedies to correct the violation.

1. In the sole judgment of the Administrator if the violation can be corrected within five (5) business days of this discussion and the person liable expresses his intent to correct the violation within that time period, the Administrator may suspend enforcement action to allow the person liable to correct the violation.

12.05.02 **Notice of Violation:** Following the attempted initial contact, where required, and any mandated cure period, if the violation is unresolved, the Administrator shall issue the Notice of Violation. The Notice of Violation shall:

A. Include the nature of the violation and the articles and sections of the Ordinance which have been violated; and

B. Include the measures necessary to remedy the violation and the time period in which the violation must be corrected, if applicable;

1. The Administrator may afford the person liable a period of up to thirty (30) days from the date of the Notice of Violation to correct the violation before penalties are imposed.
2. The decision by the Administrator as to whether such periods should be allowed and the length of any cure period shall be solely within the discretion of the Administrator, but shall be based upon the Administrator's application of the following relevant considerations which are not exclusive, based on a determination of what action is in the best interests of the Town:
   a. The seriousness of the violation; and
   b. The damage which may occur by any delay in enforcement; and
   c. The effect of the violation, if any, on neighboring property owners or occupants of neighboring property, or other citizens of the Town; and
   d. Whether or not the person liable is a repeat violator; and
   e. Whether the violation can be corrected within a period of thirty (30) days or less; and
   f. Whether the violation is of such nature that the person liable may circumvent enforcement of the Ordinance by means of a temporary correction; and
   g. Whether the violator is proceeding in good faith to address the violation; and
   h. Such other factors as the Administrator determines reasonably require immediate enforcement, or conversely, allow some minimal delay in enforcement.

and

C. Include the penalties or remedies that may be assessed, the date penalties will begin to accrue, and the amount of such penalties; and

D. Include the action which the Administrator intends to take if the violation is not corrected; and

E. Include an explanation or the right of the person liable to appeal the decision of the Administrator to the Board of Adjustment.

12.05.03 Notwithstanding Subsections 12.05.01 and 12.05.02, when the Administrator determines that a delay in enforcement would pose a danger to the public health, safety, or welfare, the Administrator shall send a Notice of Violation as soon as practicable.

12.05.04 Appeal of a Notice of Violation

A. An appeal of a notice of violation under Subsection 12.01.01 stays enforcement of the decision unless the Administrator who made the decision certifies to the Board after notice of appeal has been filed:

1. That because of the facts stated in an affidavit, a stay would cause imminent peril to life or property, or
2. Because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance.

B. The appellant shall be notified of the Administrator's certification.

C. Following certification, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.

D. If enforcement proceedings are not stayed, the appellant may file with the Administrator a request for an expedited hearing of the appeal.

1. The Board shall meet to hear the appeal within fifteen (15) days after such a request is filed.

E. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

F. The certification and stay procedures of this Section shall not apply with regard to the pursuit of criminal charges where appropriate.

12.06 Remedies

12.06.01 Available Remedies: Any or all of the following may be used to enforce the provisions of this Ordinance.

A. Civil Penalties: Any person who violates any provision of this ordinance may be subject to the assessment of a civil penalty in accordance with Section 12.07.

B. Criminal Penalties:

1. Assessment:

   a. Unless a more stringent criminal penalty is prescribed pursuant to State law for a particular violation of this Ordinance or are otherwise provided, any person who violates the UDO shall be guilty of a Class 3 misdemeanor, pursuant to N.C. Gen. Stat. § 14-4 (a), with a fine up to $500.00.

   b. Any person who knowingly or willfully violates any provision of Article 20 shall be guilty of a Class 2 misdemeanor with a fine up to $5,000.00.

c. Any person who, being the owner or agent of the owner of any land located within the planning jurisdiction of the Town, subdivides his or her land in violation of this Ordinance, or transfers or sells land by reference to, exhibition of, or by any other use of a plat showing a subdivision of the land before the plat has been properly approved and recorded in the office of the Watauga County Register of Deeds, shall be guilty of a Class 1 misdemeanor with a fine of $1,000.00. The Town may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land. Building permits required pursuant to G.S. 160A-417 shall be denied for lots that have been illegally subdivided. In addition to other remedies, the Town may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land does not exempt the transaction from violation of this Ordinance.

d. The Administrator shall institute criminal charges only with the authorization of the Town Manager.

2. **Determination:** In determining whether criminal charges should be recommended with respect to a particular violation, the Administrator shall consider the following factors, which shall not be exclusive, and the applicability of any individual factor shall not determine the decision, which should be based on the best interests of the Town:

a. Whether the violator is a repeat violator;

b. Whether the violator has acted in intentional disregard of the Ordinance;

c. Whether there are factors outside control of the violator which have the prevented the person from expeditiously correcting the violation;

d. Whether the violator has stated an intention to undertake prompt correction action;

e. What damage has occurred as a result of the violation;

f. Whether the violation is capable of repetition but escaping review, or civil penalties are ineffective in ensuring enforcement of the Ordinance; and

g. Whether some other reason is identified which will enhance the enforcement of the Ordinance by the pursuit of criminal charges in a particular case.

C. Injunction: Any violation of this Ordinance or of any condition, order, requirement, or remedy adopted pursuant to this Ordinance may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to State law. The institution of an action for injunctive relief under this Section does not relieve any

party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

D. Revocation of Permits or Certificates: The Administrator may revoke and require the return of a permit, a Certificate of Compliance, a Certificate of Occupancy, a Certificate of Completion, or a Certificate of Zoning Compliance pursuant to Section 12.09.

E. Stop Work Orders: Whenever the Administrator determines that a person is engaged in doing work without a required permit; or any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, or in a manner that endangers life or property, the Administrator may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped pursuant to Section 12.08.

F. State and Common Law Remedies: In addition to other enforcement provisions contained in this Article, the Council may exercise any and all enforcement powers granted to it by State law or common law.

12.07 Civil Penalties

12.07.01 Any act constituting a violation of this Ordinance shall subject the person liable to a civil penalty per day in the amount specified below. For each day the violation is not corrected, the violator will be guilty of an additional and separate offense. Where a per day per violation and a one-time assessment are described, both apply.

Violation	Civil Penalty (per day per violation)	Civil Penalty (one-time assessment)
Sign Violation	$100.00	
Occupancy Violation	$200.00	
Grading in Designated Floodway	$500.00	
Improperly pruning, removing or killing a protected tree or shrub.	$100.00	$100.00 per inch in diameter for each tree and $50.00 for each shrub
Removal of Required Buffer	$100.00	$500.00
Soil Erosion and Sediment Control Violation	$100.00	$1,000.00
Illegal Subdivision	$100.00	$1,000.00
All other Violations	$100.00	
Repeat Violator 1st Time	250% of the Civil Penalty	$1,000.00
Repeat Violator 2nd or More	500% of the Civil Penalty	$1,000.00

12.07.02 A penalty accrues from the date imposed until the date the violation is corrected or the date of a court's judgment, whichever is earlier.

12.07.03 The penalty may be recovered by the Town in a civil action in the nature of an action to collect a debt and may recover its court costs and attorney's fees.

12.07.04 The appeal of a civil penalty must be in accordance with the requirements of Article 6. The time period for appeal begins to run upon receipt of the Notice of Violation imposing the penalty.

A. Although a properly filed appeal stays action by the Town to collect any civil penalty assessed, the penalty continues to accrue during the pendency of the appeal, and if the decision by the Board on appeal affirms the action, order, decision or determination by the Administrator, unless the penalty is modified by the Board of Adjustment in compliance with Subsection 6.04.08(B), the amount of a penalty shall be calculated as though no appeal was filed.

12.07.05 When authorized by the Town Council, this Ordinance may also be enforced by any available equitable action or proceeding(s) instituted by the Administrator or Town to prevent, restrain, correct or abate a violation of this Ordinance.

12.07.06 **Repeat Violator:** A repeat violator is a person liable who has been determined to have violated any provision of this Ordinance within the previous thirty-six (36) months.

12.08 Stop Work Orders

12.08.01 Whenever the Administrator determines that a person is engaged in doing work without a required permit; or any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, or in a manner that endangers life or property, the Administrator may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped.

12.08.02 The Stop Work Order shall:

A. be in writing, and

B. directed to the person doing the work and

C. directed to the owner of the property and

D. posted on the property upon which the work has been undertaken, and

E. The Stop Work Order shall state:

1. the work to be stopped, and
2. the reasons for work stoppage, and
3. the conditions under which the work may be resumed.

12.08.03 **Appeals to Stop Work Order:** Appeals of a Stop Work Order shall be made as follows:

A. An Appeal of Administrative Decision must be filed with in accordance with Article 6.

12.09 Permit and Certificate Revocation

12.09.01 A permit or certificate may be revoked by the permit issuing authority for:

A. Any substantial departure from the approved application, plans, or specifications; or

B. Refusal or failure to comply with the requirements of state or local laws, or for false statements or misrepresentations made in securing the permit or certificate; or

C. Any permit or certificate mistakenly issued in violation of an applicable state or local law may also be revoked.

12.09.02 **Special Use Permit Revocation**: Before a special use permit may be revoked, all of the notice and hearing requirements of Article 6 shall be complied with. The notice shall inform the permit recipient of the alleged grounds for revocation. The revocation of a special use permit shall operate as a revocation of the zoning permit and any certificate issued by the Administrator.

A. The burden of presenting evidence sufficient to authorize the permit issuing authority to conclude that a permit should be revoked for any of the reasons set forth in Subsection 12.09.01 shall be upon the party advocating that position. The burden of persuasion shall also be upon the advocating party.

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

12.09.03 **Zoning Permit and Certificate Revocation:** Before a zoning permit or any certificate issued by the Administrator may be revoked, the Administrator shall give the permit recipient five (5) days' notice of intent to revoke the permit and shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations.

A. **Hearing Before Administrator**: The permit holder must request a hearing in writing within five (5) days. The Administrator or other disinterested person, as designated by the Administrator, will conduct a hearing on the request within five (5) business days of the Administrator's receipt of the request. The hearing will be held in person but at request of the permit holder may be held by telephone. At the hearing, the permit holder will be given an opportunity to present the facts and other matters which he maintains should prevent the revocation of the permit. The permit holder may be represented by an attorney, shall have the opportunity to examine any documents relied upon by the Administrator, and shall be given the opportunity to cross-examine any witnesses who testify against the permit holder. Within two (2) business days following the hearing, the Administrator or other disinterested person conducting the hearing will issue a decision. If the permit is revoked, the Administrator shall provide to the permit holder a written statement of the decision and the reasons therefore.

B. A decision under Subsection 12.09.03(A) may be appealed to the Board of Adjustment within the prescribed time period.

12.09.04 No person may continue to make use of land or buildings in the manner authorized by any permit after such permit has been revoked in accordance with this Section.

12.10 Enforcement by Others

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

Article 13 RESERVED

TITLE IV DISTRICTS AND USES

Article 14 ZONING DISTRICTS AND ZONING MAP

14.01 Residential Districts Established

14.01.01 Each of these districts is designed and intended to secure for the persons who reside there a comfortable, healthy, safe, and pleasant environment in which to live, sheltered from incompatible and disruptive activities that properly belong in nonresidential districts.

14.01.02 The R1 Single Family Residential District is established to provide a low-density living area consisting only of single-family dwelling units and other related uses necessary for a sound neighborhood. The regulations for this district are designed to stabilize and encourage a comfortable, healthy, safe, aesthetically pleasing and pleasant living environment for family life that promotes peaceful quiet enjoyment sheltered from incompatible and disruptive activities that properly belong in nonresidential districts.

14.01.03 The R1A Single-Family Residential with Accessory Dwelling District is established to provide a low-density living area consisting of single-family dwellings with or without subordinate, accessory dwellings. The regulations for this district are intended to maintain the essential character of a single-family neighborhood but allow for the establishment of accessory dwellings which are clearly subordinate to the single-family dwelling. The regulations for this district are designed to secure for the persons who reside there a comfortable, healthy, safe, aesthetically pleasing and pleasant environment in which to live, sheltered from incompatible and disruptive activities that properly belong in nonresidential districts.

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

A. The majority of the housing stock in the district shall have been constructed before the Town adopted zoning regulations; and

B. The area must qualify under U.S. Department of Housing and Urban Development standards as a blighted area; and

C. The district must be a designated target area for which public money has been appropriated for the purpose of rehabilitating housing stock for low and moderate income persons. All existing nonconforming uses and uses with nonconforming structures, within the Residential Rehabilitation District, shall comply with Article 7 Nonconformities.

14.01.05 The R2 Two-Family Residential District is established to provide a medium density living area consisting of single-family and two-family dwellings, and other related uses necessary for a sound neighborhood. The regulations for this district are designed and intended to secure for the persons who reside there a comfortable, healthy, safe,

aesthetically pleasing and pleasant environment in which to live, sheltered from incompatible and disruptive activities that properly belong in nonresidential districts.

14.01.06 The R3 Multiple-Family Residential District is established to provide a high density area consisting of three or more dwelling units per lot plus limited service use. The regulations for this district are designed and intended to secure for the persons who reside there a comfortable, healthy, safe, aesthetically pleasing, and pleasant environment in which to live and provide for compatible and disruptive activities that properly belong in nonresidential districts.

14.01.07 The R4 Two-Family/Manufactured Home District is established to provide a medium density area consisting of two-family uses, and manufactured homes on single lots. The regulations for this district are designed and intended to secure for the persons who reside there a comfortable, healthy, safe, aesthetically pleasing, and pleasant environment in which to live and provide for compatible and disruptive activities that properly belong in nonresidential districts.

14.01.08 The RA Residential/Agricultural District is established as a district in which the principal use of the land is for low density residential and agricultural purposes. Low-density commercial and service uses which serve the day to day convenience needs of the surrounding area are permissible so long as the uses are of such nature as to minimize conflicts with the area they serve. These districts are intended to insure that residential development not having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at a sufficiently low density to provide a healthful environment. The regulations for this district are designed and intended to create a comfortable, healthy, safe, aesthetically pleasing, and pleasant environment for all appropriate uses.

14.01.09 The MH Manufactured Home Park District is established to encourage well planned, attractive land development in the Town by providing fair standards and beneficial requirements for the siting, operation, and maintenance of manufactured homes. The regulations for this district are designed and intended to secure for the persons who reside there a comfortable, healthy, safe, aesthetically pleasing, and pleasant environment in which to live and provide for compatible and disruptive activities that properly belong in nonresidential districts.

14.02 Commercial Districts Established

14.02.01 The following commercial districts are hereby established: B1, B2, B3, and OI. These districts are created to accomplish the purposes and serve the objectives set forth in the remainder of this Section.

14.02.02 The B1 Central Business District is intended to provide for the development of the commercial and service center for the Town while maintaining its character, and to encourage appropriate residential uses in the central area of Town, normally as part of mixed-use developments. The regulations for this district are designed and intended to

create a comfortable, healthy, safe, aesthetically pleasing, and pleasant environment for all appropriate uses.

14.02.03 The B2 Neighborhood Business District is intended to provide for the development of low-density commercial and services that are accessible by pedestrians and cyclists from surrounding neighborhoods, which serve the day to day convenience needs of surrounding neighborhoods, and are of such nature as to be in harmony with the neighborhoods they serve. Appropriate residential uses are allowed in this district, normally as part of mixed-use developments. The regulations for this district are designed and intended to create a comfortable, healthy, safe, aesthetically pleasing, and pleasant environment for all appropriate uses.

14.02.04 The B3 General Business District is established to provide a wide range of consumer goods, convenience goods and personal services for the community and surrounding region. Appropriate residential uses are allowed in this district, normally as part of mixed-use developments. The regulations for this district are designed and intended to create a comfortable, healthy, safe, aesthetically pleasing, and pleasant environment for all appropriate uses.

14.02.05 The OI Office/Institutional District is established to provide a zoning district which promotes the development of moderately intensive office and institutional uses which are oriented toward the provision of services versus the sale of products. Appropriate small scale residential uses are allowed in this district to the point they support allowable office and institutional uses. The regulations for this district are designed and intended to create a comfortable, healthy, safe, aesthetically pleasing, and pleasant environment for all appropriate uses.

14.03 Educational Districts Established

14.03.01 The educational districts are established to provide areas which promote the enhancement of compatible educational institutions and opportunities within the Town's planning area while preserving the overall small-town character of Boone. For their principal and accessory uses, the entities which are subject to the U1, E1 and E2 districts may only function within those districts. Uses allowed in those districts must be integral to the entity or must be specifically identified and authorized for those districts in the Table of Principal Uses, Table of Accessory Uses and Table of Temporary Uses.

14.03.02 The U1 University District is established for Appalachian State University (ASU). This district is intended to provide for the planning and expansion of ASU's main campus that is consistent with the Town's overall planning objectives. Specific uses listed in the U1 column in the Table of Principal Uses, the Table of Accessory Uses, and the Table of Temporary Uses are only allowed if they are associated with and have the approval of the institution authorized under Use Category 9.01 and 9.02.

14.03.03 The E-1 Educational District is established to provide for appropriate ASU, CCC&TI, and other institutions of higher learning uses away from the ASU main campus. Specific uses

listed in the E-1 column in the Table of Permissible Uses, the Table of Accessory Uses, and the Table of Temporary Uses are only allowed if they are associated with and have the approval of the institution authorized under Use Category 9.01 and 9.02.

14.03.04 The E-2 Educational District is established to provide for planning and appropriate expansion of public or private elementary and secondary educational institutions such as Hardin Park Elementary and Watauga High School. Specific uses listed in the E-2 column in the Table of Permissible Uses, the Table of Accessory Uses, and the Table of Temporary Uses are only allowed if they are associated with and have the approval of the institution authorized under Use Category 9.04 and 9.05.

14.04 Manufacturing District Established

14.04.01 The M1 Manufacturing District is established primarily to accommodate appropriate, light industrial and warehouse enterprises engaged in the assembly, fabrication, finishing, packaging or warehousing of goods and materials, including the storage and processing of raw materials into other products.

14.05 Conditional Districts Established

14.05.01 Conditional districts are zoning districts in which the use and development of a property are approved through the legislative process pursuant to a site specific development plan pursuant to Article 9 Amendments.

14.06 Special Flood Hazard Area

14.06.01 The Special Flood Hazard Area is an overlay district intended to regulate the Special Flood Hazard Area pursuant to Article 30 Flood Damage Prevention.

14.07 Watershed Districts

14.07.01 The watershed districts are established as overlay districts intended to regulate the water supply watershed areas pursuant to Article 29 Watershed Protection.

14.08 Corridor Overlay Districts

14.08.01 The corridor districts are established overlay district intended to protect the main thoroughfares though Town.

14.08.02 The following corridor district(s) are hereby established, with the limits of each district being 550’ on either side of the centerline of each of the following thoroughfares, and shall apply to all development other than single-family dwellings along the thoroughfare:

A. **US Hwy 421 East**: Beginning at the intersection with US Hwy 321 (Hardin Street) and extending east along the centerline of US Hwy 421 to the farthest extent of the Town’s planning jurisdiction. This Corridor District includes both the old two lane portion of US Hwy 421 and the new four lane portion of US Hwy 421 located in the Town’s extraterritorial jurisdiction.

B. **US Hwy 421 West**: Beginning at the intersection with Poplar Grove Connector and extending west along the centerline of US Hwy 421 to the farthest extent of the Town's planning jurisdiction.

C. **US Hwy 321**: Beginning at the intersection with US Hwy 421 (East King Street) and extending south along the centerline of US Hwy 321 to the farthest extent of the Town's planning jurisdiction.

D. **NC Hwy 105**: Beginning at the intersection with US Hwy 321 (Blowing Rock Road) and extending west along the centerline with NC Hwy 105 to the intersection of NC Hwy 105 Bypass (SR 1107).

E. **NC Hwy 105 Extension:** Beginning at the intersection with US 321 (Blowing Rock Road) and extending north along the centerline with NC Hwy 105 Extension to the intersection of US Hwy 421.

F. **NC Hwy 105 Bypass** (SR1107): Beginning at the intersection with NC Hwy 105 and extending north along the centerline of NC Hwy 105 Bypass to the farthest extent of the Town's planning jurisdiction.

G. **NC Hwy 194**: Beginning at the intersection with US Hwy 421 (East King Street) and extending north along the centerline with NC Hwy 194 to the farthest extent of the Town's planning jurisdiction.

14.08.03 Site development requirements shall apply to all developments within the established corridor district with the exception of single-family residences.

14.08.04 The requirements for all properties are listed below.

A. Allowed Access: All lots recorded and shown on tax maps at the Watauga County Register of Deeds and Tax Office as of the effective date of this Ordinance shall be permitted one driveway access. If projects are proposed that encompass more than one parcel as recorded at the date of adoption of this Ordinance, they shall be permitted only one driveway access for the project. If any street(s) or road(s) other than the thoroughfare(s) protected by this Ordinance is (are) available for access to any parcel, tract or development, access must be taken from the alternate street(s). If the alternate street access is not adequate to serve the parcel, tract or development, a single access point to the regulated thoroughfare may be allowed.

B. Transition Tapers and Deceleration Lanes: These may be required for any driveway or development if the size of the development and/or traffic volume warrants, and shall be constructed in accordance with NCDOT standards. Transition tapers and deceleration lanes shall be required in accordance with standard engineering practices which analyze the results of the cumulative impacts of site distance, type of development and size of development.

C. Corner Clearance: No driveway, except single-family residential access, shall be allowed within 150' of the centerline of an intersecting street.

D. Driveway Spacing: The distance between any two [2] drives shall be 150' on the protected thoroughfare[s].

1. The driveway spacing requirement shall be measured along the right-of-way line from the centerline of the driveway.

E. Subdivision Frontage: Any tract proposed for subdivision which borders the protected thoroughfare(s) shall provide sufficient frontage on another street [either pre-existing or created as part of the subdivision] for all lots created out of such tract so that direct access to lots does not need to be provided on the protected thoroughfare[s].

F. Access Driveways: All developments (greater than 50,000 square feet of gross floor area) and fronting the protected thoroughfare[s] shall provide landscaped medians within the access driveway.

G. Access not Prohibited: Any parcel of record on the effective date of this Ordinance that has been prohibited all vehicular access based on the provisions herein shall be allowed one (1) access point to its street frontage while meeting the intent of the technical requirements as is practical.

H. Coordination of Access: Access shall be coordinated between adjoining properties for vehicles, pedestrians and bicycles. Pedestrian linkages must be in an acceptable form such as sidewalks, maintained gravel paths and paved walks.

I. Transit Shelters and Stops: All developments (having greater than 50,000 square feet of gross floor area) shall provide transit shelters and stops as needed after consultation with local transit officials.

14.08.05 No requirement of the corridor district shall repeal, modify or amend any federal or state law or regulation, but shall replace any specific regulation or Ordinance provision pertaining to the specific requirement within this Ordinance.

14.09 Neighborhood Conservation Districts

14.09.01 Neighborhood Conservation Districts are established as overlay districts to stabilize and maintain a suitable low-density living environment for family life.

14.09.02 The following Neighborhood Conservation Districts are hereby established:

A. Blanwood Drive: The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Oak Street, Windy Drive, Horn in the West Drive and Skyview Drive.

B. Forrest Hills Drive: The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map.

C. Grand Boulevard: The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Grand Boulevard, Orchard Street and Iris Lane.

D. Grandview Heights: The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of West Grandview Heights, Russell Drive and Poplar Grove Road.

E. Stadium Drive: The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Hemlock Drive, Ferncliff Road, Tanglewood, Hawthorne Lane, Hope Drive, and Spring Street.

F. Queen Street: The limits of the district are depicted on the Neighborhood Conservation District overlay zoning map and include all or portions of Queen Street, Gladys Street and Charles Street.

14.09.03 The requirements of all rental property within Neighborhood Conservation Districts shall be as follows:

A. All tenants of rental property must complete and file a Residential Parking Registration Form with the Administrator. Tenants must provide personal identification, vehicle registration, and proof of residency within a designated Neighborhood Conservation District.

B. Tenants meeting eligibility requirements will be issued parking stickers for their vehicle(s) for the appropriate neighborhood district which must be permanently attached to eligible vehicles. Annual renewal and nominal fees are required.

C. No more than two unrelated persons per dwelling unit will be issued parking stickers.

D. Owners of rental property residing more than fifty (50) miles from Boone must designate in writing a local managing agent residing within Watauga County that will be responsible for all matters concerning occupancy of such rental property, and must provide the Administrator with the agent's name, address and telephone number.

E. Owners or local managing agents of rental property must notify tenants of applicable Neighborhood Conservation District requirements.

14.10 Viewshed Protection District

14.10.01 The Viewshed Protection District is established as an overlay district intended to protect the scenic beauty and natural environment of Boone's hillside areas vital to preservation of a high quality of life and continued economic development by minimizing the visual impact of building construction and land disturbing activities.

14.10.02 Protection Map. The presumed boundaries of the Viewshed Protection District shall be depicted on a "Viewshed Map," which will be posted at the Town's Planning and Inspections Department and on the Town of Boone's website. This map shall show the areas of the Town's zoning jurisdiction which exceed the one hundred foot line which defines the lower most boundary of the viewshed. However, when an owner of property which is either partly or wholly above the depicted line files an application for

development to take place within the presumed viewshed, the Administrator or his designee shall determine if the development, as proposed, can be seen during any season of the year from one of the major traffic corridors. If the Administrator determines that the property cannot be thus seen, the requirements of the overlay district shall not apply. In addition, the owner of property contained within the viewshed protection district may establish that the property to be developed is not within the viewshed by presenting sufficient information to the Administrator that the development, as proposed, cannot be seen during any season of the year from one of the major traffic corridors, or by showing that the portion of the property to be developed is not more than 100' above the nearest major traffic corridor. Should the Administrator determine that a portion of the property to be disturbed by the development is in the viewshed, when the owner contends it is not be in the viewshed as it is proposed to be developed, the Administrator's determination shall be considered an appealable determination which may be appealed to the Town of Boone Board of Adjustment in conformity with the procedures of Article 6.

14.10.03 The requirements for the development of properties wholly or partly within the Viewshed Protection District shall be as follows:

A. The maximum allowable land disturbance on property within the viewshed shall be as follows:

1. Property up to two (2) acres in size shall be limited to three-quarters (3/4) of an acre of land disturbance. Therefore, a three-quarter (3/4) acre or smaller property in the viewshed is unrestricted by this Section with regard to land disturbing activity.

2. The maximum allowable land disturbance for property in the viewshed which is larger than two (2) acres shall be limited to three-quarters (3/4) of an acre for the first two (2) acres, plus thirty percent (30%) of the additional property. For example, a tract of land of four (4) acres can be developed with three-quarters (3/4) acre, or 32,670 square feet, of land disturbed based upon the first two acres, and an additional thirty percent (30%), or 26,136 square feet of land disturbed, based on the additional two (2) acres. Therefore, a total of 58,806 square feet can be disturbed in the development of the four (4) acres, and this total amount of land disturbance may be consolidated in one area of the property. In this example, the land in one (1) acre can be 100% disturbed, in a second acre, partly disturbed, and in the remaining two (2) acres, undisturbed.

3. Land disturbance of portions of a property below the viewshed are unrestricted by this Section, but do not increase the amount of land disturbance which can take place on the portion of the property in the viewshed.

B. The intensity of development of property zoned RA within the viewshed shall be as established for the RA district in Article 16 of the UDO. The intensity, including height limitations, of development of property in all other zoning districts within the

viewshed shall be as established for the R1 zoning district in Article 16 of the UDO, but the exemption for single family homes contained in Subsection 16.01.01(B) shall not apply in the viewshed.

C. Property which has been developed before the effective date of this amendment will be affected as follows:

1. When the intensity of the development does not exceed the limits established by Subsection 14.01.03(B), it may be increased in size up to ten percent (10%) greater than the limits established by Subsection 14.10.03(B).
2. When the intensity of the development already exceeds the limits established by Subsection 14.10.03(B), additional development is permitted up to a size 10% greater than the existing structure, and likewise, an additional ten percent (10%) of impervious surface may be created.
3. The limits on land disturbing activity created by Subsection 14.10.03(A) shall be calculated as if no development on the property has yet taken place. In other words, the Administrator shall exclude from the calculations of allowable land disturbance that portion of the property upon which an impervious surface exists at the time this amendment is effective. For example, if a house with a 2,000 square foot footprint and 2,000 square feet of driveway already exists on a three (3) acre tract, and the owner wishes to construct an addition, the Administrator will first add the square footage of the house's footprint and the square footage of the driveway to determine that there is already 4,000 square feet of impervious surface on the property. This existing square footage of impervious surface will be subtracted from the total land area of the property to calculate how much of the remaining property can be disturbed. In the example, the property will be viewed not as a three (3) acre tract, but as a tract of two (2) acres, plus 39,560 square feet (an acre = 43,560 square feet, minus 4,000 square feet of existing impervious surface). The amount of allowable land disturbance to put in the addition ends up being 44,538 square feet.

D. Persons developing property in the viewshed shall strive to reasonably site any structures to be developed on the property in such way as to minimize their visual impact from the major corridors. To this end, the Administrator may request a redesign of a site development plan to accomplish this goal.

E. Persons developing property in the viewshed shall strive to reasonably preserve and protect foliage and trees on the property, without placing the construction in danger, with a goal of minimizing the visual impact of the development from the major corridors.

F. All development in the viewshed shall include a plan for landscape buffering, using the techniques and vegetation authorized in Appendix B, in the line of sight from the

major corridors, to reduce to the extent reasonably possible the visual impact of the development from the major corridors. Such plans, in the case of the construction of a single family home, need not be "formal" or prepared by a landscape professional, but must be in writing sufficiently detailed to allow the Administrator to know what is planned.

G. All development along ridgelines must be designed in an effort to reasonably minimize the visual impact of such development from the major corridors. To this end, the Administrator may require a redesign of a site development plan to accomplish this goal or may require specific landscape buffering, such as trees and other plant material, to be installed. This requirement by the Administrator shall be considered an appealable decision to the Board of Adjustment, and may be appealed in conformity with the procedures of Article 6.

H. All requirements of the particular zoning district or development in the viewshed otherwise established by the UDO shall remain in full force and effect.

14.11 Historic Districts

14.11.01 Historic districts are established as overlay districts intended to preserve historic landmarks and districts within the Town pursuant to Article 8 Historic Preservation.

14.12 Split Zone

14.12.01 When a development is proposed on land with more than one zoning classification, the elements of the development, including but not limited to parking, recreation and storage, must be located on those portions of the development with zoning designations which allows the use as a principal use or is otherwise specifically authorized. Notwithstanding this prohibition all portions of the site specific development plan may be used to satisfy the requirements of Section 16.01 unless otherwise prohibited.

14.12.02 Split zone developments have special rules regarding allowable intensity (see Article 16).

Article 15 DISTRICT USE REQUIREMENTS

15.01 Types of Uses

15.01.01 Permitted (P): A "P" in the Table of Principal Uses, Table of Accessory Uses, and Table of Temporary Uses indicates that a use is allowed by right in the respective district unless the use is subject to a transitional zone (see 12.01.02). Such uses are subject to all applicable requirements of this Ordinance but do not have additional requirements which are specific to the use in accordance with this Article. A cross-reference in the "Reference" column of the Table for a permitted use is intended to direct the reader to a Section(s) which has special importance to the use, but it does not limit the applicability of other Sections.

15.01.02 Permitted Subject to Limitations (L): An "L" in the Table of Principal Uses, Table of Accessory Uses, and Table of Temporary Uses indicates that a use is allowed by right in the respective district unless the uses is subject to a transitional zone (see 9.01.02), provided that the use meets the normal requirements of the Ordinance plus additional requirements designed to address the specific impacts of the use. A cross-reference in the "Reference" column of the Table for a permitted use with an "L" is intended to direct the reader to a Section(s) which has special importance to the use, but it does not limit the applicability of other Sections.

15.01.03 Special Use Permit Required (S): An "S" in the Table of Principal Uses, Table of Accessory Uses, and Table of Temporary Uses indicates that a use is allowed only with a Special Use Permit in the respective district. A cross-reference in the "Reference" column of the Table for a permitted use with an "S" is intended to direct the reader to a Section which has special importance to the use, but it does not limit the applicability of other Sections.

15.01.04 Conditional District (CD): A "CD" in the Table of Principal Uses, Table of Accessory Uses, and Table of Temporary Uses indicates that a use is allowed only with a Conditional District zoning approval in the respective district. A cross-reference in the "Reference" column of the Table for a permitted use with a "CD" is intended to direct the reader to a Section which has special importance to the use, but it does not limit the applicability of other Sections.

15.01.05 Not Permitted (Blank Cell): A blank cell in the Table of Principal Uses, Table of Accessory Uses, and Table of Temporary Uses indicates that a uses in not allowed in the respective district.

15.01.06 Transitional Zones: Transitional zones attach to each R1, R1A, RR, R2, and RA district and are designed to address the predictable negative impacts of certain uses and therefore have additional standards which must be met. A proposed use subject to a transitional zone must be approved by a Special Use Permit or with Conditional District re-zoning. A superscript "T*n*" in the Table of Principal Uses, Table of Accessory Uses or the Table of Temporary Uses denotes the specified use in the specified district is subject to a

transitional zone, where "*n*" represents the size, in feet, of the transitional zone, measured from the boundary of the protected district. However, in the any of the protected districts, the distance is measured from the protected lot rather than the protected zone. See Subsection 6.02.02 for full transitional zone requirements.

15.01.07 **Use Nomenclature:** Each use listed in the Table of Principal Uses, Table of Accessory Uses, and Table of Temporary Uses below is more fully defined in Article 34 Definitions. The nomenclature of each use within the Tables is for identification purposes only.

15.02 Permissible Uses and Specific Exclusions

15.02.01 All uses that are not listed in Section 15.07 are prohibited. A use which is not permitted as a principal use in a zoning district cannot be allowed even as an accessory use in that district unless it is accessory to a principal use that would be allowable in that district.

15.03 Accessory Uses

15.03.01 An accessory use must be:

A. Clearly incidental to and customarily found in connection with a principal structure or use; and

B. Subordinate to and serve a principal structure or use ; and

C. Subordinate in area, extent, or purpose to the principal structure or use served; and

D. Located within the same site specific development plan as the principal structure or use.

15.03.02 Subsection 15.07.01, the Table of Accessory Uses, lists generally authorized accessory uses within the associated zoning districts so long as the use otherwise qualifies as an accessory use.

15.03.03 A use which is not permitted as a principal use in a zoning district cannot be allowed as an accessory use in that district unless it is specifically listed in the Table of Accessory Uses.

15.03.04 When a development is proposed on land with more than one zoning classification, any accessory use must be located on those portions of the development with zoning designations which allows the use as principal use or is authorized by the Table of Accessory Uses.

15.04 Permissible Uses Not Requiring Permits

15.04.01 Notwithstanding any other provisions of this ordinance, no zoning or special use permit is necessary for the following uses:

A. Public streets or sidewalks.

B. Electric power, telephone, telegraph, cable television, gas, water and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right-of-way with the permission of the owner.

C. Utility facilities located within a public right-of-way with the permission of the owner.

15.05 Combination Uses

15.05.01 A combination use may only be authorized if all proposed principal uses are permissible in the zoning district for which it is proposed.

15.05.02 A combination use must be authorized by a special use permit if any of the permissible uses requires a special use permit.

15.05.03 A combination use has special rules regarding landscaping (See Article 31).

15.06 More Specific Use Controls

15.06.01 When two use classifications in the Table of Principal Uses describe a particular activity, the more specific description shall control.

15.07 Table of Principal Uses

Use #	Specific Use	Zoning Districts																Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education			
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	
1.0 Household Living																		
1.01	Single-Family Dwelling	P	P	P	P	P	P								P			
1.02	Manufactured Home "Class A"	L			L	L	L	L							P			15.08
1.03	Manufactured Home "Class B"	L						L										15.08
1.04	Manufactured Home "Class C"																	
1.05	Manufactured Home Park							L										15.09
1.06	Duplex (one duplex building per lot)	P				P	P		P						P			
1.07	Duplex (more than one duplex building per lot)								L						L			15.10
1.08	Townhouse (up to 30 bedrooms)						L^{T50}		L^{T50}						L^{T50}			15.10
1.09	Townhouse (31-100 bedrooms)						L^{T50}		L^{T75}						L^{T75}			15.10
1.10	Townhouse (> 100 bedrooms)						L^{T75}		L^{125}						L^{T125}			15.10
1.11	Multi-Family Dwelling (up to 30 bedrooms)								L^{T125}						L^{T125}			15.10
1.12	Multi-Family Dwelling (31-100 bedrooms)								L^{T200}						L^{T200}			15.10
1.13	Multi-Family Dwelling (> 100 bedrooms)								L^{T300}						L^{T300}			15.10
1.14	Multi-Family Dwelling in Mixed Use (up to 30 bedrooms)										L	L^{T75}	L		L^{T75}			15.11
1.15	Multi-Family Dwelling in Mixed Use (31-100 bedrooms)										L^{T125}		L^{T125}		L^{T75}			15.11
1.16	Multi-Family Dwelling in Mixed Use (> 100 bedrooms)										L^{T125}		L^{T200}		L^{T75}			15.11
1.17	Planned Residential Development					S	L^{T200}		S									15.12
2.0 Group Living																		
2.01	Family Care Home	L	L	L	L	L	L		L						L			15.13
2.02	Family Care Institutions									L^{T125}					L^{T125}			15.14
2.03	Halfway House, Category 1									L					L			15.14
2.04	Halfway House, Category 2									L^{T125}								15.14
2.05	Nursing Care Home	L	L	L		L	L		L	L			L		L			15.14
2.06	Nursing Care Institution									L^{T125}			L^{T125}					15.14
2.07	Skilled Nursing Facility									L^{T300}			L^{T300}					15.14
2.08	Retirement Community, Category 1	L				L	L		L	L					L			15.15
2.09	Retirement Community, Category 2								L^{T200}	L^{T125}					L^{T125}			15.15

Use #	Specific Use	Zoning Districts																Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education			
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	
2.10	Residence Hall, Category 1	L							L	L	L		L		L			15.15
2.11	Residence Hall, Category 2								L^{T200}	L^{T200}			L^{T200}		L^{T200}			15.15
2.12	Residence Hall, Category 3									L^{T300}			L^{T300}					15.15
2.13	Fraternity or Sorority Dwelling								S^{T300}						P^{T300}			15.16
2.14	Boarding House								L				L		P			15.17
3.0 Transient Living																		
3.01	Home for Survivors of Domestic Violence	L	L	L		L	L			L		L			L			15.18
3.02	Shelter for Homeless, Category 1								L^{T50}	L^{T50}	L^{T50}		L^{T50}		L^{T50}			15.19
3.03	Shelter for Homeless, Category 2								L^{T300}	L^{T300}			L^{T300}		L^{T300}			15.19
3.04	Bed and Breakfast, Category 1	L	S^{T50}	S^{T50}		L^{T50}	L^{T50}				L	L			L			15.20
3.05	Bed and Breakfast, Category 2					L	L^{T125}				L^{T125}		L^{T125}		L^{T125}			15.20
3.06	Vacation Rental	L^{T75}							L^{T75}		L^{T75}	L^{T75}	L^{T75}		L^{T75}			15.21
3.07	Motel												P^{T300}		P^{T300}			
3.08	Hotel										P^{T200}		P^{T200}		P^{T200}			
4.0 Institutional Uses																		
4.01	Airport/Landing Strip	S^{T300}																15.22
4.02	Heliport	S^{T300}													S^{T300}			15.22
4.03	Funeral Home Establishment									P	P	P	P		P			
4.04	Cemetery	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
4.05	Post Office									P	P	P	P	P	P			
4.06	Post Office, Distribution													P				
4.07	Animal Sanctuary	S^{T300}													S^{T300}			
5.0 Government Uses																		
5.01	Government Cultural Facility									P	P		P		P			
5.02	Government Neighborhood Cultural Facility, Indoor Activity Only	S	S	S	S	S	S		P	P	P	P	P		P			
5.03	Government Neighborhood Cultural Facility, Includes Outdoor Activity									P	P		P		P			
5.04	Recreation Facility, Category 1	P							P	P	P	P	P		P			

Use #	Specific Use	Zoning Districts																Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education			
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	
5.05	Recreation Facility, Category 2	P	P	P	P	P	P	P	P	P	P	P	P		P			
5.06	Recreation Facility, Category 3	P^{T50}	S	S	S	S	S	S	S	P^{T50}	P^{T50}	P^{T50}	P^{T50}		P^{T50}			
5.07	Event Venue, Category 1									P	P	P	P		P			
5.08	Event Venue, Category 2									P	P	P	P		P			
5.09	Event Venue, Category 3									P^{T50}	P^{T50}	P^{T50}	P^{T50}		P^{T50}			
5.10	Landfill													S				
5.11	Solid Waste Processing													S				
5.12	Police Substation	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
5.13	Utility Facility, Town	L	L	L	L	L	L	L	L	L	L	L	L	L	L			15.23
5.14	Utility Facility, Government, Neighborhood	L	L	L	L	L	L	L	L	L	L	L	L	L	L			15.23
5.15	Utility Facility, Government, Regional	L^{T300}								L^{T300}			L^{T300}	L^{T300}	L^{T300}			15.23
5.16	Government Facility	P							P	P	P	P	P	P	P			
6.0 Non-Government Utility Facility																		
6.01	Utility Facility, Neighborhood	L	L	L	L	L	L	L	L	L	L	L	L	L	L			15.23
6.02	Utility Facility, Regional	L^{T300}								L^{T300}			L^{T300}	L^{T300}	L^{T300}			15.23
7.0 Telecommunications																		
7.01	Antenna Collocation on Existing Wireless Support Structure not requiring additional accessory equipment	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
7.02	Antenna Collocation on Existing Wireless Support Structure requiring additional accessory equipment	L	L	L	L	L	L	L	L	L	L	L	L	L	L			15.24
7.03	Building Mounted Antenna not requiring additional accessory equipment	L	L	L	L	L	L	L	L	L	L	L	L	L	L			15.24
7.04	Building Mounted Antenna requiring additional accessory equipment	L								L	L	L	L	L	L			15.24
7.05	Antenna Collocation on Electrical Transmission Towers								L									15.24
7.06	Other Antenna	L								L	L	L	L	L	L			15.24
7.07	Wireless Support Structure which meets district height requirements	S	S	S		S	S		L	L	L	L	L	L	L			15.24
7.08	Stealth Wireless Facility which exceeds district height	L	S	S		S	S		S	L	L	L	L	L	L			15.24

Use #	Specific Use	Zoning Districts																Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education			
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	
	requirements																	
7.09	Wireless Support Structure which does not meet district height requirements up to and including 120'	S								S				S	L			15.24
7.10	Other Tower that exceeds 120' in height																	15.24
7.11	Emergency Response Communication Antenna	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
8.0 Assembly																		
8.01	Religious Assembly, Category 1	P	P	P	P	P	P	P	P	P	P	P	P		P			
8.02	Religious Assembly, Category 2	P^{T125}	P^{T125}	P^{T125}	P^{T125}	P^{T125}	P^{T125}	P^{T125}	P^{T125}	P^{T75}	P		P		P			
8.03	Religious Assembly, Category 3	P^{T200}									P^{T200}		P^{T200}		P^{T200}			
8.04	Club/Lodge, Category 1										P^{T75}		P^{T75}		P			
8.05	Club/Lodge Which Does Not Serve Alcohol	P									P		P		P			
9.0 Education																		
9.01	Appalachian State University														P			
9.02	Caldwell Community College and Technical Institute									P^{T75}					P			
9.03	Other Public Colleges and Universities									P^{T75}								
9.04	Private Colleges and Universities									P^{T300}	P^{T200}		P^{T300}					
9.05	Trade School									P^{T200}	P^{T200}		P^{T200}		P			
9.06	High School									P^{T300}					P			
9.07	Elementary School									P^{T125}								
9.08	Boarding School									P^{T300}	P^{T300}		P^{T300}		P			
9.09	All other Educational Facilities									CD								
10.0 Daycare																		
10.01	Child Daycare, Large	L					L		L			L	L		P			15.25
10.02	Child Daycare Center									L			L		P			15.25
10.03	Adult Daycare, Large	L					L		L			L	L		P			15.25
10.04	Adult Daycare Center									L			L		P			15.25
10.05	All Other Daycare									CD								
11.0 General Sales and Service																		

Use #	Specific Use	Zoning Districts																Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education			
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	
11.01	Kennel	L^{T125}											L^{T125}					15.26
11.02	Veterinary Office/Hospital with Outdoor Kennels	L^{T125}								L^{T125}			L^{T125}		L^{T125}			15.26
11.03	Veterinary Office/Hospital without Outdoor Kennels	P								P	P	P	P		P			
11.04	Financial Institution ≤ 5,000 ft^2									P	P	P	P		P			
11.05	Financial Institution > 5,000 ft^2									P	P		P		P			
11.06	Restaurant ≤ 2,500 ft^2 open to the public during 10 pm – 6 am									P^{T75}	P^{T75}	P^{T75}	P^{T75}		P			
11.07	Other Restaurants ≤ 2,500 ft^2									P	P	P	P		P			
11.08	Restaurant > 2,500 ft^2 open to the public during 10 pm – 6 am									P^{T200}	P^{T125}		P^{T200}		P			
11.09	Other Restaurants > 2,500 ft^2									P^{T125}	P^{T75}		P^{T125}		P			
11.10	Bar																	
11.11	ABC Store										P		P					
11.12	Personal Service Establishment open to the public during 10 pm – 6 am									P^{T75}	P^{T50}		P^{T75}		P			
11.13	Other Personal Service Establishments									P	P	P	P		P			
11.14	Retail Store up to 5,000 ft^2									P	P	P	P		P			
11.15	Retail Store more than 5,000 but less than 25,000 ft^2										P^{T125}	P^{T200}	P^{T200}		P			
11.16	Retail Store 25,000 ft^2 and greater												L^{T300}					15.27
11.17	Shopping Center/Mall									S^{T300}	S	S^{T125}	S^{T300}		S^{T125}			15.28
11.18	Business or Professional Office open to the public during 10 pm–6 am									P^{T75}	P^{T50}		P^{T75}		P			
11.19	Other Business or Professional Office									P	P	P	P		P			
11.20	Medical Office, Category 1									P^{T300}	P^{T300}		P^{T300}		P			
11.21	Medical Office, Category 2									P^{T125}	P^{T125}		P^{T125}		P			
11.22	Medical Office, Category 3									P^{T125}			P^{T125}		P			
11.23	Medical Office, Category 4									P	P	P	P		P			
11.24	Hospital									P^{T300}					P^{T300}			
11.25	Medical Emergency Response									P^{T300}	P^{T300}		P^{T300}					
11.26	Open Air Market, Recurring	L^{T75}								L^{T50}			L^{T75}		L^{T75}			15.29
11.27	Vehicle Sales and Service											L^{T125}	L^{T75}					15.30

Use #	Specific Use	Zoning Districts																Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education			
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	
11.28	Equipment Sales and Service												L^{T125}	L^{T125}				15.31
11.29	Moped Sales and Service										P	P	P					
11.30	Boat or Marine Craft Sales and Service												L^{T75}	L^{T75}				15.32
11.31	Impound Lot/Towing Service												L^{T125}	L^{T125}	P			15.33
11.32	Gas Station	P^{T125}										P^{T125}	P^{T125}	P^{T125}	P			
11.33	Car Wash											P^{T125}	P^{T125}	P^{T125}	P			
11.34	Seasonal Retail Activities and Amusements	P								P	P	P	P		P			
12.0 Recreation																		
12.01	Indoor Shooting Range	L^{T75}											L^{T75}		P			15.34
12.02	Outdoor Shooting Range																	
12.03	Indoor Theater										P		P		P			
12.04	Outdoor Theater	P^{T200}									P^{T125}		P^{T125}		P			
12.05	Event Venue, Category 1										P	P^{T75}	P		P			
12.06	Event Venue, Category 2										P^{T50}	P^{T125}	P^{T125}		P			
12.07	Event Venue, Category 3										P^{T200}		P^{T200}		P			
12.08	Campground and Recreational Vehicle Park	L^{T200}											L^{T200}		L			15.35
12.09	Coliseum												S^{T300}		P^{T300}			
12.10	Recreation Facility, Category 1	P^{T125}								P	P	P	P		P			
12.11	Recreation Facility, Category 2	P^{T125}								P^{T50}			P^{T50}		P			
12.12	Recreation Facility, Category 3	P^{T200}											P^{T200}					
13.0 Agriculture																		
13.01	Garden, Community	L	L	L	L	L	L	L	L	L	L	L	L		P			15.36
13.02	Garden, Residential	L	L	L	L	L	L	L	L	L	L	L	L		L			15.37
13.03	Agricultural Operation Excluding Livestock	P																
13.04	Agricultural Operation Including Livestock	P																
13.05	Swine Farm																	
13.06	Confined Animal Feeding Operation (CAFO)																	
13.07	Custom Slaughterhouse	P																
13.08	Other Slaughterhouse																	

Use #	Specific Use	Zoning Districts																Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education			
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	
13.09	Forestry	L	L	L	L	L	L	L	L	L	L	L	L	L	L			15.38
14.0 Manufacturing																		
14.01	Microbrewery										L^{T75}		L^{T125}		L			15.39
14.02	Brewpub										L^{T75}		L^{T125}	L^{T125}	L			15.39
14.03	Brewery/Distillery												L^{T125}	L^{T125}	L			15.40
14.04	Brewery/Distillery, Other																	15.41
14.05	Winery Associated with a Vineyard	L^{T125}												L^{T125}	L			15.42
14.06	Winery												L^{T125}	L^{T125}	L			15.42
14.07	Winery, Other																	
14.08	Extraction of Earth Materials																	
14.09	Machine/Welding Shop												L^{T200}	L^{T200}	L^{T200}			15.44
14.10	Manufacturing, Other													L^{T300}				15.45
15.0 Parking																		
15.01	Parking Lot									L	L		L		P			15.46
15.02	Parking Structure									L	L		L		P			15.47
15.03	Park and Ride Lots	L								L			L		P			15.46
16.0 Storage																		
16.01	Mini-Storage	L^{T125}											L^{T75}	L^{T75}	P			15.48
16.02	Outdoor Storage													L^{T75}	P			15.49
16.03	Warehouse													P^{T75}	P			
16.04	Fuel Storage Facility												P^{T300}	P^{T300}				
16.05	Chemical Storage Facility																	
17.0 Transportation																		
17.01	Passenger Terminals												P^{T200}		P^{T200}			
17.02	Trucking or freight terminal ≤ 10,000 ft^2												P^{T125}	P^{T125}				
17.03	Trucking or freight terminal > 10,000 ft^2													P^{T300}				
18.0 Waste Related Uses																		
18.01	Recycling Drop-off Station	L^{T300}												L^{T200}	P			15.49
18.02	Recycling and Salvage													L^{T300}				15.49

Use #	Specific Use	Zoning Districts																Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education			
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	
18.03	Junkyard																	
18.04	Private Landfill																	
19.0 Particular Activities which pose Particular Concerns about Public Health																		
19.01	Electronic and Internet Gaming												S					15.50
19.02	Adult Establishments												S					15.51

15.07.01 Table of Accessory Uses

Use #	Accessory Use	Zoning Districts																Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education			
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	
A-1	Secondary Suite	L	L	L	L	L	L	L	L	L	L	L	L		L			15.52
A-2	Home Occupation	L	L	L	L	L	L	L	L	L	L	L	L		L			15.53
A-3	Accessory Dwelling Unit			L	L	L	L		L	L	L	L	L		L			15.54
A-4	Drive-Through									L			L	L	L			15.55
A-5	Outdoor Display									L	L	L	L	L	L			15.56
A-6	Outdoor Storage												L	L	L			15.57
A-7	Outdoor Dining									L	L	L	L		L			15.58
A-8	Automated Teller Machine (ATM)									P	P	P	P	P	P			
A-9	Automated Teller Machine (ATM), Freestanding								L	L	L	L	L	L	L			15.59
A-10	Produce Stand	L													L			15.60
A-11	Poultry	L	L	L	L	L	L	L	L	L		L	L		P			15.61
A-12	Livestock, Small	L	L	L	L	L	L	L	L	L			L		P			15.62
A-13	Livestock, Large	L																15.63
A-14	Bees	L	L	L	L	L	L	L	L	L	L	L	L		P			15.64
A-15	Garden, Residential	L	L	L	L	L	L	L	L	L	L	L	L	L	P			15.65
A-16	Satellite receiving antennas less than 1 meter in diameter	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
A-17	Satellite receiving antennas less than 2 meters in diameter	P								P	P	P	P	P	P			
A-18	Satellite receiving antennas 2 meters and greater in diameter									S			S	P	P			
A-19	Helistop	S^{T300}								S^{T300}			S^{T300}	S^{T300}	S^{T300}			
A-20	Swimming pools, spas, and hot tubs	L	L	L	L	L	L	L	L	L	L	L	L	L	L			15.66
A-21	Caretaker's residence									L			L	L	L			15.67
A-22	Vehicular Gate	L	L	L	L	L	L	L	L	L	L	L	L	L	L			15.68
A-23	Vehicle Washing Station	P							P	P		P	P	P	P			
A-24	Chemical Storage Facility												P^{T125}	P^{T125}	P			
A-25	Open Air Market, Accessory	L	L	L	L	L	L	L	L	L	L	L	L	L	L			15.29
A-26	Daycare, Small	P	P	P	P	P	P	P	P	P	P	P	P	P	P			

15.07.03 Table of Temporary Uses

Use #	Temporary Use	Zoning Districts																Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education			
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	
T-1	Temporary Care Provider Dwelling	L			L	L	L	L	L	L	L	L	L		L			15.69
T-2	Temporary Construction or Repair Dwelling	L	L	L	L	L	L	L	L	L	L	L	L	L	L			15.69
T-3	Temporary Construction Trailer	L	L	L	L	L	L	L	L	L	L	L	L	L	L			15.69
T-4	Temporary Mobile Medical Unit										L		L		L			15.69
T-5	Temporary Classroom									L			L		L			15.69
T-6	Temporary Portable Storage Containers									L				L				15.69
T-7	Temporary Staging									L			L	L	P			15.69
T-8	Temporary Non-Fixed Site Event Venue	L								L			L		P			15.69
T-9	Carrier on Wheels (COW)	L	L	L	L	L	L	L	L	L	L	L	L	L	L			15.69
T-10	Yard Sales	L	L	L	L	L	L	L	L	L	L	L	L	L				15.69
T-11	Itinerant Merchant/Peddler	L	L	L	L	L	L	L	L	L	L	L	L	L				15.69
T-12	Open Air Market, Temporary	L								L	L	L	L	L	L			15.29

15.08 Manufactured Home (Class A and Class B)

15.08.01 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.

15.08.02 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.

15.09 Manufactured Home Park

15.09.01 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.

15.09.02 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 right-of-ways and property lines.

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

I. Recreation:

1. A recreation area constructed in accordance with Section 16.05 is required in all manufactured home parks.
2. 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.

15.09.03 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 15.09.01.

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.

15.09.04 **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 6, 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.

15.10 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)

15.10.01 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.

15.10.02 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 15.11,

B. Multi-family dwelling units in single use buildings within a mixed use project constructed pursuant to an in accordance with the requirements of Section 15.11, if:

1. The development is approved through a conditional district 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.

15.10.03 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 and be approved by the Community Appearance Commission. To the greatest extent practicable, parking shall be located behind or underneath proposed building(s).

C. The fee-in-lieu provisions contained in Section 23.08.05 shall not apply. All required sidewalks shall be installed.

D. 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.

E. On-site property management or an owners association shall be required.

15.10.04 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.

15.10.05 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 ft^2) per unit must be provided for units without garages. Any storage space which is not within or attached to the building containing the units served by the space must be architecturally integrated with the development and approved by the Community Appearance Commission.

D. Occupancy of each unit shall be limited to (2) two unrelated persons.

15.11 Multi-Family in Mixed Uses

15.11.01 Multi-family residential uses (Use 1.114, 1.115 and 1.116) 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 issues from Section 15.07 Table of Principal Uses: 3.07 Motel, 3.08 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.

15.11.02 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 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 60% of primary public street level facing building facade shall be comprised of transparent, non-reflective windows and 30% of non-primary street level facing building facades shall be comprised of transparent, non-reflective windows.

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 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.

K. Pedestrian weather protection such as awnings or canopies are encouraged along the public street but may be placed only in accordance with an encroachment agreement authorized by the Town Council.

15.11.03 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. A minimum of 60% of the street facing street level building facade shall be comprised of transparent, non-reflective windows.

D. Surface parking shall be located to the side or most preferably to the rear, and in no case shall parking extend beyond the front building line.

E. Structured parking is permitted but shall be located to the rear or below street level commercial uses.

F. Building facades may be no further than 0'-0" from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or when there would be interference with public utilities.

G. Interior setbacks for all mixed use buildings shall be 10'-0" except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.

H. Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a Town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council. Such awnings or canopies count toward the recreation space requirements found in Section 16.05 of this Ordinance.

I. 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.

15.11.04 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. A minimum of 60% of the street level building façade facing the Corridor shall be comprised of transparent, non-reflective windows.

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. Structured parking is permitted but shall be located to the rear or under street level commercial uses.

d. Building facades may be no further than 10' from the street right-of-way line, except where necessary to preserve existing significant or historic trees which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or there would be interference with public utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.

e. Interior setbacks for all mixed use buildings shall be a minimum of 10' except where abutting a residential zoning district, in which case the interior setback shall at a minimum equal the required interior setback in the abutting residential district.

f. Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a Town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.

2. 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. A minimum of 60% of the street facing street level building façade of a building which fronts a protected corridor shall be comprised of transparent, non-reflective windows.

iv. 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.

v. Structured parking is permitted but shall be located to the rear or below the commercial uses.

vi. Building facades may be no further than 10' from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or there would be interference with public utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.

vii. Interior setbacks for all mixed use buildings shall be 10' except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.

viii. Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a Town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.

B. 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 15.11.04(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. A minimum of 60% of the major street facing street level façade of a building containing commercial use(s) shall be comprised of transparent, non-reflective windows.

iv. 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.

v. Structured parking is permitted but shall be located to the rear or below the commercial uses.

vi. Building facades fronting the major street may be no further than 10' from the street right-of-way line, except where necessary to preserve existing significant or historic trees, which shall be preserved, if practical, or to provide landscaped courtyards, landscaped greenspace, plazas, pocket parks, other pedestrian oriented amenities, in which case the maximum setback shall not exceed 20' or there would be interference with public utilities, or the placement of stormwater facilities and no reasonable alternative to that placement exists.

vii. Interior setbacks shall be 10' except where abutting a residential zoning district in which case the interior setback shall equal the required interior setback in the abutting residential district.

viii. Pedestrian weather protection such as awnings or canopies are encouraged along the public street provided they do not encroach into the roadway, but if they invade the space above a Town sidewalk, may be placed only in accordance with an encroachment agreement authorized by the Town Council.

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 15.11.04(B) above.

15.12 Planned Residential Development

15.12.01 Planned residential developments (PRD's) are permissible only on tracts of land of at least five acres located within an R2, R3, or R4 zoning district.

15.12.02 The overall density of a tract developed by a PRD shall be determined as provided in Section 16.01.

15.12.03 Permissible types of residential uses within a PRD include single family dwellings (Use 1.01) duplex (Use 1.06-1.07), townhouse (Use 1.08-1.10) and multi-family dwelling (Use 1.11-1.13). At least fifty percent (50%) of the total number of dwelling units must be single family dwellings (Use 1.01) on lots of at least 6,000 square feet.

15.12.04 A PRD shall be an architecturally integrated subdivision.

15.12.05 To the extent practicable, the duplex, townhouse and multi-family portions of a PRD shall be developed more toward the interior rather than the periphery of the tract so that the single family detached residences border adjacent properties.

15.12.06 In a PRD, the screening requirements that would normally apply where duplex, townhouse or multi-family development adjoins a single family development, shall not apply within the tract developed as a PRD, but all screening requirements shall apply between the tract so developed and adjacent lots.

15.13 Family Care Home

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

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

15.14 Family Care Institution, Nursing Care Home, Nursing Care Institution, Skilled Nursing Facility, Halfway House Category 1, Halfway House Category 2

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

15.14.02 A Family Care Institution, Nursing Care Home, Nursing Care Institution, Skilled Nursing Facility, 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.

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

15.15 Retirement Community Category 1, Retirement Community Category 2, Residence Hall Category 1, Residence Hall Category 2, Residence Hall Category 3

15.15.01 Retirement Community Category 1, Retirement Community Category 2, Residence Hall Category 1, Residence Hall Category 2, and Residence Hall Category 3 shall provide adequate supervision in light of the number and needs of the residents and security concerns for the use.

15.16 Fraternity and Sorority Dwelling

15.16.01 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.

15.16.02 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.

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

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

15.16.05 The maximum floor area shall be no greater than one-half (.5) of the maximum floor area ratio for the zoning district in which the use is located. For example, a one (1) acre (43,560 ft^2) lot in the R3 Multiple-Family zoning district (.480 Maximum Floor Area) would be able to support a 10,454.4 square foot building with 42 residents.

Calculation:	Maximum Floor Area:	43,560 x .480 = 20,908.8 square feet
	Allowable Floor Area:	20,908.8 x .5 = 10,454.4 square feet
	Total Number of Residents:	10,454.4 ÷ 250 = 41.8

15.17 Boarding House

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

15.17.02 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.

15.18 Home for Survivors of Domestic Violence

15.18.01 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.

15.18.02 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.

15.18.03 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.

15.18.04 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.

15.18.05 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.

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

15.18.07 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.

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

15.18.09 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.

15.18.10 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.

15.18.11 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.

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

15.19 Shelter for Homeless Category 1 and Shelter for Homeless Category 2

15.19.01 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.

15.19.02 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.

15.20 Bed and Breakfast Category 1 and Bed and Breakfast Category 2

15.20.01 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 ft^2).

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.

15.20.02 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.

15.21 Vacation Rental

15.21.01 A Vacation Rental is required to provide at least one (1) parking space per bedroom.

15.21.02 In the RA Residential Agriculture zoning district, parking should be to the side or rear of the vacation rental dwelling.

15.21.03 Without limiting the applicability of other Ordinance requirements, a Vacation Rental is subject to Article 31 Landscape Standards.

15.21.04 Only existing single-family and two-family dwellings in the R3 Multiple-Family, B1 Central Business, B2 Neighborhood Business, and B3 General Business zoning districts may be converted to a Vacation Rental.

15.21.05 The operator of a Vacation Rental must provide contact information if the operator lives more than fifty (50) miles from the Town of Boone corporate limits.

15.22 Airport/Landing Strip, Heliport, Helistop

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

15.23 Utility Facility

15.23.01 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.

15.23.02 Equipment producing noise or sound may not exceed 60 decibels at any adjoining property line.

15.24 Telecommunication

15.24.01 Unless superseded by Session Law 2013-185, the Cell Tower Deployment Act, which shall control, the following provisions shall apply to the erection or replacement or modification of a wireless facility.

15.24.02 It shall be unlawful for any person, corporation, partnership or other entity to erect any wireless facility without first obtaining a zoning permit from the Administrator. A permit shall also be required for the erection of a replacement wireless support structure or the modification of an existing wireless support structure.

A. Existing wireless support structures owned by government agencies and designed for non-commercial emergency communications may be replaced with a wireless support structure equal in height to the existing wireless support structure, however all other Ordinance provisions are applicable.

B. The placement or collocation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities must obtain a zoning permit in compliance with requirements of this Ordinance.

15.24.03 A completed zoning permit application with all the supporting documentation identified in Appendix A shall be submitted to the Administrator**.**

15.24.04 The Administrator shall approve or disapprove the zoning permit based upon the receipt of a completed site plan as required above and the following provisions:

A. The wireless facility design plan prepared by a professional engineer registered in the state of North Carolina, including engineer's signature, seal and address.

B. The foundation and base of the wireless support structure, the foundation for all the guy line anchors and support structures, all proposed buildings, and any other proposed improvements including access roads and utility connections within and to the proposed site.

C. Location Requirements:

1. The applicant shall identify all possible alternatives considered within the service area for the proposed wireless facility location and explain why the proposed wireless facility is necessary and why existing wireless facility or other structures cannot accommodate the proposed antenna(s).
2. Locating a wireless facility on a major mountain ridge shall be considered as a last resort and justifying documentation shall be provided.

D. Wireless Support Structure Height Limitations:

1. A wireless support structure shall not exceed an overall height (OAH) of 120 feet including the height of all antennae and lightning rods.
2. A wireless support structure located on any major mountain ridge shall be monopole and no taller than thirty feet (30') higher than the vegetative canopies immediately surrounding the base of the tower.

E. The proposed wireless support structure shall be designed and constructed for collocation of at least two other telecommunication antenna systems if location is not on a major mountain ridge. The wireless facility area shall be of sufficient size to accommodate the accessory equipment for at least three (3) telecommunication providers.

F. The applicant shall be required to provide documentation certifying compliance with all applicable federal and state regulations.

G. 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.

H. 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.

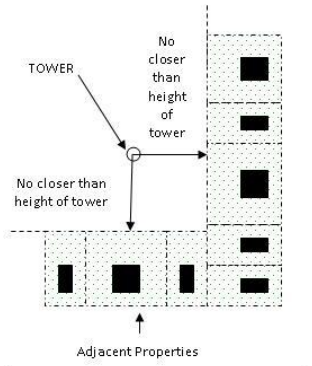
I. Setback Requirements:

1. A wireless support structures shall be set back from any surrounding property lines by a distance equal to the height of the wireless support structure unless a professional engineer registered in the State of North Carolina certifies the fall zone of the wireless support structure will be within the setback area proposed.
    a. Regardless of the fall zone, a wireless facility shall be setback twice the minimum requirement in the underlying zoning district.

b. Wireless facilities located within transmission line easements are not required to meet (a) above and are required to provide a minimum Type A landscape buffer and a minimum 10' street yard.

2. There shall be no setback requirement from structures located on the same parcel as the proposed wireless facility as long as a professional engineer registered in the State of North Carolina certifies the fall zone of the wireless support structure is designed to avoid said structures.

3. In addition, wireless support structures must be set back a minimum of 100 feet from any residentially zoned property.



Tower Setback Graphic

J. The wireless support structure shall be designed to meet the ANSI/EIA/TIA-222-G (as minimum one half inch (½") 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.

K. The wireless facility shall be surrounded by a commercial grade chain link secure fence at least eight feet (8') in height, which may include no more than two feet (2') of barbed or razor wire.

L. Lighting on wireless support structure shall not be permitted except as required by federal and state regulations.

M. Wireless support structures shall be light gray except when specific colors and color patterns are required by federal or state regulations.

N. All wireless facilities shall be landscaped in accordance with Article 31 Landscape Standards.

O. If a proposed wireless facility is within one mile of the Blue Ridge Parkway centerline and in the parkway viewshed, the applicant shall inform the National Park Service of the proposed tower siting. Park Service recommendations shall be given reasonable consideration and documentation of this consideration shall be provided to the Administrator. The Park Service shall be afforded thirty (30) days to respond to the applicant's written intention to erect a tower. No response to the notification within the thirty day response period shall be considered that the Park Service has no objection to the proposed site.

P. Stealth Wireless Facility

1. Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
2. The structure utilized to support the antennas must be allowed within the underlying zoning district. Structures may include, but are not limited to: flagpoles, bell towers, clock towers, crosses, monuments, parapets, and steeples.

Q. Wireless facilities shall comply with all other applicable regulations of this Ordinance.

R. The applicant shall provide the Administrator with proof of general liability insurance in the minimum amount of one million dollars ($1,000,000.)

15.24.05 The co-location of facilities and/or stealth technology shall be considered a mitigating factor to a variance request and may be justification for the request.

15.24.06 Any tower constructed under a permit pursuant to this Ordinance shall be removed within one hundred eighty (180) days of the date which it ceases to be in active use, or upon notice from the Ordinance Administrator, whichever is more favorable to the applicant.

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

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

15.25.02 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.

15.25.03 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.

15.25.04 A Child Daycare (Large and Center) and an Adult Daycare (Large and Center) are not allowed to be located together in one structure.

15.25.05 An Adult Daycare (Large and Center) shall not be located within five hundred (500) feet of a Child Daycare (Large and Center).

15.26 Kennel and Veterinary Office/Hospital

15.26.01 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.

15.27 Retail Store 25,000 Square Feet or Greater (Use 11.16)

15.27.01 **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.

15.27.02 Use 11.16 shall not exceed a gross floor area of 150,000 square feet.

15.27.03 Use 11.16 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.
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15.27.04 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.

15.28 Shopping Center/Mall

A. All structures within a shopping center/mall shall be architecturally compatible.

15.29 Open Air Markets

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

15.29.02 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.

15.29.03 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.

15.29.04 Temporary Open Air Market:

A. See Subsection 15.69 for additional requirements for temporary open air markets.

15.30 Vehicle Sales and Service

15.30.01 A permanent sales office must be located on site.

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

15.30.03 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.

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

15.30.05 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').

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

15.31 Equipment Sales and Service

15.31.01 A permanent sales office must be located on site.

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

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

15.31.04 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').

15.32 Boat or Marine Craft Sale and Service

15.32.01 A permanent sales office must be located on site.

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

15.32.03 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').

15.33 Impound Lot/Towing Service

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

15.33.02 Storage of impounded vehicles must be set back at least twenty feet (20') from all street right-of-ways.

15.33.03 Adequate security shall be provided to protect impounded vehicles.

15.34 Indoor Shooting Range

15.34.01 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.

15.34.02 **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.

15.34.03 **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.

15.34.04 **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.

15.34.05 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 insure that this standard is continuously met, obtain testing samples from inside and/or outside the indoor shooting range, to measure compliance. The owner and operator of an indoor shooting range must fully comply with requirements and recommendations of the manufacturer of the toxin collection system(s).

15.34.06 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.

15.34.07 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.

15.35 Campground and Recreational Vehicle Park

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

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

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

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

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

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

15.35.07 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.

15.35.08 A public water supply is required.

15.35.09 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.

15.35.10 The sale of recreational vehicles within the park is prohibited.

15.35.11 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 application.

15.36 Community Garden

15.36.01 A community garden must meet the parking requirements of Article 24 but must provide no fewer than two (2) off-street parking spaces.

15.36.02 A five foot (5') undisturbed buffer shall be provided along the perimeter of the cultivated area.

15.36.03 In low density residential districts, users are restricted to residents within a ¼ mile of the community garden.

15.36.04 A community garden shall be placed or designed to minimize impacts to adjacent properties, including run-off of water and chemicals.

15.37 Garden

15.37.01 Gardens do not require a zoning permit.

15.37.02 A garden shall be placed or designed to minimize impacts to adjacent properties, including run-off of water and chemicals.

15.38 Forestry

15.38.01 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.

15.38.02 Trees within a required landscape street yard may not be removed during any forestry activity.

15.38.03 Forestry activity may limit the availability of development permits. See Subsection 4.01.01.

15.39 Microbrewery and Brewpub

15.39.01 Outdoor storage is not allowed.

15.39.02 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.

15.39.03 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 15.45 must be met.

15.40 Brewery/Distillery

15.40.01 Outdoor storage is not allowed.

15.40.02 All visible emission, odor, air pollution, noise and dust standards set forth for Manufacturing in Section 15.45 must be met.

15.41 Brewery/Distillery, Other

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

15.41.02 All visible emission, odor, air pollution, noise and dust standards set forth for Manufacturing in Section 15.45 must be met.

15.42 Wineries

15.42.01 All outdoor storage must be screened in accordance with Section 15.57.

15.42.02 All visible emission, odor, air pollution, noise and dust standards set forth for Manufacturing in Section 15.45 must be met.

15.43 Extraction of Earth Materials

15.43.01 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.

15.44 Machine/Welding Shop

15.44.01 All operations shall be conducted wholly within fully enclosed structures**.**

15.44.02 Deliveries and shipping shall be between 6 a.m. and 9 p.m.

15.44.03 Unless located in the M1 Zoning District, no outside storage is allowed. In the M1 Zoning District, Subsection 15.45.02 shall apply.

15.44.04 The standards of subsections 15.45.04 – 15.45.09 shall apply.

15.45 Manufacturing

15.45.01 Manufacturing operations shall be conducted wholly within fully enclosed structures.

15.45.02 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.

15.45.03 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.

15.45.04 **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.

15.45.05 **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.

15.45.06 **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.

15.45.07 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.

15.45.08 **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).

15.45.09 **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.

15.46 Parking Lot/Park and Ride

15.46.01 See Section 31.09 for regulations specific to parking lots.

15.47 Parking Structure

15.47.01 See Section 25.03 for regulations specific to parking structures.

15.48 Mini-Storage

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

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

15.48.03 Mini-storage units must be constructed with the compartment doors facing internally.

15.48.04 All mini-warehouse compartment doors must open on an internal access driveway having a minimum paved width of twenty feet (20').

15.48.05 A 100 percent opaque fence with a minimum of height of six feet (6') and a maximum height of eight feet (8') shall be provided around the portion of the property used for the mini-storage development. Fences shall be constructed of wood, brick, stone or other similar materials, but also must be architecturally compatible with the proposed structure.

15.48.06 If the mini-warehouse facility has a locked and keyed entrance, two (2) staging spaces of at least thirty-five feet (35') must be located outside of the public right-of-way.

15.48.07 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.

15.48.08 Outdoor storage in a mini-storage development shall not exceed twenty-five percent of the total land area and must be secured and screened in accordance with Section 15.57.

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

15.49.01 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.

15.50 Electronic and Internet Gaming

15.50.01 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.

15.50.02 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.

15.50.03 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.

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

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

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

15.50.07 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.

15.51 Adult Establishment

15.51.01 The requirements of this Section shall apply to all adult establishments as outlined in N. Gen. Stat. Chapter 26A.

15.51.02 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**.**

15.51.03 No more than one (1) adult establishment shall be located within the same structure or portion thereof.

15.51.04 Except for adult hotels and motels, no adult establishment may provide sleeping quarters.

15.51.05 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.

15.51.06 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 ft^2) total. Provided, however, in no case shall signage cover more than ten percent (10%) of the area of any building face.

C. A sign plan showing the location and number of attached sign(s) must be submitted to the Administrator prior to the issuance of any permits to verify compliance with this Section.

D. Promotional materials for advertising shall not be visible to the public from pedestrian sidewalks or walkways.

15.51.07 The adult establishment must meet all other applicable provisions of this Ordinance.

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

15.51.09 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.

15.52 Secondary Suite (Accessory)

15.52.01 All property owners 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 property owner acknowledges that to have an accessory dwelling unit, he or she must obtain proper zoning and building permits.

15.52.02 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.

15.53 Home Occupation (Accessory)

15.53.01 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.

15.54 Accessory Dwelling Unit (Accessory)

15.54.01 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 15.54, *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 15.54, *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 15.54, *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 15.54.01(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.

15.54.02 On a single lot, an accessory dwelling unit may have no more than one (1) single family dwelling and one (1) accessory dwelling unit.

15.54.03 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.

15.54.04 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.

15.54.05 The accessory dwelling unit shall not be served by a driveway separate from any driveway serving the primary residence.

15.54.06 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.

15.54.07 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.

15.54.08 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, and certified as such by the Community Appearance Commission.

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, and its architectural compatibility has been certified by the Community Appearance Commission.

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

15.54.10 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.

15.55 Drive-Through (Accessory)

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

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

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

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

15.56 Outdoor Display (Accessory)

15.56.01 Outdoor display shall not impede pedestrian or automobile traffic.

15.56.02 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.

15.57 Outdoor Storage (Accessory)

15.57.01 Outdoor storage shall not impede pedestrian or automobile traffic.

15.57.02 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.

15.58 Outdoor Dining (Accessory)

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

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

15.59.01 Freestanding ATM’s shall be architecturally compatible with the principal structure on the lot.

15.59.02 May have no more than four dedicated parking spaces per machine.

15.59.03 Signage must meet the requirements of Article 26.

15.59.04 Must not impede pedestrian or automobile circulation.

15.59.05 Must have at least a four (4) foot landscaped buffer around the perimeter of the ATM structure.

15.60 Produce Stand (Accessory)

15.60.01 Produce stands must be located on private property and not in the public right-of-way.

15.60.02 Produce stands are not subject to landscaping and community appearance standards.

15.61 Poultry (Accessory)

15.61.01 The keeping of poultry as an accessory use does not require a zoning permit.

15.61.02 Roosters are prohibited. No lot shall contain more than five (5) hens.

15.61.03 All poultry shall be contained within a fully fenced area.

15.61.04 Poultry areas shall be kept sanitary.

15.61.05 Poultry areas shall not be located to the front of any principal building.

15.61.06 The keeping of poultry as an accessory use is limited to legally established single-family dwellings.

15.62 Small Livestock (Accessory)

15.62.01 The keeping of small livestock as an accessory use does not require a zoning permit.

15.62.02 Up to two (2) small livestock may be kept as pets.

15.62.03 Small livestock shall be contained within a fully fenced area.

15.62.04 All areas where the small livestock are kept shall be kept sanitary.

15.62.05 The keeping of small livestock as an accessory use is limited to legally established single-family dwellings.

15.63 Large Livestock (Accessory)

15.63.01 The keeping of large livestock as an accessory use does not require a zoning permit.

15.63.02 There may be no more than two (2) large livestock for every acre of grazing area.

15.63.03 Large livestock shall be contained within a fully fenced area.

15.63.04 All areas where the large livestock are kept shall be kept sanitary.

15.64 Bees (Accessory)

15.64.01 The keeping of bees as an accessory use does not require a zoning permit.

15.64.02 No lot may contain more than four hives.

15.64.03 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.

15.64.04 A water source must be provided.

15.64.05 A bait hive placed ten to thirty feet (10'-30') away and at least ten feet (10') above the hives shall be provided.

15.65 Gardens (Accessory)

15.65.01 Accessory gardens do not require a zoning permit.

15.65.02 An accessory garden shall be placed or designed to minimize impacts to adjacent properties, including run-off of water and chemicals.

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

15.66.01 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.

15.67 Caretaker's Residence (Accessory)

15.67.01 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.

15.67.02 The caretaker's residence shall be subject to all applicable intensity and setback requirements.

15.68 Vehicular Gate (Accessory)

15.68.01 No vehicular gate shall be allowed on any public street.

15.68.02 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.

15.69 Temporary Uses

15.69.01 General Regulations:

A. Unless otherwise provided here in, all listed temporary uses are required to obtain a 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 property owner fails to remove a temporary structure within the described time frames after the permit authorizing its use has been terminated, the Town may remove the said temporary structure at the expense of the owner, and may seek to recover through collection efforts or a civil action against the owner, the costs of removal, court costs and attorney fees.

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.

15.69.02 **Temporary Care Provider Dwelling**: A temporary care provider dwelling 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 a temporary care provider dwelling shall be limited to the family care provider or the aged, infirmed or disabled person~~s~~ requiring a substantial amount of personal care or attention based on a certified medical need.

B. The temporary care provider dwelling shall meet all minimum building spacing requirements set forth in Section 16.09.

C. The temporary care provider dwelling shall be placed on the lot in such manner that it meets all required setbacks.

D. No more than one (1) accessory temporary care provider dwelling per lot shall be allowed.

E. Only Class A and B manufactured homes may be used as a temporary care provider dwelling.

F. The applicant must provide a certification by a qualified medical provider that the temporary care provider dwelling is needed to take care of a sick, elderly or disabled person who lives on the same lot who is in need of personal or medical attention.

G. The location, placement, and type of the temporary care provider dwelling must be selected so as to minimize any negative effects on adjacent properties.

H. 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.

I. 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.

15.69.03 **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.

15.69.04 **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.

15.69.05 **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 Section 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.

15.69.06 **Temporary Classroom:** A temporary classroom may be permitted as a temporary use accessory to Use 9.0 Education 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. The permit shall be valid for three (3) years 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.

15.69.07 Temporary Portable Storage Containers: Placement of a temporary portable storage container(s) is subject to the following conditions:

A. General Standards for Temporary Portable Storage Containers:

1. The temporary portable storage container(s) is only allowed on a vacant lot (those with no principal uses) in the OI Office Institutional and the M1 Light Industrial zoning districts.
   a. Temporary portable storage container(s) located on a vacant lot must be related to an individual business entity.
2. The temporary portable storage container(s) shall be placed on the lot in such manner that it meets all required setbacks.
3. The location and placement of the temporary portable storage container(s) must be selected so as to minimize any negative effects on adjacent properties.
   a. Temporary portable storage containers may not be placed against any pedestrian way.
4. The land use intensity ratios of Section 16.01 do not apply to a temporary portable storage container(s).
5. A temporary portable storage container(s) may not be placed within any public right-of-way.
6. Placement of all temporary portable storage container(s) must be approved by the Fire Marshall.
7. A temporary portable storage container(s) shall neither display any attached signage nor be used as signage for any business.

8. For a period not exceeding thirty (30) days, a lot may have no more than twenty (20) temporary portable storage containers per acre.
    a. A short-term permit for a temporary portable storage container(s) shall be valid for no more than thirty (30) days in any twelve (12) month period.
    b. The thirty (30) day timeframe for the temporary permit begins the day the first temporary portable storage container is placed on the lot after the permit is issued.

15.69.08 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 property owner.

E. Applicant must have express written permission of property owner 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.

15.69.09 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.

15.69.10 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.

15.69.11 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 property owner to be located at the property.

15.69.12 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.

15.69.13 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.

Article 16 DISTRICT STANDARDS

16.01 Schedule of Land Use Intensity Regulations

16.01.01 Unless otherwise specified, development in the following zones shall comply with the intensity regulations indicated in the following Intensity Table.

A. Unless otherwise provided in this Ordinance, the land use intensity regulations for planned residential developments and architecturally integrated subdivisions shall apply to the development as a whole and not to individual parts thereof.

B. A site specific development plan consisting of no other use than one (1) "single family dwelling" is not subject to the maximum floor area ratio requirements but all other intensity rules apply.

C. In the B1 Zoning District, a minimum "Building Footprint" of fifty percent (50%) is required. All other regulations in the Intensity Table apply.

D. In the B2 Zoning District, a development may utilize the values in the Intensity Table or may substitute a maximum "Building Footprint" of thirty percent (30%) and an open space ratio of seventy percent (70%). All other regulations in the Intensity Table apply.

E. In the B3 Zoning District, a development may utilize the values in the Intensity Table or may substitute a maximum "Building Footprint" of thirty percent (30%) and an open space ratio of seventy percent (70%). All other regulations in the Intensity Table apply.

16.01.02 Intensity Table

Zoning District	Minimum Gross Land Area	Minimum Lot Width	Minimum Street Frontage	Maximum Floor Area Ratio (FAR)	Minimum Open Space Ratio (OSR)	Minimum Livability Space Ratio (LSR)	Minimum Recreation Space Ratio (RSR)	Setbacks	
								Street	Interior
Residential Zoning Districts									
RA No Public Water & Sewer Available	20,000 sq. ft	100 ft.	80 ft.	.100	.80	.65	.025	20 ft.	18 ft.
RA Public Water Available	15,000 sq. ft.	80 ft.	64 ft.	.100	.80	.65	.025	20 ft.	18 ft.
RA Public Water & Sewer Available	10,000 sq. ft.	65 ft.	52 ft.	.100	.80	.65	.025	20 ft.	14 ft.
R1	8,000 sq. ft.	70 ft.	56 ft.	.162	.77	.53	.032	20 ft.	14 ft.
R1A	8,000 sq. ft.	70 ft.	56 ft.	.162	.77	.53	.032	20 ft.	14 ft.
RR	6,000 sq. ft.	70 ft.	56 ft.	.283	.74	.48	.042	20 ft.	13 ft.
R2	6,000 sq. ft.	70 ft.	56 ft.	.283	.74	.48	.042	20 ft.	13 ft.
R4	6,000 sq. ft.	70 ft.	56 ft.	.283	.74	.48	.042	20 ft.	13 ft.
R3	5,000 sq. ft.	80 ft.	64 ft.	.480	.72	.40	.062	20 ft.	13 ft.
MH	87,120 sq. ft.	None	56 ft.	.214	.76	.51	.039	20 ft.	20 ft.
Commercial/Industrial Zoning Districts									
OI	10,000 sq. ft.	100 ft.	80 ft.	.340	.71	.27	.032	20 ft.	17 ft.
B1	5,000 sq. ft.	15 ft.	12 ft.	None	None	None	None	Refer to Section 16.06.04	Refer to Section 16.06.02
B2	5,000 sq. ft.	50 ft.	40 ft.	.264	.76	.27	.049	20 ft.	17 ft.
B3	5,000 sq. ft.	50 ft.	40 ft.	.429	.71	.27	.062	20 ft.	17 ft.
M1	17,000 sq. ft.	80 ft.	64 ft.	.350	.65	.3	None	20 ft.	22 ft.
Educational Zoning Districts									
U1	None	None	None	.429	.71	.27	.039	Refer to Section 16.06.09	Refer to Section 16.06.08

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16.01.03 Where a lot is located in more than one zoning district, the appropriate land use intensity ratios shall be applied individually to each portion of the gross land area located within the different districts.

A. However, the floor area permitted on that portion of the gross land area located within one district may be transferred to any portion of the lot's land area located in a district with a higher land use intensity ratio.

16.02 Gross Land Area

16.02.01 When a lot is located in more than one zoning district, the minimum square footage of the lot shall be the sum of the square footage derived by multiplying the minimum square footage required for each represented district by the proportion of the lot located within that district.

16.02.02 The area within the street right-of-way may not be used to satisfy lot area requirements.

16.03 Minimum Lot Widths

16.03.01 No lot may be created that is so narrow or otherwise so irregularly shaped that it would be impracticable to construct on it a building that:

A. Could be used for purposes that are permissible in that zoning district, and

B. Could satisfy any applicable setback requirements for that district.

16.03.02 Where a lot fronts two (2) or more streets, the minimum lot width requirement shall be considered met if the lot width at the street setback from any one of such streets meets the minimum lot width requirement.

16.03.03 No lot created after the effective date of this Ordinance that is less than the required width shall be entitled to a variance from any building setback requirement.

16.04 Minimum Street Frontage Widths

16.04.01 The minimum width of the frontage of a lot on a street shall be eighty percent (80%) of the minimum lot width required for the lot. Easement areas shall be excluded from this requirement.

16.04.02 Where a lot fronts on two (2) or more streets, the minimum street frontage width requirements shall be considered met if the frontage along any one of such streets meets the minimum street frontage width requirements.

16.04.03 Where a lot fronts on a turning circle of a cul-de-sac or at a point of a street where the radius of the curvature of the right-of-way is less than ninety feet (90'), the minimum street frontage width requirement shall not apply.

16.05 Minimum Recreation Space

16.05.01 Recreation space is only required for multifamily developments and manufactured home parks.

16.05.02 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

D. In the B1 district, canopies are provided to cover the sidewalk.

16.05.03 The dedication of a greenway easement may be used to satisfy the requirements for recreational space.

16.05.04 Outdoor recreation area for common use should be located twenty feet (20') or more from any residential windows at the same general level.

16.06 Building Setback Requirements

16.06.01 Subject to Sections 16.07 and 16.11 and the other provisions of this Section, no portion of any building may be located on any lot closer to any lot line or to the street right-of-way line or centerline than is authorized in the Intensity Table.

A. If the street right-of-way line is readily determinable (by reference to a recorded map, set irons, or other means), the setback shall be measured from such right-of-way line. If the right-of-way line is not so determinable, the setback shall be measured from the street centerline. Whenever a lot fronts a street with a right-of-way of thirty feet (30') or less, the setback shall be measured from a line running parallel to the centerline at a distance of fifteen feet (15') from the centerline.

B. As used in this Section, the term "lot boundary line" refers to lot boundaries other than those that abut streets.

C. As used in this Section, the term "building" includes any substantial structure which by nature of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associated with a building. Without limiting the generality of the foregoing, the following structures shall be deemed to fall within this description:

1. Gas pumps and overhead canopies or roofs.
2. Fences running along lot boundary adjacent to public street rights-of-way if such fences exceed nine feet (9') in height and are substantially opaque.
3. Retaining walls which exceed four feet (4') in height.

D. Flagpoles, bridges, transmission poles, cables, heat pumps, generators, air condition units and pad mounted transformers shall be exempt from building setback

requirements, however, walk in coolers and refrigeration units must meet the requirements for accessory buildings.

16.06.02 In the B1 district, existing development may rebuild to existing building footprint lines, but cannot rebuild any closer to a street than the established existing building setback line as noted on the Official Existing Building Line Maps recorded with the Watauga County Registry in Deed Book 239, Pages 132-138. Structures existing prior to February 25, 1993 that do not meet the required setbacks shall not be considered to have nonconforming features.

16.06.03 In the B1 district, the minimum street setback distance shall not apply to a projecting theater marquee, canopy or roof overhang supports as long as such supports do not go beyond the edge of the sidewalk. This exemption shall not obviate the need for an encroachment agreement.

16.06.04 The interior setback for the B1 zoning district is 0', unless the lot abuts a district other than a U1 zoning district, in which case the lot boundary setback shall be fifteen feet (15').

16.06.05 In the B2 and B3 zoning districts, sideline to sideline construction may be permitted on one or more lots of at least 100 feet road frontage upon issuance of a special use permit in accordance with the provisions of Article 6 and subject to the following conditions:

A. The building must be constructed in accordance with the regulations for the primary fire district as contained in the North Carolina State Building Code.

B. There shall be a deeded street or right-of-way, built to Town standards, at both the front and the rear of the property.

C. Loading, unloading and refuse disposal access shall be from the street at the rear of the property.

D. Loading and parking shall be in compliance with Article 24 of this Ordinance.

16.06.06 Whenever a lot in a nonresidential district has a common boundary line with a lot in a residential district, and the property line setback requirement applicable to the residential lot is greater than that applicable to the nonresidential lot, then the lot in the nonresidential district shall be required to observe the property line setback requirement applicable to the adjoining residential lot.

16.06.07 Setback distances shall be measured from the property line or street right-of-way line to a point on the lot that is directly below the nearest extension of any part of the building that is substantially a part of the building itself and not a mere appendage to it (such as a flagpole, etc.).

16.06.08 In the U1 district, the minimum street setback of ten feet (10') shall apply only when development is proposed adjacent to Town maintained streets.

16.06.09 In the U1 district, the minimum interior setback shall be increased to fourteen feet (14') only when development is proposed adjacent to R1 zoned property. Additional setback

provisions in Section 16.06.05 do not apply in the U1 district. The minimum interior setback is zero feet (0') only when development is proposed adjacent to B1 zoned property.

16.07 Accessory Structure Setback Requirements

16.07.01 All accessory structures 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.

16.07.02 No accessory structure may be further forward to the street setback than the front most point of the principal structure.

16.07.03 The maximum lot coverage of the accessory structure shall not exceed twenty percent (20%) of the lot.

16.07.04 An accessory structure must be clearly subordinate to the principal structure in all dimensional aspects.

16.07.05 An accessory structure shall not be located in an easement unless expressly allowed.

16.08 Building Height Limitations

16.08.01 For the purposes of this Section:

A. The height of a building shall be the vertical distance measured from the mean elevation of the finished grade to the highest point of the building.

B. A point of access to a roof shall be the top of any parapet wall or the lowest point of a roof's surface, whichever is greater. Roofs with slopes greater than seventy five percent (75%) are regarded as walls.

16.08.02 Subject to the remaining provisions of this Section, building height limitations in the various zoning districts shall be as follows:

Zone	Height Limitation (Feet)
R1, R1A, RR, R2, R4, RA	35
R3	50 (primary) – 90 (secondary)
MH	35
OI	67
B1	40
B2	35 (primary) – 40 (secondary)
B3	44 (primary) – 67 (secondary)
U1	Refer to Subsection 16.08.09
M1	67

16.08.03 In the R3, B2 and B3 districts the height limitation may range between the primary height limitation in the table to the secondary height (which is the maximum for the district), subject to the provision that for each foot the height of the structure exceeds the primary

height limitation, the boundary lot setback applicable to the structure shall increase by one (1) foot. In no case shall the height of a structure exceed the secondary height limitation established in the table.

16.08.04 In the B1 district the maximum building height shall be limited to forty feet (40'), as measured from the average elevation of the existing or proposed sidewalk along the primary street at the middle of the building elevation facing the street to the highest point of the building or structure. Where a property has street frontages on opposite sides the building height shall terminate at the midpoint of the lot with the same standard being applied to the opposite street frontage. Where a property does not border a primary street on any side, the maximum height shall be measured from the average finished ground elevation of the finished building. For the purpose of this Section, the following are considered primary streets: King Street, Queen Street, Howard Street, Rivers Street, Water Street, Depot Street, Appalachian Street, Grand Boulevard, Poplar Grove Road, Straight Street, Bent Street, Orchard Street, and Wallace Circle.

16.08.05 In all nonresidential zones and the R3 zone, all structures located within 100 feet of an R1 zoned property shall not exceed thirty-five feet (35') in height.

16.08.06 Where a multi-unit or nonresidential structure has a height in excess of twenty feet (20') and adjoins a low density residential district, the structure shall meet an additional setback of one and one half feet (1 ½') for each foot in height above twenty feet (20').

16.08.07 If a structure is located at an elevation of 3000 feet above mean sea level and 500 feet above the valley floor, in no case shall the height of such structure exceed forty feet (40') above the mean natural grade.

16.08.08 The following features are exempt from the district height limitations set forth in Subsection 16.08.02, except that on a corner lot in any residential district no planting, structures, fence, wall or obstruction to vision more than three feet (3') in height measured from the street center line shall be placed or maintained within the triangular area formed by the intersection street lines and a straight line connecting points on said street lines each if which is twenty-five feet (25') from the point of intersection.

A. Chimneys, accessory radio or television antennas, flagpoles, monuments or solar collectors provided that such features do not exceed fifteen percent (15%) of the maximum height requirements.

B. Church spires, belfries, cupolas, domes, smokestacks, windmills, or observation towers, provided such structures do not exceed in height the horizontal distance from the structure to the nearest property line.

C. Utility transmission poles and cables.

16.08.09 In the U1 district, building heights for structures internal to the main campus shall be generally limited only by the Town's firefighting capability except for those structures located immediately adjacent to property in a non-University district. In this instance:

A. All buildings proposed within 100 feet of an R1, R1A, RR, R2, R4, or RA zoned property shall be limited to a maximum height of thirty-five feet (35').

B. All buildings proposed within fifty feet (50') of an R3, OI, B1, B2, or B3 zoned property shall be limited to the maximum height allowed in the adjoining district. Additional height restrictions in Subsection 16.08.04 and 16.08.05 shall not apply in the U1 district.

16.09 Minimum Building Spacing

16.09.01 The minimum spacing between any two (2) buildings located on a single lot or in the U1 district, which contain dwelling units, shall be the sum of the spacing distances required for the walls of each building or portion thereof as follows:

A. The required spacing between buildings for any wall containing windows shall be the horizontal distance equal to the minimum interior setback applicable to the lot or district in which it is located, plus one (1) additional foot for each foot the height of the building exceeds thirty-five feet (35').

B. The required spacing distance for a windowless wall shall be in accordance with the applicable building codes.

16.09.02 Unless otherwise regulated by this Ordinance, the spacing between structures or portions of structures not containing dwelling units shall be appropriate to the use of such structures or portions thereof. Spacing shall be related to fire protection requirements, the separation of spaces by fences, walls or vegetative screening, the location of parking and service areas, the exposure to nearby living quarters and similar considerations.

16.10 Intensity Regulations for the U1 District

16.10.01 University campus land will be considered as a whole for purposes of computing land use intensities. This provision does not apply to satellite tracts; however, land separated from the main campus only by a public street or thoroughfare will be deemed part of the main campus, and any land separated from the University's State Farm property only by a public street or thoroughfare will be deemed part of the State Farm property.

16.11 Architecturally Integrated Subdivisions

16.11.01 In an architecturally integrated subdivision, the applicant may create lots and construct buildings without regard to any minimum lot size, maximum floor area ratio for single family residences (use 1.100), lot width or setback restrictions except that:

A. Lot boundary setback requirements shall apply where and to the extent that the subdivided tract abuts land that is not part of the subdivision, and

B. Each lot must be of sufficient size and dimensions that it can support the structure proposed to be located on it, consistent with all other applicable requirements of this Ordinance.

16.11.02 The number of dwelling units in an architecturally integrated subdivision may not exceed the maximum density authorized for the tract under Section 16.01. The number of lots allowed in an architecturally integrated subdivision shall be calculated by dividing the project area by the minimum gross land area as shown in Section 16.01. For an architecturally integrated subdivision project that is composed of areas with different zoning designations, the number of units shall be determined for each zoning district. The maximum number of units for the project shall be the sum of the densities for each district. The units may be distributed throughout the project without regard to the zoning district lines subject to meeting the requirements of Subsection 16.11.01. Further, only uses authorized by Article 15 shall be permitted in each zoning district.

16.11.03 To the extent reasonably practicable, in architecturally integrated subdivisions the amount of land saved by creating lots that are smaller than the standards set forth in Section 16.01 shall be set aside as usable open space.

16.11.04 The purpose of this Section is to provide flexibility, consistent with the public health and safety and without increasing overall density, to the applicant who subdivides property and constructs buildings on the lots created in accordance with a unified and coherent plan of development.

16.12 Density On Lots Where Portion Dedicated to Town

16.12.01 Subject to the other provisions of this Ordinance, if (i) any portion of a tract lies within an area designated on any officially adopted Town plan as part of a proposed public park, greenway, or bikeway, and (ii) before the tract is developed, the owner of the tract, with the concurrence of the Town, dedicates to the Town that portion of the tract so designated, then, when the remainder of the tract is developed for residential purposes, the permissible density at which the remainder may be developed shall be calculated by regarding the dedicated portion of the original lot as if it were still part of the lot proposed for development.

Article 17 RESERVED

Article 18 RESERVED

TITLE V GENERAL DEVELOPMENT STANDARDS

Article 19 GRADING

19.01 Activities Affected

19.01.01 This Article pertains to all land-disturbing activities conducted within the Town's jurisdiction. Land disturbing activities will not be approved unless part of a zoning permit application for the development of a principal, accessory or temporary use.

19.01.02 Pursuant to the application requirements in Article 4, plans and information shall be submitted that demonstrate compliance with this Article and Appendix A in regards to grading activities.

A. Single family and two family projects of less than 21,780 square feet (0.5 acre) or commercial site improvements that involve no more than 2,500 square feet of land disturbing activity though required to apply for a zoning permit with a site plan are not required to submit plans that demonstrate compliance with grading activities.

B. The waiver of plan approval requirements due to the size of activity contemplated, does not relieve the property owner of responsibility for following the requirements contained herein, or in any way limit their liability for the consequences of their land-disturbing activity under North Carolina state law or the administrative procedures and penalties outlined in this Ordinance.

19.02 Grading Performance Standards

19.02.01 Any land disturbing activity that includes alteration of existing topographic slope grades shall conform to grading performance standards contained in this Section.

19.02.02 The grading plan and specifications controlling execution of land-disturbing activities shall adhere to the following standards unless superseded by a site specific subsurface investigation, report and recommendation performed by a registered professional engineer competent in geotechnical engineering.

A. Existing grade may remain, if natural vegetation undisturbed and slope(s) are unaffected by the planned site improvements.

B. Maximum cut grade shall be 2H:1V.

C. Maximum fill grade shall be 2H:1V.

D. Grades shall be sloped to drain surface water away from buildings, pavements, slopes and structures, and toward storm drainage facilities.

19.02.03 Conventional seeding with native grasses and mulching are acceptable permanent erosion control measures for slopes flatter than 2H:1V, provided the grasses can be established and properly nourished to maturation.

19.02.04 Site specific permanent erosion control and stabilization of slopes steeper than 2H:1V must be designed by a licensed professional engineer or landscape architect competent in

such practice. Universally accepted armoring techniques and innovative approaches will be considered appropriate when properly detailed and specified.

19.02.05 Notification of the Administrator shall be made prior to starting grading for any slope steeper than 3H:1V.

19.02.06 Cut and fill slopes that are steeper than 3H:1V shall have intermediate benches to control surface water runoff. These benches shall be a minimum of five feet (5') wide and sloped back from the crest of the lower slope, to form a drainage swale at the toe of the upper slope. The drainage swale invert shall divert surface water to the appropriate storm drainage facilities. The maximum change in elevation between these benches shall be twenty feet (20'). Slope stability considerations may require wider benches for steeper or taller slopes. If a site specific evaluation is performed and recommendations submitted by a licensed professional engineer with a specialization in sub-surface evaluations; the provisions of this Subsection may be modified or waived.

19.02.07 Exposed and fill covered slope cuts in rock foundations or slopes greater than five feet (5') and steeper than 1(H):1(V) should be properly investigated and designed by a North Carolina registered professional engineer or geologist competent in rock slope engineering. The grading plan should clearly indicate the depth, orientation, and method to accomplish a cut into rock formations.

19.02.08 Retaining systems providing a cumulative vertical relief greater than five feet within a horizontal distance of fifty feet (50') or less, including retaining walls or mechanically stabilized earth walls, shall be designed and constructed under the responsible charge of a North Carolina registered professional engineer. Testing and inspection reports shall verify:

A. Foundation support system is adequate for the intended site conditions;

B. Quality of construction materials conform with specifications;

C. Actual soil conditions are substantially and functionally similar to those anticipated in design, and;

D. Backfill materials and any drainage systems comply with plans and specifications.

The North Carolina licensed engineer will submit a separate summary report stating that the constructed retaining structures are in compliance with the intent of the design.

19.02.09 Utilize a maximum 3H:1V slope within any temporary or permanent buffer zone adjacent to any lake or natural water course, tying into existing grades along the perimeter or property line of the tract. Landscape buffer areas shall be limited to a maximum 3H:1V slope unless otherwise approved by the Administrator.

19.02.10 Property boundary and field grading stakes sufficient to define the land-disturbing activity shall be established prior to starting, and maintained until earthwork construction is completed.

19.03 Special Requirements for Land Disturbing Activities Involving Steep Slopes

19.03.01 The following categories of steep slope are hereby established:

A. Very Steep Slopes: Slopes steeper than 50%.

B. Steep Slopes: Slopes between 30% and 50%.

19. 03.02 The requirements for land disturbing activities on Very Steep Slopes shall be as follows:

A. Plans for the development of any property must be accompanied by a site- specific geologic analysis of the very steep slope portion of the site to be disturbed by the proposed development plan, paid for by the applicant, and conducted by a North Carolina licensed geologist, to determine whether that plan can be developed on the site without jeopardizing slope stability on the site itself or on properties surrounding the site.

B. If the property is determined to be safe for development and requires remedial measures to ensure slope stability, a North Carolina registered professional engineer competent in geotechnical engineering must develop and present a plan to the Administrator that will preserve slope stability on the site during and after the completion of grading and construction for the site, as well as for surrounding properties to the extent that the contemplated development activities on the site affect surrounding properties.

C. No diversion or channelization of perennial streams on very steep slopes is permitted.

D. Culverting of perennial streams on very steep slopes shall be discouraged, and will be allowed only for necessary road crossings.

E. To prevent debris flow development and damage to slope stability, the riparian zone of perennial stream on very steep slopes must be left intact, which means that removal of trees, vegetation, soils, or disturbance of soils within this zone is prohibited. The riparian zone shall extend from the edge of the existing stream for thirty-five feet (35’) from each edge of the stream.

F. The applicant whose development plan will include the disturbance of a Very Steep Slope, as determined by the Administrator, may challenge this determination by appeal to the Town of Boone Board of Adjustment, in conformity with the procedures of Article 6.

G. The applicant whose development plan requires land disturbing activity on Very Steep Slopes shall make reasonable efforts to preserve and protect features of the slope, such as trees and other plant material, which may help to stabilize the slope.

19. 03.03 Development of Steep Slopes or in areas where geological hazard indicators are present.

A. Whenever new development is proposed which involves land disturbing activity on a steep slope, or if geological hazard indicators, are observed on the land which will be

disturbed by the development, the Administrator may require that the applicant obtain investigation(s) by a licensed geologist and/or licensed engineer, as appropriate, before allowing the development to proceed. If the Administrator requests such additional investigation(s), the Administrator shall designate in writing the geological hazard indicator observed. When the Administrator requires an additional study, this requirement shall be considered an appealable order from the Administrator, and it may be appealed to the Town of Boone Board of Adjustment, in conformity with the procedures of Article 6.

B. If the property is determined to be safe for development and requires no remedial measures, no further studies will be required.

C. If the property is determined to be safe for development but requires remedial measures to ensure slope stability, a North Carolina registered professional engineer competent in geotechnical engineering must develop and present a plan to the Administrator that will preserve slope stability on the site during and after the completion of grading and construction for the site, as well as for surrounding properties to the extent that the contemplated development activities on the site affect surrounding properties.

D. No diversion or channelization of perennial streams will be permitted on steep slopes unless without such diversion or channelization, a tract existing at the time of the adoption of this amendment is rendered unusable for any of the principal use(s) allowed within the zoning district.

E. Culverting of perennial streams on steep slopes shall be discouraged, and is allowed only for necessary road crossings.

F. To prevent debris flow development and damage to slope stability, the riparian zone of perennial streams must be left intact, which means that removal of trees, vegetation, soils, or disturbance of soils within this zone is prohibited. The riparian zone shall extend from the edge of the existing stream for thirty-five feet (35’) from each edge of the stream.

G. The owner of any property determined by the Administrator to be a Steep Slope may challenge this determination by appeal to the Town of Boone Board of Adjustment, in conformity with the procedures of Article 6.

19.03.04 The Town shall have the option to employ and/or contract with an independent geologist and/or engineer to evaluate plans for development as necessary, whether such development is on a very steep slope, on a steep slope, or when the Administrator believes that the development presents geological hazards or geological hazard indicators which have not been adequately investigated by the applicant.

Article 20 SOIL EROSION AND SEDIMENT CONTROL

20.01 Activities Affected

20.01.01 This Article pertains to the soil erosion and sediment control related to land-disturbing activities conducted within the Town's jurisdiction.

20.01.02 Pursuant to the application requirements in Article 4, plans and information shall be submitted that demonstrate compliance with this Article and Appendix A in regards to soil erosion and sediment control related to land-disturbing activities.

A. Single family and two family projects of less than 21,780 square feet (0.5 acre) or commercial site improvements that involve no more than 2,500 square feet of land disturbing activity though required to apply for a zoning permit with a site plan are not required to submit plans that demonstrate compliance with soil erosion and sediment control related to land-disturbing activities.

B. The waiver of plan approval requirements due to the size of activity contemplated, does not relieve the property owner of responsibility for following the requirements contained herein, or in any way limit their liability for the consequences of their land-disturbing activity under North Carolina state law or the administrative procedures and penalties outlined in this Ordinance.

20.01.03 The plan shall be accompanied by an authorized Financial Responsibility Ownership form. This form shall be signed by the person financially responsible for the land-disturbing activity or their attorney-in-fact.

A. The Administrator may require the property owner or the financially responsible party to provide a security deposit to ensure compliance with the soil erosion and sediment control provisions of the Ordinance.

1. The applicant may, prior to commencing any land-disturbing activity, be required to file with the Town an improvement security in the form of an escrow account, surety bond, irrevocable letter of credit, or other surety satisfactory to the Town, in an amount deemed sufficient by the Administrator, to cover all costs of protection or other improvements required to establish protective cover on the site in conformity with this Ordinance. Such security shall remain in force until the improvements are completed in accordance with the approved plan and said improvements are finally inspected and approved.

2. Upon completion of improvements required by this Ordinance, written notice thereof shall be given by the applicant to the Administrator and the department shall cause an inspection of the improvements to be made and, if approved, shall within thirty (30) days of the date of notice authorize in writing the release of the security given provided that the improvements have been made in accordance with the approved plan and this Ordinance

20.02 Exemptions to Soil Erosion and Sediment Control Requirements

20.02.01 The following land-disturbing activities are exempted from the requirements of this Section:

A. Those done for the purpose of fighting fires.

B. Those done in the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards (with a properly approved plan for this activity).

C. Those undertaken on agricultural land for the production of plants and animals.

D. Those undertaken on forest land for the production and harvesting of timber and timber products when conducted in accordance with Forest Practices Guidelines (15NCAC 11.0101-.0209).

E. Activity undertaken by persons as defined in N.C. Gen. Stat. § 113A-52 (8) who are otherwise regulated by the provisions of the Mining Act of 1971, N.C. Gen. Stat. §§ 74-46 through G.S. 74-68.

F. Land-disturbing activity over which the state by statute, has exclusive regulatory jurisdiction;

1. Conducted by the State,
2. Conducted by the United States,
3. Conducted by persons having the power of eminent domain,
4. Conducted by a local government,
5. Licensed by the State or United States,
6. Funded in whole or in part by the State or United States.

20.03 Basic Erosion Control Objectives

20.03.01 Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

20.03.02 On site areas which are subject to severe erosion, and off site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.

20.03.03 All land disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

20.03.04 All land disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

20.03.05 Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

20.04 Soil Erosion Control Design Standards

20.04.01 Any land disturbing activity that includes alteration of existing topographic slope grades or natural ground cover shall conform to the soil erosion and sediment control design standards in this Article.

20.04.02 Erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the ten (10) year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service, National Engineering Field Manual for Conservation Practice, the North Carolina Erosion and Sediment Control Planning and Design Manual, or other acceptable calculation procedures.

20.04.03 Erosion and sediment control measures must accomplish the following mandatory standards when land-disturbing activity is undertaken on a tract:

A. Containment: Installation of sufficient sedimentation and erosion control devices and practices to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction and upon completion of development.

B. Buffer Zone: No land-disturbing activity shall be permitted in proximity to a lake or natural watercourse unless an undisturbed buffer zone is provided along the margin of the watercourse. The buffer must be a minimum of twenty five feet (25') wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. If the slope perpendicular to the stream measured from the top of the stream bank is 3H:1V or steeper a detailed erosion control plan and calculations sufficient to support the proposed buffer width must be submitted for Town review. A temporary and minimal disturbance may be permitted if the applicant submits documentation that there is no reasonable alternative. The temporary and minimal disturbance shall be limited to a maximum of ten percent (10%) of the total length of the buffer zone within the tract to be distributed such that there is not more than one hundred linear feet (100 lf) of disturbance in each 1000 linear feet of buffer zone.

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C. Ground Cover: Groundcover (temporary or permanent depending on phase of grading) that is sufficient to restrain erosion must be placed on all disturbed areas within 21 calendar days of completion of any phase of grading. Specifications for groundcover must be listed on the erosion control plan and should be consistent with the NCDENR Erosion and Sedimentation Control Planning and Design Manual.

20.04.04 Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and

executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

20.05 Soil Erosion Control Performance Standards

20.05.01 Any land disturbing activity that includes alteration of existing topographic slope grades or natural ground cover shall conform to the soil erosion and sediment control performance standards, in Subsection 20.05.02, for stormwater exiting the tract. Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.

20.05.02 The land-disturbing activity shall be planned and conducted such that the velocity of stormwater runoff in the receiving watercourse at the point of discharge resulting from a ten (10) year storm while undertaken, and after development, shall not exceed the lesser of:

A. The maximum permissible velocity for earth lined (unprotected soils) channels as determined from the table below, or

B. The velocity in the receiving watercourse determined for the ten (10) year storm prior to development.

Should conditions (A) or (B) of this Subsection not be met, the channel below the discharge point shall be designed and improvements constructed to withstand the expected velocity.

20.05.03 This performance standard can be waived if it can be clearly demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

Soil Types	Maximum Permissible Velocity for Earth-Lined Channels	
	Feet per second	Meters per second
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

SOURCE: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels multiply allowable velocity by 0.95 for slightly sinuous, 0.9 for moderately sinuous channels, and 0.8 for highly sinuous channels.

20.06 Acceptable Erosion Control Management Measures

20.06.01 Measures applied alone or in combination to satisfy the intent of this Section are acceptable if there are no objectionable secondary consequences. The Town recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results by meeting the performance standards outlined above. Some alternatives are to:

A. Compensate for increased surface water runoff volume and velocity by including measures to promote infiltration of excess runoff from areas rendered impervious.

B. Reduce stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections.

C. Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities at the point of discharge. These may range from simple rip rapped sections to complex structures.

D. Protect watercourses subject to accelerated erosion by improving cross-sections and/or providing erosion resistant lining.

20.06.02 Most of the established “best” management practices for soil erosion and sediment control are detailed in the North Carolina Erosion and Sediment Control Planning and Design Manual.

20.07 Monitoring and Maintenance of Erosion Control Measures

20.07.01 During the development of a tract, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

20.07.02 During the development of a tract, the person conducting the land disturbing activity shall inspect all erosion and sediment control facilities and all stormwater management facilities including the discharge facility at least once every seven calendar days and within 24 hours after any storm event of greater than 0.5 inches of rain within a 24 hour period. These inspections shall determine the erosion control devices and stormwater facilities have not been damaged and are operating as designed. During this inspection the discharge from the site shall also be observed and a qualitative assessment of the discharge shall be made to determine clarity, presence of floating or suspended solids, presence of an oil sheen or other obvious indicators of stormwater pollution. If any evidence of deterioration of the system is present or there is evidence of any visible sedimentation outside the disturbed limits it shall be recorded and corrective measures

taken. The applicant shall maintain a record of inspections, findings and any corrective action. This record shall be available on site for the Administrator.

20.07.03 Whenever the Town determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action to mitigate or eliminate the sedimentation.

20.07.04 After site development, the land owner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road, street right-of-way, or easement and accepted for maintenance by a governmental agency.

20.08 Existing Uncovered Areas

20.08.01 All uncovered areas existing on the effective date of this Ordinance which:

A. Resulted from land-disturbing activity,

B. Exceed one half contiguous acre,

C. Are subject to continued accelerated erosion, and

D. Are causing off site damage from sedimentation;

shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off site sedimentation.

20.08.02 The Town reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.

Article 21 STORMWATER MANAGEMENT

21.01 Plan Approval Required

21.01.01 Subject to the requirements of Article 4, a drainage plan is required to be submitted with all applications except that single family and two-family residences are not required to furnish a certification in accordance with Subsection 4.18.

21.01.02 Pursuant to the application requirements in Article 4, plans and information shall be submitted that demonstrate compliance with this Article and Appendix A in regards to stormwater management.

21.02 Diligence in Construction of Drainage Structures

21.02.01 Stormwater management facilities shall be constructed in accordance with approved plans and maintained in proper working condition.

21.02.02 The property owner is responsible for ensuring that the construction of drainage structures and stormwater management measures are completed in accordance with the approved plan and specifications.

21.02.03 In response to a complaint, or as a random check on compliance with the requirements of the Ordinance, the Town may perform a physical inspection of the construction of drainage structures and stormwater management measures, or monitor long term maintenance procedures. Inspections performed by the Town during construction will not relieve the property owner or applicant of their responsibility to install and maintain drainage facilities in accordance with the approved plan.

21.02.04 In accordance with Section 4.18, a written certification shall be submitted prior to issuance of the certificate of occupancy.

21.03 Drainage & Stormwater Management Performance Standards

21.03.01 All drainage structures and stormwater management measures shall be designed, constructed and maintained so that adjacent properties are not unreasonably burdened with surface waters as a result of development activities. Specifically:

A. Offsite areas which drain to or across a site proposed for development must be accommodated in the stormwater plans for the development.

1. The stormwater management system must be capable of conveying the existing offsite flows through or around the development such that the volume and rate of flow from the adjacent property is not altered.
2. If offsite flows are carried in the site system any detention ponds shall be sized to accommodate this flow.

B. Stormwater drainage facilities shall be designed to limit the discharge from the site to the rate that existed prior to development of the site.

1. For projects that are redeveloping a developed site, the discharge will be limited to that which occurs before any new development.

C. The type and location of the discharge will be as occurred before the current development unless the discharge is to a manmade conveyance system.

1. If the discharge is in a manmade conveyance the Town of Boone will be furnished an easement to the point that the pre-development flows are duplicated.

21.03.02 All site improvements shall be provided with a drainage system that is adequate to prevent the undue retention of surface water on the development site. Surface water shall not be regarded as unduly retained if:

A. The retention results from a technique, practice or device deliberately installed as part of an approved sedimentation or stormwater runoff control plan, or

B. The retention is not substantially different in location or degree than that experienced on the development site prior to site improvements, unless such retention presents a danger to health or safety.

21.03.03 These competing goals for retention and discharge can be accomplished by designing, constructing and maintaining all stormwater management installations to the extent practicable to:

A. Avoid increases in surface runoff volume and velocity by including measures which promote the infiltration of stormwater,

B. Maximize the time of concentration of stormwater runoff, and

C. Promote the filtration and precipitation of pollutants from stormwater runoff in order to protect the water quality of the receiving watercourse.

21.03.04 The drainage system of a development site shall coordinate with and connect to the drainage systems or drainage ways on surrounding properties or streets where they exist.

21.03.05 All site improvements shall conform to the natural contours of the land, and without disturbance, utilize the preexisting natural and preexisting man made drainage ways.

21.03.06 Lot boundaries within subdivisions shall be made to coincide with natural and preexisting man made drainage ways to avoid creation of lots that can only be built upon by altering such drainage ways.

21.03.07 Stormwater shall not be diverted from one natural drainage basin into another.

21.03.08 Stormwater shall not be channeled or directed into sanitary sewers.

21.03.09 Design Storm:

A. The minimum design capacity for all storm drainage facilities and cross drainage facilities in public streets shall be the twenty five (25) year discharge.

B. The design of drainage facilities in flood hazard areas shall be consistent with the requirements of Article 30.

C. The computation of stormwater runoff shall follow established engineering best practices. Acceptable methods of computation include, but are not limited to, those outlined in the Soil Conservation Service National Engineering Field Manual, the Rational Method, and published U.S. Geological Survey techniques for estimating stream flow. Runoff coefficients shall be based on full development of the watershed to the extent of the current zoning.

D. Stormwater detention shall be provided to insure that the rate of discharge does not exceed the pre-development rate of discharge. In order to demonstrate this, pre and post development hydrographs will be submitted that demonstrate no increase in flow leaving the site during the twenty-five (25) year twenty-four (24) hour storm. Inflow-outflow calculations shall also be submitted for any stormwater detention ponds.

21.03.10 Stormwater pipe for either culverts or closed systems shall be constructed of either reinforced concrete, corrugated steel, or aluminized pipe in conformance with North Carolina Department of Transportation (NCDOT) Standard Specifications or high density polyethylene corrugated pipe with smooth interior which meets the product specification of ASHTO M294.

A. Corrugated steel pipe shall be fully bituminous coated. In lieu of fully bituminous coated galvanized pipe, aluminized pipe without a bituminous coating may be used. Pipe which carries active stream flow shall be partially paved (paved invert) fully bituminous coated galvanized pipe. In lieu of fully bituminous coated partially paved galvanized pipe, aluminized pipe which has been half bituminous coated and partially paved may be used. Connecting bands shall conform to NCDOT Standard Specifications.

B. Minimum pipe diameter shall be eighteen inches (18”) for open ended culverts and fifteen inches (15”) for closed systems and driveway culverts. Minimum pipe diameter for portions of closed systems placed outside the public right-of-way and privately maintained shall be twelve inches (12”).

C. Depth of cover shall be appropriate for the pipe material, pipe wall thickness and anticipated loading. Minimum depth of cover shall be twelve inches (12”).

D. Downsizing of culverts within pipe systems is prohibited.

E. Storm drainage piping shall be placed in a straight alignment at uniform grade. No changes in alignment shall be allowed except at catch basins, manholes, or other junctions that provide appropriate clean out access.

F. Storm drainage structures, including inlet grates and frames, shall conform to NCDOT Standard Specifications.

G. No change in pipe material shall be allowed except at storm drainage junctions.

H. Existing stormwater conveyance infrastructure on or through any site being considered for development or redevelopment may remain in place and active, subject to the following criteria:

1. The conveyance system meets all requirements of this Article, except Subsection 21.03.10-A and the system is certified by a design professional to be properly sized with capacity to handle the applicable design storm. The design professional shall also provide a qualitative assessment of the system to include observations of visible signs of erosion, scour, corrosion, degradation, or other structural inadequacies, along with recommendations for any suggested improvements.
2. That the property owner will, at their expense, repair or replace the system or components thereof in the event that the system should fail to function at any time in the future. Any such repair or replacement shall be in accordance with all provisions of this Article.

I. The centerline of any culverts placed along a roadway shall be a minimum of ten feet (10') from the edge of pavement or edge of unpaved travel way.

1. Due to the extreme topography or other unique features related to a specific driveway, it may not be practical to install the culvert at this location.
2. Upon demonstration of adequate cause the permit issuing authority may allow deviations from this requirement.
3. The applicant shall demonstrate that the proposed deviation will result in a culvert that adequately provides the drainage function and minimizes the chance that the ends of the culverts will be damaged.

21.03.11 Hydraulic Design:

A. Design capacity headwater elevations for open ended culverts shall be below the roadway shoulder or finished site grade elevation.

B. Design capacity hydraulic grade line for closed pipe systems shall be at or below the inlet grate elevation.

C. The hydraulic design of culverts and pipe systems shall take into account the effect of tail water and allow for all energy losses within the system.

D. Drainage design calculations shall be submitted demonstrating compliance with these regulations.

1. Minimum information required is a tabulation of the system which presents the type of each inlet, time of concentration, volume to the inlet, size of pipe, length of pipe, pipe inverts at both the high and low end, and hydraulic grade line for each pipe section.

21.03.12 End Treatments:

A. Headwalls, flared end sections, or other adequate slope protection shall be provided at culvert ends.

B. Storm drain outlets shall be protected against erosion by providing energy dissipaters and/or other adequate channel lining.

21.03.13 Open Channels and Ditches:

A. Design capacities for open channels and ditches shall be determined by the Manning Equation.

1. The value of the roughness coefficient shall be appropriate for the material encountered and the condition of the channel.

B. All ditch bottoms and side slopes shall be stabilized with pavement, stone, or vegetative linings adequate to withstand design velocities.

1. Stone rubble linings shall be placed on filters of washed gravel and/or geotextile fabric.

21.03.14 NCDOT Standard concrete curb or combination curb and gutter is required for the direction and control of stormwater in all parking lots. Alternate effective control measures which are consistent with Subsection 21.03.03 will be considered for approval on a case by case basis.

21.03.15 Use of drainage swales rather than curb and gutter with storm sewers is provided for in Article 23.

21.03.16 Building construction is prohibited from being horizontally closer than:

A. Ten feet (10’), from the centerline of drainage culverts less than forty-eight inches (48”) in diameter, or

B. Ten feet (10’) plus one half the culvert diameter, from the centerline of drainage culverts greater than forty-eight inches (48”) in diameter.

This restriction shall not apply to building roof, foundation drains, or incidental yard drains which originate closer than ten feet (10’) to the building and convey stormwater immediately away from the building.

21.03.17 Culverts or pipe systems which convey stormwater to or from existing enclosed drainage facilities shall be connected to the existing facility with an enclosed junction.

A. Connections to existing facilities in public rights-of-way shall require the execution of an encroachment agreement with the Town for Town streets or the NCDOT for state maintained roads.

21.03.18 Where impoundment or detention facilities are included in the design of stormwater management installations, every effort shall be made to minimize the degree of maintenance required to ensure the continuing effectiveness of the facility.

A. Maintenance of stormwater impoundment or detention facilities shall be the responsibility of the property owner.

B. Where impoundment or detention facilities are to be located in common areas, the applicant shall record with the Watauga County Register of Deeds an instrument setting forth provisions for the establishment of a property owners association for the purpose of assessing dues for maintenance of the facilities by purchasers of property which will be served by the facilities within the development. The applicant shall maintain these facilities until such time that the property owners association assumes responsibility for maintenance.

Article 22 UTILITIES

22.01 Utility Ownership and Easement Rights

22.01.01 In any case in which an applicant installs or causes the installation of water, sewer, electrical power, telephone, or cable television facilities and intends that such facilities shall be owned, operated, or maintained by a public utility or any entity other than the applicant, the applicant shall transfer to such utility or entity the necessary ownership or easement rights to enable the utility or entity to operate and maintain such facilities.

22.02 Lots Served by Town Owned Water or Sewer

22.02.01 Lots to be served by Town owned water or server shall meet the requirements of the Town Code.

22.03 Sewage Disposal Facilities Required

22.03.01 Every principal use and every lot within a subdivision shall be served by a sewage disposal system that is adequate to accommodate the reasonable needs of such use or subdivision lot and that complies with all applicable health regulations.

22.04 Determining Compliance with Sewage Disposal Facilities Requirements

22.04.01 Primary responsibility for determining whether a proposed development will comply with the standard set forth in Section 22.03 often lies with an agency other than the Town, and the applicant must comply with the detailed standards and specifications of such other agency.

22.04.02 Whenever any such agency requires detailed construction or design drawings before giving its official approval to the proposed sewage disposal system, the authority issuing a permit under this Ordinance may rely upon a preliminary review by such agency of the basic design elements of the proposed sewage disposal system to determine compliance with Section 22.03.

A. However, construction of such system may not be commenced until the detailed plans and specifications have been reviewed and any appropriate permits issued by such agency.

22.05 Water Supply System Required

22.05.01 Every principal use and every lot within a subdivision shall be served by a water supply system that is adequate to accommodate the reasonable needs of such use or subdivision lot and that complies with all applicable health regulations.

22.06 Determining Compliance with Water Supply System Requirements

22.06.01 Primary responsibility for determining whether a proposed development will comply with the standard set forth in Section 22.05 often lies with an agency other than the Town, and the applicant must comply with the detailed standards and specifications of such other agency.

22.06.02 Whenever any such agency requires detailed construction or design drawings before giving its official approval to the proposed water supply system, the authority issuing a permit under this Ordinance may rely upon a preliminary review by such agency of the basic design elements of the proposed water supply system to determine compliance with Section 22.05.

A. However, construction of such system may not be commenced until the detailed plans and specifications have been reviewed and any appropriate permits issued by such agency.

22.07 Electric Power

22.07.01 Every principal use and every lot within a subdivision shall have available to it a source of electric power adequate to accommodate the reasonable needs of such use and every lot within such subdivision.

A. For all new subdivisions the electric utility service provider must review the proposed plans and certify to the Town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

22.07.02 If the use is not a subdivision and is located on a lot that is served by an existing power line and the use can be served by a simple connection to such power line (as opposed to a more complex distribution system, such as would be required in an apartment complex or shopping center), then no further certification is needed.

22.08 Telephone Service

22.08.01 Every principal use and every lot within a subdivision shall have available to it a telephone service adequate to accommodate the reasonable needs of such use and every lot within such subdivision. Compliance with this requirement shall be determined as follows:

A. If the use is not a subdivision and is located on a lot that is served by an existing telephone line and the use can be served by a simple connection to such telephone line (as opposed to a more complex distribution system, such as would be required in an apartment complex or shopping center), then no further certification is needed.

B. If the use is a subdivision, or is not located on a lot served by an existing telephone line, or a substantial internal distribution system will be necessary, then the telephone utility company must review the proposed plans and certify to the Town that it can provide service that is adequate to meet the needs of the proposed use and every lot within the proposed subdivision.

22.09 Underground Utilities

22.09.01 All electric power lines (not to include transformers or enclosures containing electrical equipment including, but not limited to, switches, meters, or capacitors which may be pad mounted), telephone, gas distribution, and cable television lines in all developments shall be placed underground in accordance with the specifications and policies of the

respective utility service providers and located in accordance with the Town's standard specifications for street design and construction.

22.10 Utilities To Be Consistent With Internal and External Development

22.10.01 Whenever it can reasonably be anticipated that utility facilities constructed in one development will be extended to serve other adjacent or nearby developments, such utility facilities shall be located and constructed so that extensions can be made conveniently and without undue burden or expense or unnecessary duplication of service.

23.10.02 All utility facilities shall be constructed in such a manner as to minimize interference with pedestrian or vehicular traffic and to facilitate maintenance without undue damage to improvements or facilities located within a development.

22.11 As - Built Drawings Required

23.11.01 Whenever an applicant installs or causes to be installed any utility line in any public right-of-way, the applicant shall, as soon as practicable, in no case more than 180 days after installation is complete, and before acceptance of any water, sewer or other utility line, furnish the Town with a copy of a drawing that shows the exact location of such utility lines. Such drawings must be verified as accurate by the utility service provider. Compliance with this requirement shall be a condition of the continued validity of the permit authorizing such development.

22.12 Fire Hydrants

22.12.01 Every development that is served by a public water system shall include a system of fire hydrants sufficient to provide adequate fire protection for the buildings located or intended to be located within such development.

22.13 Solid Waste and Recycling Containers

22.13.01 Solid Waste Containers

A. Every development must provide solid waste areas and solid waste containers in compliance with the requirements of Section 91 of the Town Code.

B. All solid waste containers and solid waste container areas should be located as to minimize any negative impact on persons occupying the development site, neighboring properties, and public rights-of-way.

C. All solid waste container areas should be constructed according to specifications established by the Public Works Department to allow for collection without damage to the development site and the collection vehicle.

D. All solid waste container locations should be screened in accordance with the requirements of Subsection 31.06.05.

22.13.02 Recycling Containers

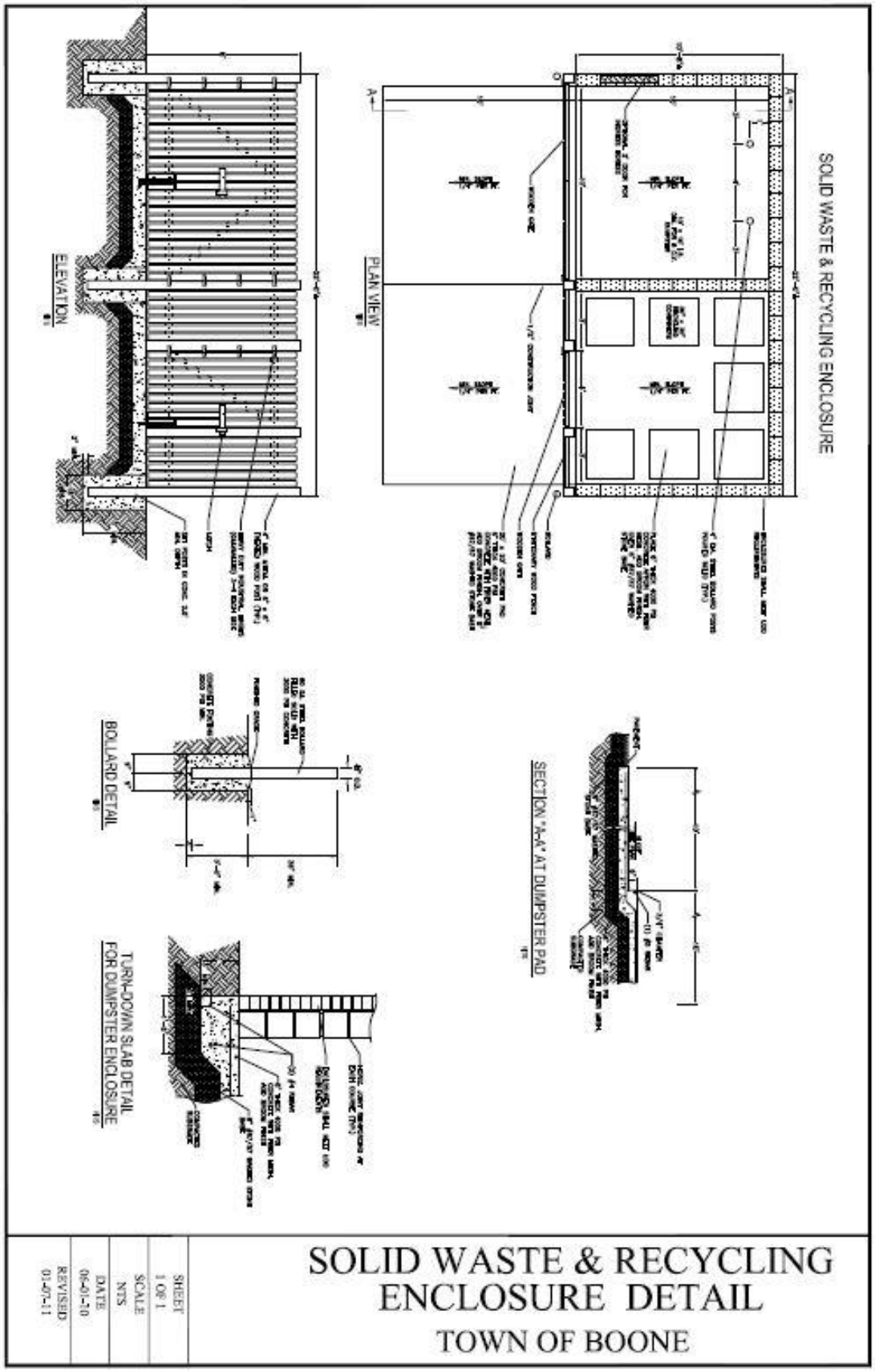
A. Multi-Family dwellings and any other development which is required to recycle should provide an area for the placement of recycling containers designed pursuant to Section 91 of the Town Code.

B. All recycling containers should be located as to minimize any negative impact on persons occupying the development site, neighboring properties, and public rights-of-way.

C. All recycling container areas should be constructed according to specifications established by the Department of Public Works to allow for collection without damages to the development site and the collection vehicle.

D. All recycling container areas should be screened in accordance with the requirements of Section 31.06.05.

22.13.03 Solid Waste and Recycling Enclosure


SOLID WASTE & RECYCLING ENCLOSURE
PLAN VIEW
ELEVATION
SECTION "A-A" AT DUMPSTER PAD
BOLLARD DETAIL
TURN-DOWN SLAB DETAIL
FOR DUMPSTER ENCLOSURE
SOLID WASTE & RECYCLING
ENCLOSURE DETAIL
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Article 23 DRIVEWAYS, STREETS AND SIDEWALKS

23.01 Street Classification

23.01.01 Streets shall be classified as provided in Subsection 23.01.02.

A. The classification shall be based upon the projected volume of traffic to be carried by the street, stated in terms of the number of trips per day.

B. The number of dwelling units to be served by the street may be used as a useful indicator of the number of trips but is not conclusive.

C. Whenever a street continues an existing street that formerly or it is expected that a street will be continued at some future time, the classification of the street will be based upon the street in its entirety.

23.01.02 The classification of streets shall be as follows:

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

B. *Local*: A street whose sole function is to provide access to abutting properties. It serves or is designed to serve at least ten (10) but no more than twenty five (25) dwelling units and is expected to or does handle between seventy five (75) and two hundred (200) trips per day.

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

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

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

23.01.03 Private streets will be permitted to serve as access within residential developments, however, the dedication of public streets and other rights-of-way or easements may be required if they are indicated in official plans adopted by the Town Council.

23.01.04 Public streets and or other rights-of-way or easements of public access over private streets will be required where the North Carolina Department of Transportation, or the Town of Boone Public Works Department determines that such access is necessary for promotion of public health, safety and welfare.

23.01.05 Private streets shall meet the dimensional standards set forth in Section 23.05.

23.01.06 Private streets may be utilized under the following conditions:

A. The applicant shall record with the Watauga County Register of Deeds an instrument setting forth provisions for the establishment of a property owners association for the purpose of assessing dues for maintenance of the roads by the purchasers of the property which will be served by the roads within the development.

B. The applicant shall maintain the road at least until such time that the property owners association assumes maintenance.

C. A subdivision disclosure statement is provided as required by G.S. 136-102.6, which fully discloses the status, whether public or private, of the road upon which the lots front.

23.01.07 The area within the street right-of-way may not be used to satisfy lot area requirements.

23.02 Access to Lots

23.02.01 Every lot shall have access to it that is sufficient to afford a reasonable means of ingress and egress for emergency vehicles as well as for all those likely to need or desire access to the property in its intended use.

23.03 Driveways

23.03.01 A driveway may provide access to no more than two (2) lots.

A. When a single driveway provides access to more than one lot, easement rights in favor of each of the lots that rely upon the driveway for access shall be provided. These rights may be by means of a document recorded in the public records of Watauga County or by means of a notation on the plat of the subdivision that is recorded.

23.03.02 All driveway entrances and other openings onto streets within the Town's planning jurisdiction shall be constructed so that:

A. Vehicles can enter and exit from the lot in question without posing any substantial danger to themselves, pedestrians, or vehicles traveling in abutting streets, and

B. Interference with the free and convenient flow of traffic in abutting or surrounding streets is minimized.

23.03.03 All driveways shall conform to the Boone Town Code, Chapter 98, or the North Carolina Department of Transportation Manual on Driveway Entrance Requirements, whichever is most restrictive.

23.03.04 The maximum grade at any one point on a driveway shall not exceed fifteen percent (15%) unless no other practicable alternative is available and has been approved by the Boone Fire Marshal.

23.04 Relationship of Streets to Topography

23.04.01 Street grades shall conform as closely as practicable to the original topography.

23.04.02 The maximum grade at any one point on a street shall not exceed fifteen percent (15%) unless no other practicable alternative is available and has been approved by the Boone Fire Marshal.

23.05 Street Width and Drainage Requirements

23.05.01 Streets shall be constructed to meet the standards set forth in the table below.

Street Type	Minimum Right-of-Way Width (feet)	Minimum Pavement Width (feet)	Shoulder & Swale Allowed	Curb & Gutter Allowed
Minor	45	18	Yes	Yes
Local	45	18	Yes	Yes
Private	30	18	Yes	Yes
Subcollector	50	20	Yes	Yes
Collector	50	20	No	Yes

23.05.02 Shoulders and drainage swales or curb and gutters may be utilized as allowed in the table above.

A. Shoulders and drainage swales shall be a minimum of four feet (4').

B. Standard ninety degree (90°) curb or roll type curb may be permitted along minor and local streets within residential subdivisions.

C. Street pavement width:

1. Shall be measured from curb face to curb face where ninety degree (90°) curb is used; and
2. Shall be measured from the center of the curb to the center of the curb where roll type curb is used; and
3. Shall be measured from edge of pavement to edge of pavement where shoulder and swale are used.

23.06 General Layout of Streets

23.06.01 Street systems shall be coordinated with existing, proposed, and anticipated streets as provided in this Section.

23.06.02 Collector streets shall intersect with surrounding collector or arterial streets at safe and convenient locations.

23.06.03 Subcollector, local, and minor residential streets shall connect with surrounding streets where necessary to permit the convenient movement of traffic between residential neighborhoods or to facilitate access to neighborhoods by emergency service vehicles or for other sufficient reasons~~,~~.

A. Connections shall not be permitted where the effect would be to encourage the use of such streets by substantial cut-through traffic.

23.06.04 Whenever connections to anticipated or proposed surrounding streets are required by this Section, the street right-of-way shall be extended and the street developed to the property line of the subdivided property (or to the edge of the remaining undeveloped portion of a single tract) at the point where the connections to the anticipated or proposed street is expected.

A. The permit issuing authority may require temporary turnarounds to be constructed at the end of such the streets pending their extension when such turnarounds appear necessary to facilitate the flow of traffic or accommodate emergency vehicles.

23.06.05 Subcollector, local and minor residential streets shall be curved whenever practicable to the extent necessary to avoid conformity of lot appearance.

23.06.06 Cul-de-sacs and loop streets are encouraged so that through traffic on residential streets in minimized.

23.06.07 All dead end streets shall be developed as cul-de-sacs in accordance with the standards set forth in this Article. Except where no other practicable alternative is available, such streets may not extend more than 550 feet (measured to the center of the turnaround).

23.06.08 The right-of-way of a cul-de-sac shall have a radius of fifty feet (50’). The radius of the paved portion of the turnaround (measured to the outer edge of the pavement) shall be thirty-five feet (35’).

A. Alternative cul-de-sac designs published in NCDOT’s “Subdivision Roads – Minimum Construction Standards” will be considered by the permit issuing authority only in situations where, because of the physical characteristics of the site, the construction of a symmetrical “bulb” end design may not be in the public’s best interest.

23.06.09 Half streets shall not be permitted except where such streets, when combined with a similar street (developed previously or simultaneously) on property adjacent to the subdivision, creates or comprises a street that meets the right-of-way and pavement requirements of this Ordinance.

23.06.10 Streets shall be laid out so that residential blocks do not exceed 1,800 feet, unless no other practicable alternative is available.

23.06.11 Streets shall intersect as nearly as possible at right angles, and no two streets may intersect at less than sixty degrees (60°).

23.06.12 Not more than two streets shall intersect at any one point, unless the Public Works Director certifies to the permit issuing authority that such an intersection can be constructed with no extraordinary danger to public safety.

23.06.13 Whenever possible, proposed intersections along one side of a street shall coincide with existing or proposed intersections on the opposite side of such street.

A. In any event, where a centerline offset (jog) occurs at an intersection, the distance between centerlines of the intersecting streets shall not be less than 150 feet.

23.07 Construction Standards and Specifications

23.07.01 All streets shall be constructed in accordance with the design construction standards promulgated by the North Carolina Department of Transportation (NCDOT), unless a more restrictive standard is herein, in which case the more restrictive standard shall apply.

23.08 Pedestrian Circulation and Sidewalk Requirements

23.08.01 **When Sidewalks Must Be Constructed**: Sidewalks shall be required for:

A. All new major subdivisions;

B. All new multi-family residential development;

C. All new office, institutional, commercial and industrial development;

23.08.02 Sidewalks along any public street shall require the dedication of a permanent easement for public use to the Town of Boone.

23.08.03 **Design Requirements**.

A. Sidewalks shall be required along the entire length of any portions of public streets which abut the development parcel.

B. Sidewalks will be constructed in accordance with the Roadway & Sidewalk Program Handbook for the Town of Boone.

1. Any deviation from the requirements must be approved by the Public Works Director.

   a. Deviations may only be allowed when strict compliance with the Roadway & Sidewalk Program Handbook is impractical due to topography or because there exists site conditions beyond the applicant's control and not of the applicant's making.

C. Whenever curb and gutter construction is used on public streets, wheelchair ramps shall be provided at intersections and other major points of pedestrian flow. Sidewalks, wheelchair ramps, and depressed curbs shall be constructed in accordance

with the published standards of the North Carolina Building Code, Volume I-C, Accessibility.

D. In all multi-family residential development, sidewalks shall be provided linking dwelling units with other dwelling units, the public street, and on site activity centers such as parking areas, laundry facilities, and recreational facilities.

23.08.04 Alternative Methods for Pedestrian Circulation: When an alternative method of public pedestrian circulation has been identified in a duly adopted governmental alternative transportation plan, or where a proposed public greenway will connect to an existing public greenway, the permit issuing authority may allow the installation of a public greenway instead of sidewalks. The following provisions shall apply for the approval of alternative methods for the provision of pedestrian circulation:

A. The applicant with written authorization from the property owner shall submit a written request for an alternative method for pedestrian circulation to the permit issuing authority.

1. The request shall specify the method proposed as a substitute for sidewalk installation.
2. A site plan depicting the location and dimensions of the alternative method of pedestrian circulation and any other information deemed necessary by the Administrator shall be included with the request.

B. All alternative methods will be constructed to meet Town of Boone standards and will require the dedication of an assignable permanent easement to the Town of Boone.

23.08.05 Fee in Lieu

A. Except for development along a Primary Sidewalk Priority Route where there is contiguous sidewalk infrastructure in place (as shown on the Sidewalk Priorities Plan duly adopted by the Town), when an applicant is required to construct a sidewalk, the applicant may in lieu of such construction deposit funds into a sidewalk fund maintained by the Town of Boone.

1. Fee-in-lieu is not an option when existing sidewalks are removed during the course of construction; in this case sidewalks must be replaced.

B. Procedures for Payment of Fee in Lieu

1. The applicant, with written authorization from the property owner, shall submit a written notification to the Administrator of the applicant's intent to pay a fee in lieu of construction.
2. The applicant shall pay the fee prior to the issuance of a Certificate of Occupancy. The fee shall be a fixed amount per linear foot based on the rate calculated and published on a quarterly basis by the Town. The applicable fee shall be determined by the rate in effect on the date the development plan is approved.

3. All funds collected in lieu of construction shall be in addition to all other sidewalk funding and shall be placed in a separate account to be used only for costs associated with new sidewalk construction as shown on the Sidewalk Priorities Plan duly adopted by the Town.

23.08.06 Whenever the permit issuing authority finds that a means of pedestrian access is necessary from the subdivision to schools, parks, playgrounds, or other roads or facilities and that such access is not conveniently provided by sidewalks adjacent to the streets, the applicant may be required to reserve an unobstructed easement of at least ten feet (10') in width to provide such access.

23.09 Street Names and House Numbers

23.09.01 Street names shall be assigned by the applicant subject to the approval of the Town.

1. Proposed streets that are obviously in alignment with existing streets shall be given the same name.
2. Newly created streets shall be given names that neither duplicate nor are phonetically similar to existing streets within the Town's planning jurisdiction, regardless of the use of different suffixes.

23.09.02 Building numbers shall be assigned by the Town.

23.10 Bridges

23.10.01 All bridges shall be constructed in accordance with the standards and specifications of the North Carolina Department of Transportation, except that bridges on roads not intended for public dedication may be approved if designed by a licensed engineer.

Article 24 PARKING

24.01 Parking Spaces Required

24.01.01 All developments in all zoning districts shall provide a sufficient number of parking spaces to accommodate the number of vehicles that ordinarily are likely to be attracted to the development in question.

24.01.02 The number of off-street vehicle parking spaces included in a development shall comply with the standards in this Article.

24.01.03 Required Parking By Use:

Residential Land Uses	Minimum Parking Required
A-1 Secondary Suite A-3 Accessory Dwelling Unit T-1 Temporary Care Provider Dwelling T-2 Temporary Construction or Repair Dwelling T-3 Temporary Construction Trailer	1 space
1.01 Single-Family Dwelling 1.02 Manufactured Home "Class A" 1.03 Manufactured Home "Class B" 1.06 Duplex (each unit) 1.07 Duplex (each unit) 2.01 Family Care Home A-21 Caretaker's Residence	2 spaces
1.05 Manufactured Home Park	2 spaces /Manufactured Home plus, 1 visitors parking space/10 Manufactured Homes, plus 2 spaces for Manufactured Home Park Employees
3.01 Home for Survivors of Domestic Violence 3.06 Vacation Rental	3 Spaces
2.08-2.09 Retirement Community 2.10-2.12 Residence Hall	1 space/ unit plus 1 visitors parking space/dwelling unit
2.02 Family Care Institutions 2.03-2.04 Halfway House 2.05-2.06 Nursing Care 2.07 Skilled Nursing Facility 2.13 Fraternity or Sorority Dwelling 3.02-3.03 Shelter for Homeless	1 space/4 beds
2.14 Board Housing 3.04-3.05 Bed and Breakfast 3.07 Motel 3.08 Hotel	1.25 space/rentable room, plus 10 per 1000 ft^2 of restaurant/lounge, plus 20 per 1000 ft^2 per meeting/banquet room

Commercial Land Uses	Maximum Parking Allowed
1.08-1.10 Townhouse 1.11-1.13 Multi-Family	2 spaces/unit Visitor parking spaces not to exceed 25% of total parking area
1.14-1.16 Mixed-Use Multi-Family	1 space / 1 bedroom units 2 spaces / 2 bedroom units 3 spaces / 3 or more bedroom units 1 space / unit for multi-family residences limited to the Elderly 1 space / unit for affordable rental dwelling units 1 space / unit for affordable owner-occupied dwelling units
16.01 Mini-Storage A-10 Produce Stand	1 space/1000 ft^2 GFA
4.06 Post Office, Distribution 14.0 Manufacturing 16.02 Outdoor Storage 16.03 Warehouse 16.04 Fuel Storage Facility 17.02 & 17.03 Trucking or Freight Terminal A-24 Chemical Storage Facility	2 spaces/1000 ft^2 GFA
10.0 Daycare 11.32 Gas Station	3 spaces/1000 ft^2 GFA
11.01 Kennel 11.02-11.03 Veterinary Office/Hospital 11.04 & 11.05 Financial Institution 11.11 ABC Store 11.12 - 11.13 Personal Service Establishment 11.14-11.16 Retail Store 11.17 Shopping Center/Mall 11.18 - 11.19 Business or Professional Office 11.20-11.23 Medical Office 11.16 Specialty Medical Facility 11.26 Open Air Market 11.33 Car Wash 12.0 Recreation 18.0 Waste Related Uses 19.0 Particular Activities which Pose Particular..	5 spaces/1000 ft^2 GFA or outdoor area used for principal use
11.06 - 11.10 Restaurant	12 spaces/1000 ft^2 GFA
4.03 Funeral Home Establishment	12 spaces/1000 ft^2 of visitation area, plus one space per every two seats in the chapel.
4.05 Post Office	1 space per employee plus 5 spaces/1000 ft^2 GFA
6.0 Non-Government Utility Facility	3 spaces per facility
7.0 Telecommunication	1 space per service provider

Commercial Land Uses	Maximum Parking Allowed
8.0 Assembly	1 space for every two seats in sanctuaries/chapels plus 3 spaces per 1000 ft^2 for daycares
9.0 Education	5 spaces per classroom
11.27 Vehicle Sales and Service 11.28 Equipment Sales and Service 11.29 Moped Sales and Service 11.30 Boat or Marine Craft Sales and Service	3 spaces/1000 ft^2 GFA, plus 2 spaces/1000 ft^2 of outdoor display, plus 2 per service bay
1.05 Manufactured Home Park 4.01 Airport/Land Strip 4.02 Heliport 4.04 Cemetery 4.07 Animal Sanctuary 5.0 Government Uses 13.0 Agricultural Uses 17.01 Passenger Terminals A-19 Helistop T-8 Temporary Non-Fixed Site Event Venue	As determined by the Administrator

24.01.04 Uses which have parking requirements which are to be "as determined by the Administrator" as listed in Subsection 24.01.03 are required to submit a parking demand analysis prepared by a qualified engineer if requested to do so by the Administrator.

A. The Administrator shall make the determination based upon the expected parking needs of the development, recognizing the Town's goal of preventing excess parking.

24.01.05 The number of parking spaces provided at the time of approval of the development may not be subsequently reduced or increased without the approval of the permit issuing authority.

A. All spaces must otherwise be maintained for the life of the development.

B. Minimums and maximums may be adjusted by the permit issuing authority when the applicant provides a parking demand analysis prepared by a qualified engineer which supports a conclusion that application of the minimums established by Subsection 24.01.03 would result in excess and unnecessary parking for the development or maximums established by Subsection 24.01.03 are inadequate to meet the parking needed for the development.

C. Without limiting the generality of the foregoing, the permit issuing authority may allow deviations from the parking requirements set forth in Subsection 25.01.03 when it finds that:

1. A residential development is irrevocably oriented toward the elderly;
2. A business is primarily oriented to walk-in trade.

D. Whenever the permit issuing authority allows or requires a deviation from the presumptive parking requirements set forth in Subsection 24.01.03, it shall enter on the face of the permit the parking requirement that it imposes and the reasons for allowing or requiring the deviation.

24.01.06 If the permit issuing authority concludes, based upon information it receives in the consideration of a specific development proposal, that the presumption established by 19.01.03 for a particular use classification is erroneous, it shall initiate a request for an amendment in accordance with the procedures set forth in Article 9.

24.01.07 When a use is proposed which is not listed in Subsection 24.01.03, the permit issuing authority shall determine the number of spaces required or permitted, as relevant, by referencing the most similar use listed in Subsection 24.01.03.

A. If the permit issuing authority concludes that no reasonably similar use is listed, it may require the applicant to submit a parking demand analysis prepared by a qualified engineer to determine the number of needed or permitted spaces for the proposed use, or the permit issuing authority may procure its own parking demand analysis.

24.01.08 Parking Requirements for Multi-Family Dwellings

A. The minimum parking required for multi-family dwellings may be reduced by a factor of 10% for each one of the following, with a maximum reduction of 20% based on these factors:

1. The development is located within 1 mile of linear sidewalk distance from any portion of the Appalachian State University library, and public sidewalks or public pedestrian walkways exist or will be constructed in connection with the development which allow safe pedestrian travel between the development and the main campus.
2. Bus service to the development exists or is arranged by the applicant and a transit shelter or bus pull-off for use by the residents is built or exists within ½ mile linear sidewalk distance from the development boundary.

B. The number of automobile parking spaces for Use 1.300 Multi-Family Residences shall not exceed one-hundred and twenty percent (120%) of the minimum requirement.

24.02 Parking Space Dimensions and Required Widths of Parking Area Aisles and Driveways

24.02.01 Subject to Subsections 24.02.02, 24.02.03 and 24.02.06, each parking space shall contain a rectangular area at least seventeen and one half feet long (17.5’) and nine feet (9’) wide. Lines demarcating parking spaces may be drawn at various angles in relation to

curbs or aisles, so long as the parking spaces so created contain within them the rectangular area required by this Section.

24.02.02 In parking areas containing ten (10) or more parking spaces, a rectangular area of only seven and one half feet (7.5') in width by fifteen feet (15') in length, may be conspicuously designated as reserved for compact cars in the following situations:

A. Multi-family uses may provide up to fifty percent (50%) of the parking spaces for compact cars.

B. All other uses may provide up to thirty-five percent (35%) of the parking spaces for compact cars.

24.02.03 Wherever parking areas consist of spaces set aside for parallel parking, the dimensions of such parking spaces shall be not less than twenty-three feet (23') by nine and one half feet (9.5').

24.02.04 Parking area aisle widths shall conform to the Geometric Design Standards for Parking Table, which varies the width requirement according to the angle of parking.

24.02.05 Driveways shall not be less than eleven feet (11') in width for one way traffic and eighteen feet (18') in width for two way traffic, except that eleven feet (11') wide driveways are permissible for two way traffic when:

A. The driveway is no longer than fifty feet (50'), and

B. The driveway provides access to not more than six (6) spaces, and

C. Sufficient turning space is provided so that vehicles need not back into a public street.

24.02.06 Geometric Design Standards for Parking Table

Geometric Design for Standard Automobiles

Parking Angle (degrees)	Stall Width (Feet)	Stall Depth (to Curb) (feet)	Aisle Width (feet)	Stall Width Parallel to Aisle (feet)	Module Width (feet)	Bumper Overhang (feet)
0	9.5	N/A	12.0	23.0	31.0	N/A
45	9.0	17.5	12.0	12.7	47.2	2.0
60	9.0	19.0	16.0	10.4	54.0	2.5
75	9.0	19.5	23.0	9.3	62.0	2.5
90	9.0	18.0	24.0	9.0	60.0	3.0

Geometric Design for Compact Automobiles

Parking Angle (degrees)	Stall Width (Feet)		Stall Depth (to Curb) (feet)	Aisle Width (feet)	Stall Width (Parallel to Aisle (feet)	Module Width (feet)	Bumper Overhang (feet)
	Multi-Family	Other Uses					
0	8.0	8.0	N/A	11.0	1.0	27.0	N/A
45	7.5	8.0	16.0	11.0	10.5	43.0	2.0
60	7.5	8.0	16.7	14.0	8.7	47.4	2.3
75	7.5	8.0	16.3	17.4	7.8	50.0	2.5
90	7.5	8.0	15.0	20.0	7.5	50.	2.5

24.03 General Design Requirements

24.03.01 Unless no other practicable alternative is available, vehicle accommodation areas shall be designed so that, without resorting to extraordinary movements, vehicles may exit such areas without backing into a public street. This requirement does not apply to parking areas consisting of driveways that serve one or two dwelling units, although backing onto arterial streets is discouraged.

24.03.02 Vehicle accommodation areas of all developments shall be designed so sanitation, emergency, and other public service vehicles can serve such developments without the necessity of backing unreasonable distances or making other dangerous or hazardous turning movements.

24.03.03 Every vehicle accommodation area shall be designed so that vehicles cannot extend beyond the perimeter of such area onto adjacent properties or public rights-of-way. Such areas shall also be designed so that vehicles do not extend over sidewalks or tend to bump against or damage any wall, vegetation, or other obstruction.

24.03.04 Circulation areas shall be designed so that vehicles can proceed safely without posing a danger to pedestrians or other vehicles and without interfering with parking areas.

24.03.05 All vehicle accommodation areas shall designate parking space for handicapped persons in accordance with the state Building Code.

24.03.06 **Location of Residential Parking:** Parking outside a substantially enclosed structure of more than four (4) motor vehicles between the front building line of the principal building and the street on any lot used for purposes that fall within the following principal use classifications: 1.01, 1.02, 1.03, 1.04, 1.05, 1.06.

24.04 Vehicle Accommodation Area Surfaces

24.04.01 Except for single or two family dwellings and excluding vehicle accommodation areas designed for two (2) vehicles or less, all vehicle accommodation areas shall be surfaced with a bituminous paving or NCDOT standard ABC stone. ABC stone may not be used on vehicle accommodation areas with slopes greater than five percent (5%).

24.04.02 Parking spaces in areas surfaced with bituminous paving shall be appropriately demarcated with painted lines or other markings. Parking spaces in areas surfaced with NCDOT standard ABC stone shall be demarcated whenever practicable.

24.04.03 Vehicle accommodation areas shall be properly maintained in all respects. In particular, and without limiting the foregoing, vehicular accommodation area surfaces shall be kept in good condition (free from potholes, etc.) and parking space lines or markings shall be kept clearly visible and distinct.

24.04.04 Use of pavement or asphalt sealant, coating or like product (hereafter referred to as "sealant").

A. Any sealant may only be used in conformity with its manufacturer's specifications and is further subject to the following requirements:

1. No person may apply a sealant nor authorize its application without first obtaining a zoning permit from the Administrator. As part of the permit application, the applicant must disclose the date the sealant will be applied, the location of the area to which the sealant will be applied, the type of sealant which will be applied and such other information as the Administrator shall request. The Administrator may charge appropriate fees to defray the costs of inspections needed to verify compliance with this Section.
2. A sealant may not be applied unless the pavement and air temperatures at the location of the application, at all times during application and for at least forty-eight hours thereafter, are and are predicted to be at least fifty-five degrees (55°) Fahrenheit and stable or rising, but less than eighty degrees (80°) Fahrenheit.
3. A sealant may not be applied during rainy or wet weather.
4. Any person applying a sealant must have on site for ready inspection by the Administrator a copy of the manufacturer's specifications for application of the sealant.

B. Additional Requirement for Non-Coal-Tar-Based Sealants: In addition to the foregoing requirements of Subsection 24.04.04(A), a non-coal-tar-based sealant may not be applied if at the time the application is to begin, any chance of precipitation is predicted by the National Weather Service for any portion of the period during which the sealant is expected to be applied, or at the time application begins there is more than a ten percent (10%) chance of precipitation predicted by the National Weather Service for any portion of the forty-eight (48) hours following the anticipated completion of the application.

C. Additional Requirement for Coal-Tar-Based Sealants:

1. In addition to the foregoing requirements of Subsection 24.04.04(A), a sealant containing coal tar may not be applied if at the time the application is to begin, any chance of precipitation is predicted by the National Weather Service for any

portion of the period during which the sealant is expected to be applied; at the time application begins there is a ten percent (10%) or more chance of precipitation predicted for any period within the forty-eight (48) hours following the anticipated completion of the application; or if at the time application begins, there is more than a twenty percent chance of precipitation predicted for any period within seven (7) full days following the anticipated completion of the application, each as predicted by the National Weather Service.

2. A sealant containing coal tar may never be applied to a surface, any part of which is located within a flood way, nor to a surface, any part of which is within 200 feet from the closest point of any natural watercourse, and shown on a map labeled as the "NC Stream Map" as produced by the North Carolina Stream Mapping Project (http://www.ncstreams.org)" on file with and available through the Administrator.

3. A sealant containing coal tar may only be applied to a surface, any part of which is located in an area of special flood hazard, if buffering is placed along all portions of the downslope perimeter of the surface sufficient to absorb and impede any draining of the sealant from the surface to a degree equivalent or more effective than the absorption and impedance which can be achieved with bales of hay, laid end to end, and such buffering is maintained in place for a period of no less than seven days following application of the sealant. For purposes of this paragraph, the use of bales of hay of normal size and weight, laid end to end, shall be considered sufficient to meet the requirements of this paragraph.

4. A sealant containing coal tar may only be applied to a surface, any part of which contains a storm drain, if buffering or filters are placed around the full perimeter of the storm drain sufficient to absorb and impede any draining of the sealant from the surface to a degree equivalent or more effective than the absorption and impedance which can be achieved with bales of hay, laid end to end, and such buffering is maintained in place for a period of no less than seven days following application of the sealant. For purposes of this paragraph, the use of bales of hay of normal size and weight forming an unbroken perimeter around a storm drain shall be considered a sufficient buffer and filter to meet the requirements of this paragraph.

24.05 Joint Use of Required Parking Spaces

24.05.01 One parking area may contain required spaces for several different uses, but except as otherwise provided in this Section, the required space assigned to one use may not be credited to another use.

24.05.02 To the extent that developments that wish to make joint use of the same parking spaces operate at different times, the same spaces may be credited to both uses. For example, if a parking lot is used in connection with an office building on Monday through Friday but is

generally ninety percent (90%) vacant on weekends, another development that operates only on weekends could be credited with ninety percent (90%) of the spaces on that lot. Or, if a church parking lot is generally occupied only to fifty percent (50%) of capacity on days other than Sunday, another development could make use of fifty percent (50%) of the church lot's spaces on those other days.

24.05.03 If the joint use of the same parking spaces by two or more (2+) principal uses involves satellite parking spaces, then the provisions of Section 24.06 are also applicable.

24.06 Satellite Parking

24.06.01 If the number of off-street parking spaces required by this Ordinance cannot reasonably be provided on the same lot where the principal use associated with these parking spaces is located, then spaces may be provided on adjacent or nearby lots in accordance with the provisions of this Section. These off site spaces are referred to in this Section as satellite parking spaces.

24.06.02 All such satellite parking spaces (except spaces intended for employee use) must be located within 500 feet of a public entrance of a principal building housing the use associated with such parking, or within 500 feet of the lot on which the use associated with such parking lot is located if the use is not housed within any principal building. Satellite parking spaces intended for employee use may be located within any reasonable distance.

24.06.03 The applicant wishing to take advantage of the provisions of this Section must present satisfactory written evidence that he has the permission of the owner or other person in charge of the satellite parking spaces to use such spaces. The applicant must also sign an acknowledgment that the continuing validity of his permit depends upon his continuing ability to provide the requisite number of parking spaces.

24.06.04 Persons who obtain satellite parking spaces in accordance with this Section shall not be held accountable for ensuring that the satellite parking areas from which they obtain their spaces satisfy the design requirements of this Article.

24.07 Special Provisions For Lots With Existing Buildings

24.07.01 Notwithstanding any other provisions of this Ordinance, whenever (i) there exists a lot with one or more structures on it constructed before the effective date of this Ordinance, and (ii) a change in use that does not involve any enlargement of a structure is proposed for such lot, and (iii) the parking requirements of Section 24.01 that would be applicable as a result of the proposed change cannot be satisfied on such lot because there is not sufficient area available on the lot that can practicably be used for parking, then the applicant need only comply with the requirements of Section 24.01 to the extent that (i) parking space is practicably available on the lot where the development is located, and (ii) satellite parking space is reasonably available.

24.07.02 Should satellite parking subsequently become reasonably available, then it shall be a continuing condition of the permit authorizing development on such lot that the applicant obtain satellite parking when it does become available.

24.08 Loading and Unloading Areas

24.08.01 Subject to Subsection 24.08.06, whenever the normal operation of any development requires that goods, merchandise, or equipment be routinely delivered to or shipped from that development, a sufficient off-street loading and unloading area, located at the rear, side or end of the business, must be provided in accordance with this Subsection to accommodate the delivery or shipment operations in a safe and convenient manner.

24.08.02 The loading and unloading area must be of sufficient size to accommodate the numbers and types of vehicles that are likely to use this area, given the nature of the development in question. Subsection 24.08.03 indicates the number of spaces that, presumably satisfies the standard set forth in this Subsection. However, the permit issuing authority may require more or less loading and unloading area if reasonably necessary to satisfy the standard in Subsection 24.08.03.

24.08.03 For the purpose of this Section, the off-street loading and unloading space shall have the minimum dimensions of twelve feet (12') by fifty-five feet (55') and overhead clearance of fourteen feet (14') from street grade.

A. Retail business shall provide one (1) space of 300 square feet for each 5,000 square feet of floor space.

B. Wholesale and industry shall provide one (1) space of 500 square feet for each 10,000 square feet of floor area.

C. In the case of mixed uses, the total requirements for off-street loading or unloading space shall be the sum of the requirements for the various uses.

24.08.04 Loading and unloading areas shall be so located and designed that the vehicles intended to use them can (i) maneuver safely and conveniently to and from a public right-of-way, and (ii) complete the loading and unloading operations without obstructing or interfering with any public right-of-way or any parking space or parking lot aisle.

24.08.05 No area allocated to loading and unloading facilities may be used to satisfy the area requirements for off-street parking, nor shall any portion of any off-street parking area be used to satisfy the area requirements for loading and unloading facilities.

24.08.06 Whenever (i) there exists a lot with one or more structures on it constructed before the effective date of this Ordinance, and (ii) a change in use that does not involve any enlargement of a structure is proposed for such lot, and (iii) the loading requirements of this Section cannot be satisfied because there is not sufficient area available on the lot that can be practicably be used for loading and unloading, then the applicant need only comply with this Section to the extent reasonably possible.

24.09 Bicycle Parking

24.09.01 The B – 1 Central Business zoning district is exempt from the requirements of this Section.

24.09.02 Except for Use 1.01 Single-Family Dwelling, Uses 1.02 and 1.03 Manufactured Home, Use 1.06 Duplex, Use 12.0, and any accessory or temporary use, bicycle parking facilities meeting the standards of this Section shall be provided by a permit applicant under each of the following circumstances:

A. When a new building is constructed;

B. When any addition to or enlargement of an existing building is constructed;

C. When a change in occupancy of any building occurs which results in a requirement for additional vehicle parking facilities under Section 24.01.

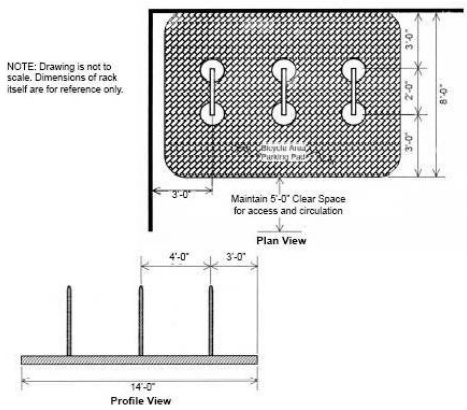
24.09.03 The number of bicycle spaces included in the required bicycle parking facilities shall be determined by the following table of uses. Use descriptions are abbreviated and are for descriptive purposes only. Uses listed below are preceded by a number which corresponds to a use category in the Table of Principal Uses, Section 15.07, *supra*, and include all specific uses described in association with that number. In those instances when alternative measures are associated with a particular use, e.g., "2, or 1 per 20 units," the measure providing the higher number of bicycle parking spaces shall be used.

Residential Land Uses	Short Term Spaces	Long Term Spaces
1.07 Duplex 1.08-1.110 Townhouse 1.11-1.16 Multi-Family Dwelling	2, or 1 per 20 units	1 per 4 units
1.05 Manufactured Home Park	2 or 1 per 20 bedrooms	
2.0 Group Living (Except 2.01)	2, or 1 per 20 bedrooms	1 per 10 bedrooms
3.0 Transient Living	2	2

Commercial Land Uses	Short Term Spaces	Long Term Spaces
5.12 Police Substation	2	
10.0 Daycare	2	2
4.03 Funeral Home Establishment 4.05-4.06 Post Office 5.01-5.02 Government Cultural Facility 5.04 Recreation Facility 5.07-5.09 Event Venue 5.16 Government Facility 8.0 Assembly 12.01 Indoor Shooting Range 12.03 Indoor Theater 12.05-12.07 Event Venue	2, or 1 per 5,000 ft^2 GFA	2, or 1 per 12,000 ft^2 GFA
9.0 Education	1 per classroom	1 per 2 classrooms
10.0 Daycare	1 per 5,000 ft^2 GFA	1 per 10,000 ft^2 GFA
11.0 General Sales and Service (except 11.26-11.34) 14.01 Microbrewery 14.02 Brewpub 19.0 Particular Activities…	2, or 1 per 5,000 ft^2 GFA	1 per 10,000 ft^2 GFA
5.05-5.06 Recreation Facility 12.11-12.12 Recreation Facility 12.04 Outdoor Theater	1 per 20 automobile parking spaces	
12.09 Coliseum	8 or 1 per 40 seats	
14.0 Manufacturing (except 14.01-14.02)		2, or 1 per 15,000 ft^2 GFA

24.09.04 Parking facilities shall meet the following standards:

A. Each bicycle parking space shall be no less than six feet (6') long by two feet (2') wide, plus sufficient area for access. A "rack" is a bicycle facility which includes multiple contiguous bicycle parking spaces. Exact conformity with the following diagram for a single rack bicycle facility is not required, but adherence to this design shall meet the requirements of this Section:



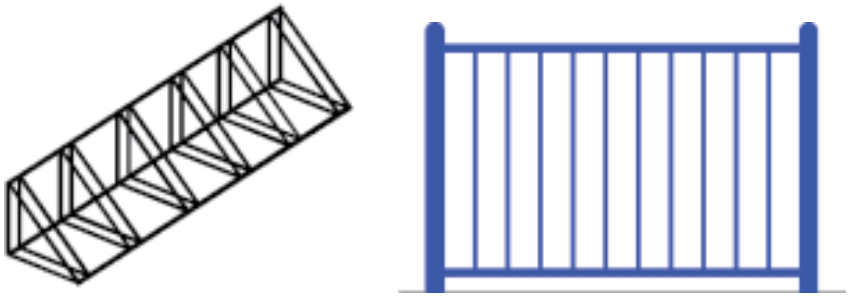
(20140384-08212014)

B. No less than four feet (4') must be provided between parallel racks.

C. Bicycle parking facilities shall be constructed of materials of sufficient strength to significantly resist their displacement or removal, and they shall be securely anchored in concrete or other equivalent material or system of sufficient strength to significantly resist removal. Bicycle parking facilities shall support bicycles in a stable position without damage to wheels, frame or other components and allow for the use of either a cable, U-shaped, or similar lock to secure the bicycle.

Examples of acceptable facilities:

Examples of **unacceptable** facilities (because they secure only one wheel):



(20140384-08212014)

D. Outside bicycle parking facilities shall be illuminated in conformity with the standards for "open parking areas" of UDO Section 25.05. Inside bicycle parking facilities shall be

illuminated in conformity with the standards for "building entries" of UDO Section 25.05.

E. Areas set aside for outside bicycle parking shall be clearly marked and reserved for bicycle parking only. Where the location of said parking is not easily visible from the street, a sign that does not exceed four square feet (4 ft^2) in area and directs cyclists to parking shall be provided on site and must be visible from the street or from the main building entrance. For purposes of this Section, "main building entrance" shall connote and refer to the primary doorway by which residents, visitors or customers enter and exit a building, whether or not said entrance is oriented facing the public street.

Examples of acceptable signs:

(20140384-08212014)

F. Bicycle parking shall be located so as to avoid impeding or creating a hazard to pedestrians from parked or approaching bicycles, and to avoid creating a hazard to bicyclists or bicycles from automobiles or other motor vehicles. Bicycle racks installed on private sidewalks within the development must provide a clear, unobstructed passage of at least five feet (5') for pedestrians and should be installed at least three feet (3') from the face of any curb. Bicycle racks may not be installed on public sidewalks without the express authorization of the Boone Town Council, subject to such conditions which may be attached to such authorization.

24.09.05 Short-term bicycle parking is parking intended or utilized for 2 hours or less by customers or visitors to a particular use. Parking facilities for short term bicycle parking must be located no farther from the main building entrance than the distance to the closest non-handicap vehicle space, or fifty feet (50'), whichever is less, and they must be visible from public sidewalk areas along the public street frontage adjoining the use and located directly in front of the main building entrance unless the main building entrance is not oriented toward the public street. In those instances where the main building entrance is not oriented toward the public street, the parking facilities must be visible from such locations, as determined by the Administrator or permit issuing authority, which will provide the greatest level of visibility to achieve the dual purposes of security for the bicycles using the facilities and availability to bicyclists visiting the building for the first time. Short term bicycle parking, when allowed within a public right-of-way, should be coordinated with street furniture as applicable.

24.09.06 Long term bicycle parking is intended or utilized for daily, overnight or even longer duration bicycle parking by residents and employees. Long term bicycle parking shall be covered or enclosed, and must provide security and protection from weather and the elements. Long term bicycle parking should be incorporated whenever possible into the building design.

24.09.07 Bicycle parking exceeding the requirements of this Section may reduce by up to 10% required motor vehicle parking for residential uses and other uses where a parking demand analysis establishes a minimum motor vehicle parking expectation. For every five bicycle parking spaces in excess of the short or long term bicycle parking requirements of Subsection 24.09.03, the use's motor vehicle parking requirement is reduced by one (1) space.

24.10 Motorcycle Parking

24.10.01 The B – 1 Central Business zoning district is exempt from the requirements of this Section.

24.10.02 Motorcycle parking facilities meeting the standards of this Section shall be provided by a permit applicant under each of the following circumstances, and one (1) motorcycle parking space shall be provided for every 40 motor vehicle parking spaces:

A. When a new building is constructed;

B. When any addition or enlargement of an existing building is constructed;

C. When a change in occupancy of any building occurs where 40 or more vehicle parking spaces are provided.

24.10.03 Motorcycle parking facilities shall meet the following design standards:

A. Each motorcycle parking space shall be no less than eight feet (8’) long by four feet (4’) wide, and sufficient space for access shall be provided.

B. Motorcycle parking facilities must be visible from public sidewalk areas along the public street frontage adjoining the use and located directly in front of the main building entrance unless the main building entrance is not oriented toward the public street. In those instances where the main building entrance is not oriented toward the public street, the motorcycle parking facilities must be visible from such locations, as determined by the Administrator or permit issuing authority, which will provide the greatest level of visibility to achieve security for the motorcycles using the facilities. Motorcycle parking facilities must also include features to provide reasonable security for motorcycles. Designers are encouraged to include fixed features such as rails, hoops, or posts designed to provide a simple locking point to secure a motorcycle or scooter using a chain or similar device.

C. Motorcycle parking facilities shall be clearly marked and reserved for motorcycle parking only, using signage and/or pavement marking determined by the Administrator or permit issuing authority as adequate to both direct motorcycle

riders to the proper facilities and to prevent use of the motorcycle parking facilities by other motor vehicles.

D. The slope of motorcycle parking facilities should be as close to level as possible while still providing adequate drainage. “Adequate drainage” is such drainage as will prevent the buildup of water and ice in included motorcycle parking spaces. Motorcycle parking facilities must have a firm surface capable of supporting the weight supported by the stand of the heaviest of models of motorcycle.

Article 25 COMMUNITY APPEARANCE STANDARDS

25.01 Applicability

25.01.01 This Article is applicable to the publicly visible portions of building elements, as defined herein.

A. An element of a building shall be deemed publicly visible when any of the following conditions are met:

1. At least seventy percent (70%) of the element occurs above adjacent grade and is visible from any street adjacent to the property;
2. At least seventy percent (70%) of the element is visible from an adjacent residentially zoned property;
3. At least seventy percent (70%) of the element is taller than the vegetative buffer at the time of planting.

B. Each element of a building shall be evaluated independently for public visibility

C. If building elements are not publicly visible at the time of construction due to existing site features (earthen berms, heavily wooded areas, existing buildings to remain), then these existing site features must remain indefinitely. If they are altered at any time to allow greater visibility, then the element made visible must comply with the standard.

D. The following uses are exempted from the requirements in this Article: 1.01 Single Family Dwelling, 1.02 & 1.03 Manufactured Home, 1.05 Duplex, 2.01 Family Care Home, A-1 Secondary Suite, A-2 Home Occupation, A-3 Accessory Dwelling Unit, all Temporary Uses.

25.02 Building Design

25.02.01 **Pedestrian-Orientation**: The intent of this Section is to provide a design of buildings that support a safe and attractive pedestrian environment.

A. Primary façade and main building entry shall face the primary public way.

B. If site constraints are present, the applicant's intent to use a "stock plan" is not a basis for appeal.

C. The Community Appearance Commission may approve a redesign in which the main primary entrance does not face the primary public way provided the following:

1. The main building entrance, when not facing the primary public way, shall provide a safe and convenient access for pedestrians from the main building entrance to the primary public way. The pedestrian way must provide additional landscape amenities.

2. Entrances which are oriented on a diagonal are permitted, provided that they are integrated with the overall architectural design, and not merely angled appendages or alcoves.
3. Ground floor windows or window displays shall be provided along at least ten percent (10%) of the building's (ground floor) street-facing elevation(s); windows and display boxes shall be integral to the building design and not mounted to an exterior wall. Parapets above the first floor are excluded from the calculations when the building is over eighty feet (80') in length.

25.02.02 **Exterior Walls**: The intent of this Section is to require running lengths of walls to be interrupted by architectural features which lend a more human scale to the overall massing.

A. Features include:

1. Offsets of the building wall or other elements in plan of four feet (4');
2. A colonnade with columns or other vertical elements of sixteen feet (16') or less on center;
3. A change in building material, with a maximum of two (2) uses of this option being counted toward the schedules below;
4. Awnings or canopies;
5. Covered entries or porticos;
6. Windows with a minimum width of two feet and eight inches (2'8") and a minimum height of three feet and four inches (3'4");
7. Trellises;
8. Pilasters, which must be a different material or contrasting color than their background;
9. A combination of the above; and
10. Any other type of feature not listed here which is deemed by Staff to meet the intent of this Ordinance.

B. Plumbing, mechanical, electrical service components and gutter downspouts are not considered features and may require screening. Such screening is not considered an architectural feature.

C. Required features must be distributed throughout the building façade and shall not be clustered.

D. Features shall be provided in accordance with the following feature schedules:

Table A

Feature Schedule – Plan

Linear Dimensions, in Plan	Minimum # of Feature Types	Minimum # of Total Features
10’ to less than 40’	2	4
40’ to less than 80’	3	8
80’ to less than 120’	4	12
120’+	5	16

Table B

Feature Schedule – Elevation

Linear Dimensions, in Elevation	Number of Features Required
10’ to less than 16’	2
16’ to less than 32’	3
32’ to less than 48’	4
48’+	5

E. Features which serve to interrupt the building façade in both plan and elevation shall be credited as such using the above charts. Windows are considered plan and elevation features. See examples in Figures 3 and 4 below.

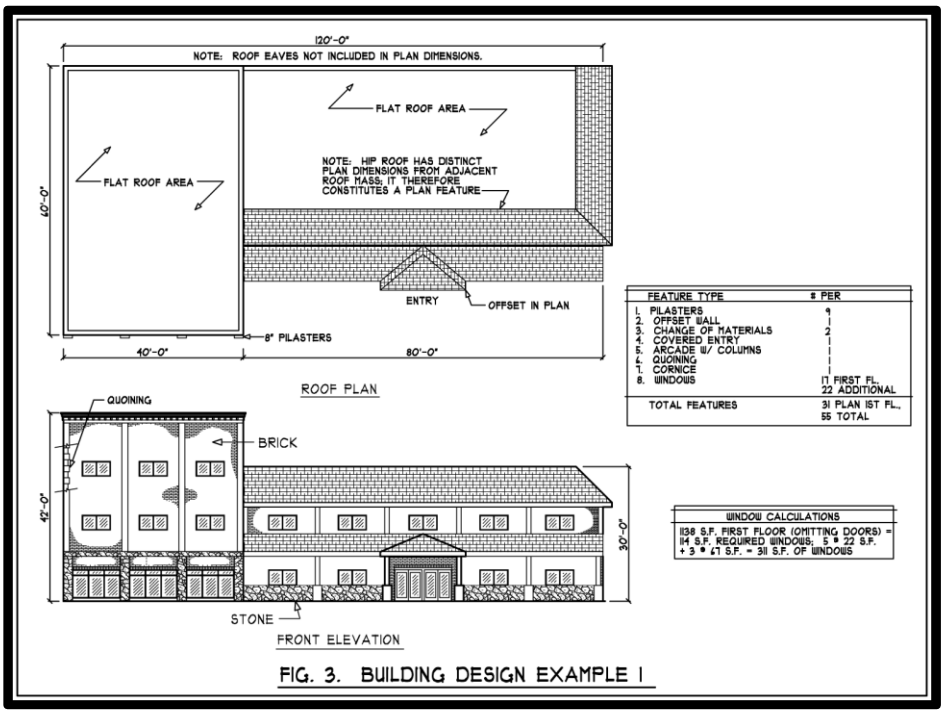


FIG. 3. BUILDING DESIGN EXAMPLE 1

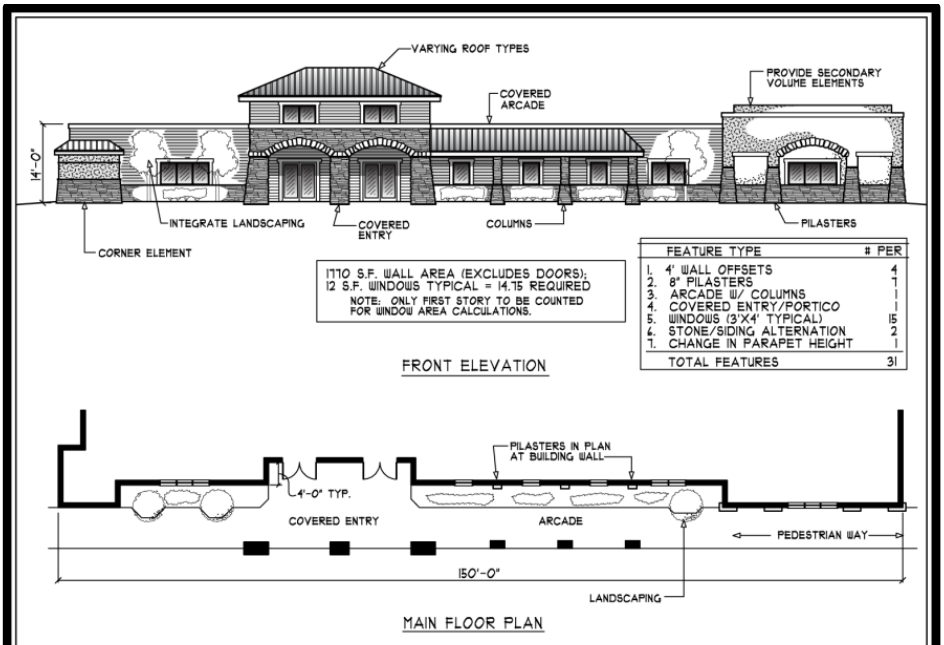


FIG. 4. BUILDING DESIGN EXAMPLE 2

25.02.03 **Roofs**: This Section regulates both pitched and flat roofs. The intent is to interrupt expanses of pitched roofs and minimize or prevent the visibility of flat roofs.

A. Walls shall not appear to terminate at flat roofs. Flat roofs shall be concealed from view by using pitched roof features, parapets, or a mixture thereof. Where only one elevation has this condition, the parapet or other feature will continue four feet (4') along the adjacent elevation. See Figure 5 below.

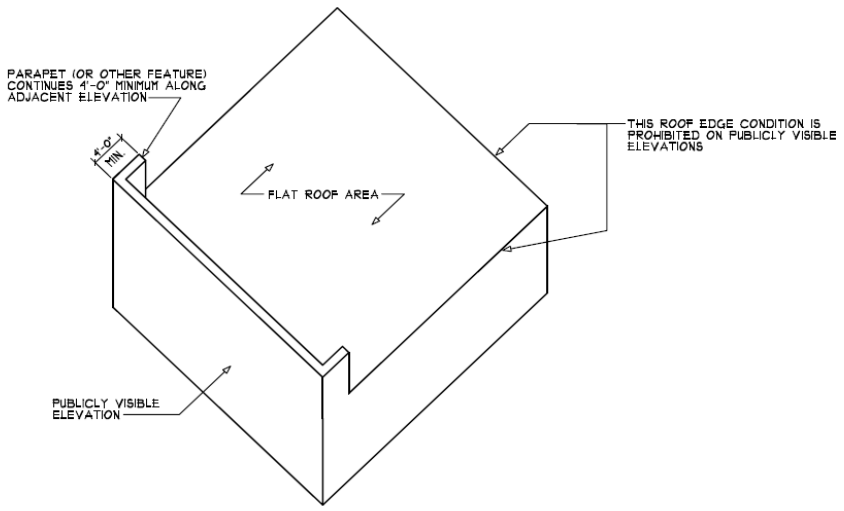


FIG. 5. CONCEALED FLAT ROOF

B. Buildings over two stories above grade may utilize a flat roof, provided the flat portion is not publicly visible. Compliance may not be possible if the adjacent road grade is substantially above the roof in question.

C. Minimum roof slope for pitched roofs is 4'(v):12'(h).

D. Publicly visible plumbing vent stacks shall be colored to match the roofing material.

E. Where a parapet intersects with a pitched roof element, there shall be no apparent breaks in the parapet wall. See Figure 6 on page 22-17.

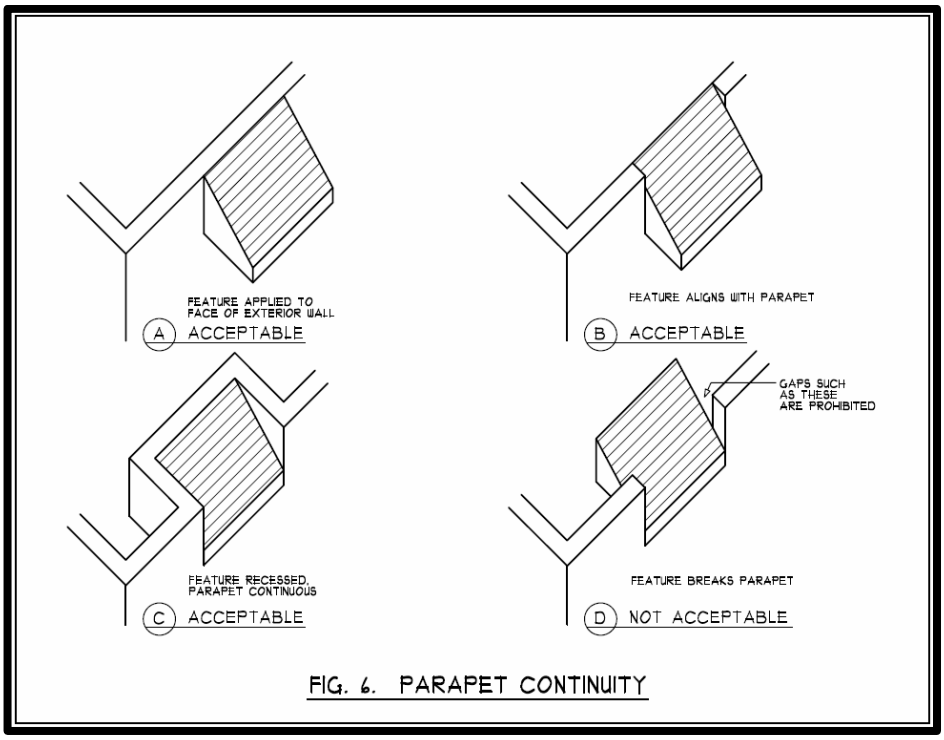


FIG. 6. PARAPET CONTINUITY

F. Awnings or canopies which are illuminated from within must be covered or finished with fully opaque material.

G. Publicly visible pitched roofs shall be articulated by features in accordance with the following schedule. Features shall be in proportion to the roof area where they appear. Features include:

Table C
Feature Schedule – Roof Areas

Roof Area	Number of Features Required
Less than 1200 ft^2	0
1200 ft^2 to less than 1600 ft^2	1
1600 ft^2 to less than 2400 ft^2	2
2400 ft^2 +	3

H. No part of this Ordinance shall be construed to prevent solar panels or any other type of renewable energy collection or storage method, provided the development follows the massing guidelines established herein.

25.02.04 **Materials:** For any publicly visible elevation, a minimum of twenty-five percent (25%) of the building finish material must be stone or concrete-simulated stone, wood or simulated wood in concrete board (such as "Hardi" products), or brick or concrete-simulated brick.

A. Mirrorized glass is prohibited from use. Reflective tinted glass is acceptable up to thirty percent (30%) tint. Anything above thirty percent (30%) tint is subject to review by the Community Appearance Commission.

B. Architectural concrete masonry such as split face, or ground-face block is acceptable.

C. Stucco and synthetic stone are acceptable finish materials.

D. Architectural concrete (containing a pattern or finish) as a finish material is acceptable. Gray, unfinished concrete is prohibited as a finish material. Concrete architectural detail elements intended to be a decorative enhancement for exterior walls and site walls are acceptable

E. Other materials subject to Staff review and approval include vinyl siding (which should simulate wood grain) and other manufactured materials. Vinyl siding shall be anchored to the exterior envelope sufficiently to avoid the appearance of deformation or bowing across the façade.

F. For publicly visible roof surfaces, allowed materials include standing seam metal, asphalt shingles, shakes, tile, or manufactured shingles which give an appearance of shingles, shakes, or other simulated natural material. Sheet materials other than those listed in this Section are subject to Staff review for use on publicly visible roofs.

G. Any materials which comprise less than ten percent (10%) of a publicly visible exterior building wall and are components of windows or trim systems are allowed (example: aluminum storefront, metal corner trim, etc.).

H. FRP, PVC, and other composites formed into architectural detail elements such as columns, cornices, etc., are approved for use as long as such material is intended to be a decorative enhancement for the façade.

25.02.05 **Colors:** The intent of this Section is to prevent inordinately bright façades and primary color ranges. All new construction elements are subject to color requirements, except pavement markings and signage.

A. Acceptable colors for site walls, site lighting, and any other outside construction elements (excluding signage) include that equivalent to Sherwin-Williams series "Essential" and "Fundamentally Neutral" in the Town of Boone Color Reference Guide.

B. Acceptable field colors and trim colors are those equivalent to Sherwin Williams series "Essential" and "Fundamentally Neutral" in the Town of Boone Color Reference Guide.

1. The "LRV" Light Reflection Value of field colors must be below 60. Any colors above "60 LRV" are subject to review by the Community Appearance Commission.
2. Black is prohibited as a field color in the series "Essential".

C. Acceptable accent colors are those equivalent to Sherwin-Williams series "Essential", "Fundamentally Neutral", and "Color Options" in the Town of Boone Color Reference Guide.

25.03 Parking Structures

25.03.01 The intent of this Section is to regulate aesthetic features on parking structures to prevent a utilitarian appearance, and to provide a safe, secure environment for patrons, employees and vehicles.

25.03.02 Publicly visible facades must comply with provisions of this Article pertaining to exterior walls, materials, and colors.

25.03.03 All above-ground parking floors and decks shall be designed using a continuous façade incorporating window-like openings. The sill of any window-like opening must be a minimum of 42" above the finished floor.

25.03.04 Exterior vehicle ramps are subject to review by the Community Appearance Commission to minimize the appearance of tilted ramps.

25.03.05 Elevator and stair shafts shall be topped with gabled roofs or other architectural features and be oriented so that lobbies are visible from the street at each level.

25.03.06 Lighting shall be uniform throughout the structure so that dark hiding places are not created. Lighting levels must conform to IESNA standards.

25.03.07 In the B1 Central Business District, the façade must be in harmony with the historic look of the area. Facades that are 75% native rock or red brick are presumptively consistent with the historic look of the B1 Central Business District. Any other combination of materials must be approved by the Community Appearance Commission.

25.04 Site Walls

25.04.01 The intent of this Section is to prevent walls which appear to dwarf the human scale and to encourage equalizing cut/fill or majority cut slope methods of grading.

25.04.02 No retaining wall may be more than eight feet (8') in height. This height does not include decorative caps that are less than eight inches (8") in height. Screen walls shall not be taller than necessary to conceal the item screened (such as a dumpster, HVAC equipment, etc.)

25.04.03 Buildings located near the top of site retaining walls shall be a minimum of four feet (4') horizontally from the top of the retaining wall.

25.04.04 Retaining walls, any portion of which are within six feet (6') of a sidewalk or pedestrian way, shall not exceed four feet (4') in height. Subsequent walls must be offset a minimum of four feet (4') in plan. See Figure 1 below.

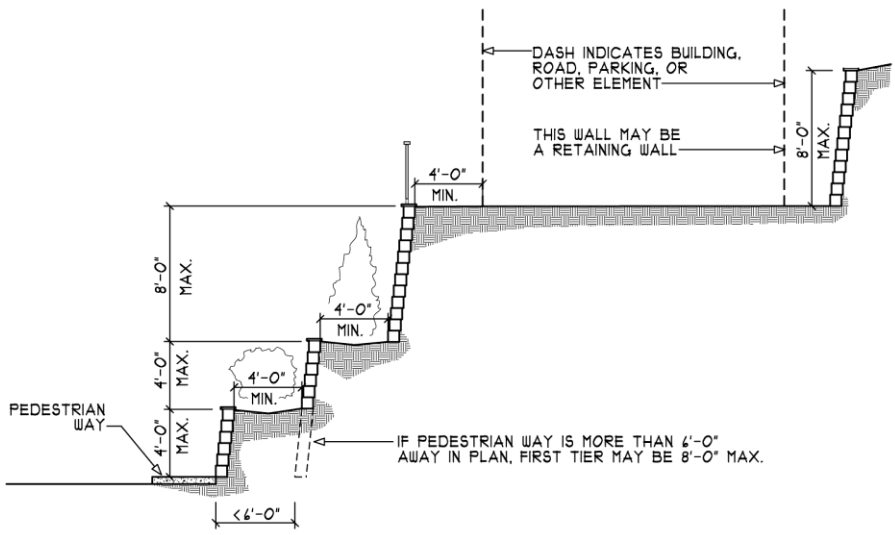
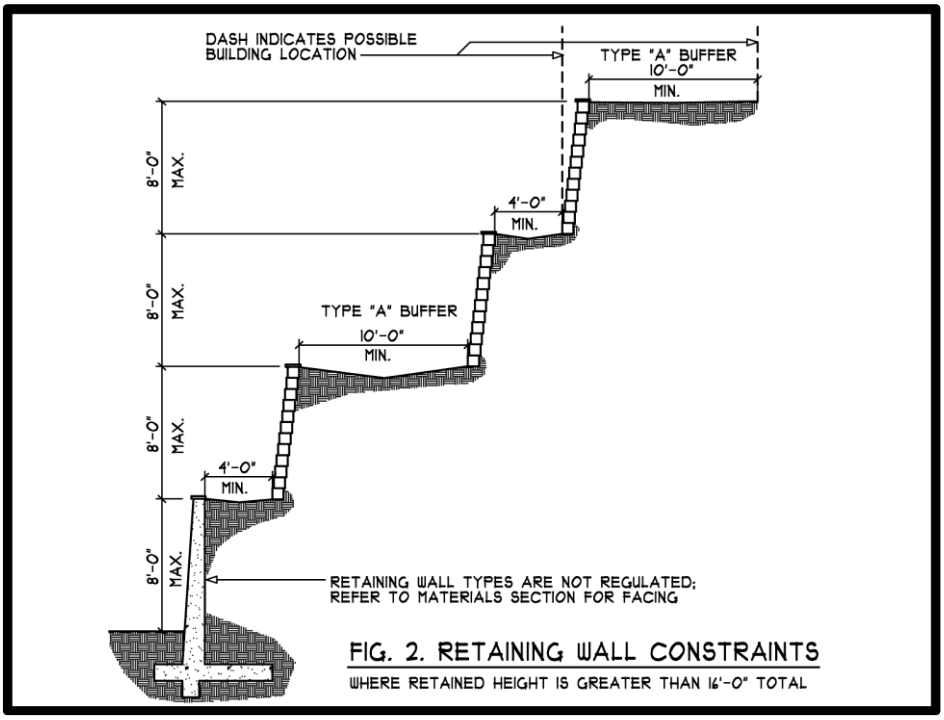


FIG. 1. RETAINING WALL CONSTRAINTS

25.04.05 A series of two (2) retaining walls must have a minimum of four feet (4') horizontally from the back of the top of the lower wall face to the toe of the upper wall face in plan. See Figure 1 above. For three (3) or more walls in series, see item [g] below.

25.04.06 The space between retaining walls in series shall be landscaped with appropriate grasses, vines or other ground cover in accordance with provisions of Appendix B and may contain shrubs and trees not to exceed thirty-five feet (35') in height at maturity. This area shall be maintained in accordance with the provisions of Section 31.12.

25.04.07 Retaining walls in series which collectively exceed sixteen feet (16') in height shall have a minimum of one (1), ten foot (10') wide Type "A" buffer (see Section 31.05), between two of the walls. Retaining walls which are separated by a building, a road, or a parking area shall be exempt from this requirement. See Figure 2 below.



25.04.08 Publicly visible site wall material and color shall be architecturally compatible with the principle building(s) on site.

25.05 Lighting

25.05.01 The intent of this Section is to prevent light from commercial developments from excessively illuminating the property in question, other properties, or the night sky.

25.05.02 Only light fixtures which are categorized as full cut-off (FCO) fixtures shall be permitted, except sportsfield fixtures which must comply with Section 25.05.04.

25.05.03 The following are specific standards for lighting intensity based upon the activity involved. Values are presented in allowable foot-candles (fc) maintained (measured horizontally) at grade and are to be averaged throughout the site to avoid hot spots, i.e. areas of extreme light intensity relative to the remainder of the site:

Activity	Minimum	Maximum	Min./Max. Uniformity Ratio
Pedestrian Areas/Sidewalks	.2 f.c.	1.0 f.c.	
Building Entries	1.0 f.c.	10.0 f.c.	
Street Lighting	.2 f.c.	1.0 f.c.	
Open Parking Areas	.2 f.c. to 9 f.c.	3.6 fc	4:1
Playgrounds		5.0 fc	
Site Perimeter		.5 fc	

25.05.04 Lighting for sports fields and outdoor courts is generally in excess of general outdoor lighting levels. Recreation lighting levels established by the IESNA are to be used as the standard. Higher lighting levels for tournament or high league play are sometimes

required and must be approved by the Community Appearance Commission. All sportsfields or tennis courts must meet the following minimum standards:

A. Fixtures must be fitted with the manufacturer's glare control package. If the manufacturer does not have a glare control package, the fixture specification must be changed to a manufacturer that offers a glare control package.

B. Lighting shall be extinguished no later than one hour after the event ends.

C. Fixtures must be designed with a sharp cutoff and aimed so that their beams fall within the primary playing area and the immediate surroundings, so that off-site direct illumination is significantly restricted.

25.05.05 Gas station canopies shall be illuminated at a maximum illuminance of 30 fc and individual fixtures shall be flush mounted or have the canopy edge below the lowest light-emitting point on the fixtures. All existing gas station canopies which exceed this standard shall be made compliant within seven (7) years of the date of adoption of this Article.

25.05.06 Up-lighting may be used to illuminate a building, landscaping element or architectural feature, provided the lighting design has a maximum illuminance of 12fc, measured in a vertical plane. Down lighting is preferred.

25.05.07 Parking decks and covered parking areas must conform to IESNA standards.

25.06 Flexibility in Administration

25.06.01 Flexibility in administration is required for this Article. When strict application of the standards within this Article undermines other provisions of the UDO, then those other provisions take precedence. For example, the retaining wall height limitation may be increased to afford an opportunity to preserve significant or historic tree(s).

25.07 Community Appearance Commission Review

25.07.01 Alternatives to the appearance standards provided herein may be permitted upon review and approval of the Community Appearance Commission.

A. Applications containing alternatives shall be forwarded to the Community Appearance Commission for review at their next regularly scheduled meeting.

25.07.02 The Commission Appearance Commission may approve such alternatives if it finds the alternatives involved meet the purpose and intent of the provisions contained within this Article. When the Commission approves an alternative, it must specifically identify how the alternative meets the purposes and intent of this Article.

25.07.03 Unless otherwise specified, the Community Appearance Commission's review and approval of any deviation from the standards contained herein is required prior to permit approval.

Article 26 SIGNS

26.01 General Regulation of Signs

26.01.01 **Location Requirements**: No signs shall be located in or overhang any right-of-way, including alleys and sidewalks, except for government signs. All signs shall be set back a minimum of one (1) foot from the right of way in all zoning districts except the "B1" Central Business District.

26.01.02 **Vision Obstructions:** No signs shall create any vision obstructions onto a public right of way, alley, sidewalk, adjacent drive or private drive entering onto a street. Signs or floodlights erected or placed in such a manner as to cause glare that impairs driver vision on a roadway or causes a nuisance to adjacent property as defined in N.C. Gen. Stat. § 136-32.2 are also prohibited.

26.01.03 **Landscaping Requirements:** Freestanding signs must be placed in a landscaped area which is at least three feet (3') in width and at least the length of the greatest dimension of the sign. Curbing, railroad ties, bricks, fencing and/or other suitable vehicular barrier shall enclose the landscaped area.

26.01.04 **Construction Signs**: Signs may be two-sided, non-illuminated and shall not exceed thirty-two square feet (32 ft^2) and may be placed on premise. They shall be removed no later than seven (7) days after completion of the project.

26.01.05 **Attached Sign Limitations**: Attached signs shall not project higher than the building soffit or eave height and shall not extend beyond the edge of any wall or other surface to which they are mounted (this does not refer to projecting signs).

26.01.06 **Copy Area:** The area of a sign shall be measured according to the following rules as applicable:

A. In the case of freestanding, projecting, canopy or marquee signs, area consists of the entire surface area on which copy could be placed. The supporting structure or bracing of a sign shall not be counted as a part of the sign area unless such structure or bracing is made part of the signs message. Where a sign has two (2) display faces back to back, the area of only one face shall be considered as the sign area. When a sign has more than one display face, all areas which can be viewed simultaneously shall be considered the sign area. All signs are limited to two (2) faces.

B. In the case of a sign (other than freestanding, projecting, canopy or marquee) whose message is fabricated together with the background which borders or frames the message, sign area shall be the total area of the entire background.

C. In the case of a sign (other than freestanding, projecting, canopy or marquee)whose message is applied to a background which provides no border or frame, sign area shall be computed by continuous rectilinear lines, or a circle or an ellipse enclosing the extreme limits of the letters, writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the

display used to differentiate the sign from the backdrop or structure against which it is placed.

26.01.07 **Freestanding Signs:** All freestanding signs shall follow the following criteria:

A. No freestanding sign shall be placed less than forty feet (40') from another freestanding sign.

B. Freestanding signs shall be located on the same lot as the business being advertised.

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

26.01.08 **Lighting:** Interior lighting for signs, where permitted, shall not exceed eleven (11) watts per bulb (the standard industry size). In the case of the use of exterior lighting by floodlights, such lights must comply with N.C. Gen. Stat. § 136-32.2.

26.01.09 **Changeable Copy:** Signs in the B2, B3 zones and projecting theater marquees in the B1 zones may contain changeable copy; however, in no case shall the changeable copy portion of the sign exceed fifty percent (50%) of the total sign area. Copy which changes through mechanical, digital, electronic, or manual means may change or alternate no more than once every sixty (60) minutes.

26.01.10 **Awning, Canopy, Projecting and Suspended Signs:** Awning, canopy projecting and suspended signs may be no less than eight feet (8') at their lowest point above any sidewalk.

26.01.11 All signs must be placed in accordance with Section 98 of the Boone Town Code.

26.02 Signs Which Do Not Require a Permit

26.02.01 No zoning permit is necessary for these signs, provided they are not prohibited in this Article and provided that they comply with the conditions described herein.

A. Informational signs displayed for the direction or convenience of the public. Such signs shall not exceed four square feet (4 ft^2) in area and may be illuminated.

B. Directional signs are permitted provided that they do not exceed four square feet (4 ft^2) in area and three feet (3') in height.

C. Gasoline pump signs that are non-illuminated giving information such as self-service instructions, price, type of fuel, etc, shall be permitted on gasoline pumps. These may contain the trade name or emblem, but they shall not exceed beyond the side of the gasoline pump and not more than one foot (1') above it. In addition, establishments that sell gasoline shall be allowed one (1) price sign (or two (2)) if the station is located on corner property which displays price only, and does not exceed four square feet (4 ft^2) in area. This sign shall be in addition to the signs permissible in the district in which said gas station is located.

D. Time and temperature signs are limited to one sign with alternating cycles. This sign may be in addition to other permitted signs. It may not contain any advertising other than the name or logo of the business and it must comply with all requirements of the district in which it is located.

E. Drive through window signs are permitted as either a freestanding sign or attached wall sign. Such signs may not exceed twenty-eight square feet (28 ft^2) and should not generally be visible from the front of the restaurant. If a freestanding menu sign is used, such sign may not exceed eight feet (8') in height. No more than two (2) drive-through signs are permitted for each business.

F. Little League sponsorship signs are permitted at the Optimist Club fields for the Little League Season (April through October). The signs may not exceed twenty-four square feet (24 ft^2) and must be uniform in dimension. The copy on the temporary sign is limited to the name of the sponsoring business and its logo.

G. Business Directory Signs: Signs, other than signs permitted under 26.12.01, that are not illuminated may be placed on buildings to identify the tenants within. Such signs shall contain no advertising other than business name and/or logo and shall not exceed one (1) square foot per sign, per business.

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H. Temporary Signs, other than Agricultural Signs, Community Event Signs, inflatable signs and Farmer's Market Signs.

I. Political Signs

J. Subdivisions, multi-family residential developments, and mobile home parks may display one sign announcing the name of the development at each entrance. The sign copy is limited to the name of the development only and may be freestanding or placed on the entrance wall of the development. The sign may be illuminated and the size may not exceed thirty square feet (30 ft^2) in area, or eight feet (8') in height.

26.03 Signs Excluded From Regulation

26.03.01 The following signs and/or displays shall be exempt from the regulations of this Article. These exemptions do not relieve an applicant from obtaining a building permit pursuant to the North Carolina Building Code:

A. A government sign, when approved or duly authorized by the governmental entity's governing body.

B. Trade names and graphics customarily painted on newspaper and soft drink dispensers, as well as delivery trucks.

C. Publicly owned memorial/historical tablets or signs.

D. Living Sign

E. Bench Signs located on private property

26.04 Prohibited Signs

26.04.01 The following signs are prohibited:

A. Abandoned Signs

B. Flashing, blinking, or scrolling signs or signs with intermittent lights

C. Portable Signs

D. Roof Signs

E. Rotating Signs

F. Sidewalk Signs

G. Snipe Signs

H. Inflatable Signs, other than those permitted under the Temporary Sign Regulations of Section 26.16.10.

I. Signs imitating or resembling official traffic or government signs or signals

J. Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying said sign(s). Vehicles or trailers which display signs must move to perform only business related activities at least every forty-eight (48) hours to obtain exemption from this requirement.

K. Temporary Signs except those in Section 26.16.

L. Trademarks, emblems, pictures, etc. displayed in a three (3) dimensional nature.

M. Pavement marking of any kind, except for traffic control.

N. Offensive Signs as defined by N.C. Gen. Stat. § 19-1.1.

O. Signs which obstruct views of other signs, other property, or sight into public right-of-ways.

P. Billboards or off premise advertising, except off-premise community event signs.

Q. Signs placed in public right-of-way

R. Signs placed which obstruct public safety

S. Any sign(s) which does not comply with regulations of this Ordinance.

26.05 Signs Permitted in the R1, RA, RR, R1A, R2, R4 and MH Districts

26.05.01 The residential districts provide for a quiet environment and sound neighborhoods. While some service oriented businesses are allowed, the general usage is for family life. The intent of this Section is therefore to provide for a limited use of signs which are generally not illuminated and which will preserve the family oriented character of neighborhoods.

26.05.02 One sign at each entrance announcing the name of a subdivision, residential development or mobile home park is allowed.

A. The sign copy is limited to the name of the development only.

B. The sign may be freestanding or placed on the entrance wall of the development.

C. The sign may not exceed thirty square feet (30 ft^2) in area, or eight feet (8') in height.

D. The sign may be illuminated.

26.05.03 Any Use 5.2 Churches, Synagogues and Temples is permitted two signs from the following categories: attached or freestanding.

A. Freestanding signs may not exceed thirty square feet (30 ft^2) in area, or eight feet (8') in height.

B. Attached signs may not exceed an area equal to one square foot (1 ft^2) of sign area per linear foot of the building frontage. The maximum square footage for an attached sign is thirty square feet (30 ft^2).

C. Signs may be illuminated.

26.06 Signs Permitted in the R3 District

26.06.01 The R3 District is established to provide a medium density area consisting of three or more family dwelling units plus limited service use.

26.06.02 Advertising Signs

A. Two signs allowed per premise that may be chosen from the following categories: attached, freestanding, canopy, or projecting. In no case may both signs be from the same category. Painted wall signs are prohibited.

B. Attached and freestanding signs may not exceed sixteen square feet (16 ft^2) in area per sign.

C. Freestanding signs may not exceed ten feet (10') in height.

D. Projecting signs may not exceed eight square feet (8 ft^2) in area per sign.

E. Awning signs may not exceed twenty-five percent (25%) of the area of the awning. The maximum allowable square footage is forty-eight square feet (48 ft^2) regardless of the size of the awning.

F. Signs which are attached to the face or side of an awning may not exceed twelve inches (12") in height and no support structures shall be visible.

26.07 Signs Permitted in the B1 District

26.07.01 The B1 district has diverse shops in close proximity to one another, and is oriented primarily to daytime pedestrian use. Flower boxes, benches, shake shingle roofs and natural plantings lend the area a distinctive mountain village appearance. Leisurely

shopping is encouraged. The intent of this Section is therefore, to promote the downtown as a shopping and gathering place and to enhance the village atmosphere. The use of wooden signs is encouraged, so as to contribute to the warmth, friendliness and natural beauty of the area.

26.07.02 Each business is permitted two (2) signs chosen from the following categories: attached, canopy, or projecting. In no case may both signs be in the same category. Painted wall signs are prohibited in the B1 zone. Signs may be illuminated. Businesses are also allowed one sign from the following:

A. A projecting sign which may contain the name of the business and any logo which the business chooses to adopt. The sign may not exceed four square feet (4 ft^2) in size. It shall display only the name of the business and/or buildings which it is attached to and the building and/or business logo or logos and no more than one (1) per building.

B. A freestanding sign which may be a maximum size of two feet (2') by two feet (2'), and the bottom of said sign shall display only the name of the business and/or building which it is located in front of, and the building and/or business logo or logos and no more than one (1) sign per building.

26.07.03 Attached signs shall not exceed an area equal to the greater of sixteen square feet (16 ft^2) or one-half square foot (½ ft^2) of sign area per linear foot of building frontage. For example, buildings which are thirty-two feet (32') across the front or less may have a sixteen (16) square feet attached sign. If the building is larger than thirty-two feet (32') across the front the permitted size would be determined by the formula, one half square feet (½ ft^2) per linear foot of building. The maximum allowable square footage is forty-eight square feet (48 ft^2) regardless of building size.

26.07.04 Projecting signs may not exceed sixteen square feet (16 ft^2) in area.

26.07.05 Awning signs shall not exceed twenty-five percent (25%) of the area of the awning. The maximum allowable square footage is forty-eight square feet (48 ft^2) regardless of the size of the awning. Signs which are attached to the face or side of an awning may not exceed twelve inches (12") in height and no support structures shall be visible.

26.07.06 Businesses who choose to use a ground mounted sign instead of a freestanding sign may increase the maximum square footage in accordance with the provisions of Section 27.15.

26.07.07 Projecting Theater Marquees: Theaters which choose to use a projecting theater marquee are only allowed to have the signage as permitted in Section 27.13.

26.08 Signs Permitted in the B2 District

26.08.01 The neighborhood business district provides a variety of commercial services. It is oriented to vehicular traffic as well as pedestrian traffic. The signs allowed in this area permit an efficient means of information transfer consistent with the size of the streets and speed of the traffic.

26.08.02 Advertising Signs

A. Signs may be illuminated.

B. Each business is permitted two signs. They may be chosen from the following categories: attached, freestanding, canopy, projecting. In no case may the signs be of the same category except that a business may have two (2) attached signs.

C. Attached signs shall not exceed an area equal to one square foot (1 ft^2) of sign area per linear foot of building frontage. For example, a building which is fifty feet (50') across the front may have a fifty square foot (50 ft^2) attached sign. The maximum allowable square footage of attached sign is eighty square feet (80 ft^2) regardless of building size.

D. Freestanding signs shall not exceed thirty square feet (30 ft^2) in area and twenty feet (20') in height.

E. Projecting signs may not exceed sixteen square feet (16 ft^2) in area.

F. Awning signs shall not exceed twenty-five percent (25%) of the area of the awning. The maximum allowable square footage is forty-eight square feet (48 ft^2) regardless of the size of the awning. Awning signs may be attached at the face of, side of, or under the awning. Signs which are attached to the face or side of awning may not exceed twelve inches (12") in height.

G. Businesses who choose to use a ground mounted sign instead of a freestanding sign may increase the maximum square footage in accordance with the provisions of Section 26.15.

26.09 Signs Permitted in the B3 District

26.09.01 The B3 districts are located on all major access roads to Boone. It is on these roads that the visitor receives a first impression of the Town. It is the intent of this Ordinance to allow the visitor to locate business establishments easily and quickly and yet not to allow signs which might interfere with views of the scenic mountains. The B3 districts provide a variety of services primarily oriented toward vehicular traffic. Because vehicles in this area travel at speeds up to 45 m.p.h., it is important to insure that signs are clear, distinct and readable in a brief space of time. The requirements identify establishments quickly and easily.

26.09.02 Advertising Signs

A. Signs may be illuminated.

B. Each business is permitted two (2) signs which may be of any type, however, no more than one canopy sign per business.

C. Freestanding signs shall not exceed fifty square feet (50 ft^2) in area and twenty feet (20') in height.

D. No freestanding sign shall be placed less than forty feet (40') from another freestanding sign.

E. Projecting signs may not exceed sixteen square feet (16 ft^2).

F. Awning signs shall not exceed twenty-five percent (25%) of the area of the awning. The maximum allowable square footage is forty-eight square feet (48 ft^2) regardless of the size of the awning. Awning signs may be attached to the awning at the face of, side of, or under the awning. Signs which are attached to the face or side of the awning may not exceed twelve inches (12") in height and no support structures shall be visible.

G. Attached signs and painted wall signs may not exceed an area equal to one square foot (1 ft^2) of sign area per linear foot of the building frontage. For example, a building which is fifty feet (50') across the front may have a fifty square foot (50 ft^2) attached or painted wall sign. The maximum square footage of attached or painted wall sign is 120 square feet, regardless of building size.

H. Businesses who choose to use a ground mounted sign instead of a freestanding sign may increase the maximum square footage in accordance with the provisions of Section 26.15.

26.10 Signs Permitted in the M1 District

26.10.01 The manufacturing district in Boone is limited to currently existing industrial uses. Each use shall be permitted one advertising sign.

26.10.02 Advertising Signs

A. The sign may be attached or freestanding.

B. The sign may be illuminated.

C. Attached signs may not exceed an area equal to one square foot (1 ft^2) per linear foot of building frontage and not exceed 120 square feet.

D. Freestanding signs may not exceed fifty square feet in size and twenty feet (20') in height.

26.10.03 In addition to signage permitted by Section 26.10.02-A, the industrial district shall be permitted a directory sign which announces the name of the industrial park and all businesses located within the park. Directory Signs may be freestanding and shall conform to the following requirements:

A. Directory Sign.

1. The freestanding directory sign shall not exceed fifty square feet (50 ft^2) in area.
2. The height of the directory sign shall not exceed twenty feet (20').

26.10.04 Businesses who choose to use a ground mounted sign instead of a freestanding sign may increase the maximum square footage in accordance with the provisions of Section 26.15.

26.11 Signs Permitted in the OI District

26.11.01 The Office Institutional zoning district provides a variety of office, institutional and commercial services. The signs allowed in this area permit an efficient means of information transfer consistent with the size of the streets and speed of the traffic.

26.11.02 Advertising Signs

A. Signs may be illuminated.

B. Each office/institution/business is permitted two signs. They may be chosen from the following categories: attached, freestanding, canopy, or projecting. In no case may the signs be of the same category except that an office/institution/ business may have two (2) attached signs. Painted wall signs are not permitted in the OI district.

C. Attached signs shall not exceed an area equal to one square foot (1) of sign area per linear foot of building frontage. For example, a building which is fifty feet (50') across the front may have a fifty square foot (50 ft^2) attached sign. The maximum allowable square footage of an attached sign is sixty-four square feet (64 ft^2), regardless of building size.

D. Freestanding signs shall not exceed thirty square feet (30 ft^2) in area and ten feet (10') in height.

E. Projecting signs may not exceed sixteen square feet (16 ft^2) in area.

F. Awning signs shall not exceed twenty-five percent (25%) of the area of the awning. The maximum allowable square footage is forty-eight square feet (48 ft^2) regardless of the size of the awning of the awning. No signs may be attached to the awning support structures. Signs which are attached to the face or side of an awning may not exceed twelve inches (12") in height.

G. Businesses who choose to use a ground mounted sign instead of a freestanding sign may increase the maximum square footage in accordance with the provisions of Section 26.15.

26.12 Shopping Centers and Malls

26.12.01 **Directory Signs**: A shopping center or mall shall be permitted a directory sign. Directory signs may be attached or freestanding and shall conform to the area requirements as follows:

A. In the B1 district, the permitted area of an attached directory sign shall not exceed the greater of twenty square feet (20 ft^2) or one half square foot (½ ft^2) per linear foot of total frontage of the building to a maximum of forty eight square feet (48 ft^2). Freestanding directory signs shall not exceed twenty square feet (20 ft^2) in area and ten feet (10') in height.

B. In the B2 district, the permitted area of an attached directory sign shall not exceed one square foot (1 ft^2) per linear foot of frontage of the building to a maximum of eighty square feet (80 ft^2). A freestanding directory sign shall not exceed forty-eight square feet (48 ft^2) in area, and twenty feet (20') in height.

C. In the B3 district, an attached directory sign shall not exceed one square foot (1 ft^2) per linear foot of building frontage to a maximum of 120 square feet. A freestanding directory sign shall not exceed the greater of fifty square feet (50 ft^2) in area or ten square feet (10 ft^2) in area for each 150 linear feet of arterial road frontage of the lot in which it is located. The height of the directory sign shall not exceed twenty feet (20').

D. In the R3 district, directory signs shall conform to the requirements set forth in Section 26.06.

E. When a shopping center or mall has in excess of 400 feet on an arterial road(s) and consists of more than five (5) acres, one (1) directory sign per arterial road upon which it fronts is permitted.

F. When a development utilizes parking-control devices as regulated by Boone Town Code Chapter 73 Towing, the name of the building or business shall be prominently visible from the entrance of the controlled parking area.

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26.12.02 Entrances to interior malls may be identified by an attached sign in addition to the other sign permitted to the business establishment. Such signs shall be attached to the building over the entrances or beside the entrances only. The signs shall not exceed four square feet (4 ft^2) in the B1 district, eight square feet (8 ft^2) in the B2 district and sixteen square feet (16 ft^2) in the B3 district.

26.12.03 Signs for tenants within shopping centers, malls and unified business establishments shall meet the following requirements:

A. Businesses within shopping centers, malls and unified business establishments are permitted two (2) signs from the following categories: attached, canopy, and projecting. In the B3 district, painted wall signs are also permitted.

B. If the business has an exterior frontage in the commercial development of eighty linear feet (80 lf) or more, the business may be permitted a freestanding sign as one (1) of its two (2) permitted signs. All signs permitted by this Section must meet all regulations contained in Section 26.01 as they pertain to the district in which they are located. Area of attached and painted wall signs shall be computed by the linear building frontage feet of each individual establishment.

26.13 Marquee Sign Regulations

26.13.01 The following regulations shall apply solely to marquee signs other than projecting theater marquee.

A. Except where a projecting theater marquee is utilized pursuant to this Section, theaters, museums, auditoriums and other entertainment facilities are permitted one (1) changeable copy marquee in addition to their two (2) permitted signs.

B. Marquee signs shall conform to the applicable sign requirements for the district in which they are located, however the area of the marquee sign shall be permitted an increase in size up to an additional 100% provided that one of the other signs to which the business is entitled is reduced in size. The percentage of increase in area shall be equal to the reduction in area of the other permitted sign.

C. If the marquee is a freestanding sign, the height of the marquee may not be increased over that permitted in the zone in which it is located.

26.13.02 The following regulations shall apply solely to projecting theater marquee signs:

A. A projecting theater marquee shall be allowed only in the B1 Central Business District.

B. No portion of a projecting theater marquee shall be less than ten feet (10') above grade nor higher than sixteen feet (16').

C. A projecting theater marquee and supporting structures shall not extend over the edge of any sidewalk or into any street right-of-way absent an encroachment agreement authorizing such incursion by the Town.

D. The projecting theater marquee shall only be attached to the building in which the theater is located and must be above an entrance to the theater. No projecting theater marquee sign shall be wider than the building to which it is attached.

E. Signage may be installed directly upon the vertical face or faces of a projecting theater marquee with the following conditions:

1. Channel letters may extend above such vertical face or faces provided that the letter height is restricted to twelve inches (12") in height.
2. No sign may extend below such vertical face or faces with the exception of lighting elements. All lighting elements shall meet the requirements of Subsection 26.13.02(B) above.
3. The changeable copy portions of a projecting theater marquee shall not exceed fifty percent (50%) of the total area of all faces and comply with Section 27.01.
4. All other signage attached to a projecting theater marquee may not exceed 20 percent (20%) of the total area of all faces.

F. A projecting theater marquee may be illuminated but shall not include flashing, blinking, scrolling or intermittent lights.

G. Encroachment: Where a projecting theater marquee extends over a public sidewalk or other public property, an executed encroachment agreement approved by the

Boone Council shall be required prior to issuance of any sign permit for a projecting theater marquee.

H. A projecting theater marquee may be constructed either as part of a new structure or as an addition to an existing structure as follows:

1. Site specific plans and specifications must be submitted from a registered North Carolina licensed structural engineer demonstrating that the projecting theater marquee complies in all ways with appropriate code provisions of the Town and the State of North Carolina, including but not limited to, materials, drainage, roof strength, bracing and anchorage.
2. A final certification from the registered North Carolina licensed structural engineer shall be required stating that the projecting theater marquee complies with all appropriate code provisions of the Town and the State of North Carolina and that the projecting theater marquee has been constructed according to their submitted design.

26.14 Home Occupation Signs

26.14.01 The following regulations shall apply solely to home occupation signs.

A. Home occupation signs are permitted in the R1, R1A, RA, R2, R3, R4, MH, B1, B2, and B3 districts.

B. The sign may not be illuminated.

C. The sign must be an attached sign mounted flat on the building.

D. The sign may not exceed four square feet (4 ft^2) in size.

26.15 Exceptions and Modifications

26.15.01 Where a business establishment elects to erect only one (1) sign on premises, and that sign is to be an attached sign, the permitted area of this sign may be increased as follows:

A. The permitted area of an attached sign may be increased by fifty percent (50%).

B. The attached sign permitted by this Section shall meet all other applicable requirements regarding placement, lighting, permit procedures, etc., of this Ordinance.

C. In the event that the business should desire a second sign after the attached sign allowed by this Section is erected, no permit for the additional sign shall be issued until the attached sign meets the size requirements of the district in which it is located as specified in Section 26.01.

26.15.02 Where a business establishment is set back from its major road by 200 feet or more, the permitted size of the attached signs may be increased by ten percent (10%) plus an additional ten percent (10%) for each fifty feet (50’) of distance in excess of 200 feet to a maximum of 100% increase provided that:

A. This increase shall apply to attached signs only.

B. This increase shall apply to only one of the two permitted signs.

C. The attached sign must meet all other applicable requirements regarding placement, lighting, permit procedures, etc. as it pertains to the district in which it is located.

D. If the business has a freestanding sign this increase shall not apply.

E. If a business is set back from its major access road by 200 feet or more and has only one sign, the business may choose the modifications of size permitted by this Subsection 26.15.01 or 26.15.02, but may not combine the allowances provided by the two Subsections.

26.15.03 Businesses may erect more than the two (2) allowed signs upon obtaining Staff approval provided that:

A. The additional signs must be attached or projecting signs.

B. The combined area of all signs must be less than or equal to the permitted area by type of sign. For example, if a ninety square foot (90 ft^2) attached sign is permitted, then the business may have two (2) forty-five square feet (45 ft^2) attached signs or three (3) thirty square feet (30 ft^2) signs.

C. The maximum number of additional signs allowed is three (3).

D. The additional signs are not illuminated.

E. The applicant shall submit a drawing of the proposed locations of the additional signs and meet all applicable requirements.

26.15.04 Businesses in the B2, B3, M1, and OI districts who chose to use a ground sign instead of a freestanding sign may increase the maximum square footage of that sign by thirty-five percent (35%).

26.15.05 Businesses located in the B1 district may erect a ground/monument sign provided that:

A. All applicable requirements of Section 26.01 are met, and;

B. A minimum of forty feet (40’) (setback) is provided between any building and a ground/monument sign, and;

C. No ground/monument sign shall exceed sixteen square feet (16 ft^2) in area with no horizontal or vertical dimension exceeding six feet (6’), and except as allowed Subsection 26.15.05(E) below, and;

D. A business located 100 feet or more from King Street may erect a freestanding sign with a maximum area of twenty-five square feet (25 ft^2) and a maximum height of six feet (6’).

E. No sign shall be placed in a public right-of-way.

26.15.06 Corner Lots: Businesses located on a corner lot may be permitted one additional attached sign to those otherwise permitted herein.

26.15.07 Signs for developments subject to Boone Town Code Chapter 73 Towing.

A. Parking-control warning signs shall comply with the requirements of Boone Town Code Chapter 73 Towing.

B. Parking-control warning signs do not require sign permits.

C. All developments subject to this subsection shall comply with one of the following requirements, as applicable:

1. A building(s) with a single-business shall prominently display the name of the business.
2. Shopping Center/Mall developments shall follow the regulations set forth in 26.12.01(F).

D. All signs shall be clearly visible from the controlled parking spaces.

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26.16 Temporary Sign Regulations

26.16.01 Temporary signs must conform to all regulations of this Section not otherwise superseded by this Article. No type of temporary sign, other than an agricultural sign whose placement is approved by the North Carolina Department of Transportation, may be placed in the public right-of-way. Temporary signs, other than agricultural signs, inflatable signs and community event signs, shall not be required to obtain a sign permit.

26.16.02 **Community Event Signs:** Community event signs are permitted for public agencies, schools, churches, civic-fraternal organizations or similar non-commercial organizations, or for commercial events when approved by the Boone Town Council.

A. Signs for non-commercial community events may be erected provided that:

1. Such groups shall be non-profit corporations or associations organized and operated for charitable purposes that are licensed as non-profit groups with the North Carolina Secretary of State.
2. Any fund being raised by the community event must be used for charitable or non-profit purposes.
3. All community events must occur within Watauga County. A community event that does not occur within Watauga County may receive permission to display signs with the approval of the Boone Town Council.
4. A Community Event Sign Permit Application must be completed by the sponsor of the event and approved by the Administrator. The sponsor must organize all aspects of a community event. A representative of the organization must sign the

permit application and will be jointly responsible with the organization for insuring that the regulations are followed.

B. Signs for commercial community events may be erected, provided that:

1. An application is properly completed and delivered to the Town of Boone Planning and Inspections Department at least forty-five days before the event.
2. The event is approved by the Boone Town Council as a "community event".
3. As determined by the Boone Town Council, the event provides a significant economic benefit to the Town as a whole, and portrays or places the Town of Boone in a positive light.
4. The event is open to all citizenry of the Town of Boone and its planning jurisdiction.
5. The event has received the written endorsement of a non-profit group whose mission includes promoting the economic vitality of Boone, such as, but not limited to, the Downtown Business Development Association, the Boone Chamber of Commerce, or the High Country Host.
6. The sponsor of the event has completed a Community Event Sign Permit Application and paid the appropriate fee, and the application is approved by the Planning and Inspections Department. A representative of the organization must sign the permit application and will be jointly responsible with the organization for insuring that these regulations are followed.

C. All community events, whether non-commercial or commercial are subject to the following requirements:

1. Each community event is allowed to display no more that twelve (12) off-premise signs that do not exceed four square feet (4 ft^2) in an area and four feet (4') in height. Only one (1) sign per lot is allowed with the permission of the property owner or registered agent. One (1) off-premise banner and one (1) banner at the event site are allowed. Each banner may not exceed twenty-four square feet (24 ft^2).
2. A community event may display allowable signage annually.
3. The signs are not illuminated.
4. The signs may not be displayed earlier than seven (7) days prior to the event and must by removed within forty-eight (48) hours after the event.

D. An event which does not take place in Watauga County may still be designated a "community event" when the event is approved by the Boone Town Council based upon a determination that the event nevertheless significantly contributes to the economic vitality and heritage of Boone.

E. The Boone Town Council recognizes the following as community events:

The Highland Games

The Blowing Rock Celtic Festival

Trade Days

Watauga High School Project Graduation

Boone Bluegrass Festival

Gospel Singing Jubilee

Sugar Grove Music Festival

Wooly Worm Festival

26.16.03 **Political Sign**: Political signs are permitted in accordance with Section 26.17.

26.16.04 **Real Estate Sign:** A real estate sign is a temporary sign advertising the real estate upon which the sign is located as being for rent, lease, open house or sale. Real estate signs are permissible subject to the following regulations:

A. Real estate signs advertising property for sale, lease or rent shall adhere to the following regulations:

1. Only one (1) sign per lot is allowed.
2. The sign shall not be illuminated.
3. Area and Height Requirements:

Zoning District	Maximum Area	Maximum Height
Residential Zoning Districts	4 ft^2	5 f.
B-1 Central Business	4 ft^2	
Remaining Zoning Districts	20 ft^2	8 ft

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4. The real estate sign shall be removed within forty-eight (48) hours after the property closing.

B. Open House Residential Real Estate Sign: Open house residential real estate signs shall be subject to the following requirements:

1. There shall be no more than one on-premise and two (2) total off-premise open house residential real estate signs for any open house event. These signs must include the realtor's phone number or the homeowner's address and the street address where the event is taking place.
2. Off-premise signs may be in place only from 8 a.m. on Saturday to 8 p.m. on Sunday.

3. Off-premise signs shall not exceed three square feet (3 ft^2) in area and two feet (2') in height.
4. Such signs shall not be illuminated.
5. Only one on-site sign per lot is allowed with the permission of the property owner, registered agent or tenant.

26.16.05 **Yard Sale Sign**: Yard sale signs are permitted as temporary signs provided that the signs adhere to the following criteria:

A. No more than three (3) signs per event are allowed.

B. Two (2) signs may be placed off premise from the location of the event on private property with the property owner or registered agent's consent.

C. The signs may remain in place for forty-eight (48) hours only.

D. Such signs shall serve as directional aids and text on such signs shall be limited to Yard Sale or Garage Sale and an arrow.

E. Signs shall be placed out of the street right-of-way and no signs will be placed on utility poles.

F. The signs shall not be illuminated.

G. Signs are limited in size to four square feet (4 ft^2) in area and must list the phone number of the event organizer on the back.

26.16.06 **Newly Established Business**: Businesses which are newly established or have changed locations may display a temporary sign provided that:

A. The size of any such sign is not in excess of twenty four square feet (24 ft^2) in area.

B. The sign may be displayed for a period of thirty (30) days. This thirty day period may begin no earlier than fifteen (15) days prior to the opening date of the business and not later than thirty (30) days after the certificate of occupancy is issued by the building inspector.

C. Only one (1) such sign is allowed per premise, however this one sign may be used in addition to other permitted signs.

26.16.07 **Special Sales and Promotions**: Temporary signs as defined by advertising special sales and promotions by merchants and other profit making concerns may be erected in addition to other permitted signs provided:

A. The size of such sign shall not exceed twenty four square feet (24 ft^2).

B. The signs are not illuminated.

C. The signs are displayed for a period of ten (10) days only.

D. Only one (1) sign per premise is allowed.

E. An interval of thirty (30) days shall separate each event.

26.16.08 Agricultural Signs: Agricultural signs are subject to the following criteria:

A. A permit must be applied for by delivery of a completed application and payment of such fee as established by the Boone Town Council, no less than forty-five (45) days prior to the first day of display. The application for a permit must state the dates of the exposition, festival or event in question. Only one (1) fee shall be due for each separate exposition, festival or event in question;

B. Signs must comply with all North Carolina Department of Transportation requirements, including those requirements as to location and placement, and the applicant is responsible for compliance with DOT requirements and with the requirements of this Ordinance;

C. Off-premises signs may only be placed with the permission of the person with the legal authority to grant such permission. There may be no more than fifteen (15) off-premises agricultural signs within the planning jurisdiction of the Town for each exposition, festival or event;

D. Signs may be permitted for a maximum of six (6) weeks, must be fixed in place for the duration of the exposition, festival or event, and must be removed by the applicant within forty-eight (48) hours of the conclusion of the exposition, festival or event;

E. All signs relating to a particular agricultural exposition, festival or event must be uniform in shape and color. Any designs must be complementary. Each sign must be stable and must be properly secured to its location;

F. Signs may not exceed twenty-eight square feet (28 ft^2), but may be comprised of a large sign with smaller signs attached, which smaller signs direct the public to particular locations participating in the exposition, festival or event;

G. Agricultural signs may not be illuminated.

26.16.09 Farmer's Market Sign Regulations

A. A permit must be applied for by delivery of a completed application and payment of such fee as established by the Boone Town Council, no less than ten days prior to the first day of operation. The application for a permit must state all dates the farmer's market will operate during the calendar year in question, and must disclose the name and address of the sponsoring non-profit organization. The person signing the application is jointly responsible with the sponsoring organization for compliance with this Article. Only one fee shall be due for each calendar year of operation of a farmer's market.

B. A farmer's market may display no more than eight (8) off-premise signs that do not exceed four square feet (4 ft^2)in area and four feet in height (4'). Only one (1) sign is

permitted per lot, and off-premises signs may be posted only with the permission of the person with the legal authority to grant such permission.

C. Farmer's market signs may not be illuminated.

D. Farmer's market signs may be displayed only during daylight hours on each day of operation.

E. Signs must comply with all relevant North Carolina Department of Transportation requirements as to location and placement, and the applicant is responsible for compliance with DOT requirements.

26.16.10 **Inflatable Signs**: Inflatable signs may be temporarily displayed in a B3 zoning district subject to the following conditions:

A. Only one (1) inflatable sign may be displayed per tax parcel, and no more than one (1) inflatable sign per business or event, even if the business or event is located on multiple tax parcels.

B. An inflatable sign may be displayed for a period of seven (7) continuous days, an interval of thirty (30) days shall separate each event for which the sign is displayed. In addition the inflatable sign may be displayed for no more than three (3) separate events in any calendar year.

C. Any inflatable sign must be set back and away from any pedestrian or vehicular right of way, any utility poles, above ground utility lines and any other hazardous structure, at least the vertical distance from the ground to the top of the sign when it is displayed at its maximum height, plus ten feet (10').

D. An inflatable sign may not obstruct visibility for vehicular traffic.

E. Any inflatable sign must be secured to the ground in conformity with the manufacturer's specifications.

F. No inflatable sign may be displayed in such a way that the top of the sign is more than twenty-five feet (25') above the ground level.

G. Inflatable signs shall not be illuminated.

H. No inflatable sign may exceed 400 cubic feet when fully inflated.

I. The applicant shall submit a certification that the inflatable sign will be erected and displayed in conformance with this Section and the manufacturer's specifications.

26.17 Political Sign Regulations

26.17.01 The following regulations shall apply solely to political signs, posters, etc.:

A. No signs shall be placed in a public right-of-way.

B. No signs shall be placed on public utility poles, telephone poles, parking meter poles or any other sign or sign support structure erected by a duly constituted governmental body.

C. No signs shall be placed on roofs nor painted on roofs.

D. Any political sign which is determined to be a hazard or infringement to the public health, safety and welfare is prohibited.

E. Portable signs shall not be allowed for political uses.

F. Political Signs may be placed on private property with the consent of the property owner or their authorized agent.

G. Except for legal billboards, no political sign shall be larger than sixteen square feet (16 ft^2).

H. Political signs may be displayed no sooner than sixty (60) days before any election. All political signs must be removed within forty-eight (48) hours after each election.

26.18 Maintenance and Relocation of Signs

26.18.01 All sign supports, braces, poles, wires, and anchors thereof shall be kept in good repair. They shall be maintained in safe condition, free from deterioration, missing parts, and peeling paint. Any sign not in compliance with these standards shall be deemed a nuisance and the following action may be taken.

A. The Administrator shall give written notice to the owner specifying the sign indicated and telling what needs to be done to bring the sign into compliance.

B. The owner of the sign shall respond to the notice within two (2) weeks and shall have sixty (60) days to complete said repairs. Additional time shall be granted by the Administrator only upon delay of parts when it has been clearly shown that the parts have been ordered.

C. Failure to complete repairs in the specified time shall result in the Administrator causing the sign to be repaired, removed or altered at the expense of the owner(s). Costs of removal or repair, court costs and attorney fees incurred by the Town shall be assessed against the owner(s), to be collected by the Town in an action in the nature of a debt.

D. In the event a sign is damaged in excess of fifty percent (50%) of its reproduction value, such sign shall be restored or repaired only in compliance with the provisions of this Ordinance.

26.18.02 Signs for which a sign permit has been issued may be relocated in conformance with the regulations of this Article upon notification of the Administrator. Signs which are nonconforming may not be relocated except upon removal of all non-conforming features of the sign.

26.19 Obsolete and Abandoned Sign Regulations

26.19.01 Signs or parts of signs which advertise or pertain to a business, product, service, commodity, event, activity, or purpose which no longer exists or that has not been in use for ninety (90) days or more shall be deemed to be an abandoned sign. Signs which are associated with seasonal business such as ski shops, Horn in the West, etc., shall not be considered obsolete or abandoned provided there is clear intent to continue in the coming season.

A. Obsolete or abandoned signs are prohibited and shall be removed by the owner or his agent within thirty (30) days of termination of the business, activity, event, etc**.**

B. Failure to remove such signs or parts of signs shall result in written notice from the Administrator. Failure to comply with these terms shall result in the sign being removed at the owner(s) expense. Costs of removal or repair, court costs and attorney fees incurred by the Town shall be assessed against the owner(s), to be collected by the Town in an action on the nature of the debt.

26.20 Permanent Off-Premise Signs in Easements

26.20.01 Permanent off-premise signs in access easements shall be permissible subject to the following requirements and limitations:

A. Application required: No permanent off-premise sign may be placed or displayed in an access easement area until a permit authorizing its display is issued.

1. The applicant must submit a certified copy of the instrument creating the easement with the application. The access easement area must be the only available and planned access for the development requesting the permanent off premise sign. The Administrator may require that the applicant provide a signed statement from an attorney that such easement confers upon the applicant the right to display a sign within the easement if the Administrator is unsure of the scope of the rights created by the easement. Unless the easement affords rights to display a sign for the full potential life of the development, it will be considered legally insufficient.

B. No permit for a sign which will be displayed or located within an access easement may be issued unless there are no roads contiguous with the lot upon which the development is located, or the access easement in which the sign is to be located is the only available and planned vehicular access to the aforementioned lot.

C. The only sign which may be permitted for display in an off-premise easement is a ground mounted/monument sign which must meet all dimensional, separation, location, and lighting requirements of this Article for a ground mounted/monument sign in the zoning district in which it will be placed or the development is located, whichever is more restrictive, unless any such requirement is explicitly superseded by this Section.

1. For residential developments, including multi-family developments, all signs subject to this Section shall be limited to no more than thirty square feet (30 ft^2) of sign face.

D. Limitations on the number of signs allowed: Only one (1) permanent off-premise sign will be allowed on a lot which is subject to an access easement which also allows a permanent off-premise sign (further known as the hosting lot). The permanent off-premise sign shall count as one of the free-standing signs (not including directory signs) allowed for the hosting lot. Furthermore, if at the time of application, existing signs on the hosting lot have either a combined square footage that meets/exceeds the maximum square footage allowed, or meet/exceed the maximum number of freestanding signs allowed, the applicant must provide a written declaration from the owner or occupant of the hosting lot indicating which sign(s) will be removed. If any signs are required to be removed, this shall be done prior to the issuance of the permit for the permanent off-premise sign.

Article 27 RESIDENTIAL OCCUPANCY CONTROLS

27.01 Residential Occupancy Control

27.01.01 Except for authorized group living, residential occupancy is limited in the Town's jurisdiction based upon zoning district in accordance with the following table.

Number of Persons	Relationship	RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2
Unlimited	Family	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Up to 2	Unrelated	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Up to 4	Unrelated							P	P				P	P	P		
5+	Unrelated														P		

27.01.02 A family is counted as one occupant for purposes of these controls.

A. Before any persons will be determined to be "cousins" and thereby included within the definition of "family", each such person shall be required to deliver to the Administrator the following documentation:

1. A copy of his or her birth certificates.

2. A copy of the parent's birth certificate which establishes the relationship.

27.01.03 A person shall be presumed to be an occupant if his or her clothes or other daily living supplies such as items of personal hygiene are maintained at the dwelling unit.

A. The absence of such described items does not prevent a finding that a person is an occupant.

B. That a person regularly and recurrently lives in, sleeps at, or possesses another dwelling unit does not prevent a finding that a person is an occupant.

27.01.04 The number of occupants in a dwelling does not constitute a use and cannot create a legal nonconformity.

27.01.05 A residential dwelling unit with more than two (2) occupants shall contain at least one (1) bedroom for each two (2) occupants.

Article 28 RESERVED

TITLE VI NATURAL RESOURCES

Article 29 WATERSHED PROTECTION

29.01 Adoption Date and Effective Date

29.01.01 The provisions in this Article were originally adopted on May 27, 1993 and became effective on June 30, 1993. The authority for implementation of the Water Supply Watershed Regulations are in the N.C. Gen. Stat. § 160A, Article 8, Section 174, General Ordinance Authorization and N.C. Gen. Stat. § 143, Article 21, Watershed Protection Rules.

29.02 Jurisdiction

29.02.01 The provisions of the Article shall apply within the areas designated as a Public Water Supply Watershed by the North Carolina Environmental Management Commission and shall be defined and established on the map entitled, "Watershed Protection Map of Boone, North Carolina" ("The Watershed Map"), which is adopted simultaneously herewith. The watershed map and all explanatory matter contained thereon accompanies and is hereby made a part of this Article.

29.03 Exceptions to Applicability

29.03.01 Nothing contained herein shall repeal, modify, or amend any federal or state law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this Article amend, modify, or restrict any provisions of the Code of Ordinances of the Town of Boone; however, the adoption of this Article shall and does amend any and all ordinances, resolutions, and regulations in effect in the Town at the time of the adoption of this Article that may be construed to impair or reduce the effectiveness of this Article or to conflict with any of its provisions.

29.03.02 It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.

29.03.03 Existing development is not subject to the requirements of this Article. Expansions to structures classified as existing development must meet the requirements of this Article, however, the built upon area of the existing development is not required to be included in the density calculations.

29.03.04 A pre-existing lot owned by an individual prior to the effective date of this Ordinance, regardless of whether or not a vested right has been established, may be developed for single family residential purposes without being subject to the restrictions of this Ordinance. However, this exemption is not applicable to multiple contiguous lots under single ownership.

29.04 Establishment of Watershed Review Boards

29.04.01 The Planning Commission shall act as the Watershed Review Board on all subdivision regulation matters. The Board of Adjustment shall act as the Watershed Review Board on all other matters regarding this Ordinance.

29.05 Establishment of Watershed Areas

29.05.01 The purpose of this Section is to list and describe the watershed areas herein adopted.

29.05.02 For purposes of this Article the Town and its extraterritorial jurisdiction are hereby divided into the following areas, as appropriate:

A. WS-II-CA (Critical Area)

B. WS-IV-CA (Critical Area)

C. WS-IV-PA (Protected Area)

29.06 Watershed Areas Described

29.06.01 *WS-II Watershed Areas Critical Area (WS-II-CA)*: In order to maintain a predominately undeveloped land use intensity pattern, single family residential uses shall be allowed at a maximum of one (1) dwelling unit per two (2) acres. All other residential and nonresidential development shall be allowed at a maximum six percent (6%) built upon area. New sludge application sites and landfills are specifically prohibited.

A. Allowed uses are:

1. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990.
2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 1I.6101-.0209).
3. Residential development, including both single family and all other residential.
4. Non-residential development, excluding:
   a. The storage of toxic and hazardous materials unless a spill containment plan is implemented,
   b. Landfills, and
   c. Sites for land application of sludge/residuals or petroleum contaminated soils. New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are used, stored or manufactured on the premises.

B. Density and built upon limits:

1. Single family residential development shall not exceed one (1) dwelling unit per two (2) acres on a project by project basis. No residential lot shall be less than two (2) acres, except within an approved cluster development.
2. All other residential and non-residential development shall not exceed six percent (6%) built upon area on a project by project basis. For the purpose of calculating built upon area, total project area shall include total acreage in the tract on which the project is to be developed.

29.06.02 *WS-IV Watershed Areas Critical Area (WS-IV-CA)*: In order to address a moderate to high land use intensity pattern, single family residential uses are allowed at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed twenty-four percent (24%) built-upon area. New sludge application sites and landfills are specifically prohibited.

A. Allowed uses are:

1. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990.
2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 1I.6101-.0209).
3. Residential.
4. Non-residential development, excluding:
   a. The storage of toxic and hazardous materials unless a spill containment plan is implemented,
   b. Landfills, and
   c. Sites for land application of sludge/residuals or petroleum contaminated soils.

B. Density and built upon limits:

1. Single family residential development shall not exceed two (2) dwelling units per acre on a project by project basis. No residential lot shall be less than one half (1/2) acre, except within an approved cluster development.
2. All other residential and non-residential development shall not exceed twenty - four percent (24%) built upon area on a project by project basis. For the purpose of calculating the built upon area, total project area shall include total acreage in the tract on which the project is to be developed.

29.06.03 *WS-IV Watershed Areas Protected Area (WS-IV-PA)*: In order to address a moderate to high land use intensity pattern, single family residential uses shall develop at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built upon area.

A. Uses allowed are:

1. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 1I.6101-.0209).
3. Residential development.
4. Non-residential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.

B. Density and built upon limits:

1. Single family residential development shall not exceed two (2) dwelling units per acre, on a project by project basis. No residential lot shall be less than one half (1/2) acre, except within an approved cluster development.
2. All other residential and non-residential development shall not exceed twenty-four percent (24%) built upon area on a project by project basis. For the purpose of calculating built upon area, total project area shall include acreage in the tract on which the project is to be developed.

29.07 Cluster Development

29.07.01 Clustering of development is allowed in all watershed areas under the following conditions:

A. Built upon area or stormwater control requirements of the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.

B. All built upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.

C. The remainder of the tract shall remain in a vegetated or natural state. Where the development has an incorporated property owners association, the title of the open space area shall be conveyed to the association for management. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

29.08 Buffer Areas Required

29.08.01 A minimum thirty foot (30’) vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial stream bank or shoreline stabilization is permitted.

29.08.02 No new development is allowed in the buffer except for water dependent structures and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built upon surface area, direct runoff away from

the surface waters and maximize the utilization of stormwater Best Management Practices.

29.09 Rules Governing the Interpretation of Watershed Area Boundaries

29.09.01 The boundaries of the watershed areas are as shown on the Official Watershed Map. Where uncertainty exists, the Administrator shall interpret the Watershed Map as to location of such boundaries. This decision may be appealed to the Board of Adjustment.

29.10 Existing Development

29.10.01 Any existing development may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this Ordinance, however, the built upon area of the existing development is not required to be included in the density calculations.

29.11 Watershed Protection

29.11.01 Except where a single family residence is constructed on a lot deeded prior to the effective date of this Ordinance, no building or built upon area shall be erected, moved, enlarged or structurally altered, nor shall any zoning or building permit be issued nor shall any change in the use of any building or land be made until a watershed protection permit has been issued by the Administrator. No watershed protection permit shall be issued except in conformity with the provisions of this Ordinance.

29.11.02 Watershed protection permit applications shall be filed with the Administrator. The application shall include a completed application form and supporting documentation deemed necessary by the Administrator.

29.11.03 Prior to issuance of a watershed protection permit, the Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this Ordinance.

29.11.04 A watershed protection permit shall expire if a zoning or building permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

29.12 Public Health, Safety, and General Welfare

29.12.01 All development shall be located, designed, and proposed so as to promote the public health, safety, and general welfare. All development shall comply with all required regulations and standards in this Ordinance as well as conform with the general plans for the physical development of the Town as embodied in this Ordinance and in the comprehensive plan.

Article 30 FLOOD DAMAGE PREVENTION

30.01 General Provisions

30.01.01 Lands to Which This Article Applies: This Article shall apply to all Special Flood Hazard Areas within the Town's jurisdiction, including Extra-Territorial Jurisdictions (ETJs).

A. The use of any land or structure within the Special Flood Hazard Area shall comply with the use regulations in the UDO applicable to the underlying zoning district as well as any additional requirements imposed by this Article.

30.01.02 Basis for Establishing the Special Flood Hazard Areas: The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Watauga County dated December 3, 2009 which are adopted by reference and declared to be a part of this Article.

30.01.03 Establishment of Floodplain Development Permit: A Floodplain Development Permit shall be required in conformance with the provisions of this Article prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Subsection 30.01.02 of this Article.

30.01.04 Compliance: No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this Article and other applicable regulations.

30.01.05 Abrogation and Greater Restrictions: This Article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

30.01.06 Interpretation: In the interpretation and application of this Article, all provisions shall be:

A. Considered as minimum requirements; and

B. Liberally construed in favor of the governing body; and

C. Deemed neither to limit nor repeal any other powers granted under State statutes.

30.01.07 Warning and Disclaimer of Liability: The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the Town of Boone or by any officer or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made hereunder.

30.02 Administration

30.02.01 Designation of Floodplain Administrator: See Subsection 2.06.04.

30.02.02 Floodplain Development Application, Permit and Certification Requirements

A. Application Requirements. Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. A special flood hazard area site plan shall be submitted in accordance with Appendix A.

B. Permit Requirements. The Floodplain Development Permit shall include, but not be limited to:

1. A description of the development to be permitted under the Floodplain Development Permit; and
2. The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Subsection 30.01.02 ; and
3. The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities; and
4. The Regulatory Flood Protection Elevation required for the protection of all public utilities; and
5. All certification submittal requirements with timelines; and
6. A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable; and
7. The flood openings requirements, if in Zones A, or AE; and
8. Limitations of below BFE enclosure uses (if applicable). (i.e., parking, building access and limited storage only).

C. Certification Requirements.

1. Elevation Certificates

   a. An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit.

   b. An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the

reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

c. A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

2. Floodproofing Certificate

If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproof design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

3. If a manufactured home is placed within Zone A, or AE, and the elevation of the chassis is more than thirty-six inches (36") in height above grade, an engineered foundation certification is required in accordance with the provisions of Subsection 30.03.02(D)(2).

4. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a Floodplain Development Permit.

5. Certification Exemptions. The following structures, if located within Zone A, or AE, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this Subsection:

   a. Recreational Vehicles meeting requirements of Subsection 30.03.02(G);

   b. Temporary Structures meeting requirements of Subsection 30.03.02(H); and

   c. Accessory Structures less than 150 square feet meeting requirements of Subsection 30.03.02(I).

30.02.03 Duties and Responsibilities of the Floodplain Administrator

A. The Floodplain Administrator shall perform, but not be limited to, the following duties:

1. Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this Article have been satisfied; and

2. Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received; and

3. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA); and

4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained; and

5. Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Subsection 30.03.05 are met; and

6. Obtain actual elevation (in relation to mean sea level) of the reference level of the lowest floor (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Subsection 30.02.02(B); and

7. Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Subsection 30.02.02(C); and
8. Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Subsection 30.02.02(C); and
9. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Subsection 30.02.02(C) and Subsection 30.03.02(C); and
10. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Article 6; and
11. When Base Flood Elevation (BFE) data has not been provided in accordance with the provisions of Subsection 30.01.02, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Subsection 30.03.03(B), in order to administer the provisions of this Article; and
12. When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Subsection 31.01.02, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this Article; and
13. When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA; and
14. Maintain a copy of the LOMA issued by FEMA in the Floodplain Development Permit file; and
15. Permanently maintain all records that pertain to the administration of this Article and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended; and
16. Make on-site inspections of work in progress. As the work pursuant to a Floodplain Development Permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local Ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a

right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action; and

17. Issue stop-work orders as required in accordance with the procedures of Section 12.08 of this Ordinance. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Article, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor; and

18. Revoke Floodplain Development Permits as required in accordance with procedures of Section 12.09 of this Ordinance. The Floodplain Administrator may revoke and require the return of the Floodplain Development Permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any Floodplain Development Permit mistakenly issued in violation of an applicable State or local law may also be revoked; and

19. Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the planning jurisdiction of the Town at any reasonable hour for the purposes of inspection or other enforcement action; and

20. Follow through with corrective procedures of Subsection 3.02.04; and

21. Review, provide input, and make recommendations for reasonable conditions should a request for a variance be submitted; and

22. Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with the provisions of Subsection 30.01.02 of this Article, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs; and

23. Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

30.02.04 Corrective Procedures: The Administrator shall follow the corrective procedures in accordance with Article 12 of this Ordinance.

30.02.05 **Variance Procedures:** The Board of Adjustment shall hear and decide requests for variances from the requirements of this Article. See Article 6.

30.03 Provisions for Flood Hazard Reduction

30.03.01 **General Standards:** In all Special Flood Hazard Areas the following provisions are required:

A. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

B. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

C. All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.

D. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.

E. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

F. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and to minimize discharges from the systems into flood waters.

G. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding. Any onsite sewage disposal system shall be located to avoid damage during flooding or interruption when evacuation is not necessary.

H. Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this Article, shall meet the requirements of “new construction” as contained in this Article.

I. Nothing in this Article shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this Article and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this Article.

J. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Section 6.03. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area floodplain only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Subsection 30.02.02(C)(2).

K. All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

L. All subdivision proposals shall on each lot intended for development, provide buildable area outside of the Floodway Zone and the Special Flood Hazard Area to greatest extent possible.

M. All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

N. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

O. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

P. When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.

Q. When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest Base Flood Elevation (BFE) shall apply.

R. No artificial obstruction may be located within any Floodway zone.

S. Any stream culverted on or before September 23, 1986, shall have a floodway of twenty feet (20') from the center of the culvert or to the limit of the mapped floodway as shown on the most recent FIRM, whichever is greater.

30.03.02 **Specific Standards:** In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Section 30.01.02, or Section 30.03.03, the following provisions, in addition to the provisions of Section, are required:

A. Residential Construction. New residential construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference

level, including basement, elevated no lower than the Regulatory Flood Protection Elevation.

B. Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation. Structures located in ZONE A, or AE Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy.

C. A registered professional engineer or architect shall certify that the floodproofing standards of these Subsections are satisfied. Such certifications shall be provided to the Floodplain Administrator as set forth in Subsection 30.02.02(C), along with the operational plan and the inspection and maintenance plan.

D. Manufactured Homes.

1. New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation.

2. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified, engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to N.C. Gen. Stat. § 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six inches (36”) or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six inches (36”) in height, an engineering certification is required.

3. All enclosures or skirting below the lowest floor shall meet the requirements of Subsection 30.03.02(E).

4. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

E. Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

1. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas; and
2. Shall be constructed entirely of flood resistant materials; and
3. Zones A or AE shall include flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
    a. A minimum of two flood openings on different sides of each enclosed area subject to flooding;
    b. The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
    c. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
    d. The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
    e. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
    f. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

F. Additions/Improvements.

1. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
    a. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
    b. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

2. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

3. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

   a. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.

   b. A substantial improvement, the existing structure and the addition and/or improvements must comply with the standards for new construction.

G. Recreational Vehicles.

1. A recreational vehicle may only be located within a Special Flood Hazard Area if the recreation vehicle is stored only for fewer than 180 consecutive days and is fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions);

2. Permanently attached recreational vehicles are prohibited.

H. Temporary Non-Residential Structures. Prior to the issuance of a Floodplain Development Permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted to the Floodplain Administrator for review:

1. The specified time period for which the temporary use will be used or required. Time specified may not exceed three (3) months, renewable up to one (1) year; and

2. The name, address, and phone number of the individual responsible for the removal of the temporary structure; and

3. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification); and

4. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

5. Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

I. Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

1. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas); and
2. Accessory structures shall not be temperature-controlled; and
3. Accessory structures shall be designed to have low flood damage potential; and
4. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters; and
5. Accessory structures shall be firmly anchored in accordance with the provisions of Subsection 30.03.01(A); and
6. All service facilities such as electrical shall be installed in accordance with the provisions of Subsection 30.03.01(D); and
7. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Subsection 30.03.02(E)(3).
8. An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Subsection 30.02.02(B).

J. Subdivisions

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

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

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

K. Permissible Uses Within the Special Flood Hazard Area

The following uses shall be permitted within the Special Flood Hazard Area provided they are permitted under Article 16 of the UDO and documentation is submitted to show they shall comply with the provisions of this Section:

1. General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses.
2. Lawns, gardens, play areas, and other similar uses.
3. Golf courses, driving ranges, archery ranges, picnic grounds, parks, hiking, bicycle or horseback riding trails, open space and other similar private and public recreational uses.

30.03.03 **Standards for Floodplains Without Established Base Flood Elevations:** Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Subsection 30.01.02, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of Section 30.03.01, shall apply:

A. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty feet (20') each side from top of bank or five (5) times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:

1. When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this Article and shall be elevated or floodproofed in accordance with standards in Subsections 30.03.01 and 30.03.02.
2. When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway

and non-encroachment areas shall also comply with the requirements of Subsections 30.03.02 and 30.03.05.

3. All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with Subsection 30.01.02 and utilized in implementing this Article.

4. When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation. All other applicable provisions of Subsection 30.03.02 shall also apply.

30.03.04 Standards for Riverine Floodplains with Base Flood Elevations but Without Established Floodways or Non-Encroachment Areas: Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

A. Standards of Subsections 30.03.01 and 30.03.02; and

B. Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

30.03.05 Floodways and Non-Encroachment Areas: Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Subsection 30.01.02. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Subsections 30.03.01 and 30.03.02, shall apply to all development within such areas:

A. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

1. It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard

engineering practice and presented to the Floodplain Administrator prior to issuance of Floodplain Development Permit, or

2. A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.

B. If Subsection 30.03.05(A) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this Article.

C. No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

1. The anchoring and the elevation standards of Subsection 30.03.02(D).

Article 31 LANDSCAPE STANDARDS

31.01 Applicability

31.01.01 The table and information set forth in Section 31.05, concerning the types of screening, establishes suggested screening requirements that, presumably, satisfy the general standards established in Section 31.02. However, this table is only intended to establish a presumption and should be flexibly administered in accordance with Section 31.11.

31.01.02 The provisions of this Article and Appendix B of this Ordinance shall apply to all commercially developed land and all land within the following zoning districts: R3, M-H, OI, B1, B2, B3 and M1, unless the property is excluded from municipal regulation pursuant to N.C. Gen. Stat. § 160A-458.5 (b).

31.01.03 The following provisions shall apply in the U1 zoning district:

A. New development in the U1 district shall provide street trees along Town maintained streets in accordance with Section 31.09 and shall be consistent with the University's treatment of streets on or adjacent to the main campus.

B. New development in the U1 district shall provide a ten foot (10') Type "A" Standard Buffer adjacent to all non-university property in accordance with Subsection 31.05.02(A) and Section 31.06.

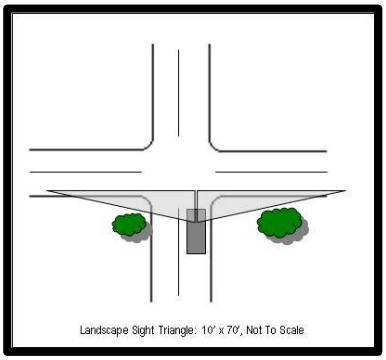
31.02 General Screening Standard

31.02.01 Every development shall provide sufficient landscape material so that:

A. Neighboring properties are shielded from adverse external effects of that development; and

B. The development is shielded from the negative impacts of adjacent uses such as parking lots.

31.02.02 To ensure that landscape materials do not constitute a traffic hazard, a sight triangle ten feet (10') by seventy feet (70') will be observed at all intersections of driveways/streets with adjacent streets (see diagram below).



A. Required street trees shall be planted outside of the sight triangle area.

B. Shrubs planted within sight triangles shall be of a type with a maximum mature height of twenty-four inches (24”).

31.03 Compliance with Screening Standard

31.03.01 To determine the required screening, the following steps shall be taken:

A. Identify the classification of the proposed land use and all adjacent uses listed in Section 31.04 Screening Land Use Classification.

B. Use the Table of Screening Requirements in Section 31.05 to determine the appropriate letter designation for each abutting area. If the abutting area is undeveloped, the required screening shall be that which would be required for a use necessitating the greatest visual obstruction.

C. Match the letter designation obtained from Section 31.05 Table of Screening Requirements with Section 31.06 Buffer and Screen Requirements to determine the required screening.

D. The screening requirements established in this Article apply to all land uses except where specific requirements are established for uses elsewhere in this Ordinance.

31.04 Screening Land Use Classification

31.04.01 Listed below are the classifications of land uses that will determine the required screening established in Section 31.05, Table of Screening Requirements. The land uses are keyed to the Table of Principal Uses contained in Article 15.

A. **Classification I**: 1.01 Single-Family Dwelling, 1.02-1.04 Manufactured Homes, 1.05 Manufactured Home Park, 2.01 Family Care Home, 3.01 Home for Survivors of Domestic Violence, 13.01-13.02 Garden

B. **Classification II**: 1.06-1.07 Duplex, 1.08-110 Townhouse, 1.11-13 Multi-Family Dwelling, 1.14 -1.16 Multi-Family Dwelling in Mixed Use; 2.02 Family Care Institution, 2.03-2.04 Halfway House, 2.05-2.06 Nursing Care Home, 2.07 Skilled Nursing Facility, 2.08-2.09 Retirement Community, 2.10-2.12 Residence Hall, 2.13 Fraternity or Sorority Dwelling, 2.14 Boarding House, 3.02-3.03 Shelter for Homeless, 3.04-3.05 Bed and Breakfast, 3.06 Vacation Rental, 4.04 Cemetery, 5.01-5.03 Cultural Facility, 5.04-5.04 Recreation Facility, 5.07 Event Venue, 5.12 Police Substation, 5.13-5.15 Utility Facility, 5.16 Government Facility, 6.01-6.02 Utility Facility, 8.01-8.03 Religious Assembly, 9.0 Education, 12.04 Outdoor Theater, 12.07 Event Venue, 12.10-12.11 Recreation Facility

C. **Classification III**: 3.07 Motel, 3.08 Hotel, 4.01 Airport/Landing Strip, 4.02 Heliport, 4.03 Funeral Home Establishment, 4.05-4.06 Post Office, 5.06 Government Recreation Facility Category 3, 5.08-5.09 Government Event Venue, 8.04-8.05 Club/Lodge, 10.0 Daycare, 11.0 General Sales and Service,; 12.01 Indoor Shooting Range, 12.03 Indoor

Theater, 12.06-12.07 Event Venue; 12.08 Campground and Recreational Vehicle Park, 12.12 Recreation Facility, 13.03-13.04 Agricultural Operation, 13.07 Custom Slaughterhouse, 14.01 Microbrewery, 14.02 Brewpub, 14.03 Brewery/Distillery, 14.05 Winery Associated with a Vineyard, 14.06 Winery, 14.09 Machine/Welding Shop, 15.0 Parking, 16.01 Mini-Storage, 16.02 Outdoor Storage, 16.03 Warehouse, 17.0 Transportation, 18.01Recycling Drop-off Station, 19.0 Particular Activities which pose Particular Concerns about Public Health

D. **Classification IV**: 4.07 Animal Sanctuary, 5.10 Landfill, 5.11 Solid Waste Processing, 7.0 Telecommunications (excluding 7.01, 7.03, and 7.10), 12.09 Coliseum, 14.08 Extraction of Earth Materials, 14.10 Manufacturing Other, 16.04 Fuel Storage Facility, 18.04 Recycling and Salvage

31.05 Table of Screening Requirements

31.05.01 The Table of Screening Requirements shall be used to determine screening requirements between adjacent land uses.

Proposed Land Use Classification	Adjacent Permitted Land Use Classification				Adjacent Zone with Nonconforming Use		Adjacent Public or Private Street
	I	II	III	IV	Residential	Non-Residential	
II	C	A	A	A	B	A	10’ Street Yard See Section 31.09
III	C	B	A	A	B	A	10’ Street Yard See Section 31.09
IV	C	C	C	A	C	C	25’ Street Yard See Section 31.09

31.05.02 Three basic types of screening are hereby established and are used as the basis for the table. Compliance of planted vegetation screens or natural vegetation will be judged on the basis of the average mature height and density of foliage of the subject species, or field observation of existing vegetation. All types may be composed of a wall, fence, landscaped earth berm, planted vegetation, or existing vegetation. Suggested plant material is included in Appendix B.

A. Standard Screen, Type “A” is a screen composed of intermittent visual obstructions from the ground to a height of at least twenty feet (20’). The standard screen is intended to create a separation of spaces without necessarily eliminating visual contact between the spaces.

B. Semi-Opaque Screen, Type “B” is intended to partially block the view between uses and to create a strong distinction of separation of spaces. At maturity, the portion of

intermittent visual obstructions should not contain any completely unobstructed openings more than ten feet (10') wide.

C. Opaque Screen, Type "C" is a screen that is opaque from the ground to a height of at least six feet (6'), with intermittent visual obstructions from the opaque portion to a height of at least twenty feet (20'). An opaque screen is intended to exclude completely all visual contact between uses and to create a strong spatial separation. The opaque portion of the screen must be opaque in all seasons of the year. At maturity, the portion of intermittent visual obstruction should not contain any completely unobstructed openings more than ten feet (10') wide.

Screening Type	Required Width of Bufferyard
Type "A" Standard	10 ft.
Type "B" Semi-Opaque	15 ft.
Type "C" Opaque	25 ft.

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31.06 Buffer and Screen Requirements

31.06.01 Existing Vegetation

Buffers require provision of both physical separation and landscape elements to meet the intent of this Ordinance. Existing vegetation shall be used to meet all or part of the requirements of this Section wherever possible, if it provides the same level of obscurity as the planted buffer required below. Vegetation to be saved shall be identified on site plans along with protection measures to be used during grading and construction. See Section 31.13 for protection measures required and calculation of credits for existing trees.

31.06.02 Planted Vegetation

A. Required plantings include for a mix of large shade trees, small trees, large shrubs, and smaller shrubs to provide variable height screening, and a variety of plantings and seasonal color. Evergreen trees are used to provide a more opaque screen, as well as more natural appearance to the buffer. The mix is designed to create a buffer which will give a satisfactory screen within three (3) to five (5) years of planting, under normal maintenance, while allowing room for the various plants to grow. Planting requirements for buffers include both trees and shrubs as described below.

Buffer Type	"A" Buffer	"B" Buffer	"C" Buffer
Minimum Bufferyard Width	10 feet	15 feet	25 feet
Total Number of Plants per 100 Linear Feet	20	30	40
Number of Evergreen Trees	3	10	15
Number of Large Deciduous Trees	1	3	5
Number of Small Deciduous Trees	2	2	5
Number of Shrubs (at least 75% must be evergreen)	14	15	15

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B. The plant list must only describe plant sizes on the landscape plan by: height for shrubs (gallon sizes for shrubs will not be approved), height for evergreen trees and either or both caliper and height for deciduous trees.

1. Minimum plant sizes for buffer requirements:

   a. Evergreen tree: Minimum height of eight feet (8') at planting.

   b. Large deciduous tree: Minimum caliper of two and one-half inches (2 ½") with a height of twelve to fourteen feet (12' – 14') at planting.

   c. Small deciduous tree: Minimum caliper of one inch (1") with a height of eight feet (8') at planting.

   d. Shrubs: Minimum height of eighteen inches (18") at planting.

C. **Plant Standards**. All plants must meet the requirements of the most recent edition of the American Standards for Nursery Stock. Plants must be healthy, well branched, and free of disease and insect infestation.

31.06.03 Use of Bufferyards

Required bufferyards shall not be disturbed for any reason except for approved driveway openings, pedestrian or bicycle paths, designated greenways, utilities, drainage ways, bio-retention areas, walls, fences, and other passive or minor uses compatible with the general separation of land uses and provided that the total number of required plantings are still met. Approval from the Administrator is required prior to initiating any disturbance of the buffer. Utility easements may be included in the width of the buffer with the following conditions:

A. Utility lines should be located cross perpendicular to a buffer, if possible, to minimize the impact.

B. If utility lines must run within bufferyard, they must be located along the edge of the bufferyard.

C. The applicant should minimize the amount of plantings for the bufferyard in the utility easement area so they will not have to be removed if the utility line needs maintenance. If an applicant plans to plant in the utility easements, approval must be

obtained from the affected utility companies to ensure that plantings will not conflict with the installation, operation, or maintenance of utility lines. Trees and shrubs planted within the utility easement will not count towards the buffer planting requirement unless they are approved by the utility companies. This may necessitate adding more land to the buffer to accommodate the required number of plantings.

31.06.04 Bufferyard Reductions

The width of the buffer may be reduced with the use of a fence or wall. If an applicant plans to build a fence or wall, a "C" buffer classification reduces to a "B" buffer classification and a "B" buffer classification reduces to an "A" buffer classification. Fences and walls must meet the following standards:

A. Fences or walls shall be constructed of wood, brick, stone, or other masonry, and be architecturally compatible with the proposed structure. A detailed drawing of the screen must be shown on the landscape plan and approved by the Administrator.

B. Walls and fences shall be solid construction and opaque.

C. Walls and fences shall be a minimum height of six feet (6').

D. The wall or fence shall be located in the center of the buffer with vegetation planted on either side.

31.06.05 Loading Docks, Screening of Solid Waste and Recycling Container Areas, Outdoor Storage Areas, Utility Structures and Rainwater Harvesting Systems

A. Loading docks, solid waste and recycling containers, outdoor storage, mechanical and HVAC equipment, Rainwater Harvesting Systems, and similar facilities on the roof, on the ground, or on buildings shall be incorporated into the overall design theme. These areas shall be located and screened so that the visual impacts of these facilities are fully contained and out of view from adjacent properties and public streets.

B. Solid waste and recycling containers (when required) shall be screened in accordance with the Solid Waste and Recycling Enclosure Detail (Subsection 22.13.03). The design and materials of the enclosure, fence or wall must be presented as part of the site plan or subdivision approval process. The screening material shall be architecturally compatible with the principal building(s) on site. Landscape plantings compatible with the overall landscape plan may be required outside of enclosures where they are in public view from a street and it is necessary to soften the enclosures appearance.

C. Outdoor storage areas shall be located along the side or the rear of the principle structure and screened so that the visual impacts are fully contained and out of view from adjacent properties and public streets. Screening material may include fence, wall or landscaping so long as materials are architecturally compatible with the principle building(s) on site and will provide an opaque screen. All areas utilized for outdoor storage must be located in areas specifically designed for outdoor storage

and is prohibited in or on designated exterior walkways, parking areas, driveways, and landscape areas.

31.07 Combination Uses

31.07.01 The screening requirement between a combination use and an adjacent use shall be that required for the use necessitating the greatest visual obstruction.

31.07.02 Unless otherwise required for a structure, including a vehicle accommodation area or street, internal screening shall not be required between composite uses.

31.08 Subdivisions

31.08.01 When undeveloped land is subdivided and undeveloped lots only are sold, the applicant shall not be required to install any screening. Screening shall be required, if at all, only when the lots are developed, and the responsibility for installing such screening shall be determined in accordance with the requirements of this Article.

31.08.02 It shall be the responsibility of all new subdivision applicants to submit a tree survey in areas of land disturbance associated with construction of streets, drainage, utilities, and stormwater management areas. The tree survey shall be drawn to engineers scale and accurately designate the species, location and diameter of all trees eight inches (8”) in diameter and greater.

A. Every subdivision shall retain all existing healthy Historic trees with drip lines outside the land disturbing limits associated with proposed streets, drainage, utilities and stormwater management areas. An applicant may be required to modify his/her design in order to preserve healthy Historic trees, provided the redesign can be accommodated without reducing the intensity of the development on the site or increasing the area of land disturbance.

B. Every subdivision shall retain all existing healthy Significant trees with drip lines outside the land disturbing limits associated with proposed streets, drainage, utilities and stormwater management areas.

31.09 Screening Along Streets

31.09.01 The required minimum street yard shall be ten feet (10’) and a maximum of twenty-five feet (25’), measured perpendicular from the street right-of-way. An average of one (1) large tree two and one-half inch (2 ½”) minimum caliper (unless subject to overhead power lines) per thirty feet (30’) of street frontage is required. Innovative design in tree arrangement is encouraged. Trees planted to satisfy this Section shall not be placed uniformly but in an irregular pattern. However, the minimum spacing between street trees shall be twenty feet (20’) and the maximum shall be forty feet (40’). The applicant shall either plant or retain sufficient trees so that, there is for every thirty feet (30’) of street frontage at least an average of one (1) deciduous tree that has or will have when fully mature a trunk at least twelve inches (12”) in diameter at maturity.

31.09.02 The Administrator shall have the authority to vary on a case-by-case basis the amount and size of required street trees where an alternative requirement would address unique site conditions and allow design flexibility while still serving the objectives for street tree standards. At least 250 square feet of contiguous, un-encroached growing area shall be provided for each tree. Planting location shall take into consideration any roadway widening identified on approved thoroughfare plans but not provided by the development.

31.09.03 Evergreen shrubs at the rate of one eighteen inch (18”) minimum height shrub per three linear feet (3 lf) of property line abutting public streets less driveways, of a species expected to reach a minimum height of thirty inches (30”) and a minimum spread of thirty inches (30”) within three (3) to five (5) years of planting.

31.09.04 Except in the B1 Central Business District, when a surface parking lot is a principal land use or a component of a combination use, the following provisions shall apply:

A. The minimum street yard shall be twenty-five feet (25’) measured perpendicular from the street right-of-way but the minimum street yard may be reduced by one foot (1’) for every two feet (2’) below adjacent street grade when the Administrator concludes the parking area shall have less of a visual impact than at street level.

B. An average of one (1) large tree, two and one-half inch (2 ½”) minimum caliper, per twenty- five feet (25’) of street frontage shall be provided.

C. An average of one (1) large evergreen tree, eight feet (8’) minimum height, per fifty feet (50’) of street frontage shall be provided.

D. Shrubs at the rate of one (1) eighteen inch (18”) minimum height per two linear feet (2’) of street frontage shall be provided. The shrubs shall be of a species expected to reach a minimum height of thirty inches (30”) and a minimum spread of thirty inches (30”) within five (5) years of planting. At least seventy-five percent (75%) of shrubbery in this area must be evergreen.

1. When a proposed parking area will be substantially below grade and shrubbery will not be visible from the street, the Administrator may reduce this requirement.

E. A minimum three foot (3’) opaque decorative brick/rock wall not to exceed six feet (6’) in height with landscape plantings along the street side or an earthen berm at least three feet (3’) in height with landscape plantings incorporated into the design of the berm or a combination of both must be provided along any street frontage. Semi-opaque walls and variations in wall material may be approved by the Community Appearance Commission.

F. The height of any berm shall be undulating and the base shall be curving in nature.

G. A parking area that is located above or below the adjacent street level must design the plant material in the street yard in such a way as to maximize screening from the street.

31.09.05 In the B1 Central Business District, when a surface parking lot is a principal land use or a component of a combination use the following provisions shall apply:

A. The minimum street yard shall be ten feet (10') measured perpendicular from the street right-of-way.

B. An average of one (1) large tree, two and one-half inch (2 ½") minimum caliper, per twenty- five feet (25') of street frontage shall be provided.

C. An average of one (1) large evergreen tree, eight feet (8') minimum height, per fifty feet (50') of street frontage shall be provided.

D. Shrubs at the rate of one (1) eighteen inch (18") minimum height per three linear feet (3 lf) of street frontage shall be provided. The shrubs shall be of a species expected to reach a minimum height of thirty inches (30") and a minimum spread of thirty inches (30") within five (5) years of planting. At least seventy-five percent (75%) of shrubbery in this area must be evergreen.

1. When a proposed parking area will be substantially below grade and shrubbery will not be visible from the street, the Administrator may reduce this requirement.

E. A minimum three foot (3') opaque decorative red brick/native rock wall not to exceed six feet (6') in height with landscape plantings along the street side shall be provided. Semi-opaque walls and variations in wall material may be approved by the Community Appearance Commission.

F. A parking area that is located above or below the adjacent street level must design the plant material in the street yard in such a way as to maximize screening from the street.

31.10 Vehicular Surface Area

31.10.01 The purpose of this Section is to provide visual relief from large expanses of pavement with the introduction of landscape plantings. Trees and shrubs are required in and around parking lots with more than six (6) spaces to provide attractive views from roads and adjacent properties, provide shade to reduce heat generated by impervious surfaces, reduce glare from parking lots, and to help filter exhaust from vehicles.

31.10.02 Plant beds shall be evenly distributed throughout the vehicular surface areas for maximum shade. No portion of the vehicular surface area shall be further than sixty feet (60') from the trunk of a large deciduous tree, except for areas that cannot reasonably be landscaped in the interior as determined by the Administrator, including, but not limited to, truck loading and unloading spaces and vehicle storage areas.

31.10.03 Plantings which shall be used to meet these requirements shall be located within the vehicular surface area or in plant beds directly adjacent to the surface areas. Trees along the adjacent street or yard areas and a maximum of ten feet (10') from the vehicular surface area may be used to meet this requirement.

A. Plant bed islands within the vehicular surface area shall be a minimum ten feet (10') in width to allow for adequate root aeration and expansion.

B. Plant bed islands shall provide a minimum 250 square feet of contiguous growing area for each tree.

C. Planting areas and islands shall be protected by barriers including but not limited to curbs, bollards, wheel stops, walls or fences.

D. Plantings shall be arranged so as not to interfere with driver vision, vehicle circulation, or pedestrian circulation.

31.10.04 Shrubs shall be planted at the rate of one (1) eighteen inch (18") minimum height evergreen or deciduous shrub per every 250 square feet of vehicular surface area. Shrubs to meet this requirement must be located within fifteen feet (15') of the paved area. Additionally, shrubs shall be located to facilitate safe sight distances within parking areas, and to protect them from overhangs of motor vehicles.

A. Minimum curb radii of three feet (3') are required on the corners of all planting islands and medians to allow for free movement of motor vehicles around planting materials. All islands shall have raised edging around them to further protect plant material from being run over by motor vehicles.

B. Shrubs shall not be planted within six feet (6') of a trunk of a new tree, nor within the drip line of a protected, existing tree.

31.10.05 Parking areas shall be separated from the exterior wall of a structure by landscaped planting areas at least four feet (4') in width. Planting areas may be omitted where necessary to accommodate pedestrian entrance ways. Alternative planting areas meeting the purpose and intent of this Section may be approved by the Administrator.

31.11 Flexibility in Administration Required

31.11.01 The requirements of this Article are established by the Council as standards that presumptively result in a better overall appearance of the built environment and protect the natural resources of the community. The Council recognizes that due to the particular nature of a tract, the nature of the proposal, or other factors, that the objectives of this Article may be achieved even though the standards are not adhered to with mathematical precision. Therefore, the Administrator is authorized to permit deviations from these standards when both of the following conditions are met:

A. The objectives underlying these standards can be met without strict adherence to them.

B. Because peculiarities in the applicant's tract of land or the facilities proposed would make it unreasonable to require strict adherence to these standards.

31.11.02 Whenever the permit-issuing authority authorizes any deviation from the standards, the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation.

31.12 Compliance and Maintenance

31.12.01 Certificate of Compliance

A. Landscaping must be installed according to the approved site plan and inspected prior to receiving a certificate of compliance. All plant material shall meet or exceed size and shape relationships specified in the latest edition of the American Standard for Nursery Stock published by the American Association of Nurserymen. Plant material must be installed by a landscape contractor licensed to practice in the State of North Carolina. All sizes specified refer to size at time of planting. Vegetation shall be planted to ensure the best chance of survival and to reduce the potential expense of replacing damaged plant material.

1. Caliper of the trunk of all new planted trees shall be taken six inches (6") above ground up to and including four inch (4") caliper, and twelve inches (12") above the ground for larger sizes. Seldom are tree trunks perfectly round. Caliper measurements may be taken with "pincer" type caliper, or diameter tape.

31.12.02 Request for Extension of Compliance

A. It is recognized that land development occurs continuously and that if the season or weather conditions prohibit planting the materials, the applicant may file a written request for extension of compliance with landscaping requirements with the Administrator, which states the reasons why the request is being made. If the Administrator finds that there are unfavorable conditions for planting, an extension of compliance with landscaping requirements may be allowed. Along with the letter the applicant must provide a performance guarantee (such as a performance bond, or irrevocable letter of credit), in an amount equal to one hundred and fifty percent (150%) of the official signed landscape contract for installing the required landscaping to guarantee the completion of the required planting.

1. In addition, this letter shall acknowledge that the applicant for the Building Permit is aware of all landscaping and screening requirements, and will comply with those requirements within 90 days, or discontinue use of the property.

2. If the initial letter of request for extension of compliance with landscaping requirements has expired and conditions are still deemed unsuitable for planting, the applicant may request one additional extension of up to ninety (90) days. Failure to comply with the provisions of this Section within the time noted in the

letter of request for the extension of compliance with landscaping requirements shall be deemed a violation of this Ordinance.

3. The applicant shall also acknowledge that while a Conditional Certificate of Compliance may be issued, no final Certificate of Compliance will be issued while there is an active (pending) letter of request for extension of compliance with landscaping requirements. Violation of these provisions shall constitute an illegal occupancy of the principal use.

31.12.03 Compliance of Maintenance

A. The owners of the property and their agents, heirs, or assigns shall be responsible for the installation, preservation, and maintenance of all planting and physical features required under this Article. The disturbance of any landscaped area or vegetation installed pursuant to the Article shall constitute a violation of the site plan or subdivision plan. Any vegetation that is dead, substandard, unhealthy, of poor structural quality, or missing, shall be removed and replaced in conformance with the standards of this Ordinance and to the approved site plan or subdivision plan.

1. Should significant amounts of landscaping or physical elements used to meet requirements be lost due to an unusual weather occurrence or natural catastrophe, the owner of the property shall submit a plan detailing his/her intent in replacing lost material. Replacement planting may occur within a phased basis as approved by the Administrator. The owner shall have one (1) year or one (1) growing season, whichever is sooner, to replace or replant.

31.12.04 Prohibited Pruning

A. All plant materials required by this Article shall be allowed to reach their mature size and shall be maintained at their mature size. Any trimming or pruning must be conducted in strict accordance with the current edition of “Tree, Shrub, and other Woody Plant Maintenance – Standard Practices” of the American National Standard for Tree Care Operations (ANSI 300). Required plantings shall not be cut or excessively pruned or otherwise damaged so that their natural form is impaired. Improper pruning includes the removal of the central leader, removal of more than twenty-five percent (25%) of the foliage within an annual growing season, removal of twenty five percent (25%) of the foliage of a branch or limb when it is cut back to a lateral branch, and cutting a branch back to a lateral not large enough to assume apical dominance.

1. A violation of this Subsection shall subject the violator to a civil penalty as set forth in Section 12.07 for any improperly pruned, damaged, or excessively trimmed tree. In addition to this civil penalty, if more than fifty percent (50%) of the crown of a tree is removed within a continuous five-year period, the owner of the property, where a violation has occurred, shall replace each improperly pruned, damaged, or excessively trimmed tree with the appropriate replacement rate in accordance with Subsection 31.13.02.

2. Any replacement tree shall be planted in a planting area of at least 250 square feet of contiguous growing area for each and shall have a minimum dimension of seven feet (7'). If the property whereon the violation has occurred fails to contain sufficient land area to replant the required replacement trees and replacement trees cannot be planted on adjoining public street right-of-ways, then in lieu of such replacement trees, a fee equal to $100 per caliper inch of 2 ½" replacement trees shall be paid to the Town. The Town's Administrator may require crown restoration and/or crown reduction in accordance with the current edition of "Tree, Shrub, and other Woody Plant Maintenance – Standard Practices" of the American National Standard for Tree Care Operations (ANSI 300) for any improperly pruned, damaged, or excessively trimmed tree. All such corrective pruning shall be done under the supervision of a Certified Horticulturist, Arborist or Forester, Landscape Architect, North Carolina Landscape Contractor, or North Carolina Certified Plant Professional and approved by the Administrator.

31.13 Preservation of Existing Trees and Vegetation

31.13.01 Preserving trees can improve the aesthetic quality of the site and improve property values, provide environmental benefits, mitigate the impacts of development on the community, and help minimize opposition to the proposed development. It is recommended that groups of trees be preserved, as well as individual trees.

31.13.02 Existing healthy preserved trees and shrubs may be credited towards required buffer trees, street trees, and parking lot trees according to the following:

A. Preserved trees may be credited at the rate of:

1. 2"- 6" caliper tree = 1 tree
2. 7" – 12" caliper tree = 2 trees
3. 13" – 18" caliper tree = 3 trees
4. 19" – 24" caliper tree = 4 trees
5. 25" + caliper tree = 5 trees

Note: All replacement trees are required to be a minimum two and one-half inch (2 ½") caliper with a height of twelve to fourteen feet (12'- 14').

31.13.03 In order to receive credit, preserved vegetation must be certified in good health and condition by a Certified Horticulturist, Arborist or Forester, Landscape Architect, North Carolina Landscape Contractor, or N. C. Certified Plant Professional. Trees designated to be preserved must be indicated on the Landscape and Grading Plans. Protective barriers must be shown on the Landscape and Grading Plans in accordance with the requirements of Subsection 31.13.10. If a preserved tree dies after completion of the project, it must be replaced with the total number of trees which were credited to the existing tree.

31.13.04 Every development shall retain all existing healthy Historic trees with drip lines outside the building footprint except new subdivisions. New subdivisions shall refer to Section 31.08. An applicant will be required to modify his/her design in order to preserve healthy

Historic trees, provided the redesign can be accommodated without reducing the intensity of development on the site.

31.13.05 It shall be the responsibility of all applicants that submit site plans for new construction to submit a tree survey of the site proposed for development except for new subdivisions. New subdivisions shall submit a tree survey in accordance with Subsection 31.08.02. The tree survey shall be drawn to engineers scale and accurately designate the species, location and diameter of all trees eight inches (8") in diameter or greater on the site, and all trees proposed for credit as provided in Subsection 31.13.02.

31.13.06 If a property owner contends a tree is or is not healthy and the Administrator is in disagreement with such claim, the property owner shall submit an evaluation of the tree's health, performed by an individual who meets the requirements established in Subsection 31.13.03. If such evaluation determines the tree is not in good health or will not remain healthy under new conditions proposed for the site, the Administrator shall permit the removal of the tree(s).

31.13.07 Every development shall retain all existing healthy Significant trees with drip lines outside the building and paving area footprint to the greatest extent possible. An applicant may be required to modify his/her design in order to preserve healthy Significant trees, provided the redesign can be accommodated without reducing the intensity of development on the site.

31.13.08 The permit issuing authority may approve reductions in the requirements for the number of parking spaces or loading area requirements in order to facilitate preservation of Historic and Significant trees.

31.13.09 The standard measurement for existing trees to be preserved shall be the Diameter-at-breast-height (Dbh) measured in inches at a height of four and one-half feet (4 ½') above ground. If a tree splits into multiple trunks below four and one-half feet (4 ½'), then each trunk is measured as a separate tree. A tree which splits into multiple trunks above four and one-half feet (4 ½') is measured as a single tree at four and one-half feet (4 ½').

31.13.10 Protection of Existing Vegetation

A. No grading or other land disturbing activity can occur on a site with existing trees which are designated to be preserved in order to meet the landscaping requirements until protective barriers are installed by the applicant and approved by the Administrator.

B. For purposes of this Article, the Tree Protection Area is defined as that area within a circle drawn with the tree's trunk as the center and a radius defined by the tree's drip line (which is the perimeter formed by the points farthest away from the trunk of a tree where precipitation falling from the branches of that tree lands on the ground). No storage of materials, dumping of waste materials, fill or parking of equipment shall be allowed within this protected area, either during construction or after completion.

No structures shall be permitted within the protected area unless approved by the Administrator.

C. A protection fence constructed of a high visible material resistant to degradation by sun, wind and moisture for the duration of the construction, shall be used.

D. If a violation of Section 31.13 occurs and as a result protected trees or shrubs die after a certificate of occupancy is issued for the development, then the owner of the property and their agents, heirs, or assigns shall be required to replace the tree using the credits in Subsection 31.13.03. Such replacement must take place within thirty (30) days after death and this condition shall be a continuing condition of the validity of the permit.

E. Where tree-protection areas are damaged during the development of the site and trees or shrubs which are designated to be preserved are killed or removed, the permit recipient shall be penalized as follows:

1. A fine of one hundred ($100.00) dollars per each inch in diameter of the damaged tree and fifty ($50.00) dollars per each shrub (For example, the penalty for damaging a six inch(6”) caliper tree shall be $600.00), and
2. Replacement vegetation shall be provided in accordance with Subsection 31.13.02.

Article 32 RESERVED

Article 33 RESERVED

TITLE VII DEFINITIONS

Article 34 DEFINITIONS

34.01 Definitions of Basic Terms

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this Article shall have the meaning indicated when used in this Ordinance.

Abandoned Sign
Sign or parts of signs which advertise or pertain to a business, product, service, commodity, event, activity, or purpose which no longer exists, is not maintained or that has not been in use for ninety (90) days or more. Signs which are associated with seasonal business such as ski shops, Horn in the West, etc. shall not be considered abandoned or obsolete provided there is clear intent to continue in the coming season.

ABC Store
A retail store licensed by the North Carolina Alcoholic Beverage Commission.

Accelerated Erosion
Any increase over the rate of natural erosion as a result of land-disturbing activities.

Accent Color
A single paint color which is used on a building, in the least proportion of all colors used, not to exceed 5% of the façade area.

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

Accessory Dwelling Unit
A subordinate dwelling unit associated and located on the same lot as a single family dwelling.

Accessory Equipment
All equipment serving a wireless facility. This includes but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other similar structures.

Accessory Structure (Appurtenant Structure) (as applied in Article 30 Flood Damage Prevention)
A structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

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

Addition (to an existing building) (as applied in Article 30 Flood Damage Prevention)
An extension or increase in the floor area or height of a building or structure.

Adequate Erosion Control Measure, Structure or Device
Control of the soil material within the land area under responsible control of the persons conducting the land-disturbing activity.

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

Adult Arcade
Any place to which the public is permitted or invited wherein coin-operated or token-operated or electronically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to person in booths or viewing rooms where the images so displayed depict or describe specified sexual activities and/or specified anatomical areas.

Adult Establishment
Includes adult arcades, adult bookstores or adult video stores, adult cabarets, adult massage parlors, adult motels, adult motion picture theaters, adult theaters, nude model studios, adult live entertainment or any combination of these uses or any use defined in N.C. G.S. Article 26A Adult Establishments.

Adult Bookstore or Adult Video Store
A bookstore or video store:

A. Which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas; or

B. Having a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, other photographic, electronic, magnetic, digital or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

Adult Daycare, Small

A program or arrangement where up to two adolescents, or disabled or older adults, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption. This type of Adult Daycare shall be operated by the owner of the home.

Adult Daycare, Large

A program or arrangement where up to four adolescents, or disable or older adults, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption. This type of Adult Daycare shall be operated by the owner of the home.

Adult Daycare Center

A program or arrangement where five or more adolescents, disabled or older adults, who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four hours but less than 24 hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption.

Adult Live Entertainment

A establishment or business where any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas.

Adult Massage Parlor

A commercial establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment or manipulation of the human body is administered unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or similar professional person licensed by the state. This definition does shall not apply to any bona fide therapeutic massage service provided by a licensed medical professional or other person certified by a state or nationally recognized organization, nor shall this definition apply to any private or public fitness center or nonprofit community recreational fitness and service organization, either of which provides massage therapy as a service incidental to the operation of a fitness center.

Adult Motel or Adult Hotel

A hotel, motel, or similar commercial establishment that:

- **A.** Offers accommodations to the public, for any form of consideration, and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe specified sexual activities and/or specified anatomical areas as one of its principal business purposes; or
- **B.** Offers a sleeping room for rent for a period of time that is less than 10 hours; or

C. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours**.**

Adult Motion Picture Theater

A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or related to specified sexual activities or specified anatomical areas for observation by patron therein.

Adult Theater

A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits, or displays, as one of its principal business purposes, persons who appear in a state of nudity or semi-nudity, or live performances that expose or depict specified anatomical areas and/or specified sexual activities.

Affordable Owner-Occupied Dwelling Unit

An affordable owner-occupied dwelling unit is a dwelling unit, as that term is defined herein, which has been sold or will be offered for sale for a gross price at which the monthly gross principal and interest payment, in a mortgage financing 90% of the purchase price, amortized over a period of thirty years and calculated with interest at the legal rate, is no greater than twenty-five percent (25%) of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and, if sold, the purchaser of which is a family in need of housing protection.

Affordable Owner-Occupied Housing Development

An affordable owner-occupied housing development is one in which fifty percent (50%) or more of the included dwelling units are, or upon completion of the development, will be, affordable owner-occupied dwelling units, as that phrase is defined herein.

Affordable Rental Dwelling Unit

An affordable rental dwelling unit is a dwelling unit, as that term is defined herein, for which the monthly gross rental payment is not greater than twenty-five percent (25%) of the monthly Area Median Income for a family of four, as established annually by the United States Department of Housing and Urban Development, and which is occupied by a family in need of housing protection.

Affordable Rental Housing Project

An affordable rental housing project is one in which fifty percent (50%) or more of the included dwelling units are, or upon completion of the project, will be, affordable rental dwelling units, as that phrase is defined herein.

Agricultural Sign
A temporary sign posted to direct the public to an agricultural exposition, festival or event, as those terms are described, when such exposition, festival or event is taking place within the corporate or planning limits of the Town, or within Watauga County. An agricultural exposition, festival or event is an event which involves at least ten separate participants involved in the cultivation of land, who for a period of time not exceeding six weeks per year, provide tours and/or on-site sales or samples of agricultural products resulting from that cultivation to area tourists.

Agriculture Operation Including Livestock
The use of land for the keeping, grazing, feeding, or breeding of livestock, poultry, or bees.

Agriculture Operation Excluding Livestock
The use of land for the production of cash grains, field crops, vegetables, fruit and nuts, and for horticulture and floriculture.

Airport/Landing Strip
Any development for the landing or take-off of aircraft, or any supporting operations, such as maintenance, loading and unloading, storage, fueling or terminal facilities.

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

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

Amusement or Water Parks and Fairgrounds
A commercially operated enterprise that offers rides, games, exhibitions and other forms of entertainment.

Animal Sanctuary
An establishment where animals are brought to live and be protected for the rest of their lives.

Annuals
Flowering plants, used to provide seasonal color and interest. Root stock dies in winter, therefore annuals need replanting each season. Often referred to as bedding plants.

Antenna
Any equipment or device designed to transmit and/or receive telecommunication signals.

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

Architecturally Integrated Subdivision
A subdivision in which approval is obtained not only for the division of land into lots but also for a configuration of principal buildings to be located on such lots. The plans for an architecturally integrated subdivision shall show the dimensions, height, and location of all such buildings to the extent necessary to comply with the purpose and intent of architecturally integrated subdivisions as set forth in Section 16.11.

Area of Special Flood Hazard
See "Special Flood Hazard Area (SFHA)" definition.

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

Artificial Obstruction
Any obstruction, other than a natural obstruction, that is capable of reducing the flood carrying capacity of a stream or may accumulate debris and thereby reduce the flood carrying capacity of a stream.

Attached Sign
A sign which is mounted flush to a building wall.

Automated Teller Machine (ATM)
A type of banking and financial services with automated or self-service banking features with no staff or personnel provided.

Automated Teller Machine (ATM), Freestanding
An automated teller machine which may not be on the same lot as the financial institution with which such machine is associated. The purpose of this definition is to distinguish between teller machines operated as accessory uses to banks located in principal buildings where customers can choose to do their banking either inside the building or at the teller machine, and teller machines that are totally separate from bank buildings and therefore generate additional traffic.

Awning
A shelter projecting from and supported by the exterior wall of a building constructed of non rigid materials on a supporting framework.

Banner
A sign made of fabric or any non-rigid material with no enclosing framework.

Bar
An establishment which primarily prepares and serves alcoholic beverages for immediate consumption. These establishments may also provide limited food and entertainment (primarily music) services. Excluded from this definition are microbreweries, brewpubs, breweries/distilleries, and all wineries.

Base Flood
The flood having a one percent (1%) chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE)
A determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard", establishes the "Regulatory Flood Protection Elevation".

Basement (as applied in Article 30 Flood Damage Prevention)
Any area of the building having its floor subgrade (below ground level) on all sides.

Bed and Breakfast, Category 1
A single –family dwelling with one to three guest rooms (enclosed within one structure) where overnight accommodations and a morning meal are provided daily or weekly for compensation.

Bed and Breakfast, Category 2
A dwelling with more than three guest rooms within one or more structures where overnight accommodations and meals are provided daily or weekly for compensation.

Bees
Flying insects kept for the production of honey or beeswax.

Bench Sign
A sign located on the surface of a bench. The size of the bench is limited to seventy inches (70") in length and thirty-six inches (36") in height.

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

Billboard
A sign identifying advertising and/or directing the public to a business, merchandise, service, entertainment or product which is located at a place other than the property on which such sign is located. These signs are also known as off-premise outdoor advertising signs.

Boarding House
A dwelling unit where three (3) or more rooms (not to exceed nine(9)) are provided for lodging for definite periods exceeding seven days. Meals may or may not be provided, but there is only one common kitchen facility and no meals are provided to outside guests.

Boarding School
A school at which some or all of the pupils receive board and lodging during the school term.

Boat or Marine Craft Sales or Service
The storage, display, sale, lease, rental or repair of new or used boats, personal watercraft or new or used outboard motors, and boat trailer.

Borrow
Fill material which is required for onsite construction and is obtained from other locations.

Brewery/Distillery
A manufacturing operation engaged in the production of malt and distilled beverages, which has all operations contained within a fully enclosed building, and is not classified in these definitions as a microbrewery or a brewpub.

Brewery/Distillery, Other
A manufacturing operation engaged in the production of malt and distilled beverages, and is not classified in these definitions as a brewery/distillery, microbrewery or a brewpub.

Brewpub
A restaurant which includes a manufacturing operation engaged in the production of malt, distilled beverages, and wine, with an annual production less than 15,000 US beer barrels (1,800,000 L); which has all operations contained within a fully enclosed building and sells 50% or more of their production on site.

Buffer Zone
The strip of land adjacent to a lake or natural watercourse, the width of which is measured from the edge of the water to the nearest edge of the disturbed area, with the twenty-five percent (25%) of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone twenty-five feet (25’) wide. Buffer zones within designated Water Supply Watersheds shall have an undisturbed buffer zone thirty feet (30’) wide.

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

Building Footprint
The exterior dimensions of the largest floor of a building(s) excluding porches which are fully open on three (3) sides.

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

Business or Professional Office
An establishment where business is conducted that does not primarily involve the sale or transfer of goods by the business to the customer at the location. This includes, but is not limited to, general business offices, insurance offices, law offices and real estate sales or management offices.

Caliper
Standard trunk diameter measurement for nursery grown stock taken six inches (6”) above the ground up to and including four inch (4”) caliper size, and twelve inches (12”) above the ground for larger sizes.

Campground
Any site or tract of land upon which campsites are located, established or maintained for occupancy by the general public as temporary living quarters for recreation, travel, or vacation purposes.

Canopy Sign
Sign that is part of, or attached to, an awning, canopy or other fabric, plastic or structural protective cover over a door, window, entrance or outdoor service area.

Car Wash
A commercial establishment that washes, cleans, and/or waxes automobiles or other motor vehicles, whether or not in conjunction with other goods or services provided to customers.

Caretaker’s Residence
A dwelling unit on the site of a non-residential use and occupied by a guard or the person who oversees the operation of the non-residential use.

Central Leader
Primary or terminal shoot, i.e. the trunk of a tree.

Cemetery
A place used or to be used and dedicated or designated for one or more of the following purposes: a burial park, for earth interment, a mausoleum or a columbarium for human remains.

Certificate of Completion
A document issued by the Administrator, following issuance of certificates of compliance if necessary, certifying compliance of a structure other than a building with all applicable requirements of the UDO and other relevant State and local laws, which authorizes use of the structure.

Certificate of Compliance
A document issued by the Building Inspector certifying compliance with applicable building, mechanical, plumbing, electrical, fire protection or gas codes.

Certificate of Occupancy
A document issued by the Administrator, following issuance of certificates of compliance if necessary, certifying compliance of a building with all applicable requirements of the UDO and other relevant State and local laws, the sole document which authorizes occupancy.

Certificate of Zoning Compliance
A document issued by the Administrator, where neither a Certificate of Completion or Certificate of Occupancy is needed, certifying compliance with all applicable requirements of the UDO and other relevant State and local laws, which authorizes a use.

Changeable Copy Sign
Sign on which copy changes through mechanical, electronic, digital or manual means and reader boards with changeable letters.

Chemical Storage Facility
A building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Child Daycare, Small
A program or arrangement where no more than two (2) children, who are no more than sixteen (16), and who do not reside where the care is provided, receive care on a regular basis of at least once per week for no more than twelve (12) hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption. This type of Child Daycare shall be operated by the owner of the home.

Child Daycare, Large
A program or arrangement where at least three and up to eight (8) children, who are no more than sixteen (16), and who do not reside where the care is provided, receive care on a regular basis of at least once per week for no more than twelve (12) hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption. This type of Child Daycare shall be operated by the owner of the home.

Child Daycare Center
A program or arrangement where over eight children, whom are no more than sixteen (16) years old, and who do not reside where the care is provided, receive care on a regular basis of at least once per week for more than four (4) hours but less than twenty-four (24) hours per day from persons other than their guardians or full-time custodians, or from persons not related to them by birth, marriage, or adoption.

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

Club/Lodge, Category 1
A building used for recurring non-profit social, literary, political, educational, fraternal, or charitable purposes with seating capacity for 100 or less, with all regular activities conducted within fully enclosed building(s). May include other associated uses such as occasional outdoor activities and which does not serve or consume alcoholic beverages on its premises.

Club/Lodge, Category 2
A building used for recurring non-profit social, literary, political, educational, fraternal, or charitable purposes with seating capacity between 100 and 500 with the majority of its regular activities conducted within fully enclosed building(s). May include other associated uses such as occasional outdoor activities and may serve or consume alcoholic beverages on its premises.

Club/Lodge, Category 3
A building used for recurring non-profit social, literary, political, educational, fraternal, or charitable purposes with seating capacity greater than 500 or activities and uses not permitted for Club/Lodge, Categories 1 or 2.

Coliseum
An arena or stadium with a seating capacity exceeding 5,000.

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

College
Institution of higher learning that provides education to undergraduates and awards bachelors and sometimes masters degrees.

Collocation
The installation of new wireless facilities on previously-approved structures, including but not limited to towers, buildings, utility poles and water tanks.

Combination Use
Two or more principal uses in or proposed for a site specific development plan.

Community College
An educational institution dedicated primarily to the educational needs of the area which it serves, and may offer freshmen and sophomore courses for transfer credit to a senior college or university, organized credit curricula for the training of technicians, and courses in general adult education.

Community Event Signs
An annual temporary sign, other than a commercial sign, posted to direct patrons to community events for public agencies, schools, churches, civic-fraternal organizations or similar non-commercial organizations, or an annual temporary sign posted to direct patrons to a commercial event, when that event, as determined by the Boone Town Council, provides a significant economic benefit to the Town as a whole, is open to all citizenry of the Town of Boone and its planning jurisdiction, portrays the Town of Boone in a positive light, and which has received the written endorsement of a non-profit group whose mission includes promoting the economic vitality of Boone such as, but not limited to, the Downtown Business Development Association, the Boone Chamber of Commerce, or the High Country Host.

Confined Animal Feed Operation (CAFO)
An establishment primarily engaged in the breeding, and/or raising of livestock in confinement at a high stocking density. The main products of which may include meat, milk and eggs.

Construction Sign
Sign identifying an architect, engineer, contractor, subcontractor, financial institution, material supplier, etc., participating in construction on the property where the sign is located.

Cooperative Winery
A manufacturing operation engaged in the production of wine and wine-like beverages, which has all operations contained within a fully enclosed building and is independent of a vineyard.

Council
The governing body of the Town of Boone, consisting of a mayor and five (5) Council members, as established in the Charter of the Town of Boone.

Critical Area
The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either

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

Cul-de-sac
A street that terminates in a vehicular turnaround.

Cultural Facility
A building owned or operated by a government entity in which objects of interest or performances in the fine arts, humanities, or sciences are displayed, preserved or presented for exhibition or education.

Custom Slaughterhouse
These facilities slaughter and /or process Custom Exempt products: meat, poultry and wild game (deer and other animals hunted for food) for private individuals only. All products are marked "NOT FOR SALE" and identified by the owner's name. These facilities are inspected for sanitation and proper labeling of product. The meat and poultry products are not inspected for disease or quality and cannot enter commerce. All products must be returned to the original owner for his/her personal use and cannot be sold.

Cut
The exposed wood area that remains after a branch has been removed.

Diameter-at-breast-height (Dbh)
Diameter-at-breast-height is a standard measurement of existing tree size, and is a tree trunk measured in inches at a height of four and one-half feet (4 ½') above the ground.

Deciduous Plant
Those plants that annually lose their leaves.

Deciduous Tree
Small to large tree, from a height of twenty feet (20') to over forty feet (40') at maturity, planted for aesthetic purposes such as canopy of shade, interesting bark, or fall foliage.

Decision (by Administrator)
Any final and binding order, requirement, determination by the Administrator or other action which is subject to appeal.

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

Directional Sign
A sign giving directions, instructions, or facility information. The sign(s) may contain the name or logo of an establishment, but no advertising copy. Examples include "parking", "exit", "enter" or "parking-control warning" signs.
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Directory Sign
A sign listing the names of more than one business, activity or professional office conducted within a building, group of buildings or commercial center.

Disposal
As defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Double-Faced Sign
A sign with two copy faces.

Dormant
A condition of non-active plant growth. Deciduous trees and shrubs are considered to be dormant from the time their leaves fall until new foliage begins to reappear.

Drip Line
A vertical line, extending from the outermost edge of the tree canopy or shrub branches, to the ground.

Drive-Through
The portion of a business (such as a bank or restaurant) that is designed so that customers can be served while remaining in their vehicles.

Drive-Through Window Sign
An attached or freestanding sign listing choices and prices. The sign also allows communication between the consumer and business.

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

Duplex
A building, not including a manufactured home, that is developed with space on all sides, containing, intended or used solely for two (2) dwelling units that share a common wall or ceiling/floor and where each dwelling unit has separate access from the outside; not attached to any non-accessory building or dwelling unit; and not on the same lot as any other dwelling unit; unless another dwelling unit is explicitly authorized by this Ordinance.

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

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

Electronic and Internet Gaming Use
A use, whether principal or accessory, where person(s) utilize electronic machines, including but not limited to computers or gaming terminals, to conduct or participate in games of chance, including sweepstakes and gambling activities not prohibited under N.C. Gen. Stat. Chapter 14, Article 37, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds, including but not limited to Internet cafes, Internet sweepstakes, electronic gaming machines/operations or cybercafés, and excluding a business solely participating in a lottery approved by the State of North Carolina.

Element of a building
An exterior wall, roof, or site wall which is manmade and constructed.

Elementary School
A school that includes first through eighth grades and may have a kindergarten or early childhood program.

Elevated Building (as applied in Article 30 Flood Damage Prevention)
A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Response Communication Antenna
An interoperable communication system as identified by the North Carolina Department of Public Safety (such as VIPER).

Energy Dissipater
A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

Equipment Sales and Service
The storage, display, sale, lease, rental or repair of vehicles or other apparatus commonly used in commercial, farming, industrial or construction enterprises, including but not limited to trucks, tractors, trailers, bulldozers, cranes, backhoes, rollers, lifts and loaders.

Erosion Control
The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

Event Venue, Category 1
A facility for meetings and gatherings, such as reunions, weddings, conventions, anniversaries, and other similar ceremonies take place within fully enclosed buildings.

Event Venue, Category 2
A facility providing outdoor space for meetings and gatherings, such as reunions, weddings, conventions, anniversaries, and other similar ceremonies which take place between 6 a.m. and 10 p.m.

Event Venue, Category 3
A facility providing outdoor space for meetings and gatherings, such as reunions, weddings, conventions, anniversaries, and other similar ceremonies, in which any portion takes place between 10 p.m. and 6 a.m.

Evergreen Plant
Those plants that retain foliage throughout the year.

Evergreen Tree
Some medium to large evergreen tree, which, because used to screen views, must keep branches to the ground. Examples are White Pine and Carolina Hemlock.

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

Existing Manufactured Home Park or Manufactured Home Subdivision
A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was

completed before the initial effective date of the floodplain management regulations adopted by the community.

Exterior Walls
The vertical or nearly-vertical planes which form the exterior envelope of a building.

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

Extra Territorial Jurisdiction (ETJ)
The portion of the Town's planning jurisdiction that lies outside the corporate limits of the Town.

Façade
The face of a building, especially the principal or front face showing its most prominent architectural features.

Fall Zone
The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

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

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

Family Care Home
A home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident persons with disabilities.

Family Care Institution
A building with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for more than siz resident person with disabilities.

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

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

Farmer's Market Sign
A temporary sign posted to direct the public to a farmer's market when such farmer's market is taking place within the corporate or planning limits of the Town. A "farmer's market" is a one-day event which can take place from week to week, but in the aggregate no more than two days each week, which involves individual participants selling retail products, at least fifteen of whom sell products which derive from the cultivation of land, and which takes place under the sponsorship of a non-profit organization.

Field Color
A single paint color which is used most extensively in a building's visible façade.

Financial Institution
Establishments that provide retail banking services, mortgage lending, and similar financial services to individuals and businesses. This specific use includes those institutions engaged in the on-site circulation of cash money and check-cashing facilities. Financial institutions may or may not have drive-through service depending on the zoning district in which they are located.

Final Plat
The final map of all or a portion of a subdivision, showing the boundaries and location of lots, streets, easements, and any other information required in Sec. 30-4-1.3 and Sec. 30-4-15.7, presented for local government approval and subsequent recordation in the Watauga County Register of Deeds.

Flat Roof
The external covering of a building having a 2(v):12(h) slope or less.

Flood or Flooding
A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters and/or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Insurance
The insurance coverage provided under the National Flood Insurance Program.

Flood Insurance Rate Map (FIRM)
An official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Flood Insurance Study (FIS)
An examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

Flood Zone
A geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

Floodplain
Any land area susceptible to being inundated by water from any source.

Floodplain Administrator
The individual appointed by the Administrator to administer and enforce the floodplain management regulations.

Floodplain Development Permit
Any type of permit that is required in conformance with the provisions of Article 30 Flood Damage Prevention, prior to the commencement of any development activity.

Floodplain Encroachment
The advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Floodplain Management
The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not

limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodproofing
Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

Floodway
The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Floor Area
The sum of the enclosed areas on all floors of a building measured from the outside faces of the exterior walls. It includes halls, lobbies, stairways, elevator shafts, enclosed porches and balconies and any below grade floor areas used for habitation or storage. It does not include open terraces, patios, atriums, balconies, carports, garages or any floor space in an accessory building.

Forestry
The professional practice embracing the science, business, and the art of creating, conserving, and managing forests and forestlands for the sustained use and enjoyment of their resources, material, or other forest produce.

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

Freeboard
The height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation (BFE) plus the freeboard establishes the "Regulatory Flood Protection Elevation".

Freestanding Sign
A sign supported by a sign structure placed in the ground which is wholly independent of any building, fence, vehicle, or object other than the sign structure for support.

Full Cutoff Fixture
A light fixture designed so that no light is projected at or above a ninety degree (90◦) plane running through the lowest point on the fixture where the light is emitted and less than ten percent (10%) of the rated lumens are projected between ninety degrees (90◦) and eighty degrees (80◦).

Functionally Dependent Facility
A facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Funeral Establishment
Every place or premises devoted to or used in the care, arrangement and preparation for the funeral and final disposition of dead human bodies and maintained for the convenience of the public in connection with dead human bodies or as the place for carrying on the practice of funeral service.

Garden, Community
Areas of land managed and maintained by a group of individuals to grow and harvest food crops and/or non-food ornamental crops, such as flowers, for personal or group use, consumption or donation.

Garden, Residential
A planned outdoor space set aside to grow and harvest food crops and/or non-food ornamental crops, such as flowers, for personal use.

Gas Station
A facility which sells fuel and lubricants for motor vehicles, often with a retail component.

Gasoline Pump Sign
Signs which are normally associated with the sale of gasoline including the price, self-service, etc. information contained on the pump.

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

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

Government Cultural Facility
A building owned or operated by a government entity in which objects of interest or performances in the fine arts, humanities, or sciences are displayed, preserved or presented for exhibition or education of the general public.

Government Neighborhood Cultural Facility
A government cultural facility which does not exceed 5,000 square feet.

Governmental Entity
The Town and its departments, the Watauga County Board of Education, Watauga County, the State of North Carolina and its departments, and the United States of America and its departments.

Government Facility
A building, structure, or use of land, excluding the other uses specifically listed in Government Uses 5.0, operated by a governmental entity that is used to provide government services such as administration of a political subdivision of the State, or centralized operations of cultural resources, fire protection, law enforcement, planning and zoning, public utilities, or public works.

Government Sign
Any temporary or permanent sign erected and maintained by a governmental entity.

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

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

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

Ground Cover
Any natural vegetation growth or other material, usually evergreen, which renders the soil surface stable against accelerated erosion and can also be used to control pedestrian traffic.

Ground Mounted Sign/Monument Sign
A freestanding sign that is less than six feet (6') in height.

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

Half Street
A street of less than the full required right-of-way and pavement width.

Halfway House, Category 1
A facility in which not more than six (6) persons at one time temporarily reside, where each of the residents is in transition from in-patient treatment for alcoholism or drug abuse or from incarceration back into the community.

Halfway House, Category 2
A facility in which more than six (6) persons temporarily reside, where each of the residents is in transition from in-patient treatment for alcoholism or drug abuse or from incarceration back into the community.

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

Hazardous Waste Management Facility
As defined in N.C. Gen. Stat. § 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Height (of a sign)
The vertical distance measured from the highest point of the sign to the lowest point of surface grade beneath the sign.

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

Height Measurement (landscape)
Shrubs height in inches, deciduous trees caliper and height in feet, evergreen trees height in feet.

Heliport
An area designed, used, or intended for use for the landing and take-off of helicopters, and any supporting operations, such as maintenance, loading and unloading, storage, fueling or terminal facilities.

Helistop
A public or private land are or roof structure designated for the pick-up or discharge of passengers and cargo, which does not provide helicopter maintenance and repair facilities or fueling services.

High School
A school that includes grades nine (9) through twelve (12) and that offers at least the minimum high school course of study prescribed by the State Board of Education.

Highest Adjacent Grade (HAG) (as applied in Article 30 Flood Damage Prevention)
The highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

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

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

Historic Structures
Buildings or structures which are listed individually on the National Register of Historic Places, are located within a National Register Historic District and are certified as contributing to the district, are located in or contributing to a local historic district that has been certified by the National Park Service, or are listed individually by the Town of Boone's Historic Preservation Commission and certified by the Commission as meeting the criteria established for a local historic property designation.

Historic Tree
Any healthy tree with a diameter of twenty-five inches (25") or more measured Diameter-at-breast-height (Dbh).

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

Home Occupation
An accessory use conducted entirely within a dwelling and carried on by the occupants thereof, which use is incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof.

Home Occupation Sign
A sign permitted in association with a legitimate home occupation conducted on the premises of the dwelling unit occupied by the operator of the business.

Hospital
A licensed private or public institution that provides inpatient primary health services and medical or surgical care to persons suffering from illness, disease, injury, deformity, or other physical or mental conditions, and including related facilities such as laboratories, outpatient or training facilities.

Hotel
A building or a group of buildings primarily containing guest rooms accessed by an internal hallway for lodging and usually meals and other services for travelers and other paying guests. Common accessory uses are dining areas, meeting rooms, and recreational facilities. Occupancy is by transients rather than residents.

Identification Sign
A sign whose copy is limited to the name and address of a building, institution, person and/or activity or occupation being identified.

Illegal Sign
A sign which does not meet the requirements of this Ordinance.

Illuminated Sign
A sign with an artificial light source incorporated internally or externally for the purpose of illuminating the sign.

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

Impound Lot/Towing Service
A lot used for storing vehicles which have been towed.

Improper Pruning
For deciduous trees: the removal of the central leader or the shortening of branch ends. For deciduous shrubs: removal of more than a third of healthy growth. For evergreen trees and shrubs: removal of more than a third of growth. For all trees and shrubs: use of tools leaving uneven or broken cuts or wounds.

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

Indoor Theater
A completely enclosed building used for showing motion pictures or live performances.

Inflatable Sign
A sign or figure filled with air or gas to enlarge said sign or figure.

Informational Sign
A sign that informs the public of goods, facilities or services available on the premises, e.g., credit card sign or sign indicating hours of business.
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Interior Setback
The land area between the interior lot line and the closest wall of a building located on the property.

Itinerant Merchant
A person who transports an inventory of goods to a building, vacant lot, or other location in the town, other than the persons' permanent place of business, and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail.

Junkyard
Any establishment or land used, in whole or in part, for commercial or industrial storage, dismantling, and/or sale of waste paper, rags, scrap metal, motor vehicles, machinery, tires, or other junk outside of an enclosed building. This shall not include a landfill, other public utility facility, or a recycling and salvage operation.

Kennel
Any premises wherein any person, firm or organization boards, lets for hire, trains for fee, breeds, buys or sells animals.

Lake or Natural Watercourse
Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

Land Disturbing Activity
Any use of the land by any person in residential, industrial, education, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

Land Use Intensity Ratios
A technique for regulating density in the form of a fraction, expressed in decimal form, with the minimum square footage as the numerator and the gross land area of the lot as the denominator.

Landfill
A government facility for the disposal of solid waste in or on land authorized by N.C. Gen. Stat. Chapter 130A Article 9 of the North Carolina General Statutes.

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

Large Craft Brewery/Distillery
A manufacturing operation engaged in the production of malt and distilled beverages, which has all operations contained within a fully enclosed building, and is greater than 3,000 square feet but does not exceed 10,000 square feet.

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

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

Lifting or Limbing Up
The removal of lower branches for under clearance.

Little League Sign
Sponsorship signs placed at the Optimist Club field.

Livability Space
The portion of total open space including existing natural areas, lawns and other landscaped areas, walkways, paved terraces, sitting areas, outdoor recreational areas and the landscaped portion of street rights-of-way. Such space shall not include open space used for motorized vehicles.

Livestock, Large
Cattle, swine, sheep, goats, mules, llamas, horses and similar animal breeds for which the mature animal exceeds 150 pounds in weight.

Livestock, Small
Cattle, swine, sheep, goats, mules, llamas, horses and similar animal breeds for which the mature animal does not exceed 150 pounds in weight.

Living Sign
A non-illuminated sign constructed of living material such as shrubs, trees, and/or flowers.

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

Lot
A parcel of land whose boundaries have been established by a legal instrument for purposes of transfer of title.

Lot of Record
A lot, parcel, or tract which has been recorded in the Watauga County Register of Deeds' Office and which was in conformance with land development ordinances in effect at the time it was created.

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

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

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

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

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

Lowest Adjacent Grade (LAG)
The elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

Lowest Floor
The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Article 30 Flood Damage Prevention.

Machine/Welding Shop
A workshop where metals are cut, shaped, welded and worked, using machine tools, for purposes of fabrication or repair.

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

Major Variance (From Statewide Watershed Protection Rules)
A variance that results in the complete waiver of a watershed management requirement and/or the relaxation, by a factor of ten percent (10%) or more, of any watershed management requirement that takes the form of a numerical standard.

Major Mountain Ridge
A ridge with an elevation higher than 3000 feet above mean sea level and an elevation 500 feet or more above the elevation of an adjacent valley floor.

Major Subdivision
A subdivision that involves:

- **A.** The creation of eleven or more lots, regardless of whether the lots are created at one time or over an extended period of time; or
- **B.** The creation of any new streets (either public or private); or
- **C.** The creation or extension of a public water or sewer system, or
- **D.** The installation of drainage improvements through one (1) or more lots to serve one (1) or more other lots.

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

Manufactured Home "Class A"

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 (1) foot for each five (5) feet of horizontal run, and the roof is finished with a type of shingle that is commonly used in standard residential construction;

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.

Manufactured Home "Class B"

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 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". Skirting is required for "Class B" manufactured homes.

Manufactured Home "Class C"

Any mobile or manufactured home that does not meet the criteria of a Class A or Class B manufactured home.

Manufactured Home Park

A residential use in which more than one (1) **manufactured** home is located on a single lot.

Manufacturing

The assembly, fabrication, finishing or packaging of goods and materials, including the storage and processing of raw materials into other products.

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

Marquee
A sign of a theater, auditorium, fairground or museum which advertises present and/or scheduled events with the use of changeable text.

Mean Sea Level (as applied in Article 30 Flood Damage Prevention)
The National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

Medical Emergency Response
Establishments providing transportation equipped with sirens, such as ambulances, for emergency medical relief.

Medical Office, Category 1
A medical office, other than a hospital, which regularly receives or discharges patients by ambulances using sirens.

Medical Office, Category 2
A medical office including physician offices, dentists, chiropractors, psychiatric, optometrists, and other healthcare providers, and which is open to the public during 10 p.m. to 6 a.m. other than Medical Office Category 1.

Medical Office, Category 3
A medical office that provides inpatient psychiatric, or principally provides inpatient or outpatient alcohol or drug addiction care, drug treatment or other similar services other than Medical Office Categories 1, 2, and 4.

Medical Office, Category 4
A medical office to the public including physician offices, dentists, chiropractors, psychiatric, optometrists, and other healthcare providers other than Medical Office Categories 1, 2, and 3.

Microbrewery
A manufacturing operation engaged in the production of malt and distilled beverages, with an annual production less than 15,000 US beer barrels (1,800,000 L); which has all operations contained within a fully enclosed building.

Mini-Storage
A building or group of buildings, divided into separate spaces or compartments leased to individuals, organizations, or businesses on an individual basis for self-service storage of personal property.

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

Minor Subdivision
Any subdivision other than a major subdivision.

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

Monopole
A single, freestanding pole-type structure supporting one or more antennae.

Moped Sales
The storage, display, sale, lease, rental or repair of mopeds as defined by G.S. 105-164.3.

Motel
A building or a group of buildings with guest rooms having direct access to an outdoor parking area, primarily containing guest rooms for lodging and sometimes meals and other services for travelers and other paying guests. Common accessory uses are dining areas, meeting rooms, and recreational facilities. Occupancy is by transients rather than residents.

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

Multi-Family Dwelling
A building or combination of buildings on a single lot which includes three or more dwelling units.

Multi-Family Residences for the Elderly
Multi-family dwellings for which the United States Department of Housing and Urban Development has determined that the housing is specifically designed for and occupied by elderly persons under a Federal, State or local government program, or is occupied solely by persons who are sixty-two or older (62+) or it houses at least one (1) person who is fifty-five or older (55+) in at least eighty percent (80%) of the occupied units, and adheres to a policy that demonstrates intent to house persons who are fifty-five or older (55+).

Natural Erosion
The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

Natural Obstruction
Includes any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the Floodway Zone by a non-human cause.

New Construction (as applied in Article 30 Flood Damage Prevention)
Structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

Nonconforming Lot
A lawfully established lot of record that does not conform to the current dimensional requirements of the zoning district in which it is located.

Nonconforming Sign
A sign that was lawfully constructed but does not conform to current size, height, location, design, construction, or other requirements of this Ordinance.

Nonconformity
An existing lot or structure or use of an existing lot or structure that does not conform to one or more of the regulations applicable to the zoning district in which the lot or structure is located or any other requirements of this Ordinance.

Nonconforming Situation
All nonconformities other than a nonconforming use, nonconforming lot or a nonconforming sign, including a lawfully established structure that does not conform to dimensional, elevation, location, or other requirements of this Ordinance.

Nonconforming Use
A lawfully established use that is not allowed in the zoning district in which it is currently located.

Non-Encroachment Area
The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

Non-Fixed Site Event Venue
A special event, such as a carnival or circus, on a lot which does not have a dedicated facility for hosting such events.

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

Nude Model Studio
Any place where a person who appears nude or semi-nude, or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration. Nude Model Studio shall not include an educational institution for which nude modeling is a legitimate part of the curriculum of the institution; and should not be held in a structure that has any sign visible from the exterior of the structure and any other advertising that indicates a nude or semi-nude person is available for viewing.

Nursing Care Home
A dwelling maintained for the purpose of providing nursing care and medical supervision for elderly, chronically ill, infirm, or incurable persons, at a lower level than that available in a hospital to not more than six (6) persons plus resident caregivers.

Nursing Care Institution
An institutional facility, other than a Skilled Nursing Facility, maintained for the purpose of providing nursing care and medical supervision for elderly, chronically ill, infirm, or incurable persons, at a lower level than that available in a hospital to more than six (6) persons plus resident caregivers.

Occupant, Residential
Any person who, on a regular and recurrent basis, is present at a dwelling unit a substantial period of time.

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

Off-Premise Sign
A sign which does not pertain to the use of the premises on which it is located.

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

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

On-Premise Sign
A sign which pertains to the use of the premises on which it is located.

Open Air Market
Any display of goods for sale by itinerate merchants or peddlers in a fixed outdoor setting.

Open Space (using FAR)
The total gross land area not covered by buildings, including covered open areas with at least two (2) sides which are open and unobstructed fifty percent (50%) or more.

Open Space (using Building Footprint)
Space outside the building(s) footprint.

Ordinary Maintenance (as applied to Use 7.0 Telecommunication)
Ordinary maintenance ensures that wireless facilities are kept in good operating condition. Ordinary maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity.

Ornamental Grasses
Used to provide landscape interest, perhaps for screening views, or for pedestrian control. Are typically low water users.

Outdoor Dining
A portion of a restaurant which is not completely enclosed and in which food or beverages are consumed.

Outdoor Display
The display for sale of products outside of a fully enclosed structure.

Outdoor Shooting Range
An outdoor specialized facility designed for the discharge or shooting of fire arms, air rifles, air pistols, B-B guns or similar weapons.

Outdoor Storage
The storage of products outside of a fully enclosed structure.

Outdoor Theater:
An outdoor area which may be partially enclosed used for showing motion pictures or live performances.

Overlay District
A zoning district is an additional zoning requirement that is placed on a geographic area but does not change the underlying zoning.

Painted Wall Sign
A sign painted directly on any exterior building wall or door surface, exclusive of window and door glass areas.

Park and Ride Lot
A parking lot or structure established for the purpose of allowing commuters or other people to leave their vehicles and transfer to public transit or carpool for the remainder of the journey.

Parking Area Aisles
That portion of the vehicle accommodation area consisting of lanes providing access to parking spaces.

Parking-Control
Towing or the use of any mechanical device, such as a “boot” or other instrument intended to disable a vehicle or prevent a vehicle from being removed from a private parking lot or space, or the imposition of a private charge for the removal of a vehicle from a private parking lot or space, or any other non-consensual means by which a vehicle is prevented from being removed from a parking lot or space.
(20140385-08212014)

Parking-Control Warning Sign
A sign that informs the public that the parking lot or parking structure is subject to parking-control.
(20140385-08212014)

Parking Lot
An off-street, surfaced, ground level area where motor vehicles or bicycles are stored for temporary, daily, or overnight parking.

Parking Structure
A structure used for motor vehicle or bicycle parking which is partially or wholly enclosed and includes any above or below-grade decks for temporary, daily or overnight parking.

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

Passenger Terminal
Operating passenger transportation systems using a bus or other motor vehicle, including scenic and sightseeing transportation using buses or other motor vehicles.

Peddler
A person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods.

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

Perennials
Flowering plants whose root stock survives the winter. Used to provide color/textural interest, and control pedestrian traffic, seldom used for screening.

Performance Guarantee
A financial commitment to ensure successful completion of a development's required improvements. Acceptable forms may include surety bond, irrevocable letter of credit or cash as specified in the relevant Section.

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

Person with Disabilities
A person with a temporary or permanent physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)b.

Personal Service Establishment
A business that provides individual services related to personal needs directly to customers at the site of the business, or that receives goods from or returns goods to the customer that have been treated

or processed at that location or another location. This includes travel agencies, dry-cleaners, laundries, tailors, hair stylists, cosmeticians, toning or tanning salons, photocopy centers, shoe repair shops, appliance repair shops, interior design studios, and dance and martial arts studios and other similar uses. This does not include gas stations.

Phase of Grading
Defined portions (area or implementation) of grading or soil erosion and sediment control measures that are required to be done in a specific sequence as part of the Plan(s).

Pitched Roof
The external covering of a building having a slope greater than 2(v):12(h).

Planned Residential Development
A development constructed on a tract or tracts of at least five (5) acres under single ownership, planned and developed as an integral unit, and consisting of single-family detached residences combined with either two family residences or multi-family residences, or both, all developed in accordance with Section 15.12.

Planting Plan
A landscape plan showing types, numbers, sizes, and locations of plants to be planted or preserved.

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

Police Substation
A building, not greater than 2,000 square feet from which a governmental law enforcement agency operates.

Political Sign
A temporary sign used in connection with a local, state, national election or referendum.

Portable Sign
A sign mounted on a frame or chassis, designed to be easily relocated, and not meant to be permanently affixed to buildings, poles, or the ground.

Post Office
A government department or agency handling the transmission of mail and includes a retail operation open to the public.

Post Office, Distribution
A government department or agency handling the transmission of mail and does not include a retail operation open to the public.

Post-FIRM Development
Construction or other development for which the "start of construction" occurred on or after the effective date of the initial Flood Insurance Rate Map.

Poultry
Domesticated fowl kept for eggs or meat.

Pre-FIRM Development
Construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map.

Preliminary Plat
A map, prepared by a registered land surveyor, indicating the proposed layout of a subdivision showing lots, streets, water, sewer, storm drainage, and any other information required in Appendix A.

Primary Public Way
The street that adjoins the property that carries the highest volume of traffic.

Primary Height Limitation
The maximum height allowed for any structure located at the minimum setback required for such structure.

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

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

Private Landfill
A facility or use of land for the disposal of solid waste.

Private Street
A street consisting of a private easement and a privately maintained roadway.

Principally Above Ground
At a structure in which at least 51% of the actual cash value of the structure is above ground.

Produce Stand
A business establishment selling raw, unprocessed fruits, vegetables nuts, other produce in its raw or natural state, and other items which are accessory to an on-site agricultural operation.

Project Manager
A person who oversees the entire development project from start to completion and acts as the main point of contact with the Town during the project.

Projecting Sign
A sign which is attached to a building wall with the face of the sign perpendicular to the building wall.

Projecting Theater Marquee
A structure projecting from and supported by the building with independent roof and drainage provisions and which is erected over doorways as protection against weather and which also advertises present and/or scheduled events with the use of changeable text.

Pruning
The removal of dead or diseased, live but interfering, and/or weak branches.

Public Right-of-way
The land or interest therein acquired for or devoted to transportation purposes by the Town of Boone or State of North Carolina.

Publicly Visible
An element of a building which is visible from any adjacent street or residentially zoned property.

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

Real Estate/for Sale/Open House/or Lease Sign
A temporary sign advertising the real estate upon which the sign is located as being for rent, lease, open house or sale.

Recreation Facility, Category 1
A facility in which regularly scheduled recreation activities take place within completely enclosed buildings.

Recreation Facility, Category 2
A facility providing outdoor space in which regularly scheduled recreation activities take place, and which does not utilize outdoor event lighting.

Recreation Facility, Category 3
A facility providing outdoor space in which regularly scheduled recreation activities take place, and which utilizes outdoor event lighting.

Recreation Space
The portion of total open space and livability space plus enclosed floor area, which is reserved and improved for the common recreational use of residents of multi-family developments and planned residential developments.

Recreational Vehicle (RV)
A vehicle, which is Built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck and designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Recreation Vehicle Park
Any site or tract of land upon which two (2) or more recreational vehicle spaces are located, established, or maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreation, travel, or vacation purposes.

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

Recycling and Salvage
A facility, other than, a recycling drop-off station, for the collection , handling, sorting, storage, processing, compaction, purchase, and/or resale of scrap or discarded material like paper, metal, rubber, plastic, glass, or cloth. The term includes facilities for separating trash and debris from recoverable materials such as paper products, glass, and metal cans which can be returned to a condition in which they may be again be used for production.

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

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

Recycling Drop-off Station
A center or collection point with containers or facilities designed and intended for the depositing of clean, separated, and recyclable materials, and the collection of such materials for processing at another location, but itself having no mechanical facilities, for the processing of such materials.

Reference Level
The top of the lowest floor for structures within Special Flood Hazard Areas designated as any Zone beginning with "A".

Regulatory Flood Protection Elevation
The "Base Flood Elevation" plus the "Freeboard" of two feet (2'). In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least two feet (2') above the highest adjacent grade.

Religious Assembly, Category 1
A building used for recurring religious services, including worship services, religious study and similar activities, with seating capacity for 100 or less, with all regular activities within fully enclosed buildings. May include other associated uses such as a parsonage, secondary outdoor activities such as occasional outdoor worship, social gatherings, and other customary religious activities.

Religious Assembly, Category 2
A building used for recurring religious services, including worship services, religious study and similar activities, with seating capacity between 100 and 500. May include other associated uses such as a parsonage, and secondary outdoor activities including occasional outdoor worship, social gatherings, daycare, playgrounds and other customary religious activities.

Religious Assembly, Category 3
A building or land used for recurring religious services, including worship services, religious study and similar activities, with seating capacity greater than 500 or activities and uses not permitted for Religious Assembly, Categories 1 or 2.

Repeat Violator
A person liable who has been determined to have violated any provision of this Ordinance within the previous thirty-six (36) months.

Residence Hall, Category 1
A building used principally to provide rooms for sleeping accommodations for no more than ten (10) persons at an educational, public, or religious institution and located on the same lot as the institution. Common kitchen, sanitary, and social gathering rooms may also be provided.

Residence Hall, Category 2
A building used principally to provide rooms for sleeping accommodations for more than ten (10) persons at an educational, public, or religious institution and located on the same lot as the institution. Common kitchen, sanitary, and social gathering rooms may also be provided.

Residence Hall, Category 3
A building used principally to provide rooms for sleeping accommodations associated with an educational, public, or religious institution, other than ASU, CCC&TI, and other institutions of higher learning, and not located on the same lot as the institution. Common kitchen, sanitary, and social gathering rooms may also be provided.

Restaurant
An establishment which provides prepared food to patrons.

Retail Store
A commercial establishment that provides goods, products, or materials directly to the consumer. This includes clothing stores, appliance stores, bakeries, food stores, grocers, caterers, pharmacies, bookstores, florists, furniture stores, hardware stores, pet stores, toy stores, and variety stores. It does not include restaurants, personal service establishments, or gas stations.

Retirement Community, Category 1
A group of buildings on a single lot that each contain no more than two dwelling units, where the occupancy is restricted to persons who are at least 55 years of age, or married couples in which one of the persons is at least 55 years of age, in which nursing and/or medical care may be provided, as well as support services, such as common dining facilities, retail stores, and personal service establishments, which are operated by the owner of the retirement community or lessees of the owner and which are only for the use of the residents. Retirement communities are designed to meet the residents' basic needs for shelter, food, and healthcare, regardless of the level of independence of the individual resident and regardless of how these needs may change over time.

Retirement Community, Category 2
A building or group of buildings where at least one building contains more than two dwelling units, where the occupancy is restricted to persons who are at least 55 years of age, or married couples in which one of the persons is at least 55 years of age, in which nursing and/or medical care may be provided, as well as support services, such as common dining facilities, retail stores, and personal service establishments, which are operated by the owner of the retirement community or lessees of the owner and which are only for the use of the residents. Retirement communities are designed to meet the residents' basic needs for shelter, food, and healthcare, regardless of the level of independence of the individual resident and regardless of how these needs may change over time.

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

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

Riverine
Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

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

Roof Area
A single, unbroken, contiguous plane, measured perpendicular to slope.

Roof Sign
Any sign erected or constructed wholly upon and over the roof of any building and supported solely on the roof structure.

Rotating Sign
A sign which turns around on an axis.

Satellite Receiving Antenna
A dish antenna used to receive and transmit signals relayed by satellite.

Seasonal Retail Activities and Amusements
Sales, services and associated attractions such as Christmas tree lots, pumpkin patches, corn mazes and similar holiday-specific commercial activities.

Secondary Height Limitation
The absolute maximum height allowed for any structure.

Secondary Suite
An additional separate independent living area associated with a single-family dwelling typically containing its own entrance, kitchen, bathroom and living area used by family members of the occupants of the single family dwelling.

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

Sediment
The solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

Sedimentation
The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural water course.

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

Street Setback
The land area between the established street right-of-way and the closest wall of a building located on the property.

Shelter for Homeless, Category 1
A short or long term shelter for persons who lack a fixed, regular and adequate nighttime residence. Occupancy (not including non-occupant managers) is limited to 10.

Shelter for Homeless, Category 2
A short or long term shelter for persons who lack a fixed, regular and adequate nighttime residence. Occupancy (not including non-occupant managers) is greater than 10.

Shopping Center/Mall
A development containing more than one commercial use with shared parking and/or interconnecting walkways enabling patrons to walk from unit to unit.
(20140385-08212014)

Shrubs
May be evergreen or deciduous and have branches to the ground. Used as accent, focus, or if evergreen, as screening material.

Sidewalk Sign
A temporary sign placed on the sidewalk during regular business hours.

Sign
Any object, device, display, structure, or part thereof, situated outdoors, which is used solely to advertise, identify, display, direct, or visually attract attention to an object, person, institution, organization, business, product, service, event or location by any means, including but not limited to words, letters, figures, designs, symbols, fixtures, streamers, balloons, pennants, air driven devices, colors, illuminated or projected images. Signs do not include the flag or emblem of any nation, organization of nations, state, city, or any fraternal, religious or civic organizations; works of art which in no way identify a product; or scoreboards located on athletic fields.

Sign Copy
The wording and/or symbols on a sign surface in either permanent or changeable form.

Sign Face
The area of a sign on which copy is placed.

Sign Maintenance
The cleaning, painting, repair or replacement of defective parts of a sign in a manner that does not alter the basic copy, design or structure of the sign.

Significant Tree
Any healthy tree with a diameter of eight inches (8”) or more measured Diameter-at-breast-height (Dbh).

Siltation
The sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

Single-Family Dwelling
A building, not including a manufactured home, that is developed with space on all sides, containing, intended or used solely for one dwelling unit; not attached to any non-accessory building or dwelling unit; and not on the same lot as any other dwelling unit; unless another dwelling unit is explicitly authorized by this Ordinance.

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

Site Walls
Retaining walls, screen walls or other vertical or nearly- vertical planes which occur on a property, but are not part of the exterior envelope of a building.

Sketch Plan
A rough sketch map of a proposed subdivision or site, showing streets, lots, and any other information of sufficient accuracy to be used for discussion of the proposed subdivision or site.

Skilled Nursing Facility
A facility meeting the definition and licensed pursuant to §1819 of the Social Security Act, containing any number or residents.

Slaughterhouse
A facility under N.C.D.A. inspection which is inspected daily by a trained Meat & Poultry Inspector. Animals scheduled for slaughter and carcasses of slaughtered animals are inspected for disease and condemned by a veterinarian if necessary. Products from these establishments are labeled "Inspected and Passed by N.C.D.A" and bear a rhomboid shaped inspection legend. These products can be sold anywhere within the state of North Carolina.

Or

A facility which is USDA inspected and is staffed by inspectors who are state employees. They are inspected daily by a trained Meat & Poultry Inspector. Animals scheduled for slaughter and carcasses of slaughtered animals are checked for disease and condemned by a veterinarian if necessary. Meat products produced in these plants are "Inspected and Passed by USDA." Poultry Products produced in these establishments are "Inspected for Wholesomeness by USDA." They bear a round USDA inspection legend and may be shipped anywhere in the United States or exported to foreign countries.

Snipe Sign
A temporary sign or poster affixed to a tree, public utility pole, fence, etc.

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

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

Solid Waste Processing
A solid waste management facility permitted by the North Carolina Department of Environment and Natural Resources that receives municipal solid waste for processing or treatment.

Special Flood Hazard Area (SFHA)
The land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined by Article 30 Flood Damage Prevention.

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

Start of Construction (as applied in Article 30 Flood Damage Prevention)
Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory

buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Stealth Wireless Facility
Any wireless facility that is integrated as architectural feature of a structure so that the purpose of the structure for providing wireless services is not readily apparent to a casual observer.

Steep Slope
A slope of 30% or greater.

Stormwater Drainage Facilities
The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

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

Stormwater Runoff
The direct runoff of water resulting from precipitation in any form.

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

Street Frontage Width
The horizontal distance measured along a straight line connecting the points at which the street lot line abuts such street with interior lot lines and or street lot lines.

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

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

Subcollector Street
A street whose principal function is to provide access to abutting properties but is also designed to be used or is used to connect minor and local streets with collector or arterial streets. Including residences indirectly served through connecting streets, it serves or is designed to serve at least

twenty six (26) but not more than one hundred (100) dwelling units and is expected to or does handle between two hundred (200) and eight hundred (800) trips per day.

Subdivision

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

A. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the minimum standards set forth in this Ordinance.

B. The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved.

C. The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system corridors.

D. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards set forth in this Ordinance.

Substantial Damage

Damage of any origin sustained by a structure during any ten (10) year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

Substantial Improvement

Any combination of repairs, reconstruction, rehabilitation, additions, or other improvements of a structure, taking place during any ten (10) year period for which the cost equals or exceeds fifty percent (50%) of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

A. Any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or

B. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Surface Parking Area

Off-street automobile parking area which is not enclosed within a building.

Swimming Pool
Any receptacle or artificial basin of water, either above or below grade level, intended for swimming or recreational bathing have a depth of eighteen inches (18”) or greater at the deepest point. This includes hot tubs and spas.

Swine Farm
A use involving more than five swine.

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

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

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

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

Temporary Portable Storage Container
A temporary portable storage container (such as: semi-trailers or other similar portable containers) is any container designed for the storage of goods and materials and is usually transported by a commercial vehicle and is for temporary use only.

Temporary Sign
A sign or advertising display constructed of cloth, canvas, fabric, plastic, paper, plywood or other light material that is used only temporarily and is not permanently mounted.

Ten Year Storm
The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten (10) years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

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

Time and Temperature Sign
Signs which display only time and temperature in alternate light cycles.

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

Tower
A lattice-type structure, guyed or freestanding, that supports one or more antennas.

Tower Height
The vertical distance measured from the ground to the upper most point of the tower.

Town
The Town of Boone.

Townhouse
A building containing, intended or used solely for one dwelling unit on its own lot, with an individual private entrance and where three or more buildings are joined side-by-side ("a row"), with no dwelling unit located above or below another dwelling unit, and each building having exposed front and rear walls for access, light and ventilation. A Townhouse development may contain multiple rows.

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

Trade School
An institution which offers vocational and technical training in a variety of technical subjects and trades, typically resulting in a certification; it may include residential components for students and faculty.

Tree Protection Area (TPA) - A circular region measured outward from a tree trunk representing the area where roots must be maintained for the tree's survival. This TPA is measured from the tree trunk to the outermost edge of the drip line of the canopy.

Trim Color
A single paint color which is used on a building's trim, lesser in proportion to the Field Color.

Trucking Terminal
A processing facility where freight is usually loaded onto and off of transport.

Twenty-Five Year Storm
The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in twenty-five (25) years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

Uncovered
The removal of ground cover from, on or above the soil surface.

University
An educational institution for higher learning that typically includes an undergraduate college, graduate schools in various disciplines and sometimes professional schools.

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

Utility Facility
Any above-ground structures or facilities other than buildings, unless such buildings are incidental to the operation of such structures or facilities operated by a public utility as authorized by North Carolina law and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, electricity, gas oil, or electronic signals (other than use category 7.0 Telecommunication Uses). Excepted from this definition are utility lines and supporting structures such as electric power, telephone, telegraph, cable television, gas, water and sewer lines, and wires or pipes located within public right-of-way authorized by the appropriate government entity.

Utility Facility, Government
A utility facility owned or operated by a government entity other than the Town.

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

Utility Facility, Regional
All utility facilities other than neighborhood facilities.

Utility Facility, Town
Any above-ground structure , or use of land owned or operated by the Town and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, stormwater or electronic signals.

Utility Pole
A structure that is designed for and used to carry lines, cables, or wires for power, lighting, telephone, or cable television.

Vacation Rental
A single- or two-family dwelling that is rented as a whole on a daily, weekly, or monthly basis.

Variance
An authorization that a development may vary from strict compliance with one or more of the provisions of this Ordinance; provided, no change in permitted uses may be authorized by variance.

Vegetative Canopy
Trees which create a roof like layer of spreading branches.

Vehicle Accommodation Area
That portion of a lot that is used by vehicles for access, circulation, parking, and loading and unloading.

Vehicle Sales and Service
The storage, display, sale, lease, rental or repair of passenger vehicles, including but not limited to automobiles, vans, light trucks, motorcycles, mopeds and all-terrain vehicles types.

Vehicle Washing Station
An accessory car wash to a private development that is not open to the public.

Vehicular Gate
A gate or similar structure across a driveway, street or alley that may be used to block the entrance or passage of motor vehicles. This term includes all forms of gates, including automatic and manual gates and gates manned by attendants.

Velocity
The average velocity of flow through the cross-section of the main channel at the peak flow of the storm of interest. The cross-section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overbank flows are not to be included for the purpose of computing velocity of flow.

Very Steep Slope
A slope of 50% or greater.

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

Veterinary Office/Hospital
An establishment used for the care, grooming, diagnosis, and treatment of sick, ailing, infirm, or injured animals.

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

Viewshed (As applied for Use 7.0 Telecommunication)
Those lands seen from a known location forming a visual composition, with foreground, middle ground, and background areas. Foreground is the area within one (1) mile of the known location close enough to a viewer so that individual plant types, smells, colors, and forms are extremely vivid.

Vineyard
An area under cultivation with grape-bearing vines, grown mainly for winemaking, but also raisins, table grapes and non-alcoholic grape juice.

Violator
A person liable who has been determined to have violated any provision of this Ordinance.

Volume (as applied in Article 25 Community Appearance Standards)
A portion of a building which is offset by a minimum of ten feet (10') in plan or in elevation.

Warehouse
Storage of goods and materials within fully enclosed structures intended for distribution.

Waste
The surplus materials resulting from onsite construction and which is disposed of at other locations.

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

Water Surface Elevation (WSE)
The height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

Watercourse
A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

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

Winery Associated with a Vineyard
A manufacturing operation engaged in the production of wine and wine-like beverages, which has all operations contained within a fully enclosed building and is located on or adjacent to a vineyard.

Winery
A manufacturing operation engaged in the production of wine and wine-like beverages, which has all operations contained within a fully enclosed building.

Winery, Other
A winery not classified in these definitions as a “winery associated with a vineyard” or “winery”.

Wireless Facility
The accessory equipment and network components, wireless support structures, including antennas, transmitters, receivers, base stations, power supplies, cabling and associated equipment necessary to provide wireless data and telecommunication services to a discrete geographic area.

Wireless Support Structure: A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

Yard Sale
A yard sale, also known as a garage sale, rummage sale, tag sale, lawn sale, attic sale or moving sale is an informal irregularly scheduled event for the sale of used goods by private individuals on a lot containing a dwelling or dwelling unit.

Yard Sale Sign

A sign directing the public to the occasional non-business sale of secondhand household and other goods incidental to household uses.

Zoning Permit

A permit issued by the land use Administrator that authorizes the recipient to make use of property in accordance with the requirements of this Ordinance.

TITLE VIII APPENDICES

APPENDIX A APPLICATION INFORMATION

A1 General Requirements

A1.01 The presumption established by this Ordinance is that all of the information listed in this Appendix must be submitted with all applications to enable the permit issuing authority to determine whether the development, once completed as proposed, will comply with all requirements of this Ordinance.

A. However, the permit-issuing authority may require more information or accept less information according to the circumstances of the particular case.

B. An applicant who believes information presumptively required by this Appendix is unnecessary shall contact the Administrator for an interpretation.

A1.02 With respect to all plans and other documents required by this Ordinance, the applicant shall submit the number of copies that the Administrator deems necessary to expedite the review process.

A2 Written Application

A2.01 Every applicant shall complete a written application containing at least the following information:

A. The name, address, and phone number of the property owner; and

B. If the applicant is not the property owner in question, the name, address and phone number of the applicant.

1. Pursuant to Subsection 4.03.01(B), when a person other than the owner of the property applies for a permit or approval including a lessee or a person who has contracted to purchase the property, the application must be accompanied by the written approval of the property owner or other proof of authority; and

C. The date of the application; and

D. A succinct statement of the nature of the development proposed under the permit or the nature of the variance; and

E. Identification of the lot in question by street address and Watauga County Parcel Identification Number; and

F. The zoning district in which the lot is located; and

G. The cost of the development project; and

H. The number of square feet or acres of the lot in question; and

I. The number of square feet or acres of land disturbing activity; and

J. The gross floor area of all existing or proposed buildings located on the lot where the development is to take place.

A3 Development Site Plans

A3.01 All plans should use a method of portrayal that is well thought out, systematized, and clearly presented graphically. All features required to be shown on the plans as set forth in this Section may be included on one set of plans, so long as the features are distinctly discernible.

A3.02 Basic Plan Requirements

A3.02.01 **First Page:** The first page of all development plans shall contain:

A. Name of property owner(s); and

B. Name of applicants(s); and

C. Name of all responsible design professionals and/or project manager

D. Name of development (if any); and

E. North Arrow; and

F. Legend; and

A3.02.02 **Location Map**: The location map shall show the location of the development in the broad context of the Town or planning jurisdiction.

A. This location map may be drawn on the development site plan or it may be furnished separately using reduced copies of maps of the Town's planning jurisdiction available at the Planning and Inspections Department.

A3.02.03 **Scale:** Plans shall be drawn to scale, using such a scale that all features required to be shown on the plans are readily discernible. Large developments may require that plans show the development in sections. The objective may be accomplished by using plans drawn to different scales to illustrate features.

A3.02.04 Plans must be drawn or printed in permanent blue or black ink.

A3.02.05 Plans must demonstrate all existing Natural, Man-Made, and Legal Features including:

A. Tree line of wooded areas; and

B. Orchards or other agricultural groves by common or scientific name; and

C. Streams, ponds, drainage ditches, swamps; and

D. Vehicle accommodation areas designated by surface material and showing the layout of existing parking spaces, and direction of travel; and

E. Streets, private roads, sidewalks, and other walkways, all designated by surface material; and

F. Curbs and gutters, curb inlets, and curb cuts, and drainage grates; and

G. Other storm water or drainage faculties, including manholes, pipes, and drainage ditches; and

H. Underground utility lines, including water, sewer, electric, telephone, gas and cable television; and

I. Aboveground utility lines and other utility facilities; and

J. Fire hydrants; and

K. Location and dimension of all buildings, structures and signs; and

L. Location of all exterior light fixtures; and

M. Location of solid waste and recycling enclosures; and

N. Zoning of the property; and

O. All property lines (with dimension identified); and

P. All street right-of-way lines; and

Q. All utility or other easements.

A3.02.06 Plans must demonstrate all proposed changes in existing natural, man-made, and legal features, including:

A. The number of square feet in every lot created by a new subdivision; and

B. Lot dimension, including lot widths measured in accordance with Section 16.03; and

C. All intensities as set forth in Section 16.01.02 Intensity Table.

D. Location and dimension of all buildings, structures and signs; and

E. All applicable street and interior setbacks;

F. Location and dimensions of all required recreational areas, with each area designated as to type of use; and

G. Vehicle accommodation areas designated by surface material and showing the layout of existing parking spaces, and direction of travel; and

H. Areas intend to remain as usable open space. The plans shall clearly indicate whether such open space areas are intended to be offered for dedication to public use or to remain privately owned; and

I. Streets, labeled by classification and street name showing whether curb and gutter or shoulder and swales are to be provided along with street pavement widths. Streets shall be labeled as public or private; and

J. Curbs, gutters, curb inlets and curb cuts, drainage grates; and

K. Other stormwater or drainage facilities; and

L. Sidewalks and walkways showing widths and details of construction; and

M. Bridges; and

N. Underground utility lines, including water, sewer, electric, telephone, gas and cable television; and

O. Aboveground utility lines and other utility facilities; and

P. Fire hydrants; and

Q. Location of solid waste and recycling enclosures; and

A3.03 Grading Plan

A3.03.01 When required, an applicant shall submit a grading plan.

A3.03.02 The grading plan shall be prepared by and shall bear the seal and signature of a North Carolina licensed professional engineer, landscape architect, surveyor, or architect competent to perform all aspects of design.

A3.03.03 The grading plan shall contain:

A. Site specific soils investigation (if performed); and

B. Detail drawings and cross-section of earthwork,

C. Construction details for retaining structures; and

D. Other narrative statements necessary to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this Ordinance.

E. More specialized documentation may include such items as:

1. Design calculations for temporary excavation support; and
2. Calculations for temporary surface water diversion; and
3. Dewatering methods with provisions for handling extracted water; and
4. Importation of fill material (quantity and type); and
5. Description of rock excavation techniques (blasting) with protection or monitoring of neighboring properties and structures, etc.

F. The construction sequence describing major work activities shall be listed on the plan.

G. Grading that can be conducted in phases should be clearly indicated on the plan. Multiple plans may be necessary to adequately portray tracts with complex phasing or discontinuous areas of land-disturbing activity.

H. Topographic survey:

1. The grading plan shall be based upon a topographic survey prepared by a registered land surveyor of the tract that includes detailed information of both natural and cultural physical features prior to development.

2. In addition to showing physical features such as existing buildings, overhead and/or underground utilities, roadways, walks, water or drainage features, the plan should also indicate the location of existing vegetation, particularly historic and significant trees being retained and protected and limits of vegetation if the tract is partially wooded.

3. Contour lines shall be used to present the topography of the entire tract, including sufficient distance into adjoining properties to indicate continuity. The contour line interval should be selected to appropriately convey the topographic information for planning and controlling construction. Generally, a two (2) foot contour interval is sufficient. However, smaller intervals (0.5 – 1.0 ft.) may be used for flatter areas and larger intervals (5 – 10 ft.) for steeper terrain. Contour intervals may be no greater than ten feet (10').

I. Basic Survey Data Required:

1. Boundary information (metes and bounds, legal description of the site if available), including all existing and proposed street right-of-ways.

2. Location of existing curbing, walks, grass, utility or planting strips, edge of pavement, roadway medians, if any, and their respective grades, widths, and alignments.

3. Location, size, and depths of all underground utilities when available, including; gas, electric, water, sanitary sewer, stormwater drainage features, telephone, television cable, etc.

4. Location and approximate height above existing grade of overhead utility lines and poles for lighting, electric, telephone, cable television, etc.

5. Location and description of all recorded public or private utility easements, building setbacks, and drainage easements encumbering the tract.

6. Location of all natural features such as rock outcroppings, watersheds, streams, ponds, etc. on the lot or within 100 feet of the graded area. This information conveys the impact of the proposed development on the lot.

7. Location of any wells or septic fields within 100 feet of the graded area.

8. Location of existing structures such as buildings, retaining walls, fences, building foundations, underground storage tanks, etc. Reference of the setbacks of other buildings on adjacent properties and adjacent property lines.

9. Location of sufficient spot elevations on existing land surface to generate a topographic map of the entire tract.

J. Grading Plan Format: The following information shall also be included on the grading plan:

1. Contour lines shall be used to present the existing and proposed topography of the entire tract, including sufficient distance into adjoining properties to indicate

continuity. The contour line interval should be selected to accurately and appropriately convey the topographic information for planning and controlling construction. Generally, a two foot (2') contour interval is sufficient. However, smaller intervals (0.5 -1.0 ft.) may be used for flatter areas and larger intervals (5 - 10 ft.) for steeper terrain. Contour intervals may be no greater than ten feet (10').

2. Grades at corners of buildings, step landings, and first floor elevations.
3. Finished grades at the edges of surfaced areas and at such interior points as necessary to show the shaping of the area. A combination of proposed contours and spot evaluations may be used to convey this information.
4. Proposed roadway elevations by indicating proposed contours and spot elevations where necessary. Profiles, cross-sections, and spot elevations are to be used to establish grading of paved areas such as roadways.
5. Top-of-curb grades at all connecting walks, curb returns, and all catch basin locations.
6. Spot elevations along swale lines, by using arrows to show direction of flow. Slope gradients should also be shown.
7. Top elevation of all storm and sanitary sewer manholes and other appurtenances.
8. Lawn and earth grades can be shown by proposed contours and by spot elevations where necessary.
9. The proposed location of stockpiled topsoil for future use in landscaped areas. To avoid root compaction the stockpile should be located outside root zones of the significant vegetation to be preserved.
10. The storage locations of construction materials outside the root zones of significant vegetation to be preserved to avoid root compaction.
11. The location of existing significant vegetation such as specimen trees or the canopy limits of wooded areas intended for preservation.
12. The elevations of any flood plains located on, or directly affecting a tract (i.e. drainage, sediment and erosion control considerations and/or watershed protection).

A3.04 Soil Erosion and Sediment Control Plan

A3.04.01 When required, an applicant shall submit a soil erosion and sediment control plan.

A3.04.02 The soil erosion and sediment control plan shall be prepared by and shall bear the seal and signature of a North Carolina licensed professional engineer, landscape architect, surveyor, or architect competent to perform all aspects of design.

A3.04.03 The soil erosion and sediment control plan shall contain the following information:

A. The soil erosion and sediment control plan shall define the existing site topography and the proposed site conditions in sufficient detail to accurately plan and implement the planned erosion, sedimentation, and velocity control measures.

B. The soil erosion and sediment control plan shall be prepared to meet the basic objectives, design standards, and performance standards for erosion control in this Ordinance.

C. The soil erosion and sediment control plan shall be presented at a scale not smaller than 1 inch = 50 feet.

D. Soil erosion and sediment control measures that will be active, dormant, or removed during various phases of the land-disturbing activity shall be clearly indicated on the soil erosion and sediment control plan. Multiple erosion and sediment control plans may be necessary to adequately portray the tracts with complex phasing or discontinuous areas of land-disturbing activity.

E. The soil erosion and sediment control plan should follow the same format for grading plans in accordance with A3.03.03-J.

A3.05 Drainage Plan

A3.05.01 When required, an applicant shall submit a drainage plan.

A3.05.02 The drainage plan shall be prepared by and shall bear the seal and signature of a North Carolina licensed professional engineer or landscape architect, competent to perform all aspects of design.

A3.05.03 The drainage plan shall refer to the drawings and technical documentation for planned site improvements necessary to fulfill both the drainage and stormwater requirements of this Ordinance and shall include:

A. Location and topographic maps with the total drainage area delineated including both on site and off site areas and sufficient information to define all ridges, existing streams, drainage ways, wetland areas, existing springs, and water elevation of any proposed discharge point, and any additional information required to evaluate the existing and proposed drainage system.

B. Architectural and engineering drawings showing plan, profile and details of; piping, drainage structures, swales, and channels tying into a network of pre-existing man made or natural channels.

C. Written project specifications governing work performance and materials.

D. Computations and assumptions sufficient to support the design of; piping, drainage structures, retention/detention ponds, and permanent erosion control measures.

E. Whatever other narrative statements necessary to adequately describe the proposed site improvements and the measures planned to comply with the requirements of this Appendix.

F. The Drainage Plan shall be prepared to meet the basic objectives and design standards for drainage and stormwater management as described in Article 21.

G. The Drainage Plan shall show the existing site topography and proposed site drainage improvements in sufficient detail to facilitate plan review and construction. The Drainage Plan drawings shall be presented at a scale not smaller than 1 inch = 50 feet.

A3.06 Special Flood Hazard Area Plan

A3.06.01 When required, an applicant shall submit a special flood hazard area site plan.

A3.06.02 The special flood hazard area site plan shall be prepared by a registered land surveyor or professional engineer.

A3.06.03 The special flood hazard area site plan shall contain the following information:

A. A site plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

1. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development; and
2. The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Subsection 30.01.02 or a statement that the entire lot is within the Special Flood Hazard Area; and
3. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Subsection 30.01.02; and
4. The boundary of the floodway(s) or non-encroachment area(s) as determined in Subsection 30.01.02; and
5. The Base Flood Elevation (BFE) where provided as set forth in Subsection 30.01.02; Section 30.02.03; or Subsection 30.02.04; and
6. The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
7. The certification of the site plan by a registered land surveyor or professional engineer.

B. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:

1. Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
2. Elevation in relation to mean sea level to which any non-residential structure in Zone AE, or A will be floodproofed; and

3. Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.

C. If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.

D. A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of Article 30 Flood Damage Prevention are met. These details include but are not limited to:

1. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
2. Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Subsection 30.03.02(E)(3) when solid foundation perimeter walls are used in Zones A, AE.

E. Usage details of any enclosed areas below the lowest floor.

F. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

G. Certification that all other Local, State and Federal permits required prior to Floodplain Development Permit issuance have been received.

H. Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Subsection 30.03.02(G) and 30.03.02(H) of Article 30 Flood Damage Prevention are met.

I. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream as determined by the Flood Study; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

A3.07 Building Elevations

A3.07.01 When required, an applicant shall submit building elevations in accordance with Article 25 Community Appearance Standards.

A3.07.02 An applicant shall submit building elevations of each side of the building, which shall graphically illustrate in site plan view and elevation view, those elements which are publicly visible. Elevation drawing shall:

A. Provide all materials and colors rendered in such a way that each is distinct; and

B. Be accompanied by the following information for each portion of the building, corresponding to the design requirements set forth in Article 25:

1. Largest distance in plan between required features and the elevation(s) on which this occurs; and
2. Largest distance in elevation between required features and the elevation(s) on which this occurs; and
3. Number of features required and number present in each elevation (presented in a table "Feature Schedule"); and
4. Name of each type of feature in elevation; and
5. Material samples shall be provided for all synthetic materials not specifically approved by Section 25.02.

A3.08 Lighting Plan

A3.08.01 When required, an applicant shall submit a lighting plan in accordance with Article 25 Community Appearance Standards.

A3.08.02 An applicant shall submit a lighting plan prior to the issuance of building permits.

A3.08.03 The plan shall contain the following information:

A. An area lighting plan, drawn to scale, indicating all structures, parking lots, building entrances, vehicular and pedestrian traffic areas, vegetation that may interfere with lighting, and adjacent land uses that may be adversely impacted by the lighting. The plan shall contain a layout of all proposed fixtures by location, orientation, aiming direction, mounting height and type.

B. The plan shall include existing (to remain) and proposed exterior lighting (site, architectural, building entrance, landscape, flagpole, etc.).

C. A 10' x 10' illuminance grid (point-by-point) of maintained footcandles overlaid on the site plan plotted out to 0.0 footcandles, which demonstrates compliance with Section 25.05.

A3.08.04 A detail of all proposed light fixtures demonstrating compliance with Section 25.05 shall be submitted with the lighting plan.

A3.09 Landscape Plan

A3.09.01 When required, an applicant shall submit a landscape plan.

A3.09.02 Landscape plans shall be prepared by a person who demonstrates knowledge and experience in the field of landscaping and/or site design such as a landscape architect, urban designer, nurserymen, or horticulturist.

A3.09.02 A detailed tree survey showing all existing trees eight inch (8") caliper or greater shall be submitted with the landscape plans.

A3.09.03 The landscape plan shall include the following:

A. A plant list showing: quantity, scientific names, common names and sizes and a key that identifies the location of all plant material on the landscape plan.

B. Shrub sizes shall be shown by height only and tree sizes by caliper and height.

C. Proposed drives, paving areas, decks, walks, pools, and other man-made structures/elements which are to be constructed within the property.

D. All construction notes/details relating to construction, specific material and planning procedures.

E. A table which indicates detailed use of existing plant material.

F. Landscape plans shall comply with required driveway/intersection sight distance triangle requirements in Subsection 31.02.02.

G. All TPA's shall be specified on the landscape plan and the grading/soil erosion and sediment control plan.

H. A tree protection fence detail provided on the landscape plan and the grading/soil erosion and sediment control plan.

A10 Plat Requirements

A10.01 Exempt Plats

A10.01.01 In accordance with Section 5.05 the following certifications must be included on a plat for an exempt division of land:

A. Certificate of Ownership for Exempt Divisions of Land

I (we) certify that I am (we are) the owner(s) of the property described hereon, which property is located within the jurisdiction of the Town of Boone.

_____	_____
Owner	Date

B. Certificate of Survey and Accuracy

I, _____, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____, page_____, etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book _____, page _____; that the ratio of precision as calculated is 1:____; that this plat was prepared in accordance with N. C. Gen. Stat. 47-30. Witness my original signature, registration number and seal this _____ day of _____, A.D., _____.

Seal or Stamp

_____
Surveyor

Registration Number

C. Certificate of Approval of Exempt Division of Land

I certify that to the best of my ability I have determined that the plat shown hereon is exempt from the Town of Boone Subdivision Regulations because the plat represents:

(CHOOSE ONE)

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

_____ _____
Planning Director or Designee Date

A10.02 Minor and Major Subdivisions

A10.02.01 All final plats shall be prepared in accordance with N.C. Gen. Stat. 47-30.

A10.02.02 Plat Content Required:

A. Dimensions of the plat shall be 18 inches x 24 inches. When more than one (1) sheet is required to include the entire subdivision, all sheets shall be made of the same size and shall show appropriate match marks on each sheet and appropriate references to other sheets of the subdivision.

B. Title Block to contain:

1. Name of Development; and
2. Property owner's name, address and daytime telephone number; and
3. Surveyor's name, address and telephone number; and
4. Applicant's name, address and telephone number (if different from the property owner's); and
5. Location (including address, township, county, and state); and
6. Date(s) plat prepared or revised; and
7. Graphic and written scale; and

C. North arrow.

D. Total acreage of the property to be subdivided along with the total number of proposed lots/units and the approximate location, dimension and acreage of all proposed or existing lots.

E. Current zoning and zoning district lines.

F. Existing land use within the property and on adjacent properties.

G. Names of adjoining property owners.

H. Plat book or deed book reference for the property to be subdivided.

I. Vicinity map showing location of site relative to surrounding area .

J. Corporate limits, county lines, and other jurisdiction lines, if any, on the tract.

K. The exact boundary lines of the property to be subdivided fully dimensioned by lengths and bearings, and the location of intersecting boundary lines of adjoining properties. If existing property lines are to be changed, label as "old property line(s)" and show as faded dashed lines.

L. The approximate location, dimensions (including rights-of-way, utility or other easements), and area of all land proposed to be set aside for park or playground use or other public use, or for the use of the property owners in the proposed subdivision.

M. Statement of intended use of lots.

N. The right-of-way lines and easement of all streets and roads, and access right-of-way to state roads or town streets.

O. Lot lines showing bearings and distances. All dimensions should be to the nearest one hundredth (0.01) of a foot and angles to the nearest minute.

P. Building setbacks lines (in table format).

Q. Relationship with the Special Flood Hazard Area as delineated by the most recent Flood Insurance Rate Map.

R. A statement that individual lots have or have not been approved by the Appalachian District Health Department for well and septic tank use.

S. Reference to deed book and page number of recorded restrictive covenants.

T. Reference to the deed book and page number of the owner's deed for the property to be subdivided.

U. The plans for utility layouts, including sanitary sewers, water distribution lines, stormwater systems, natural gas, telephone and electric service, illustrating connections to existing systems or plans for individual water supply systems and/or sewage disposal systems, line sizes and location of fire hydrants, and manholes.

V. Street names

W. A subdivision disclosure as required by G.S. 136-102.6, which fully discloses the status, whether public or private, of the road upon which the lots front.

X. No final plat that shows lots served by private roads may be recorded unless the final plat contains the following notations:

"Further subdivision of any lot shown on this plat as served by a private road may be prohibited by the Town of Boone Unified Development Ordinance."

Y. Final plat approval for any subdivision containing land that lies within a Special Flood Hazard Area may not be given unless the plat shows all Special Flood Hazard Area boundaries and contains in clearly discernible print the following statement:

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

Z. Certifications

1. Minor Subdivisions

   a. Certificate Of Ownership for Minor Subdivision

   I hereby certify that I am (we are) the owner(s) of the property described hereon, which property is within the subdivision regulation jurisdiction of the Town of Boone, and that I freely adopt this plan of subdivision.

   _____ _____
   Owner Date

b. Certificate of Survey and Accuracy

I, _____, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____, page_____, etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book _____, page _____; that the ratio of precision as calculated is 1:____; that this plat was prepared in accordance with N. C. Gen. Stat. 47-30. Witness my original signature, registration number and seal this _____ day of _____, A.D., _____.

Seal or Stamp

_____
Surveyor

Registration Number

c. Certificate of Approval for Minor Subdivision

I hereby certify that the minor subdivision shown on this plat has been found to be in compliance with the Town of Boone Unified Development Ordinance and is approved for recording within sixty days of the date of this approval.

_____ _____
Planning Director or Designee Date

2. Major Subdivisions

a. Certificate Of Ownership and Dedications for Major Subdivision

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

_____ _____
Planning Director or Designee Date

b. Certificate of Survey and Accuracy

I, _____, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____, page_____, etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book _____, page _____; that the ratio of precision as calculated is 1:____; that this plat was prepared in accordance with N. C. Gen. Stat. 47-30. Witness my original signature, registration number and seal this _____ day of _____, A.D., _____.

Seal or Stamp

_____
Surveyor

Registration Number

c. Certificate of Approval for Major Subdivision

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

_____ _____
Planning Director or Designee Date

d. The certificate listed below shall appear on all major subdivision plats which are not connected, nor will be connected to publicly owned or operated water supply and sewage disposal systems.

Certificate of Approval of Water Supply and Sewage Disposal System

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

_____ _____
County Health Officer or Authorized Representative Date

e. The certificate listed below shall appear on all major subdivision plats which are located outside of the corporate limits of the Town but are within the planning jurisdiction and which contain public streets.

Division of Highways District Engineer Certificate

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

District Engineer Date

A11 Owner's Associations

A11.01 Creation: When required, an owners' association must be established to fulfill requirements of the North Carolina Condominium Act and to accept conveyance and maintenance of all common elements and facilities within a subdivision or development containing common elements. The owners' association must be in legal existence prior to the conveyance, lease-option, or other long-term transfer of control of any unit or lot in the development.

A11.02 Conveyance: Where subdivisions or developments have common elements serving more than one dwelling unit, these common elements must be conveyed to the owners' association, in which all owners of lots in the development must be members. All common elements other than public street rights-of-way, other areas dedicated to the city, and lots must be designated as common elements. In a condominium development the common element must be platted as common elements in accordance with the NC Condominium Act. In other subdivisions or developments, fee-simple title must be conveyed by the applicant to the owners' association when the plat is recorded.

A11.03 Subdivision or Conveyance of Common Elements: Common elements may not subsequently be subdivided or conveyed by the owners' association unless a revised preliminary plat and a revised final plat showing such subdivision or conveyance have been submitted and approved.

A11.04 Minimize Number of Associations: Subdivisions or developments, whether including different land uses, different types of housing, or simply different sections, must hold the number of owners' associations to a minimum. An association may establish different categories of membership, different budgets for the categories, and different rates of

assessment when different kinds of services are provided to different categories. Smaller associations under an umbrella (master) association are permitted.

A11.05 **Owners' Association Not Required:** A development involving only 2 units attached by a party wall (or 2 separate walls back-to-back) is not required to have common elements or an owners' association. Such developments without an owners' association must establish a maintenance agreement between owners to govern any party walls and to ensure reciprocal easement rights needed for maintenance.

A11.06 **Common Elements in Subdivision Phases:** Common elements required by this ordinance must be provided within each phase of the subdivision in an amount proportional to the size of the phase under review. Common elements can be counted cumulatively, including all sections recorded to date.

A11.07 **Submission of Owners' Association Declaration:** After preliminary plat approval, the applicant shall submit for review and approval a draft of the declaration of the owners' association containing covenants and restrictions governing the owners' association, lots or units, and common elements. Prior to or concurrently with the submission of the final plat for review and approval, the applicant must submit a copy of the final declaration for review and approval. The declaration must include provisions for the following:

A. Membership: Membership in the owners' association is mandatory for each original purchaser and each successive purchaser of a lot or unit. Provisions must be made for the addition of owners in subsequent sections of the development.

B. Responsibilities of Association: The declaration must state that the owners' association is responsible for:

1. payment of premiums for liability insurance and local taxes and fees;
2. maintenance of landscaping, recreational, engineered stormwater control and/or other facilities located on the common elements; and
3. payment of assessments for all public and all private improvements made to or for the benefit of the common elements.

C. Exterior Maintenance of Units: The owners' association must be made responsible for exterior maintenance of all attached units (whether they be dwelling units or nonresidential units); or each unit owner must be made responsible, with the owners' association granted authority to perform such exterior maintenance in the event the unit owner fails to do so in a prompt and satisfactory manner and to assess the cost of the maintenance against the unit.

D. Powers of the Association: The owners' association is empowered to levy assessments against the owners of lots or units within the development. Such assessments must be for the payment of expenditures made by the owners' association for the items set forth in this Section, and any assessments not paid by the owner against whom such assessments are made will constitute a lien on the lot of the owner.

E. Easements: Easements over the common elements for access, ingress, and egress from and to public streets and walkways, and easements for enjoyment of the common elements and for parking, must be granted to each lot owner.

F. Maintenance and Restoration: Provisions for maintenance and restoration in the event of destruction or damage must be established for common element improvements and party walls.

G. Parking Allocation: The declaration must contain the following provision: "Parking spaces must be allocated among the individual lots or units in such a manner that each unit is entitled to a sufficient number of parking spaces to comply with this ordinance for the use intended to be located therein. The owners' association must maintain a register listing the total number of parking spaces in the development and the number of spaces allocated to each lot or unit. A copy of this register must be available to the Town of Boone Planning and Inspections Department upon request. The owners' association may not reduce the number of parking spaces allocated to an individual lot or unit without the express written consent of the subject owner, and in no case may the number of parking spaces allocated to an individual lot or unit be reduced to a number below that required by this ordinance."

H. Owners Association with a Private Wastewater Treatment, Collection and Disposal System: The Declaration for an owners' association, responsible for the maintenance of a private wastewater treatment, collection and disposal system, must contain the following provisions:

1. The wastewater collection system with pumps, wastewater treatment works, and/or disposal facilities, including all appurtenances (the “disposal system”) must be part of the common elements.

2. The disposal system must be properly maintained and operated by the owners' association in conformity with law and the provisions of the permit for construction, operation, repair and maintenance of the system and facilities, as required by Title 15A, Subchapter 2T of the North Carolina Administrative Code.

3. The disposal system must be maintained out of the common expenses of the owners' association, and must receive the highest priority for expenditures by the owners' association except for federal, state and local taxes and insurance.
4. In order to assure that there will be funds readily available to repair, maintain or construct the disposal system, beyond the routine operation and maintenance expenses, a separate fund must be created out of the common expenses. Such funds must be separate from the routine maintenance funds allocated for the disposal system and must be part of the yearly budget.
5. In the event the common expense allocation and separate fund are not adequate for the construction, repair and maintenance of the disposal system, the owners' association is authorized to levy special assessments to cover the necessary costs. There will be no limit on the amount of special assessments, and any such special assessments can be made as necessary at any time.
6. The owners' association may not enter into voluntary dissolution without first having transferred its disposal system to another person acceptable to and approved by the North Carolina Environmental Management Commission or appropriate delegated authority, by the issuance of a permit.
7. The owners' association may not transfer, convey, assign or otherwise relinquish or release its responsibility for the operation and maintenance of its disposal system until a permit has been issued by the North Carolina Environmental Management Commission or appropriate delegated authority, to the owners' association successor.

APPENDIX B GUIDE FOR LANDSCAPING

B1 **Introduction:** Appendix B is a compilation of the latest accepted horticultural practices. It is meant to be used by North Carolina Landscape Contractors and Staff to help assure that installed landscape thrives once planted. It contains definitions, text descriptions and plant list. Sections within this Appendix provide information on tree protection, planting and pruning guidelines and suggested species. This Appendix is the guide that Staff uses to assess landscape installation. The information is designed to be used interchangeable with Article 31 Landscape Standards. All those who install landscape material subject to Staff approval towards a Certificate of Occupancy or landscape compliance are expected to follow these guidelines.

B2 **Tree Preservation and Care During construction**

B2.01 Tree Preservation

B2.01.01 Tree Protection Area

- **A.** Install tree protection fencing before doing any grading or land disturbing activity.
- **B.** Install tree protection fencing around the "Tree Protection Area":
- **C.** The size of the "Tree Protection Area" is the area within the drip line of the tree or group of trees.
- **D.** Do not disturb the "Tree Protection Area." In other words do not clear, grub, trench, remove soil, backfill, drive or park vehicles, equipment or materials, dump trash, oil, paint or any material harmful to the health and growth of the tree within the area marked by the drip line of any tree.
- **E.** If authorized to clear within the TPA, cut any trees or shrubs flush with the grade or grind the stumps to a minimum twelve inches (12") below surrounding grade. Backfill any holes with clean, dry soil the same day. Moisten the soil. Seed or mulch the remaining area depending on which landscaping treatments are stipulated on the plans.
- **F.** If installing tree protection fencing for trees along a wood's edge, locate the fence at the drip line of the outermost trees.
- **G.** Call the Planning and Inspections Department (828-268-6960) to request that the Administrator visit the site to give approval of the placement of fencing before doing any other site work.
- **H.** The Administrator may allow a Temporary Access (for 30 days only) across the "Tree Protection Area." Get permission in writing from the Administrator and keep a copy on the construction site at all times. Mulch the access across the "Tree Protection Area" with a minimum 6" layer of large wood chips. No material storage, however, is allowed in the access area even on a temporary basis.
- **I.** Some trees being saved may require root pruning. See Section B2.02 below for specific guidelines on root pruning.

J. Those trees requiring more than a third of their roots pruned/removed are unlikely to survive. Remove those trees.

B2.02 Care During Construction

A. Root pruning may be done on existing trees located near proposed construction using the following guidelines:

1. Cut roots no more than six inches (6”) back from new construction, cut to a depth of two feet (2’) only.
2. Backfill with clean, dry soil within hours of root pruning. Moisten soil the same day.
3. Keep all tools sharp to ensure roots are not broken or torn.

B. Any clearing done in the TPA may only be done if specified on the approved site plan or with written permission from the Administrator and cannot disturb the roots. Cut any trees or shrubs flush with grade or use a stump grinder.

C. Do not use climbing irons, spurs or spikes on trees when pruning them.

B3 Requirements for Successful Groundcover, Shrub and Tree Installations

B3.02.01 Plant Material

Protect all plants at all times. Protect plants from sun and/or drying winds. Plants cannot be planted immediately upon delivery to the site must be kept in the shade or covered with burlap to prevent sun scorch. These plants need to be well watered. Plants which remain unplanted for longer than one day must be heeled in, i.e. covered with wet compost, soil, or other acceptable material and their root ball kept moist by watering. No plant may remain unplanted on site longer than three (3) days.

To protect surrounding turf that may be damaged from being driven over and upon which soil may be temporarily piled, cover with a tarp or sheets of plywood. Provide tree protection fencing to protected any existing trees, shrubbery, and beds in this area.

Supply all plants as specified in the Plant List as shown on the approved Site Plan. Determine from the plan the quantities of each species required. **If a discrepancy exists between the number of plants specified in the Plant List and the graphic representation on the plan, the installer is to use the number graphically represented on the plan.** Plants must be typical of their species and variety, have normal growth habit, have well developed branching, be densely foliated, and have healthy roots. Size of plants, spread of roots, and size of root ball must be in accordance with the American Standard for Nursery Stock (most current edition). Plants of each particular variety must be uniform in size, density, and configuration.

Container plants must have a root system dense enough to hold the soil intact when removed from the container. The root system however must not be root bound, or so dense in mass that it is excessively intertwined or has a circular growth pattern.

Balled and burlap (B & B) plants must be nursery grown, and dug within three (3) days of transplanting. The burlap used to secure the ball must be untreated and biodegradable. There can be no more than one inch (1") of fill over the original roots. B & B plants must have firm balls of earth in which the plant has been growing and of a diameter not less than specified in the American Standard for Nursery Stock.

All new trees must have straight trunks with an intact single central leader, unless a multi-stem tree is specified. Trees will not be accepted which have had their branches shortened, leaders cut, or have damaged leaders which require cutting. Unless otherwise specified, shade trees shall not have branches within six feet (6') of the top of the root ball.

B4.02.02 Soil Preparation:

Create plant beds the size and location shown on the approved Site Plan. All groundcovers and container shrubs must be planted in a shrub bed, B & B material or large container material may be planted in individual planting holes. The planting area must be wide enough to accommodate all roots without crowding, and must contain nutrient rich soil.

In order to ready the planting areas, prepare the soil by taking the following steps:

A. Remove all vegetation and topsoil from the top three inches (3") of the planting area for both planting beds and plant holes. Remove unwanted vegetation from the site, stockpile topsoil on site for future use or remove from site if specifically stated in the approved Site Plan.

B. Dig all shrub beds two (2) to three (3) times the width of the root mass and all tree planting holes 1.5 to 2 times the width of the root ball with a minimum nine inches (9") on each side of the mass or ball.

C. Install a sufficient quantity of planting mix to replace the removed topsoil, and to achieve positive drainage at a minimum of 1.5% slope.

1. The replacement soil shall be the following planting mix: 10% - 30% sterile well pulverized red clay, 30% - 50% silt, 30% - 45% coarse sand, 1.0 mm to 0.5 mm in diameter, minimum 5% organic material such as completely decomposed compost/humus. The acidity range of the plant mix shall be ph 5.5 to ph 7.0. The planting mix shall have the following nutrients at the specified percent base saturation: calcium at 55% to 80%, magnesium at 10% to 30%, and potassium at 5% to 8%.

2. If the quality of planting mix seems questionable to the Administrator, Staff may require the results of a soil test for analysis.

D. If no replacement planting mix is used, there is an acceptable alternative soil preparation. Thoroughly pulverize the soil, minus the sod, removed from the planting hole or plant bed. Amend with lime and fertilizer at the rates specified on the package.

B4.02.03 Plant Installation

A. Soak with water all container plants before removing them from their containers to keep the plant moist and healthy during the planting process.

B. Remove groundcover and shrubbery from their containers. If their root balls are pot bound, scarify the ball before installation.

C. Set plants upright, plumb, and oriented to provide the best appearance and relationship to the viewer.

D. Set trees and shrubs two to three inches (2”-3”) above finished grade. Do not place backfill soil on top of the root ball, or up the stems or trunks of plant material.

E. Backfill around the root ball being careful not to pack tightly. Form a two inch (2”) high collar of soil around the drip zone of the individual shrub in all areas not irrigated.

F. Take extra care to adequately backfill B & B plants. Backfill and compact bottom third (1/3) of the root ball. Cut away the ball ties, the top two thirds (2/3) of the wire basket, and the exposed burlap. Do not remove the burlap from under the root ball. Backfill one half (1/2) the remaining hole with the specified planting mix, and water thoroughly. Backfill the rest of the hole with the specified planting mix, firm down to eliminate air pockets, but do not pack tightly. Build a collar of soil four inches (4”) in height around the edge of the root ball to form a basin for holding water. Form the bottom of the basin at surrounding finish grade.

G. Mulch with two to three inches (2”-3”) of hardwood mulch.

H. Water all plants immediately after planting. See Subsection B4.02.05 for more on watering.

B4.02.04 Fertilizing and Liming Shrubs and Trees:

A. Incorporate lime and fertilizer appropriately.

B. The fertilizer analysis for shrubs shall be either 12-6-6 or 14-7-7 and shall be applied at a rate of 2 pounds per 100 square feet.

C. For trees, apply fertilizer at a rate of 0.16 lb. to 0.20 lb. nitrogen per inch caliper of tree. Use a slow release fertilizer. Two possible fertilizer mixes are either 1 cup 31-7-7 or 2 cups 12-6-6 fertilizer per inch caliper.

D. In addition to nitrogen, apply phosphorous and potassium at a rate of 0.05 lb. per inch caliper.

E. Apply granulated fertilizer as a top dressing within the drip line of each individual plant. Immediately remove any fertilizer that comes in contact with the stem, trunk or foliage of a plant. Work the fertilizer into the top two inches (2”) of the soil.

F. Apply fertilizer and work into the soil before installing mulch.

B4.02.05 Watering Shrubs and Trees

A. Be sure water is free from oil, acids, salts or any other substances that is toxic or harmful to vegetation.

B. Water container plants thoroughly before removing from their containers to keep the plant moist and healthy during the planting process.

C. Water all plants immediately after planting. To water thoroughly, saturate all backfill in beds during the same day of planting. Water only by open-end hose at very loose pressure to avoid erosion of soil, breaking the soil collars surrounding each plant, and/or injury to roots. Make sure plants are vertical and the top of the root ball is not below existing grade once they are watered and fully settled.

B4.02.06 Mulching Shrubs and Trees

A. Use shredded hardwood (triple or double cut) as a mulch. The mulch cannot contain any trash.

B. Apply mulch in a two to three inch (2”-3”) layer within two days of planting.

C. Do not spread mulch closer than six inches (6”) from the trunk of a tree.

B4.02.07 Staking Trees

A. Generally for large caliper two and one-half inch (2 ½”) caliper to six inch (6”) caliper B & B trees, staking for support is not recommended, if the tree is planted using the methods described in this Appendix. However, because the trunks are exposed, it may be necessary to place 3 stakes around the tree at the edge of the rootball for protection of the trunk of the tree. Use stakes that are tall enough to be seen easily. Finally, when using stakes for protection, do not attach wire or rope to the trees.

B. Trees less than two inch (2”) caliper and shrubs less than eight feet (8’) in height do not stake.

C. In unusual conditions, staking may be used with the Administrator’s approval. Stake trees using three (3) 1”x 2”x18” minimum size wood stakes per tree. Drive anchors

into undisturbed soil. Use strapping or rope fed through a rubber hose at the trunk to prevent damage to the bark.

D. The stakes should offer support, but also not bind or bend the tree, because flexibility of the trunk is essential for its future growth and development. Generally, after the first growing season the tree will be able to support itself.

B4.02.08 Turf

A. Prepare the soil and apply lime and fertilizer.

B. Incorporate lime and fertilizer in the top six to eight inches (6”-8”) of the soil using a rototiller.

C. Use a rake to create a smooth and level bed free of hollows and depressions and with soil particles no larger than pea size.

D. Water to settle the soil, and rake again to break the crusty surface before seeding.

E. Sod installation:

1. Spread four inches (4”) of topsoil and cultivate entire area to four to six inch (4 “-6”) depth.
2. Spread lime and fertilizer over cultivated topsoil (as per specifications on package) and hand rake to smooth finish grade.
3. Thoroughly water area to be sodded prior to installation.
4. Lay sod, roll and water thoroughly.

B5 Plant List

Large Trees – Evergreen

Scientific Name	Common Name
Abies balsamea	Balsam Fir *
Abies concolor	White Fir *
Abies fraseri	Fraser Fir *
Cedrus atlantica	Atlas Cedar
Cedrus deodara	Deodar Cedar
Cedrus libani	Cedar of Lebanon
Cladrastis kentukea	American Yellowwood *
Cryptomeria japonica	Japanese Cryptomeria
Cupressoyparis leylandii	Leyland Cypress
Cupressus bakeri	Baker’s Cypress *
Ilex opaca	American Holly *
Juniperus virginiana	Eastern Red Cedar *
Magnolia grandiflora	Southern Magnolia *
Picea abies	Norway Spruce

Picea glauca	White Spruce *
Picea orientalis	Oriental Spruce
Picea pungens	Colorado Spruce *
Pinus aristata	Bristlecone Pine *
Pinus banksiana	Jack Pine *
Pinus echinata	Shortleaf Pine *
Pinus strobes	White Pine *
Pinus sylvestris	Scotch Pine
Pinus virginiana	Virginia Pine *
Pseudotsuga menziesii	Douglas Fir *
Thuja occidentaus	Northern White Cedar *
Tsuga Canadensis	Eastern Hemlock *
Tsuga caroliniana	Carolina Hemlock *

Large Trees - Deciduous

Acer platanoides	Norway Maple
Acer rubrum	Red Maple *
Acer saccharinum	Silver Maple *
Acer saccharum	Sugar Maple *
Aesculus glabra	Ohio Buckeye *
Aesculus flava	Yellow Buckeye *
Betula alleghaniensis	Yellow Birch *
Betula lenta	Sweet Birch *
Betula papyrifera	Canoe Birch *
Betula nigra	River Birch *
Betula pendula	European White Birch
Betula platyphylla	Japanese White Birch
Betula populifolia	Gray Birch *
Carya cordiformis	Bitternut Hickory *
Carya glabra	Pignut Hickory *
Carya illinoinensis	Pecan *
Carya laciniosa	Shellbark Hickory *
Carya ovata	Shagbark Hickory *
Catalpa bignonioides	Southern Catalpa *
Celtis laevigata	Sugar Hackberry *
Celtis occidentalis	Common Hackberry *
Cladrastis lutea	Yellowwood *
Diospyros virginiana	Persimmon *
Fagus grandifolia	American Beech *
Fraxinus americana	White Ash *
Fraxinus nigra	Black Ash *
Fraxinus pennsylvanica	Green Ash *

Ginkgo biloba	Maidenhair Tree
Gleditsia triacanthos inermis	Thornless Honeylocust *
Gymnocladus dioicus	Kentucky Coffee Tree *
Juglans cinerea	Butternut *
Juglans nigra	Black Walnut *
Liquidambar styraciflua	Sweetgum *
Liriodendron tulipifera	Tulip Poplar *
Magnolia acuminate	Cucumber Tree *
Magnolia macrophylla	Big Leaf Magnolia *
Metasequoia glyptostroboides	Dawn Redwood *
Nyssa sylvatica	Black Gum *
Platanus occidentalis	Sycamore *
Populus angustifolia	Balsam Cottonwood *
Populus deltoids	Eastern Cottonwood *
Populus tremuloides	Quaking Aspen *
Prunus serotina	Black Cherry *
Quercus alba	White Oak *
Quercus coccinea	Scarlet Oak *
Quercus imbricaria	Shingle Oak *
Quercus falcate	Southern Red Oak *
Quercus muehlenbergii	Chinkapin Oak *
Quercus michauxii	Swamp chestnut *
Quercus phellos	Willow Oak *
Quercus palustris	Pin Oak *
Quercus rubra	Red Oak *
Quercus stellata	Post Oak *
Quercus velutina	Black Oak *
Taxodium distichum	Bald Cypress *
Tilia americana	Basswood *
Ulmus americana	American Elm *
Zelkova serrata	Japanese Zelkova

Small Trees - Evergreen

Cupressus arizonica	Arizona Cypress *
Ilex x attenuate	Hybrid Holly *
Ilex x attenuate 'Fosteri'	Foster Hybrid Holly *
Ilex Montana	Big Leaf Holly *
Ilex x 'Nellie R. Stevens'	Nellie Stevens Holly *
Juniperus virginiana	Eastern Red Cedar *

Small Trees - Deciduous

Acer buergeranum	Trident Maple

Acer ginnala	Amur Maple
Acer griseum	Paperbark Maple
Acer leucoderme	Chalk Maple *
Acer palmatum	Japanese Maple
Acer palmatum dissectum	Laceleaf Japanese Maple
Acer pensylvanicum	Striped Maple *
Aesculus pavia	Red Buckeye *
Aesculus sylvatica	Painted Buckeye *
Alnus serrulata	Alder *
Amelanchier arborea	Serviceberry *
Aralia spinosa	Devil's Walking Stick *
Asimina triloba	Pawpaw *
Carpinus caroliniana	Ironwood *
Celtis tenuifolia	Dwarf Hackberry *
Cercis Canadensis	Redbud *
Chionanthus virginicus	Fringetree *
Cladrastis kentukea	Yellowwood *
Cornus alternifolia	Pagoda Dogwood *
Cornus amomum	Silky Dogwood *
Cornus florida	Flowering Dogwood *
Cotinus obovatus	American Smoke Tree *
Crataegus mollis	Downy Hawthorn *
Crataegus marshallii	Parsley Hawthorn *
Diospyros virginiana	Eastern Persimmon *
Halesia diptera	Silverbell *
Hamamelis virginiana	Witchhazel *
Ilex deciduas	Possumhaw *
Magnolia fraseri	Mountain Magnolia *
Malus coronaria	Sweet Crabapple *
Ostrya virginiana	Ironwood *
Oxydendrum arboretum	Sourwood *
Rhus copallina	Winged Sumac *
Sassafras albidum	Sassafras *
Sorbus americana	American Mountain Ash *
Vaccinium arboretum	Sparkleberry *

Shrubs - Deciduous

Abelia x grandifloria	Glossy Abelia
Azalea kaempferi	Kaempferi Azalea
Azalea hybrida	Satsuki Azalea
Azalea obtusum	Kurume Azalea
Berberis julianae	Wintergreen Barberry

Berberis thunbergii	Japanese Barberry
Berberis verruculosa	Warty Barberry
Buxus microphylla 'Koreana'	Korean Boxwood
Buxus sempervirens 'Suffrutocosa'	Dwarf Boxwood
Chamaecyparis obtusa 'Nana Gracilis'	Dwarf Hinoki Cypress
Cotoneaster horizontalis	Rockspray Cotoneaster
Cotoneaster dammeri	Bearberry Cotoneaster
Cotoneaster divaricatus	Spreading Cotoneaster
Cotoneaster horizontalis	Rockspray Cotoneaster
Euonymus alatus	Winged Euonymus
Euonymus fortunei	Wintercreeper Euonymus
Hypericum patulum	St. Johnswort *
Hypericum frondosum	Golden St Johnswort *
Hypericum pronlificum	Shrubby St. Johnswort *
Ilex aquifolium	English Holly
Ilex cornuta	Chinese Holly
Ilex cornuta 'Burford'	Burford Holly
Ilex cornuta 'Carissa'	Carissa Holly
Ilex cornuta 'Rotunda'	Dwarf Horned Holly
Ilex crenata	Japanese Holly
Ilex crenata 'Helleri'	Heller Japanese Holly
Ilex crenata 'Kingsville'	Kingsville Japanese Holly
Ilex crenata 'Repandens'	Repanden Japanese Holly
Ilex crenata 'Stokes'	Stokes Japanese Holly
Ilex crenata 'Tiny Tim'	Japanese Holly
Ilex glabra	Inkberry *
Ilex pernyi	Perny Holly
Juniperus chinensis	Chinese Juniper
Juniperus communis	Common Juniper
Juniperus conferta	Shore Juniper
Juniperus davurica 'Expansa'	Parsons Juniper
Juniperus horizontalis	Creeping Juniper
Juniperus procumbens	Japanese Garden Juniper
Juniperus Sabina 'Tamariscifolia'	Tamarix Juniper
Kalmia latifolia	Mountain Laurel *
Kalmia polifolia	Bog Laurel *
Leucothoe axillaries	Doghobble *
Leucothoe populifolia	Florida Leucothoe *
Magnolia virginiana	Sweet Bay *
Osmanthus heterophyllus 'Rotundifolius'	Curleyleaf Tea Olive
Ostrya virginiana	Ironwood *
Oxydendrum arboretum	Sourwood *

Pinus mugo 'Compacta'	Mugo Pine
Prunus laurocerasus 'Otto Luyken'	Otto Laurel
Rhododendron catawbiense	R. Catawba *
Rhododendron maximum	Rosebay Rhododendron *
Rhododendron minus	Carolina Rhododendron *
Rhus aromatica	Fragrant Sumac *
Rhus copallinum	Winged Sumac *
Rhus glabra	Smooth Sumac *
Taxus x media	Intermediate Yew
Thuja orientalis	Oriental Arborvitae
Viburnum rhytidophyllum	Leatherleaf Viburnum

Shrubs - Evergreen

Azalea hybrida 'Exbury'	Exbury Hybrid Azalea
Buddleja davidii	Butterfly Bush
Callicarpa americana	American Beautyberry *
Calycanthus floridus	Sweetshrub *
Chaenomeles speciosa	Common Floweringquince
Clethra alnifolia	Sweet Pepperbush *
Cytisus scoparius	Scotch Broom
Deutzia scabra	Pride of Rochester
Elaeagnus umbellate	Autumn Elaeagnus
Euonymus alata	Winged Euonymus
Euonymus americanus	Hearts-a-Burstin *
Forsythia x intermedia	Border Forsythia
Fothergilla major	Withalder *
Gaylussacia dumosa	Dwarf Huckleberry *
Hibiscus syriacus	Rose of Sharon
Hydrangea arborescens	Wild Hydrangea *
Hydrangea quercifolia	Oakleaf Hydrangea *
Lindera benzoin	Spicebush *
Lonicera fragrantissima	Winter Honeysuckle
Magnolia stellata	Star Magnolia
Malus sargentii	Sargent Crab Apple
Neviusia alabamensis	Snowwreath *
Rhododendron arborescens	Sweet Azalea *
Rhododendron austrinum	Yellow Azalea *
Rhododendron calendulaceum	Flame Azalea *
Rhododendron canadense	Rhodora *
Rhododendron canescens	Piedmont Azalea *
Rhododendron cumber landense	Cumber Land *
Rhododendron periclymenoides	Pinxter Bloom *

Rhododendron prunifolium	Plumleaf *
Rhododendron viscosum	Swamp Azalea *
Rosa palustris	Swamp Rose *
Spiraea prunifolia	Bridalwreath Spirea
Spiraea x vanhouttei	Vanhoutte Spirea
Syringa vulgaris	Common Lilac
Styrax americana	American Snowbell *
Viburnnum dentatum	Arrowwood *
Viburnum x juddii	Judd Viburnum
Viburnum macrocephalum 'Sterile'	Chinese Snowball
Viburnum plicatum tomentosum	Doublefile Viburnum
Vitex agnus-castus	Chaste Tree

Wet Land Plants

Cornus amomum	Silky Dogwood *
Salix canidida	Sage willow *
Salix discolor	Pussy Willow *
Salix exigua	Coyote Willow *
Salix herbacea	Snowbed Willow *
Salix lucida	Shinning Willow *
Salix nigra	Black Willow *
Salix sericea	Silky Willow *
Stewartia ovata	Mountain Stewartia *

Vines

Gelsemium sempervirens	Yellow Jasmine *
Lonicera ciliosa	Orange Honeysuckle *
Lonicera dioica	Wild Honeysuckle *
Lonicera hirsuta	Hairy Honeysuckle *
Lonicera involucrata	Bearberry Honeysuckle *
Lonicera sempervirens	Trumpet Honeysuckle *
Parthenocissus quinquefolia	Virginia Creeper *
Wisteria frutescens	American Wisteria *

Ground Covers Evergreen

Antennaria plantaginifolia	Pussytoes *
Galax urceolata	Galax *
Hexastylis arifolia	Heartleaf *
Lycopodium flabelliforme	Running Cedar *
Mitchella repens	Partridgeberry *
Senecio aureus	Butterweed *
Smilax pumila	Dwarf Smilax *

Ground Cover Deciduous

Asarum canadense	Wild Ginger *
Chrysogonum virginianum	Southern Green and Gold *
Hepatica americana	Liverleaf *
Pachysandra procumbens	Allegheny Spurge *
Tiarella cordifolia var. collina	Foamflower *
Uvularia sessilifolia	Strawlily *

* denotes native plant

Grasses

Andropogan gerardii	Big Bluestem
Andropogan glomeratus	Bushy Bluestem
Andropogan virginicus	Broomsedge
Miscanthus sinensis	Adagio
Miscanthus sinensis	Gracillimus
Miscanthus sinensis	Morning Light
Muhlenbergia	Capillaris
Panicum virgatum	Switch Grass
Panicum virgatum	North Wind
Panicum virgatum	Heavy Metal
Pennisetum orientale	Tall Tails