Board of Commissioners' Agenda

May 4, 2021

Commission Meetings are held at 200 College Street, Room 326 in downtown Asheville beginning at 5:00 p.m.

Due to the COVID-19 pandemic, only attendance for public comment/hearing will be permitted. The public will be able to watch the meeting via Facebook Live @Buncombegov.

Public Comment is taken at the beginning of the meeting.

Public Comment process has changed for General Public Comments and Public Hearing Comments. Please click here for details and instructions.

Call To Order

top

Discussion / Adjustment / Approval To Follow Agenda

top

Consent Agenda

top

- Approval of April 20, 2021 Special Meeting Minutes
- Approval of April 20, 2021 Briefing Minutes
- Approval of April 20, 2021 Regular Meeting Minutes
- Resolution Approving Pyrotechnic Experts for Firework Display
    - Resolution
- Tax Collection Report
- Approval of Pre-Construction Services Contract with James R. Vannoy Construction for A-B Tech Deferred Maintenance Projects
- Approval of Architectural Services Contract with Novus Architects for A-B Tech Deferred Maintenance Projects
- Approval of Partnership for Pre-K Facility at Avery's Creek Elementary School
    - Agreement
- Approval of Additional Environmental Health Onsite Wastewater & Wells Position
- Resolution Authorizing the Execution of an Interlocal Agreement with Town of Black Mountain for Building Inspection Services

  - Resolution
  - Agreement

- Resolution Authorizing Amendment to Ground Lease Agreement with DEP, LLC to Design, Install & Maintain a Solar Photovoltaic Power Array on the Old County Landfill Property
  - Resolution
  - Agreement

- Budget Amendment for Methodist Home for Children
  - Ordinance

Public Comment top

Public Comment process has changed for General Public Comments and Public Hearing Comments. Please click here for details and instructions.

Good News top

Presentations top

- National Nurses Week Proclamation
  - Proclamation

- Pro Bono Celebration Day Proclamation

- A-B Tech Board of Trustees
  - More Information

- Mountain Community Capital Fund
  - More Information

Public Hearings top

Public Comment process has changed for General Public Comments and Public Hearing Comments. Please click here for details and instructions.

- Juneteenth - Additional County Holiday
  - Ordinance
  - More Information

- Adoption of 160D – BC Code of Ordinances Integration

- Ordinance
- Planning Board Memo
- Planning Board Resolution
- More Information

- Brown Rezoning Request
  - Staff Analysis & Information
  - Application
  - Planning Board Resolution
  - Maps
  - Approve Ordinance
  - Consistency/Inconsistency Statement
  - More Information

County Manager's Report

top

Old Business

top

New Business

top

- Letter of Commitment for Public Financing of Mountain Housing Opportunities Low-Income Housing Tax Credit Program Project Application
- Budget Amendment for Occupancy Tax Fund Adjustment for Growth
  - Ordinance

Board Appointments

top

Announcements

top

- May 11 @ 1:30 p.m. - Commissioners' Budget Work Session at 200 College Street, Room 326 in downtown Asheville.

- May 18 @ 3 p.m. - Commissioners' Briefing at 200 College Street, Room 326 in downtown Asheville.

- May 18 @ 5 p.m. - Commissioners' Regular Meeting at 200 College Street, Room 326 in downtown Asheville.

Closed Session / Open Session

top

Adjournment

top

**MINUTES OF BUNCOMBE COUNTY BOARD OF COMMISSIONERS'
REGULAR MEETING OF MAY 4, 2021 AT 5 P.M.**

BE IT REMEMBERED: That the Board of Commissioners met in regular session on May 4, 2021, in the Commission Chambers, 200 College Street, Room 326 in downtown Asheville, North Carolina at 5 p.m. where and when the following business was transacted:

The Chairman called the meeting to order with the following members present:

Brownie Newman, Chairman
Jasmine Beach-Ferrara, Commissioner
Amanda Edwards, Commissioner
Robert Pressley, Commissioner
Parker Sloan, Commissioner
Terri Wells, Commissioner
Al Whitesides, Vice Chair

Staff present: Avril Pinder, County Manager; Sybil Tate, Assistant County Manager; Dakisha Wesley, Assistant County Manager; Jennifer Barnette, Budget Director; Sharon Burke, Human Resources Director; Jennifer Pike, Tax Collector; Stoney Blevins, Health and Human Services Director; Rachael Nygaard, Strategic Partnerships Director; Tim Love, Intergovernmental Relations; Nathan Pennington, Planning Director; Lamar Joyner, Clerk to the Board; Michael Frue, Senior Staff Attorney; Brandon Freeman, Staff Attorney

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

Vice Chair Whitesides motioned to approve the Consent Agenda, add the **Pro Bono Celebration Day Proclamation** to **Presentations**, and the remainder of the agenda. Commissioner Beach-Ferrara seconded and the motion passed 7-0.

- Approval of April 20, 2021 Special Meeting Minutes
- Approval of April 20, 2021 Briefing Minutes
- Approval of April 20, 2021 Regular Meeting Minutes
- Resolution Approving Pyrotechnic Experts for Firework Display
  - Resolution
- Tax Collection Report
- Approval of Pre-Construction Services Contract with James R. Vannoy Construction for A-B Tech Deferred Maintenance Projects
- Approval of Architectural Services Contract with Novus Architects for A-B Tech Deferred Maintenance Projects
- Approval of Partnership for Pre-K Facility at Avery's Creek Elementary School
  - Agreement
- Approval of Additional Environmental Health Onsite Wastewater & Wells Position
- Resolution Authorizing the Execution of an Interlocal Agreement with Town of Black Mountain for Building Inspection Services
  - Resolution
  - Agreement
- Resolution Authorizing Amendment to Ground Lease Agreement with DEP, LLC to Design, Install & Maintain a Solar Photovoltaic Power Array on the Old County Landfill Property
  - Resolution
  - Agreement
- Budget Amendment for Methodist Home for Children
  - Ordinance

PUBLIC COMMENT

Don Yelton questioned the recent activities involving the Vance Monument and Juneteenth paid holiday.

James Fulton stated that the non-discrimination ordinance was not needed.

Lara Lustig expressed support for Teacher Appreciation Week and questioned the closing process for the Asheville Primary School.

Grant Millin stated that the Vance Monument Joint Task Force lacked transparency and disability is not being considered in the equity program.

Rachael Bliss expressed support for the Juneteenth paid holiday and questioned the transparency in the economic development process.

Shifra Ahlers questioned the activities of the Asheville City Schools administration.

PRESENTATIONS

- **National Nurses Week Proclamation**

  Commissioner Edwards read and presented the proclamation to Ellis Vaughan, Public Health.

- **Pro Bono Celebration Day Proclamation**

  Commissioner Beach-Ferrara read the proclamation.

- **A-B Tech Board of Trustees**

Dr. John Gossett, A-B Tech President, provided an update to the commissioners on the activities and accomplishments of the agency. Appreciation of the partnership with the County was expressed.

- **Mountain Community Capital Fund**

Lynn Smith, Board Chair, provided an update and explained the purpose of the committee is to provide loans to small business owners whose main weakness is lack of collateral. The committee's accomplishments, finances, and impact were highlighted.

PUBLIC HEARINGS

- **Juneteenth - Additional County Holiday**

Sharon Burke, Human Resources Director, explained that requests and suggestions were made to consider adding the Juneteenth holiday. The Buncombe County Equity & Inclusion workgroup researched the holiday and found that it was in alignment with the Buncombe County Strategic Plan. The holiday would be observed the Friday on or before June 19th as a County-paid holiday annually.

The Chairman opened the hearing at 6:00 p.m.

The hearing was closed at 6:01 p.m.

Vice Chair Whitesides moved to approve the ordinance as presented. Commissioner Beach-Ferrara seconded the motion and it passed 7-0.

- **Adoption of 160D – BC Code of Ordinances Integration**

Nathan Pennington, Planning Director, and Brandon Freeman, County Attorney, explained that Chapter 160D ("160D") is the culmination of years of work to significantly recodify and modernize city and county development regulations (enabling legislation).

The Chairman opened the hearing at 6:11 p.m.

The hearing was closed at 6:12 p.m.

Commissioner Sloan moved to approve ordinance with the attached 160D text amendments as submitted. Commissioner Pressley seconded the motion and it passed 7-0.

- **Brown Rezoning Request**

Nathan Pennington, Planning Director, presented the down-zoning request, stated that the request was consistent with the comprehensive plan and was unanimously approved by the Planning Board. The property would move from R-1 Residential to R-LD Low-Density Residential at the address of 7 Chalmers Way in Swannanoa. The total acreage of the property is 4.59.

The Chairman opened the hearing at 6:16 p.m.

The hearing was closed at 6:17 p.m.

Chairman Newman moved to adopt the plan consistency statement. Commissioner Sloan seconded the motion and it passed 7-0.

Commissioner Pressley moved to approve the rezoning request. Vice Chair Whitesides seconded the motion and it passed 7-0.

NEW BUSINESS

- **Letter of Commitment for Public Financing of Mountain Housing Opportunities Low-Income Housing Tax Credit Program Project Application**

Matt Cable, Planning Manager, summarized the project proposals and funding requests for the FY22 Affordable Housing Services Program that Mountain Housing Opportunities (MHO) submitted for Lakeshore Villas and Pentland Place.

Vice Chair Whitesides moved to authorize staff and the Chairman to negotiate project loan terms and send Letters of Commitment for $800,000 in funding to support the two Mountain Housing Opportunities LIHTC Program applications to the North Carolina Housing Finance Agency. Commissioner Edwards seconded and the motion passed 6-0.

- **Budget Amendment for Occupancy Tax Fund Adjustment for Growth**

Jennifer Barnette, Budget Director, explained the budget amendment.

Vice Chair Whitesides moved to approve the budget amendment as presented. Commissioner Pressley seconded and the motion passed 7-0.

ANNOUNCEMENTS

The Chairman made the following announcements:

- *May 11 @ 1:30 p.m. - Commissioners' Budget Work Session at 200 College Street, Room 326 in downtown Asheville.*
- *May 18 @ 3 p.m. - Commissioners' Briefing at 200 College Street, Room 326 in downtown Asheville.*
- *May 18 @ 5 p.m. - Commissioners' Regular Meeting at 200 College Street, Room 326 in downtown Asheville*

Vice Chair Whitesides moved to go into closed session pursuant to NCGS 143-318.11(a) (3) to hear legal matters and NCGS 143-318.11(a) (5) to hear contract or lease matters with no possible action anticipated following the closed session. Commissioner Beach-Ferrara seconded and the motion passed 7-0.

CLOSED SESSION

The Board heard the update and had discussion regarding the previously mentioned legal matters and contract or lease matters. No action was taken.

Commissioner Beach-Ferrara moved to go back into open session. Commissioner Edwards seconded and the motion passed 7-0.

Vice Chair Whitesides moved to adjourn the meeting. Commissioner Wells seconded and the motion passed 7-0.

The meeting was adjourned at 6:55 p.m.

LAMAR JOYNER, CLERK
BOARD OF COMMISSIONERS

BROWNIE NEWMAN, CHAIRMAN
BOARD OF COMMISSIONERS

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

Consent Agenda

Department: Emergency Services **Presenter(s):** Jerry Leatherwood, Deputy Fire Marshal

Contact(s): Jerry Leatherwood, Deputy Fire Marshal

Subject: Resolution Approving Pyrotechnic Experts for Firework Displays

Brief Summary:

- Request from Joey's Fireworks, Inc. and John Adair to conduct a fireworks display on 7/3/21 at the Cliffs at Walnut Cove, 158 Walnut Valley Pkwy, Arden, NC 28704.
- Request from Hale Artificier, Inc. and William Howland to conduct a fireworks display on 7/4/21 at Lake Julian Park, 37 Lake Julian Road, Arden, NC 28704.
- Request from Pyrotechnico Fireworks, Inc. and Brian Freelan to conduct a fireworks display on 7/3/21 at the private residence of David Luck, 1355 Cane Creek Rd., Fletcher, NC 28732.
- Request from Pyrotechnico Fireworks, Inc. and John Adair to conduct a fireworks display on 7/5/21 at Biltmore Estate-South Terrace, 1 Lodge Street, Asheville, NC 28803.
- Request from Pyrotechnico Fireworks, Inc. and Thomas Knott to conduct a fireworks display on 7/4/21 at Biltmore Estate, 1 Antler Hill Road, Asheville, NC 28803.

In accordance with Governor Cooper's current COVID–19 Executive Order, physical distancing and mass gathering guidelines will be strictly adhered to.

Recommended Motion & Requested Action: Approve resolution.

County Manager's comments and Recommendation: County Manager recommends approval.

RESOLUTION #21-05-01

RESOLUTION APPROVING PYROTECHNICS EXPERTS FOR CONDUCTING FIREWORKS DISPLAYS

WHEREAS, pursuant to North Carolina General Statutes Section 14-410 and 14-413 the Board of Commissioners is authorized to review and approve the qualifications of persons applying for approval as pyrotechnics experts for the purpose of conducting fireworks displays; and

WHEREAS, application has been made by Joey's Fireworks, Pyrotecnico Fireworks, Inc., and Hale Artificier, Inc. for pyrotechnic displays; and

WHEREAS, this Board is of the opinion that the application received to conduct firework or pyrotechnic displays should be approved.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners for the County of Buncombe as follows:

1. That the following be granted permission to conduct fireworks displays at the location and on the dates shown, to-wit:

NAME	LOCATION	DATE
Joey's	158 Walnut Valley Pkwy, Arden	July 3, 2021
Pyrotechnico	1355 Cane Creek Rd.,Fletcher	July 3, 2021
Hale Artificier	37 Lake Julian Road, Arden	July 4, 2021
Pyrotechnico	1 Antler Hill Road, Asheville	July 4, 2021
Pyrotechnico	1 Lodge Street, Asheville	July 5, 2021

2. The County Fire Marshal has reviewed these requests and found that those listed above are qualified pyrotechnic experts.

3. That pursuant to N.C.G.S. 14-410 and 14-413 the Board has found that the above named individual/company is a qualified pyrotechnic expert for the purpose of conducting fireworks displays.

4. In accordance with the current NC Executive Order, physical distancing and mass gathering guidelines will be strictly adhered to.

ADOPTED this the 4th day of May, 2021.

ATTEST

LAMAR JOYNER, CLERK

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE

BROWNIE NEWMAN, CHAIRMAN

APPROVED AS TO FORM:

COUNTY ATTORNEY

Buncombe County Tax Collections

Jennifer Pike
Tax Collector

CONSENT

DEPARTMENT: Tax Collections **PRESENTER: Jennifer Pike**

CONTACT: Jennifer Pike

SUBJECT: Approval of March 2021 Tax Collection Report

BRIEF SUMMARY:

NCGS 105-350 requires the Tax Collector to submit a report showing the amount of taxes collected.

As of March 31, 2021, the total levy billed for fiscal year 2021 is 98.65% collected, as compared to 98.76% for fiscal year 2020. At our rate of collections, we expect to meet the Current Year Ad Valorem budgeted amount.

The personal property category is made up of both Business Personal Property (BPP) and Individual Personal Property (IPP). The percentage collected for IPP of 77.60% is below the collected percentage of 82.63% as of the same time last year, due to the amount of motor vehicle registration gap tax outstanding.

Below is Buncombe County year to date reporting for fiscal year 2021, as of March 31, 2021.

Current Year Collections

Fiscal Year 2021	Personal Property	Public Service	Real Estate	Motor Vehicles	Total
Total Levy	$ 14,508,647.11	$ 5,494,567.14	$ 184,235,020.57	$ 10,957,979.90	$ 215,196,214.72
Amount Collected	$ 14,071,931.71	$ 5,494,567.14	$ 181,831,194.99	$ 10,882,910.27	$ 212,280,604.11
Unpaid Balance	$ 436,715.40	$ -	$ 2,403,825.58	$ 75,069.63	$ 2,915,610.61
Interest Collected	$ 22,289.28	$ 440.68	$ 270,572.59	$ 56,434.91	$ 349,737.46
FY21 Collection %	**96.99%**	**100.00%**	**98.70%**	**99.31%**	**98.65%**
FY20 Collection %	97.45%	100.00%	98.77%	99.53%	98.76%

Total fiscal year 2021 year to date collections, property tax and interest **$ 212,630,341.57**

Prior Year Collections

Prior Years 2011-2020	Personal Property	Real Estate	Total
Amount Collected	$ 88,792.55	$ 597,863.12	$ 686,655.67
Interest Collected	$ 8,891.31	$ 58,019.12	$ 66,910.43

Total prior year collections, fiscal year to date **$ 753,566.10**

***Total property tax released March 2021 due to taxable value adjustments** **$ 13,527.94**

***Total refunds processed March 2021** **$ 31,250.14**

***Detailed information for releases and refunds is available in Tax Collections.**

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

Consent Agenda

Department: **General Services** **Presenter(s): Ronnie Lunsford**

Contact(s): **Ronnie Lunsford**

Subject: Pre-Construction services contract with James R. Vannoy Construction for AB-Tech deferred maintenance projects.

Brief Summary:

The FY21 AB-Tech Capital Fund included $3.298MM for deferred maintenance projects at AB-Tech. In order to proceed with the implementation of the deferred maintenance projects, Construction Manager at Risk (CMAR) pre-construction services are needed. Construction Manager at Risk pre-construction services include the following:

- Cost estimating
- Value engineering
- Project scheduling
- Developing scopes of work
- Preparing bid packages
- Other services necessary for project completion

In February of 2021, General Services released a Request for Qualifications (RFQ) for the selection of a Construction Manager at Risk. Submittals were received and scored by General Services. James R. Vannoy Construction scored the higher of the two companies that submitted Construction Manager at Risk qualifications. As a result, staff negotiated a contract with James R. Vannoy for $35,877. James R. Vannoy will work with together with the design team to develop the scope of work, cost estimations, bid packages and ensure that the project is completed in budget and satisfactorily for Buncombe County and AB-Tech. This project is estimated to be completed in early 2022.

Recommended Motion & Requested Action: Recommend executing the Design Contract with Novus.

County Manager's comments and Recommendation: Recommends approval.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

AB TECH CAPITAL IMPROVEMENTS PROJECT FY21
PRECONSTRUCTION SERVICES CONTRACT

THIS AGREEMENT is made and entered into this the 31st day of March 2021, by and between **BUNCOMBE COUNTY** and **JAMES R. VANNOY AND SONS CONSTRUCTION CO., INC.** (hereinafter referred to as Vannoy Construction).

WHEREAS, Buncombe County needs the services of a Construction Manager At Risk for Preconstruction Services associated with the design and development of the FY21 Capital Improvement Projects on the campus of Asheville-Buncombe Technical Community College (AB Tech); and

WHEREAS, the facility will be funded through sales tax revenues exclusively dedicated to capital improvement projects for AB Tech; and

WHEREAS, Buncombe County requested Statements of Qualifications from parties interested in providing Construction Manager At-Risk services for the project; and

WHEREAS, proposals were received on February 16, 2021 and based on the proposals submitted, the County has determined that the team of Vannoy Construction will provide the best combination of qualifications and experience necessary to perform the services of a Construction Manager At-Risk on this project; and

WHEREAS, Vannoy Construction accepts a relationship of trust and confidence between Vannoy Construction and Buncombe County and undertakes to act as Buncombe County's fiduciary in matters related to the project; and

WHEREAS, Vannoy Construction agrees to furnish their best skills and best judgment to cooperate with Buncombe County, AB Tech, and the Architect during the design of the project and in all ways to further the interests of Buncombe County, AB Tech, and the project; and

WHEREAS, Vannoy Construction agrees to furnish efficient engineering reviews and business administration during the Preconstruction Services phase of this project.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, Buncombe County and Vannoy Construction agree as follows:

Preconstruction Services. Preconstruction services shall be provided in accordance with the Fee Proposal for Preconstruction Services submitted by Vannoy Construction, advertisements, and the "Request for Proposals for Construction Manager at Risk Services and Providing a Guaranteed Maximum Price for the AB Tech Capital Improvement Project FY21," which documents are hereby incorporated by reference.

Payments to CMAR. Buncombe County will compensate Vannoy Construction for Preconstruction Services in the amount of Thirty-five thousand eight hundred seventy-seven dollars ($35,877.00), which shall be payable as outlined in the Fee Proposal upon satisfactory completion of preconstruction services described in this agreement.

Mediation. Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the Buncombe County Bar Association shall name a mediator to hear the matter.

The parties shall equally share the mediator's fee. The mediation shall be held in Asheville at a location designated by the mediator selected to hear the matter.

Legal Proceedings. Claims, disputes and/or other matters in question between the parties that are not resolved by mediation shall be heard in the North Carolina General Courts of Justice in Asheville, Buncombe County, North Carolina, which said Court shall have jurisdiction to hear any dispute between the parties arising out of this agreement. The Parties hereby agree that this paragraph establishes exclusive and sole jurisdiction for any legal proceeding in Buncombe County, North Carolina.

Termination without Cause. The County may terminate this contract without cause by giving 14 days written notice to the Contractor. In that event, all finished or unfinished deliverable items prepared by the Contractor under this contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made.

IN WITNESS WHEREOF, this Agreement has been executed by Buncombe County and Vannoy Construction by and through a duly authorized representative, and is effective the date and year first above written.

JAMES R. VANNOY AND SONS CONSTRUCTION CO., INC.

BY: Brian K. Walker

TITLE: BRIAN WALKER, VICE PRESIDENT

BUNCOMBE COUNTY

BY: _____

TITLE: _____

_____

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

_____
Buncombe County Finance Director

VANNOY
CONSTRUCTION

March 29, 2021

Attn: Mr. Mike Mace and Ronnie Lunsford

Buncombe County Government
40 McCormick Place
Asheville, N.C. 28801

Dear Mr. Mace,

Thank you for the opportunity to be a part of the team on the AB Tech Capital Improvements Phase 4 Project for the Fiscal Year 2021.

We would like to propose a pre-construction fee in the amount of $35,877.00. We have reduced the amount to reflect the upfront work already completed during the assessment phase. If this is acceptable we would propose billing one half at DD document completion and the final one half once the project is bid and the preconstruction process is completed.

We intend to continue our work with the owner and design team providing budgets at each stage while reviewing the construction documents and providing review related comments to insure we have clear well defined contract documents for bidding and construction. We will provide value engineering as part of this process and set up related bid documents in the form of a bid manual containing all the necessary documents to bid the project including but not limited to bid package scopes of work, allowances, unit prices, alternates, overall project schedule, site utilization plan, required bid forms, and other bid related information. We will advertise for bidder prequalifications, prequalify bidders, propose a prequalified bidders list to the owner, bid the project publically and select the lowest qualified bidders under the direction of the owner.

If this proposal is acceptable please let us know and we or your office can draft a preconstruction contract reflecting the budget and fee amounts. Again, we appreciate the opportunity to provide our services on this project and look forward to its successful completion.

Respectfully,

T.J. Hollars
Senior Project Manager
James R. Vannoy & Sons Construction Co. Inc.
551 Brevard Rd Suite 111 Asheville, NC 28803
Cell: (828)-265-6447
Office: (828)-575-1300

CMAR Scoresheet

AB Tech FY21 Capital Plan Maintenance

Firm: Vannoy Construction

Category	Score	Maximum points possible
Similar Project Experience	25	25
Ability of Key Personnel	20	20
Current & Projected Workload	15	15
Work experience with County	10	10
Proximity & Familiarity with Buncombe County & AB Tech	10	10
Construction Administration Abilities	15	15
Quality of compliance plan for minority business participation	0	5
Total	95	100

Comments
High Surety rating

CMAR Scoresheet
AB Tech FY21 Capital Plan Maintenance

Firm: Frank L. Blum

Category	Score	Maximum points possible
Similar Project Experience	25	25
Ability of Key Personnel	19	20
Current & Projected Workload	15	15
Work experience with County	8	10
Proximity & Familiarity with Buncombe County & AB Tech	10	10
Construction Administration Abilities	13	15
Quality of compliance plan for minority business participation	0	5
Total	90	100

Comments

Surety Rating lower than Vannoy

CMAR Scoresheet

AB Tech FY21 Capital Plan Maintenance

Firm: Vannoy Construction

Category	Score	Maximum points possible
Similar Project Experience	25	25
Ability of Key Personnel	20	20
Current & Projected Workload	12	15
Work experience with County	10	10
Proximity & Familiarity with Buncombe County & AB Tech	10	10
Construction Administration Abilities	15	15
Quality of compliance plan for minority business participation	3	5
Total	95	100

Comments

CMAR Scoresheet
AB Tech FY21 Capital Plan Maintenance

Firm: Frank L. Blum

Category	Score	Maximum points possible
Similar Project Experience	25	25
Ability of Key Personnel	17	20
Current & Projected Workload	12	15
Work experience with County	5	10
Proximity & Familiarity with Buncombe County & AB Tech	10	10
Construction Administration Abilities	13	15
Quality of compliance plan for minority business participation	3	5
Total	85	100

Comments

CMAR Scoresheet

AB Tech FY21 Capital Plan Maintenance

Firm: Vannoy Construction

Category	Score	Maximum points possible
Similar Project Experience	25	25
Ability of Key Personnel	20	20
Current & Projected Workload	10	15
Work experience with County	10	10
Proximity & Familiarity with Buncombe County & AB Tech	10	10
Construction Administration Abilities	15	15
Quality of compliance plan for minority business participation		5
Total	90	100

Comments

CMAR Scoresheet
AB Tech FY21 Capital Plan Maintenance

Firm: Frank L. Blum

Category	Score	Maximum points possible
Similar Project Experience	25	25
Ability of Key Personnel	18	20
Current & Projected Workload	12	15
Work experience with County	5	10
Proximity & Familiarity with Buncombe County & AB Tech	10	10
Construction Administration Abilities	10	15
Quality of compliance plan for minority business participation	0	5
Total	80	100

Comments

CMAR Scoresheet
AB Tech FY21 Capital Plan Maintenance

	Vannoy	Frank L. Blum
Mike	95	90
Ronnie	90	80
Pam	95	85
Total	280	255

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

Consent Agenda

Department: General Services **Presenter(s): Ronnie Lunsford**

Contact(s): Ronnie Lunsford

Subject: Architectural services contract with Novus Architects for AB-Tech deferred maintenance projects.

Brief Summary:

The FY21 AB-Tech Capital Fund included $3.298MM for deferred maintenance projects at AB-Tech. In order to proceed with the implementation of the deferred maintenance projects, architectural services are needed. Architectural services include the following:

- Existing conditions and schematic design
- Design documents
- Construction documents
- Assist with bidding and permitting
- Construction administration
- Other architectural services necessary for completion of the project

In February of 2021, General Services released a Request for Qualifications (RFQ) for the selection of a firm. Submittals were received and scored by General Services. Novus Architects scored the highest of the eight firms that submitted designer qualifications. As a result, staff negotiated a contract with Novus Architects for $150,000. Novus Architects will work together with the Construction Manager at Risk to develop the scope of work, construction documents, and ensure that the project is completed within budget and satisfactorily for Buncombe County and AB-Tech. This project is estimated to be complete in early 2022.

Recommended Motion & Requested Action: Recommend executing the Design Contract with Novus.

County Manager's comments and Recommendation: Recommends approval.

AGREEMENT FOR
DESIGN CONSULTANT SERVICES

This Agreement for Design Consultant Services is made, and entered into this the 22nd day of March 2021, by and between the **COUNTY OF BUNCOMBE**, a political subdivision of the State of North Carolina, (hereinafter "OWNER"), and Novus Architects, (hereinafter "DESIGNER" or "DESIGN CONSULTANT"), whose principal place of business is: 14 South Pack Square Suite 400, Asheville, NC 28801.

For Professional Services in connection with the Project known as:
Buncombe County Government
FY21 Capital Improvements
Asheville-Buncombe Technical Community College
Multiple Buildings

The Owner and the Design Consultant hereby agree as set forth below:

1. ARTICLE 1
DEFINITIONS

The following words and phrases where appearing in initial capitalization, shall for the purposes of this Agreement have the following meanings:

1.1. Project. The Project shall be as described above.

1.2. Services. The Services to be performed by the Design Consultant under this Agreement shall consist of the Basic Services described in Article 3, Article 7, Attachment A to the extent there is no conflict, and any other services in the Contractor Documents as part of the Basic Services, and include normal structural, mechanical and electrical architectural design services.

1.3. Construction Contract Documents. The Construction Contract Documents shall consist of the plans and specifications prepared by the Design Consultant, and any addenda and change orders thereto, and the Construction Contract between Owner and Contractor, all of which shall be compatible and consistent with the terms of this Agreement, which shall Control if there is a conflict.

1.4. Construction Costs. The Construction Costs shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Design Consultant. The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Design Consultant, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction. Construction Costs do not include the compensation of the Design Consultant and its consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 6.

1.5. Contractor. The Contractor is the person or entity which enters into an agreement with the Owner to perform the construction of any or all of the Project, including, without limitation, the providing of labor, materials, and equipment incorporated or to be incorporated into the Project. The term

"Contractor" means the Contractor or its authorized representative, but excludes the Owner's Representative and the Design Consultant.

1.6. Basic Services Compensation. Basic Services Compensation shall be the lump sum fee designated in Article 4 to be paid by the Owner to the Design Consultant in connection with the performance of the Basic Services by the Design Consultant.

2. ARTICLE 2
RELATIONSHIP OF THE PARTIES

2.1. Design Consultant Services. The Design Consultant shall provide professional engineering services for the Project in accordance with the terms and conditions of this Agreement and all applicable codes and laws. The Design Consultant's performance of services shall be as professional consultant to the Owner to carry out the activities of Project design and construction administration and to provide the technical documents and supervision to achieve the Owner's Project objectives.

2.2. Owner Representation. The Owner shall designate a Project Manager to serve as the Owner's Representative. The Owner's Representative has no design responsibilities of any nature. None of the activities of the Owner's Representative supplant or conflict with the design, budget or any other services and responsibilities customarily furnished by the Design Consultant or sub-consultants in accordance with generally accepted architectural/engineering practices except as otherwise modified by this Agreement. Instructions by the Owner to the Design Consultant relating to services performed by the Design Consultant will be issued or made by or through and in accordance with procedural, organizational, and documentation standards established by the Owner's Representative. Communications and submittals of the Design Consultant to the Owner and Contractor shall be in writing and issued or made in accord with similar procedural and documentation standards established by the Owner's Representative. The Owner's Representative shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Design Consultant and Contractor and to call periodic conferences to be attended by the Design Consultant, and his sub-consultants, throughout the term of this Agreement.

2.3. Other Consultants. The Owner may provide drawings, consultation, recommendations, suggestions, data and/or other information relating to the Project from other Consultants under separate contract with the Owner, including but not limited to: Surveyor, Utility Locating Service, Geo-technical Consultant, CMARs, and/or Materials Testing Consultant. The Design Consultant is responsible for the coordination of survey, existing utility location, geo-technical services, and/or material testing, including all coordination with surveyor, soils engineers, utility locating contractor, City and/or County officials, and CMARs, if any, required for Project.

2.4. Design Consultant Representation.

2.4.1. The Design Consultant shall provide a list of all consultants (and sub-consultants if applicable) which the Design Consultant intends to utilize on the Project prior to commencing work on the Project. The list shall include such information on the qualifications of the consultants as may be requested by the Owner. The Owner will review the consultants proposed. The Design Consultant shall not retain a consultant to which the Owner has a reasonable objection. The Design Consultant shall use individuals or firms that are licensed and regularly engaged in the fields of expertise required for this Project.

2.4.2. All agents and workers of the Design Consultant and its sub-consultants shall be prepared to provide identification at all times they are on the Owner's property including, at a

minimum, the company name and telephone number and name. The County reserves the right to require identification badges that contain the information above.

,

2.4.3. The Design Consultant shall receive, compile and report all M/WBE participation of all of its sub-consultants and vendors of this project in a format acceptable to Owner at the commencement of design, and on a monthly basis, should any change from the preliminary submission occur.

2.5. Division of Responsibilities/Services. The Design Consultant understands and agrees that should the Owner's Representative or other consultant provide the Design Consultant with any estimating assistance, cost or time control recommendations or other consultation, recommendations or suggestions, any or all such activities on the part of the Owner's Representative, consultant, or any other representative of the Owner shall in no way relieve the Design Consultant of the responsibility of fulfilling its obligations and responsibilities under this Agreement.

2.6. Compliance with Laws. Design Consultant represents that it is in compliance with all applicable Federal, State, and local laws, regulations or orders, as amended or supplemented, including Chapter 64 Article 2 of the North Carolina General Statutes regarding the verification of work authorization. The implementation of this Contract shall be carried out in strict compliance with applicable Federal, State, or local laws.

3. ARTICLE 3
BASIC SERVICES

3.1. **Scope of Services**.

3.1.1. The Basic Services to be provided by the Design Consultant shall be performed in the phases described hereinafter which have as their objective design and construction administration of the Project. The Basic Services shall be performed in accordance with the standard of care set forth in this Agreement. The final product shall be suitable for the Owner's purposes, satisfy the Owner's requirements, comply with all applicable codes and laws, and be completed on a timely basis and within the approved budget.

3.1.2. The Design Consultant's services shall be performed as expeditiously as necessary for the orderly progress of the Work. The Design Consultant shall submit for the Owner's approval a schedule for the performance of the Design Consultant's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Design Consultant.

3.1.3. Upon authorization from the Owner to proceed, and based on the approved Design Narrative, the Design Fee, and Preliminary Programming, the Design Consultant shall prepare **Schematic Design Documents** consisting of drawings and other documents illustrating the design concept, scale and relationship of the Project components, for approval by the Owner.

3.2. **Design Development Phase**.

3.2.1. Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Design Consultant shall prepare, for approval by the Owner, Design Development Documents consisting of

drawings and other documents to fix and describe the size and character of the project as to, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

3.2.2. The Design Consultant shall advise the Owner of any adjustments to the preliminary estimate of Construction Costs

3.3. **Construction Document Phase**.

3.3.1. Upon written authorization from the Owner to proceed, the Design Consultant shall prepare from the approved Design Documents, working drawings and Specifications setting forth in detail the requirements for the construction of the entire Project. The Design Consultant shall assist the owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

3.3.2. The Design Consultant shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

3.3.3. The Design Consultant shall be responsible for, and shall hold the Owner harmless for, any and all claims or damages due to the negligence of the Design Consultant or his employees in the preparation of the Construction Documents.

3.4. **Permitting and Bidding/Negotiation**.

3.4.1. The Design Consultant, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Costs, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

3.4.2. The Design Consultant shall coordinate and document the reproduction, distribution and retrieval of the bidding documents. Further, the Design Consultant shall coordinate and document the collection and return of deposits or payments. In addition to the bidders, documents shall be issued to all required code authorities, contractors, plan room, services, and others, as the Owner designates.

3.4.3. *Intentionally left blank for numbering purposes.*

3.4.4. The Design Consultant shall request, expedite and submit all information necessary to obtain all necessary permits, licenses and approvals, required for the Project.

3.4.5. The Design Consultant shall prepare such clarifications and addenda to the bidding documents as may be required. The Design Consultant will provide these to the Owner for review prior to issuance to all holders of bid documents.

3.4.6. The Design Consultant will schedule and conduct a Pre-Bid Conference with prospective bidders to review the Project. The Design Consultant shall provide knowledgeable representatives, including representatives of its consultants, to participate in these conferences to explain and clarify Bidding Documents. Within two (2) days after the Pre-

bid Conference the Design Consultant shall deliver to the Owner, if needed, a final Addendum.

3.4.7. The Design Consultant shall prepare a certified bid tabulation and recommendation to the Owner concerning the Contract Award.

3.4.8. If the estimated Construction Costs are exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall, i) give written approval of an increase in such fixed limit, ii) authorize rebidding or renegotiating of the project within a reasonable time, iii) abandon the Project and terminate in accordance with Article 12, OR iv) participate with the Design Consultant in such re-bidding, re-negotiation, and re-design, at no additional expense to the Owner, as may be necessary to obtain price(s) within the approved budget or price(s) acceptable to the Owner. All re-design must be approved by the Owner. The Design Consultant, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement

3.4.9. Should the Design Consultant re-design or conduct re-bidding under its responsibilities set out in the preceding paragraph, its' Construction Phase and Post Construction Phase services shall be extended to take re-design/re-bid delays into account at no additional expense to the Owner.

3.4.10. The Design Consultant shall assist the Owner's Representative in the preparation of the Agreement(s) between Owner and Contractor(s) for the Owner's execution. The Owner's Representative will coordinate award(s) and Notice(s) to Proceed for the Owner.

3.5. **Construction Phase**.

3.5.1. The Construction Phase for each portion of the Project will commence with the award of the Construction Contract and will terminate when the Owner makes the Final Completion payment to the Contractor.

3.5.2. The Design Consultant shall consult with the Owner and participate in all decisions as to the acceptability of subcontractors and other persons and organizations proposed by the Contractor for various portions of the work.

3.5.3. The Design Consultant shall receive, compile, track and report all W/MBE participation of all contractors, sub-contractors and vendors of this project in a format acceptable to Owner. Reports will be made to the Owner on a monthly basis, utilizing a pay application cover sheet to be supplied and certified by the contractor (format to be provided by Owner).

3.5.4. The Design Consultant shall review and approve the Work performed by the Contractor(s) for conformance with Contract Documents.

3.5.5. The Design Consultant shall provide necessary Project drawings, in electronic format, to the electrical or data contractor for creation of data "as built" submittal and approval drawings, and to the general contractor for site layout/staking.

3.5.6. The Design Consultant shall conduct Pre-installation meetings to review the installation procedures prior to the placement of the work.

3.5.7. The Design Consultant shall, when requested by the Owner's Representative, prepare Change Order documentation.

3.5.8. The Design Consultant shall render to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, interpretations of requirements of the Contract Documents. The Design Consultant shall make all interpretations consistent with the intent of and reasonably inferable from the Contract Documents.

3.5.9. Should errors, omissions or conflicts in the specifications or other Contract Documents by the Design Consultant be discovered, the Design Consultant will prepare and submit to the Owner's Representative, within two (2) working days unless otherwise authorized by the Owner's Representative, such amendments or supplementary documents and provide consultation as may be required, for which the Design Consultant shall make no additional charges to the Owner.

3.5.10. The Owner's Representative shall be the point of contact for the Owner, except when the Owner shall direct otherwise. All instructions to the Contractor(s) shall be issued by the Design Consultant except when is directed otherwise by the Owner's Representative.

3.5.11. The Design Consultant will have access to the Work at all times. All site visits, observations and other activities by the Design Consultant shall be coordinated with the Owner's Representative and written report of such visits made promptly to the Owner's Representative.

3.5.12. The Design Consultant shall make such periodic visits to the Project sites as may be necessary to familiarize themselves generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of such on-site observations, the Design Consultant and its consultants shall take the appropriate steps to guard the Owner against defects and deficiencies in the Work of the Contractor. If the Design Consultant observes any work that does not conform to the Contract Documents, the Design Consultant shall immediately make an oral and written report of all such observations to the Owner's Representative. The Design Consultant shall not be required to make exhaustive or full-time on-site observations to check the quality or quantity of the Work, but shall make as many observations as may be reasonably required to fulfil their obligations to the Owner. The Design Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work.

3.5.13. The Design Consultant shall immediately notify the contractor and Owner in writing if the Project falls more than fourteen (14) days (or the number of days set by the County in the preconstruction meeting, which number shall be recorded in the minutes of said meeting) behind schedule. The Design Consultant shall immediately request a recovery plan from the contractor and make appropriate written recommendation to the Owner.

3.5.14. Based upon observations at the site and upon the Contractor's applications for payment, the Design Consultant shall determine the amount owing to the Contractor(s), pursuant to the terms of the Owner/Contractor Agreement, and shall issue Certificates for Payment to the Owner in such amounts. The Design Consultant's signing of a Certificate of Payment shall constitute a representation by the Design Consultant to the Owner, based upon the

Design Consultant's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated, that to the best of the Design Consultant's knowledge, information and belief, the quality of the Work appears to be in accordance with the Contract Documents (subject to: an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion; the results of any subsequent tests required by the Contract Documents; minor deviations from the Contract Documents correctable prior to completion; and to any specific qualifications stated in the Certificate for Payment), and that the Contractor is entitled to payment in the amount certified. By signing a Certificate for Payment to the Owner, the Design Consultant shall not be deemed to represent that it has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Construction Contract Sum.

3.5.15. If, in accordance with its duty, the Design Consultant advises the Owner's Representative of non-conforming work as stated in subparagraph 3.5.12, the Design Consultant shall confirm the non-conformance in writing to the Owner's Representative within two (2) days of observation.

3.5.16. The Design Consultant and the Owner's Representative jointly shall have authority to condemn or reject Work on behalf of the Owner when in the Owner's Representative's or the Design Consultant's opinion the Work does not conform to the Contract Documents. Whenever in the Owner's Representative's or the Design Consultant's reasonable opinion it is considered necessary or advisable to insure the proper implementation of the intent of the Contract Documents, the Owner's Representative shall have the authority to require special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such Work is fabricated, installed or completed.

3.6. **Final Completion of Design Services**.

3.6.1. When the Contractor notifies the Design Consultant that the Work is substantially complete, the Design Consultant and its consultants shall inspect the Work and prepare and submit to the Owner's Representative lists of the Work of the Contractor(s) which is not in conformance with the Contract Documents. The Design Consultant shall transmit such lists to the Contractor(s). The Owner may request that the Design Consultant inspect and prepare a list on any portion of the Work.

3.6.2. The Design Consultant shall receive, compile, and report all W/MBE participation of all contractors, sub-contractors and vendors of this project, utilizing a pay application cover sheet to be supplied and certified by the contractor (format to be provided by Owner).

3.6.3. The Design Consultant and its consultants shall conduct up to two (2) comprehensive Final Completion inspections at the request of the Owner. If more than two (2) Final Completion inspections are required, through no fault of the Design Consultant, the additional inspections shall be deemed additional services.

3.6.4. The Design Consultant shall obtain from the Contractor(s) drawings, prints, and other data necessary for the accurate preparation of the record drawings.

3.6.5. The Design Consultant shall make a recommendation in writing to the Owner regarding liquidated damages for each contractor, as may be applicable.

3.6.6. Upon correction of the deficiency reports and acceptance of all other close-out submittals and certificates of the Contractor, the Owner's Representative and the Design Consultant shall review and approve the Application for Final Payment and forward it to the Owner for execution. In addition, the Design Consultant shall certify in writing that the work conforms to the Contract Documents. The Design Consultant shall issue AIA Substantial Completion Certificates for each Contractor.

3.7. **Serving as Witness**.

3.7.1. The Design Consultant shall provide testimony in public hearings, arbitration proceedings, and legal proceedings, and such testimony shall be provided without additional fee or charge to the Owner unless said testimony is requested by the Owner and consists of expert testimony not related to this Project or Work.

3.8. **Construction Warranty**.

3.8.1. The Design Consultant and its consultants shall assist the Owner in resolution of warranty issues as may be required to determine responsibility for deficiencies. The Design Consultant and its consultants shall conduct an inspection of the project one (1) month prior to warranty expiration and provide to the Owner a written report specifying any warranty deficiencies which may exist.

4. ARTICLE 4
COMPENSATION

4.1. **Basic Services Compensation**.

The Owner shall compensate the Design Consultant in accordance with the terms and conditions of this Agreement, including the following:

4.1.1. For the Basic Services of the Design Consultant, Basic Services Compensation shall be in the amount of $150,000.00.

4.1.2. In the event the Owner requests changes to the Project or elects not to complete the work or any portion thereof, which would decrease the most recently approved CCAP, basic compensation due the Design Consultant, as to such deletion or decrease, shall be adjusted downwards for remaining services to be performed but not for services already performed to the date of receipt by the Design Consultant of the written requested change or notice of the intent not to complete part or all of the work, in accordance with the basic payment schedule set forth in Paragraph 4.2 hereof.

4.1.3. The Basic Services Compensation stated in Paragraph 4.1.1 includes all compensation and other payments due the Design Consultant (manpower, overhead, profit, direct costs, travel, copies, postage, telephone and facsimile service, etc.) in the performance of the Basic Services.

4.2. **Payments to the Design Consultant**.
Payments on account of the Design Consultant shall be made as follows:

4.2.1. Payments for Basic Services, including any design phase change orders, shall be made in proportion to services performed so that the compensation at the completion of each Phase shall equal the following percentages of the Basic Services Compensation. Payment shall be made upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and certifications that all sub-consultants have been paid, and other documentation as requested by the Owner.

Schematic Design Phase	15%
Design Development Phase	20%
Construction Documents Phase	40%
Permitting and Bidding/Negotiation Phase	5%
Construction Administration (to include Close Out Documents)	20%
Final Completion of Design Services Phase	100%

4.2.2. No deductions shall be made from the Design Consultant's Basic Services Compensation on account of penalty, liquidated damages, retainage or other sums withheld from payments to Contractor.

4.2.3. Deductions may be made from the Design Consultant's Basic Services Compensation on account of errors and omissions in the drawings, specifications and other documents prepared by the Design Consultant or in the Design Consultant's performance of its obligations under this Agreement.

4.3. Additional Services Compensation.

4.3.1. With respect to any Additional Services, as described in Article 7 herein, performed by the Design Consultant hereunder, the Design Consultant and Owner shall negotiate an equitable adjustment to the Basic Services Compensation. However, if negotiations are not successful prior to the time the additional services are needed, the Owner may direct the Design Consultant to proceed with the Additional Services on a time spent basis with Additional Services Compensation to be computed as follows:

4.3.2. Principals' time at the fixed rate as stated in the proposal submitted by the designer and attached as Exhibit A.

4.3.3. Payments for Additional Services of the Design Consultant shall be made upon presentation of the Design Consultant's statement of services, fully supported by invoices, time cards, and other documentation as requested by the Owner.

4.4. Accounting Records.

4.4.1. Records of the Design Consultant with respect to Additional Services and payroll, and consultant and other expenses (including Reimbursable Expenses) pertaining to the Project, shall be kept according to generally accepted accounting principles and shall be available to the Owner or its authorized representative for inspection and copying at mutually convenient times.

5. ARTICLE 5
PERIOD OF SERVICE

5.1. Unless earlier terminated as provided in Article 12 hereof, this Agreement shall remain in force for a period which may reasonably be required for the Basic Services and Additional Services hereunder. However, the provisions of the Agreement relating to Professional Responsibility Construction Warranty; Professional Liability coverage; Indemnification; and Ownership of Documents/Confidential Information shall remain in effect after termination of the other provisions of the Agreement.

5.2. Time is of the essence in this Agreement.

6. ARTICLE 6
OWNER'S RESPONSIBILITIES

6.1. The Owner shall provide full information regarding the requirements for the Project.

6.2. The Owner shall examine documents submitted by the Design Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Design Consultant's Services.

6.3. If required for this Project, the Owner shall furnish a certified land survey of the Project sites, giving as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines, both public and private, above and below grade, including inverts and depths. All associated work will be coordinated by Design Consultant as part of the Basic Services.

6.4. The Owner shall pay for the services of a soils engineer or other consultant, when such services are deemed necessary by the Design Consultant or Owner's Representative, to provide reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistively tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional interpretations thereof. All associated work will be coordinated by Design Consultant as part of the Basic Services.

6.5. All services, information, surveys and reports required of the Owner shall be furnished at the Owner's expense.

6.6. If the Owner so directs, the Owner shall pay for and the Design Consultant shall request, expedite, and obtain all necessary permits, licenses, approvals, easements, assessments, and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

7. ARTICLE 7
ADDITIONAL SERVICES

7.1. If any of the following Additional Services are authorized in advance by the Owner in writing, the Design Consultant shall furnish or obtain from others the authorized Additional Services. If authorized in advance, in writing by the Owner, the Design Consultant shall be paid for these Additional Services by the Owner pursuant to Article 4.3, to the extent they exceed the Basic Services under this Agreement. Additional Services may include:

7.1.1. Providing fully detailed presentation models or presentation renderings, not included in Basic Services.

7.1.2. Providing financial feasibility or other special studies, not included in Basic Services.

7.1.3. Providing planning surveys or alternative site evaluations.

7.1.4. Providing services after payment by the Owner of the Final Payment to the Design Consultant other than services called for in the Basic Services.

7.1.5. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practices consistent with the terms of this Agreement.

8. ARTICLE 8
NOTICES

8.1. Any notice required by this Agreement or other communications to either party by the other shall be in writing and deemed given when delivered personally or when deposited in the United States Post Office, first class, postage prepaid, addressed as follows, or to such other address as shall be duly given by notice meeting the requirement of this Article.

To Owner:
Buncombe County
Attn: General Services Department
40 McCormick Place
Buncombe, NC 28801

To Design Consultant:
Novus Architects
14 South Pack Square Suite 400
Asheville, NC 28801

9. ARTICLE 9
INSURANCE

9.1. Insurance

9.1.1. Design Consultant agrees their insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth below prior to the Owner's signing of this Agreement. The insurance coverage and limits set forth below shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Design Consultant's duty to carry adequate insurance. The insurance coverage and limits set forth below shall not act as, be construed, or deemed to be a limitation on the liability of Design Consultant, for losses or damages under this Agreement. The minimum insurance coverage which the Design Consultant shall procure and maintain at its sole cost and expense during the term of the Agreement is as follows:

Worker's Compensation. Coverage at the statutory limits in compliance with applicable State and Federal laws. Design Consultant shall ensure that any subcontractors also have workers compensation coverage at the statutory limits.

Employer's Liability. Coverage with minimum limits of $1,000,000 each employee accident and $1,000,000 each employee disease.

Commercial General Liability. Insurance covering all operations performed by the Design Consultant with a minimum limit of $1,000,000 per occurrence with a $2,000,000 aggregate.

Professional Liability. Insurance covering the Design Consultant for acts, errors, or omissions in performance of the Agreement with a minimum limit of $1,000,000 per claim for projects under $15,000,000 and a minimum limit of $2,000,000 per claim for projects over $15,000,000.

Business Automobile Liability. Insurance covering all owned, non-owned, and hired vehicles used in performance of this Agreement. The minimum combined single limit per occurrence shall be $1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21.

Umbrella/Excess Liability. If the underlying liability policy limits are less than those required, Design Consultant may provide an excess or umbrella policy to meet the required limits of insurance. The excess or umbrella policy shall extend coverage over the underlying professional liability policy. Any additional insured under any policy of the underlying insurance will automatically be an additional insured under this insurance.

Additional Insurance Provisions.

If the Design Consultant maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Design Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

The Design Consultant shall provide the County with certificates of insurance evidencing the above amounts. Buncombe County and General Services Department shall be named as additional insureds under the commercial general liability and business automobile liability policy(s). Before commencing work and for any subsequent renewals, the Design Consultant shall furnish the County with certificates of insurance on an approved form.

Each insurance policy required above shall state that coverage shall not be canceled, except with written notice to the County, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina and in a form acceptable to the County.

Design Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Design Consultant shall ensure that Buncombe County and General Services Department are additional insureds on insurance required from subcontractors.

The Design Consultant shall maintain in force during the performance of this contract and for six (6) years after final completion of the Project, the Professional Liability insurance coverage referenced above.

Waiver of Subrogation: Design Consultant hereby grants to County a waiver of any right to subrogation which any insurer of said Design Consultant may acquire against the County by virtue of payment of any loss under such insurance. Design Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

The limits of coverage under each insurance policy maintained by the Design Consultant shall not be interpreted as limiting the Design Consultant's liability and obligations under this Agreement.

9.2. Notwithstanding the foregoing, nothing contained in this Article 9, nor this Contract, shall be deemed to constitute a waiver of the sovereign immunity of the Owner, which immunity is hereby reserved by the Owner.

10. ARTICLE 10
INDEMNIFICATION

10.1. Notwithstanding anything to the contrary contained herein, the Design Consultant shall indemnify and hold harmless the Owner and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from (1) the Design Consultant's negligent performance or failure to perform its obligations under this Agreement and (2) any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of personal and/or real property including the loss of use resulting wherefrom and caused by any negligent act or omission of the Design Consultant, anyone directly or indirectly employed by the Design Consultant or anyone for whose acts the Design Consultant may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article.

10.2. Except as otherwise set forth in this Agreement, the Design Consultant and the Owner shall not be liable to each other for any delays in the performance of their respective obligations and responsibilities under this Agreement which arise from causes beyond their control and without their fault or negligence, including but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, atmospheric condition of unusual severity, war, and strikes. Owner shall not be liable to the Design Consultant for acts or failures to act by the Contractor.

11. ARTICLE 11
DISPUTE RESOLUTION PROCEDURE

11.1. To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between the Owner and the Design Consultant, that any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear their dispute, the President of the Buncombe County Bar Association shall name a mediator to hear the matter. During the pendency of any dispute and after a determination thereof, the parties to the dispute shall act in good faith to mitigate any potential damages including utilization of construction schedule changes and alternate means of construction. The costs of the process shall be divided equally between the parties to the dispute.

11.1.1. The mediation session shall be private and shall be held in Buncombe County, North Carolina or in another North Carolina County agreed upon by both parties. Mediation under this Article 11 shall not be the cause for a delay of the Project which is the focus of the dispute.

11.2. If, as a result of mediation, a voluntary settlement is reached and the parties to the dispute agree that such settlement shall be reduced to writing, the Mediator shall be deemed appointed and constituted an arbitrator for the sole purpose of signing the mediated settlement agreement. Such

agreement shall be, and shall have the same force and effect as an arbitration award, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction.

11.3. If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Buncombe and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this Article, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

12. **ARTICLE 12**
TERMINATION, SUSPENSION OR ABANDONMENT

12.1. If either party shall substantially fail to perform in accordance with the terms of this Agreement through no fault of the other party, the non-breaching party may terminate this Agreement by delivering seven (7) days' written notice of termination.

12.2. If the project is suspended by the Owner for more than thirty (30) consecutive days, the Design Consultant shall be compensated for services performed prior to notice of such suspension.

12.3. This Agreement may be terminated by the Owner upon not less than seven (7) days' written notice to the Design Consultant in the event that the project is permanently abandoned. If the Project is abandoned by the Owner for more than ninety (90) consecutive days, the Design Consultant may terminate this Agreement by giving written notice.

12.4. If the Owner fails to make payment when due the Design Consultant for services and expenses, the Design Consultant may, upon seven (7) days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Design Consultant within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Design Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

12.5. In the event of termination not the fault of the Design Consultant, the Design Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due. This shall be the exclusive remedy for termination.

12.6. Owner shall have no liability to the Design Consultant for any delay or damage caused the Design Consultant due to suspension of the work, or due to any other delay, interruption, hindrance, or interference.

12.7. Should the Owner terminate this agreement for any reason under this Article, the Owner will acquire such drawings, including the ownership and use of all drawings, specifications, documents and materials relating to the Project prepared by or in the possession of the Design Consultant. The Design Consultant will turn over to the Owner in a timely manner and in good unaltered condition all original drawings, specifications, documents, materials, and computer files related to the project.

13. **ARTICLE 13**
SUCCESSORS/ASSIGNMENT

13.1. This Agreement shall inure to the benefit of and be binding on the heirs, successors, assigns, trustees and personal representatives of the Owner, as well as the permitted assigns and trustees of the Design Consultant.

13.2. The Design Consultant shall not assign, sublet or transfer its interest in this Agreement without the written consent of the Owner, except that the Design Consultant may assign accounts receivable to a commercial bank or financial institution for securing loans, without prior approval of the Owner.

14. **ARTICLE 14**
OWNERSHIP OF DOCUMENTS/CONFIDENTIAL INFORMATION

14.1. The Drawings, Specifications and other documents prepared by the Design Consultant for this Project are for use solely with respect to this Project, the Owner shall be the owner of these documents and shall have all common law, statutory and other reserved rights, including the copyright. The Design Consultant's Drawings, Specifications or other documents shall not be used by the Owner or others on other projects, except by agreement in writing by the Design Consultant.

14.2. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the project is not to be construed as publication in derogation of the Owner's reserved rights.

15. **ARTICLE 15**
ADDITIONAL PROVISIONS

15.1. Unless otherwise provided in this Agreement, the Design Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

15.2. The Design Consultant shall not discriminate against any employee or applicant for employment because of age, gender, race, creed, national origin, or disability. The Design Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event the Design Consultant is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Agreement may be canceled, terminated or suspended in whole or in part by Owner, and the Design Consultant may be declared ineligible for further Owner contracts.

15.3. The Design Consultant shall follow all applicable federal, state, and local laws.

15.4. The Owner and Design Consultant agree to endeavor to provide written notification and to negotiate in good faith prior to litigation concerning claims, disputes, and other matters in question arising out of or relating to this Agreement or the breach thereof.

15.5. The payment of any sums by the Owner shall not constitute a waiver of any claims for damages by the Owner for any breach of the Agreement by the Design Consultant.

15.6. This Agreement and its Exhibits and Attachments represent the entire and integrated agreement between the Owner and the Design Consultant and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Design Consultant.

15.7. This Agreement shall be governed by the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Buncombe and the State of North Carolina.

15.8. If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15.9. Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.

15.10. The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.

15.11. For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.

15.12. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the counterparts shall constitute one and the same instrument, which shall be sufficient evidence by any one thereof.

15.13. **E-VERIFY**. As a condition of payment for services rendered under this agreement, CONTRACTOR shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if CONTRACTOR provides the services to the County utilizing a subcontractor, CONTRACTOR shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes as well. CONTRACTOR shall verify, by affidavit, compliance of the terms of this section upon request by the COUNTY.

In witness whereof, each individual executing this agreement acknowledges that he/she/it is authorized to execute this agreement and further acknowledges the execution of this agreement the day and year first written above.

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

_____

Don Warn, Buncombe County Chief Financial Officer

DESIGN CONSULTANT:
NOVUS ARCHITECTS

By: _____

Title: principal

Date: 04.02.2021

OWNER:
COUNTY OF BUNCOMBE

By: _____

Title: _____

Date: _____

EXHIBIT A

PROPOSAL TO PROVIDE
ARCHITECTURAL SERVICES

For

Buncombe County Government
FY 21 Capital Improvements
Asheville-Buncombe Technical Community College
Multiple Buildings

Asheville, NC

March 15, 2021

By:

NOVUSARCHITECTS

14 SOUTH PACK SQUARE
SUITE 400
ASHEVILLE, NC
828-236-9992
www.novusarchitects.com

PROJECT DESCRIPTION

Novus BEW Asheville, PLLC. will provide structural, architectural, plumbing, mechanical, and electrical design services for a capital improvements scope of work in the Dogwood and Bailey Buildings as listed below. *The total estimated cost of construction based on estimates prepared by others is $2,483,684.00.*

Dogwood Building:

- Roof Replacement
- Window Replacement
- Replacement of Pneumatic HVAC Controls
- Boiler Replacement
- Welding Hood Replacement
- Exit/Egress Lighting
- Permanent Eye Wash Installation

Bailey Building:

- Rooftop Mechanical Equipment Access Platform

SCOPE OF BASIC SERVICES

WORK STEP A: Existing Conditions and Schematic Design

1. Novus will visit and investigate the conditions of each building identified within the scope of work to document and refine the requirements of each task outlined for this project.
2. Novus will work with the local Authorities Having Jurisdiction (AHJ) to develop a strategy and determine the expectations for submitting these buildings/scopes for permitting.
3. Novus will develop electronic drawing files of buildings included in this scope of work.
4. Novus will provide scope of work information to the CMAR for the purposes of developing schematic design cost estimates for the scope tasks outlined in the project. These documents will include the following:
    a. Reference Floor Plans for each building
    b. Exterior Envelope drawings for each building
    c. Scope of Work Narratives for each scope task
    d. Engineering design documentation

WORK STEP B – DESIGN DEVELOPMENT (DD)

1. Novus will attend meetings with Owner for a review to establish the detailed project requirement for each building and scope item.
2. Novus will coordinate with licensing and regulatory agency requirements.
3. Novus will continue to develop the details of the design and specifications
4. Novus will engage engineering consultants to begin design development for site, structural, mechanical, electrical, plumbing, and fire protection drawings.
5. Novus will provide the Owner with a copy of the design development documents for review prior to the development of construction documents.
6. Novus will provide the Construction Manager complete design development documents for review and pricing purposes.

WORK STEP C – CONSTRUCTION DOCUMENTS (CD)

1. Novus will develop architectural and engineering construction drawings suitable for project bidding, permitting and construction.
2. Novus will coordinate construction documents with engineering consultants.
3. Novus will attend meetings with Owner for a review of the construction documents prior to bidding and permitting.
4. Novus will provide the Owner with a copy of the construction documents for review prior to bidding and permitting.
5. Novus will produce written specifications to accompany the construction drawings.
6. Novus will provide final construction documents to the Construction Manager for review and bidding purposes.

WORK STEP D – BIDDING AND PERMITTING

1. Novus will assist the Construction Manager in coordinating the bid process
2. Novus will attend a pre-bid meeting on site
3. Novus will respond to requests for information during bidding from contractors and Owner.
4. Novus will provide assistance to the Construction Manager as required for permitting and will answer questions and respond as necessary to review comments from all Authorities Having Jurisdiction.

WORK STEP E – CONSTRUCTION ADMINISTRATION (CA)

1. Novus will attend construction progress meetings.
2. Novus will coordinate with the Construction Manager.
3. Novus will review contractor shop drawings and submittals.
4. Novus will respond to contractor's requests for information (RFI).
5. Novus will compile a punch list at substantial completion of the project.
6. Novus will review GC closeout documents.

BASIC SERVICES FEES

Architectural Design services including all engineering consulting fees will be produced for a lump sum amount of $169,000.

Special Fee Reduction for this Project: A portion of this scope of work was previously prepared during the Fiscal Year 19 Capital Improvements Project. The roof replacement for the Dogwood Building drawing work has been completed through the design development phase. This results in savings to this project of $20,000.

The remaining balance of $149,000 will be invoiced on a monthly schedule based on the following design phase breakdown.

Schematic Design Phase	10%
Design Development Phase	25%
Construction Documents Phase	35%
Permitting & Bidding Phase	05%
Construction Phase	20%
Close Out Documents	05%
Total	%100 ($149,000)

PROJECT SCHEDULE

A compete project schedule will be developed in collaboration with the Owner and CMAR for this project. Deliverable benchmarks will be established to support pre-construction services and bidding by the CMAR.

REIMBURSABLE EXPENSES

Reimbursable Expenses are in addition to the fees noted above and will be included at Novus's cost plus an additional 10% of the cost. Such costs include – reproduction of documents, travel for architect and sub-consultant engineers, mail and express delivery. Estimated not to exceed $1000.00.

NOT INCLUDED IN BASIC SERVICES

- Cost Estimating Services
- Design renderings

ADDITIONAL SERVICES

Additional time spent on architectural services excluded or not included above shall be performed at our standard hourly rates listed below. Additional Services include drastic changes in the scope after approval of design.

ARCHITECT'S STAFF HOURLY RATES

Managing Principal	$195/hour
Principal	$160/hour
Quality Control	$125/hour
Project Architect	$120/hour
Staff Architect	$110/hour
Interior Designer	$100/hour
Intern/Drafting	$100/hour
Construction Administrator	$90/hour
Admin/Clerical	$ 65/hour

We look forward to working with you on this project.

Sincerely,

Emily J. Kite, AIA, ALEP
Principal / Asheville Office Leader
Novus BEW Asheville, PLLC

Consulting Services RFP Evaluation Matrix

Submittals received October 30, 2020

VALUE/SECT.		1					2					3			
	Submittal List	**Clark Nexsen**					**Domokur**					**LS3P**			
A.	**Particulars of the Firm**	**Ronnie**	**Mike**	**Pam**			**Ronnie**	**Mike**	**Pam**			**Ronnie**	**Mike**	**Pam**	
	• Office Location	5	5	5			5	5	5			4	5	4	
	• Local Partner		5	5			5	5	4			5	5	5	
	• Principals of Firm	5	5	5			5	5	4			4	5	4	
	• Primary Contact Person	5	5	5			5	5	4			4	4	4	
	• Personnel / Resumes	5	5	5			4	5	4			4	5	4	
	• Other														
B.	**Project Team Structure**														
	Descrip. of Serv. Offered (MBE/WBE)														
	• Architectural	2	3	2			4	4	4			3	3	3	
	• Civil		2				1	2	1						
	• Landscape Architect						1	2	1						
	• Structural		1				1	2	1			1	1	1	
	• Mechanical	1	2	1			1	2	1			1	2	1	
	• Electrical	1	2	1			1	2	1			1	2	1	
	• Plumbing	1	2	1			1	2	1			1	1	1	
	• Fire Protection		2									1	1		
	• Cost Estimating		1										2		
	• Programming/Office Planning														
	• Accessibility														
	• Code												1		
	• Exterior Building Envelope Consultant											1	1		
	• Energy Modeling												2		
	• Vibration/Acoustical Engineer														
	• Lighting Design (interior + exterior)														
	• Vertical Transportation														
	• Supplemental Services (if applicable)											1	2		
C.	**Specific Relevant Experience**														
	• Government Facilities	2	2	3			1	2	2			1	2	2	
	• Educational Facilities	5	5	5			5	5	5			5	5	5	
	• Manufacturing Facilities														
	• Other														
D.	**Delivery Method**	5	5	4			5	5	5			5	5	5	
	• Presentation	3	3	3			3	3	3			4	3	4	
	• System for Design														
	Total	40	55	45	0	0	48	56	46	0	0	46	57	44	0
	Cumulative Total	140.00					150.00					147.00			

Comments:

1 Firms listed across the top represent companies who submitted RFPs.

2 Evaluation criteria items are listed down the left side.

3 Develop your own strategy for scoring. Typically a 1 to 5 point spread with 5 being the highest score. Sometimes it is a yes/no or 0 or 1.

4 The firms with the highest scores will be requested to participate in an interview process, where the final firm will be awarded the contract.

Consulting Services RFP Evaluation Matrix

Submittals received October 30, 2020

VALUE/SECT.			4					5					6		
	Submittal List		**Novus**					**PFA**					**RMF**		
A.	**Particulars of the Firm**		**Ronnie**	**Mike**	**Pam**			**Ronnie**	**Mike**	**Pam**			**Ronnie**	**Mike**	**Pam**
	• Office Location		5	5	5			5	5	5			4	5	4
	• Local Partner		5	5	5			5	5	5			4	5	4
	• Principals of Firm		5	5	5			5	5	5			5	5	4
	• Primary Contact Person		5	5	5			5	5	5			5	5	4
	• Personnel / Resumes		5	4	5			4	5	4			5	4	4
	• Other														
B.	**Project Team Structure**														
	Descrip. of Serv. Offered (MBE/WBE)														
	• Architectural		3	3	4			3	3	4			1	2	1
	• Civil												1	2	1
	• Landscape Architect														
	• Structural		1	1	1				1				1	1	1
	• Mechanical		1	2	1			1	2	1			1	2	1
	• Electrical		1	2	1			1	2	1			1	2	1
	• Plumbing		1	1	1			1	1	1			1	1	1
	• Fire Protection		1	1				1	1				1	1	
	• Cost Estimating			2					2						
	• Programming/Office Planning														
	• Accessibility														
	• Code			1					1						
	• Exterior Building Envelope Consultant			1					1						
	• Energy Modeling			2					2						
	• Vibration/Acoustical Engineer														
	• Lighting Design (interior + exterior)												1	1	1
	• Vertical Transportation														
	• Supplemental Services (if applicable)		1										1	1	1
C.	**Specific Relevant Experience**														
	• Government Facilities		1	1	3			2	2	3			1	1	1
	• Educational Facilities		5	5	5			5	5	5			5	5	5
	• Manufacturing Facilities														
	• Other														
D.	**Delivery Method**		5	5	5			5	5	5			5	5	5
	• Presentation		4	3	4			4	4	4			3	3	3
	• System for Design														
	Total	0	49	54	50	0	0	47	57	48	0	0	46	51	42
	Cumulative Total		153.00					152.00					139.00		

Comments:

1 Firms listed across the top represent companies who s

2 Evaluation criteria items are listed down the left side.

3 Develop your own strategy for scoring. Typically a 1 tc

4 The firms with the highest scores will be requested to

Consulting Services RFP Evaluation Matrix

Submittals received October 30, 2020

VALUE/SECT.				7					8				
	Submittal List			**Sizemore**					**Stewart Cooper Newell**				
A.	**Particulars of the Firm**			**Ronnie**	**Mike**	**Pam**			**Ronnie**	**Mike**	**Pam**		
	• Office Location			3	5	3			4	5	4		
	• Local Partner			5	5	4			5	5	4		
	• Principals of Firm			5	5	4			5	5	4		
	• Primary Contact Person			5	4	4			4	4	4		
	• Personnel / Resumes			4	4	4			4	4	4		
	• Other												
B.	**Project Team Structure**												
	Descrip. of Serv. Offered (MBE/WBE)												
	• Architectural			3	3	3			2	4	2		
	• Civil								1	2	1		
	• Landscape Architect									2			
	• Structural			1	1	1			1	2	1		
	• Mechanical			1	2	1			1	2	1		
	• Electrical			1	2	1			1	2	1		
	• Plumbing			1	2	1			1	2	1		
	• Fire Protection			1	1								
	• Cost Estimating			1	1								
	• Programming/Office Planning												
	• Accessibility												
	• Code												
	• Exterior Building Envelope Consultant												
	• Energy Modeling												
	• Vibration/Acoustical Engineer												
	• Lighting Design (interior + exterior)								1	1	1		
	• Vertical Transportation												
	• Supplemental Services (if applicable)			1	1	1							
C.	**Specific Relevant Experience**												
	• Government Facilities			1	1	1			3	3	3		
	• Educational Facilities			5	5	5			4	4	4		
	• Manufacturing Facilities												
	• Other												
D.	**Delivery Method**			5	4	5			4	4	4		
	• Presentation			3	3	3			3	3	3		
	• System for Design												
	Total	0	0	46	49	41	0	0	44	54	42	0	0
	Cumulative Total			136.00					140.00				

Comments:

1 Firms listed across the top represent companies who s
2 Evaluation criteria items are listed down the left side.
3 Develop your own strategy for scoring. Typically a 1 tc
4 The firms with the highest scores will be requested to

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

Consent Agenda

Department: Strategic Partnerships **Presenter(s):** Rachael Nygaard

Contact(s): Rachael Nygaard, Strategic Partnerships Director

Subject: Pre-K Facility at Avery's Creek Elementary School

Brief Summary:
Buncombe County's Early Childhood Education and Development Committee has provided funding recommendations for FY2022 investments in early care and education projects.

The funding recommendations include $100,000 for Buncombe County Schools to install a pre-k facility on the site of Avery's Creek Elementary School (ACES).

In order to have the facility complete and the new classroom open for the 2021-2022 school year, there is a need to approve the project in May rather than waiting for July when agreements are typically established (the start of the new fiscal year).

The proposed interlocal agreement specifies that Buncombe County will pay up to $100,000 for installation expenses (e.g. site prep, power hookup, concrete, ramps, fencing, playground, inspections) to be financed by the FY2022 Early Childhood Education and Development Fund. Buncombe County Schools has a method for covering the costs of procuring the modular classroom facility. Buncombe County Schools is working with Community Action Opportunities to operate a Head Start classroom in the facility. Community Action Opportunities will be responsible for equipment, furnishings, playground and licensure.

Community Action Opportunities currently operates Head Start classrooms at 14 out of the 23 Buncombe County elementary schools, and ACES will become the 15th. ACES is located in Arden in the Roberson District. This Title I school has approximately 600 students in Kindergarten through 4th grade. About 13% of students are Black and 32% are Hispanic, and the school provides Dual Language classes in every grade level.

Recommended Motion & Requested Action:
Vote to approve the partnership and authorize the County Manager to sign the interlocal agreement with Buncombe County Schools

County Manager's comments and Recommendation:
County Manager recommends approval

INTERLOCAL AGREEMENT REGARDING THE FUNDING OF EARLY CHILDHOOD EXPENSES TO BENEFIT THE CHILDEN AND FAMILIES OF THE COUNTY OF BUNCOMBE

THIS AGREEMENT, made and entered into this _____day of _____ 2021, by and between the **County of Buncombe** ("County"), a body politic and corporate of the State of North Carolina; and the **Buncombe County Board of Education** ("Buncombe School Board"), a body politic and corporate of the State of North Carolina having general control and supervision of all matters pertaining to the Buncombe County Schools; collectively referred to hereinafter, as "the Parties".

WITNESSETH:

WHEREAS, N.C.G.S. §160A-460 et seq. authorizes units of local government to enter into agreements between them for the joint exercise of their powers;

WHEREAS, the Parties have agreed to work together to provide early childhood services to qualifying families residing within the County of Buncombe; and

WHEREAS, the Buncombe County's Early Childhood Education and Development Committee has provided early childcare and education project funding recommendations to the Buncombe County Board of Commissioners for Fiscal Year 2022, which include $100,000 for the installation of a pre-k facility on the site of Avery's Creek Elementary School (ACES) (hereinafter the ACES Project); and

WHEREAS, to complete the ACES Project for the 2021-2022 school year, the County should approve the ACES Project in May of this Fiscal Year 2021 rather than Fiscal Year 2022, when it will consider the other funding recommendations of the Early Childhood Education and Development Committee; and

WHEREAS, the Parties have agreed to a procedure to fund the ACES Project as set forth herein.

NOW, THEREFORE, the Parties agree as follows:

1. **Applicability.** This Agreement shall govern the procedure for County funding of the ACES Project.

2. **Funding Responsibilities.**

   a) The County will pay up to $100,000 for installation expenses (which may include but not be limited to: site prep, power hookup, concrete, ramps, fencing, playground, and/or inspections) within thirty (30) days of the receipt of an invoice approved by the County's Budget and Finance Departments.

b) The Buncombe School Board is responsible for procuring the modular classroom facility and working with Community Action Opportunities, which will operate a Head Start classroom in the same and assume the responsibilities of an associated equipment, furnishings, playgrounds and licensures.

3. **Funding Procedure.** All ACES Project appropriations made by the County to the Buncombe School Board shall be made pursuant to existing law and shall be accounted for in the respective budgets of all parties hereto as either a restricted current expense appropriate or a restricted capital outlay appropriation by purpose and/or project. All such appropriations shall be approved through board action with appropriate documentation detailing the amount of each appropriation and the early childhood purpose and/or project for which the funds are restricted. Unless such funds are accounted for in their current fiscal year budgets, each affected board shall pass a corresponding budget amendment for each appropriation or group of appropriations.

4. **Credit for the Advancement of Funding.** In the event that the County determines that early childhood funds administratively reserved for a future fiscal year should be expended during the current fiscal year, the procedure established under Paragraph 2 above shall apply and such budget amendment should reflect that the funding is "an advance on funds administratively reserved for the subsequent fiscal year."

5. **General Provisions.**

a) Integration & Amendment. The Agreement is fully integrated and represents the entire understanding between the Parties. The Agreement may be modified or amended only by written instruments signed by the Parties. Unless explicitly stated in the Agreement, nothing contained in the Agreement is intended to create expressed or implied third-party beneficiaries as a matter of law including residents of the County. The Agreement shall be deemed to have been drafted by all the Parties and any ambiguities in the construction of the Agreement shall not be construed against any drafter.

b) Severability. The Agreement is severable and if any provisions of the Agreement are deemed invalid or illegal by a court of competent jurisdiction, the other remaining provisions of the Agreement shall remain valid and enforceable.

c) Execution. The Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

d) Sovereign Immunity. Notwithstanding any other term or provision in the Agreement, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign or governmental

immunity or other State or federal constitutional or statutory provision or principle that otherwise would be available to the Parties under applicable law.

e) Acknowledgment. The undersigned represents and acknowledges that they have carefully read the entire Agreement, understand the Agreement and its consequences, and knowingly and voluntarily enter into the Agreement.

f) Counterparts and Electronic / Facsimile Signatures. This Agreement may be signed by each party's respective duly authorized representative in one or more counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute one single agreement between the Parties hereto. The Parties agree this Agreement may be electronically signed and executed via facsimile. An electronic of facsimile signature is the same as a handwritten signature for the purposes of validity, enforceability, and admissibility. Once signed, any reproduction of this Agreement made by reliable means, such as photocopy or facsimile, is considered an original.

6. Authority to Execute. THIS INTERLOCAL AGREEMENT DOES NOT REQUIRE THE APPROPRIATION OF FUNDING BY ANY PARTY HERETO. THIS IS AN AGREMENT TO FACILITATE, AND ACCOUNT FOR, FUNDING BY AND BETWEEN THE PARTIES ONLY.

By signing below, the respective Managers and Superintendents of Schools certify that they have the authority, or have been given the authority by their respective Boards, to execute any and all documents necessary to effectuate this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this instrument to be effective as of the day and year written above.

COUNTY OF BUNCOMBE

_____
Avril Pinder, County Manger

BUNCOMBE COUNTY BOARD OF EDUCATION

_____
Dr. Tony Baldwin, Superintendent

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

Consent Agenda

Department: Health & Human Services (HHS)

Presenter(s): Jessica Silver, Environmental Health Administrator

Contact (s): Jessica Silver, Environmental Health Administrator
Stoney Blevins, HHS Director

Subject: Additional Environmental Health Onsite Wastewater & Wells Position

Brief Summary:

Buncombe County Health & Human Services Public Health Division, Environmental Health Section, Onsite Wastewater & Wells program has experienced a 22% increase for septic system evaluations over the last five years. Building projects, not serviced by public sewer, begin with a request for an evaluation to determine the suitability of a site to accommodate a septic system and/or well. Due to this continued growth, the program is experiencing wait times that exceed the two week turnaround time expectation for new site visits.

In an effort to reduce the turnaround time, improve the customer experience, and ensure positive public health and environmental outcomes we are requesting an additional position within the Onsite Wastewater section.

Recommended Motion & Requested Action:

Authorize one full time position within the Onsite Wastewater Section and cover with current year lapsed salary.

County Manager's comments and Recommendation:
County Manager recommends approval as presented.

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

Consent Agenda

Department: Permits & Inspections **Presenter(s):** Matt Stone

Contact(s): Matt Stone

Subject: Black Mountain MOA

Brief Summary: Update of current inter-local agreement with the Town of Black Mountain to perform their building permitting and inspection services on an as-needed basis, this will also bring fees for this service in line with our current fee schedule. The original agreement was originally drafted in 2007 and last updated in 2018.

Recommended Motion & Requested Action:
Recommended Motion – Approve Black Mountain MOA
Requested Action – Chairman's Signature

County Manager's comments and Recommendation: Recommends approval

RESOLUTION # 21-05-02

Resolution Authorizing the Execution of an Interlocal Agreement with Town of Black Mountain for Building Inspection Services

---

WHEREAS, it may become necessary, from time to time, for the Town of Black Mountain to request building inspection services from Buncombe County; and

WHEREAS, Buncombe County is willing to perform building, electrical, plumbing, and HVAC inspections on behalf of the Town of Black Mountain on an as-needed basis upon request of the Town's Building, Planning, and/or Zoning Department staff subject to the terms and conditions set forth herein; and

WHEREAS, N.C. Gen. Stat. § 160A-461 authorizes any unit of local government in North Carolina and any one or more other units of local government in North Carolina to enter into contracts or agreements with each other in order to execute any undertaking.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That it hereby authorizes the execution of an Interlocal Agreement with Town of Black Mountain for Building Inspection Services, which may be amended, from time to time, the terms of which are incorporated herein by this reference and a copy of which shall be filed with the minutes of the meeting at which this Resolution was adopted.

2. That the Chair, Vice Chair, and County Manager, or any of them, or their designee, acting individually or collectively, are hereby authorized, empowered and directed to take all actions necessary or appropriate in the judgment of such officers to accomplish the purposes and intents of this Resolution, including the execution and delivery of the Interlocal Agreement and all other documents, agreements, instruments and certificates contemplated by said Agreement.

3. That, by and with the consent of the County Legal Department, County staff is hereby instructed to proceed with this undertaking and all acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.

4. That this resolution shall become effective upon its adoption.

This the 4th of May, 2021.

ATTEST

Lamar Joyner, Clerk

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE

By: _____
Brownie Newman, Chair

APPROVED AS TO FORM

County Attorney

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

INTERLOCAL AGREEMENT
Between
BUNCOMBE COUNTY
And
THE TOWN OF BLACK MOUNTAIN
For
BUILDING INSPECTION SERVICES

THIS INTERLOCAL AGREEMENT is dated the _____ of _____, 20_____ (the "Agreement"), and is between the **BUNCOMBE COUNTY** ("Buncombe County"), a body politic and corporate organized and existing under the laws of the state of North Carolina and the **TOWN OF BLACK MOUNTAIN** ("Town of Black Mountain"), a political subdivision of the State of North Carolina a municipal corporation chartered and operating under the laws of the State of North Carolina (hereinafter, collectively, the "Parties").

WITNESSETH:

WHEREAS, from time to time, it may become necessary for the Town of Black Mountain to request building inspection services from Buncombe County; and

WHEREAS, Buncombe County is willing to perform building, electrical, plumbing, and HVAC inspections on behalf of the Town of Black Mountain on an as-needed basis and upon request of the Town's Building, Planning, and/or Zoning Department staff subject to the terms and conditions set forth herein; and

WHEREAS, N.C. Gen. Stat. § 160A-461 authorizes any unit of local government in North Carolina and any one or more other units of local government in North Carolina to enter into contracts or agreements with each other in order to execute any undertaking.

NOW THEREFORE, in consideration of the respective rights, powers, duties and obligations hereinafter set forth herein, the Parties agree as follows:

ARTICLE I
RECITALS and PURPOSE

1.01 Recitals
The Recitals are incorporated into this Agreement.

1.02 Purpose
The purpose of this agreement is to establish the terms and conditions under which the Town of Black Mountain may request building inspection services from Buncombe County. This will allow, among other things, the Town of Black Mountain to continue the building inspections and permitting process should the Town's building inspector be unavailable. This Memorandum of

Agreement updates and replaces any prior building inspection services agreements between Buncombe County Permits and Inspections Department and the Town of Black Mountain. ·

ARTICLE II
TERM, AMENDMENT, and TERMINATION

3.01 Term. This Agreement shall become effective upon the properly authorized execution of the Agreement by both Parties and shall continue until superseded or terminated by either Party ("Term").

3.02 Amendment. This Agreement may only be amended by a writing signed by the Parties. To propose an amendment to Agreement either Party may submit the proposed amendment and the reasons for the proposed amendment in writing to the other Party per the Notice provisions in this Article II. If the Parties agree to the proposed amendment, a written amendment to Agreement shall be executed. The Parties may enter into amendments that do not have financial implications for either Party with the approval of and execution by their respective Managers. All other amendments shall require approval by the respective governing boards of the Parties.

3.03 Disputes. Notwithstanding any other provision of this Agreement, either Party may contest any decision, action or inaction of the other Party, or an alleged failure of the other Party to comply with the terms of this Agreement. If any such dispute cannot be informally resolved, then such dispute shall be resolved as provided in 7.08.

3.04 Termination. Either Party may terminate this Agreement for any reason, or for no reason, upon thirty (30) days written notice to the other Party per the Notice provisions in this Article II.

3.05 Notice. Any notice required by this Agreement shall be in writing and delivered to the Parties at the following addresses:

For Buncombe County: Buncombe County Permits and Inspections Director
30 Valley Street
Asheville, NC 28801.

For Town of Black Mountain: Town of Black Mountain Permits and Inspections Director
106 Montreat Road
Black Mountain, NC 28711

3.06 Prior Agreements Superseded. Upon the execution and delivery of this Agreement, this Agreement shall supersede any and all prior agreements, if any, and shall constitute the definitive Agreement between the Parties regarding all matters relating to the undertaking.

3.07 Survive Termination. Those obligations concerning enforcement of warranties and representations which by their nature should survive the termination of this Agreement, shall survive the termination of this Agreement.

3.08 Responsibilities of the Parties.

a. Buncombe County agrees to:

1. Perform building, electrical, plumbing, and HVAC inspections on behalf of the Town of Black Mountain on an as-needed basis within twenty four (24) hours of receiving a request for the same from the Building, Planning, and/or Zoning Department staff of the Town of Black Mountain.

2. Promptly invoice the Town of Black Mountain for each inspection performed pursuant to this Agreement. Such an invoice shall include the type of inspection performed, the date of inspection, the fee and any applicable discounts on total fees, as well as a copy of any written notices, permits, or comments provided by the inspector.

b. The Town of Black Mountain agrees to:

1. Pay Buncombe County the rate contained in Buncombe County's fee schedule inspections, which both Parties understand may be increased or otherwise amended from time to time and impact the amount paid by the Town of Black Mountain under this Agreement, for each inspection conducted pursuant to this Agreement.

2. The Town of Black Mountain agrees to remit payment to the Buncombe County Permits and Inspections Department within 30 days upon receipt of an invoice for services rendered.

ARTICLE V
EXHIBITS AND RELATED DOCUMENTS

6.01 Exhibits

The following exhibits are attached hereto and incorporated by reference into this Agreement as if fully set forth herein:

A. Exhibit "A" Buncombe County's Current fee schedule for inspections, which both Parties understand may be increased or otherwise amended from time to time and impact the amount paid by the Town of Black Mountain under this Agreement

6.02 Related Documents. The Parties acknowledge that the Indenture must be finalized and shall be executed as soon as reasonably possible and in no event later than the creation of the Trust.

ARTICLE VI
OTHER PROVISIONS

7.01 No Third Party Beneficiaries. This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the Parties hereto, and shall not confer any rights or remedies upon any person or entity other than the Parties hereto.

7.02 Ethics Provision. The Parties acknowledge and shall adhere to the requirements of N.C.G.S. 133-32, which prohibits the offer to, or acceptance by any state or local employee of any gift from anyone with a contract with the governmental entity or from a person seeking to do business with the governmental entity.

7.03 Governing Law, Venue. The Parties acknowledge that this Agreement shall be governed by the laws of the State of North Carolina. Venue for any disputes arising under this Agreement shall be in the courts of Buncombe County, North Carolina.

7.04 Entire Agreement. The terms and provisions herein contained constitute the entire agreement by and between the Parties hereto and shall supersede all previous communications, representations or agreements, either oral or written between the Parties hereto with respect to the subject matter hereof.

7.05 Severability. If any provision of this Agreement shall be determined to be unenforceable by a court of competent jurisdiction, such determination will not affect any other provision of this Agreement.

7.06 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original.

7.07 Representations and Warranties. The Parties each represent, covenant and warrant for the other's benefit as follows:

A. Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and this Agreement has been authorized by Resolution spread upon the minutes of each Party's governing body. This Agreement is a valid and binding obligation of each Party.

B. Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either Party is now a party or by which either is bound, or constitutes a default under any of the foregoing.

C. To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such Party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. The Party's execution and delivery of this Agreement, and its compliance with its obligations under this Agreement, does not require the approval of any regulatory body or any other entity the approval of which has not been obtained.

7.08 Dispute Resolution. In the event of conflict or default that might arise for matters associated with this Agreement, the Parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction.

Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Buncombe County, North Carolina.

7.09 No Waiver of Non-Compliance with Agreement. No provision of this Agreement shall be deemed to have been waived by any Party hereto unless such waiver shall be in writing and executed by the same formality as this Agreement. The failure of any Party hereto at any time to require strict performance by the other of any provision hereof shall in no way affect the right of the other Party to thereafter enforce the same. In addition, no waiver or acquiescence by a Party hereto of any breach of any provision hereof by another Party shall be taken to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

7.10 Governing Law. The Parties intend that this Agreement be governed by the law of the State of North Carolina.

7.11 Assignment. No Party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other Parties.

7.12 Liability of Officers and Agents. No officer, agent or employee of any Party will be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This section will not relieve any such officer, agent or employee from the performance of any official duty provided by law.

7.13 Execution in Counterparts/Electronic Version of Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Any Party may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

7.16 Headings. Section and paragraph headings contained in this Agreement are solely for the convenience of the Parties and shall not affect in any way the meaning or interpretation of this Agreement.

7.17 Regulatory Authority. Nothing in this Agreement shall restrict or inhibit a Party's police powers or regulatory authority.

7.18 Further Actions. The Parties agree to cooperate fully and execute any and all further documents and to take all further actions that may be necessary to give full force and effect to the intent of this Agreement.

7.19 Authority to Inspect. The Parties authorize their respective permits and inspections directors to conduct inspections according to their statutory powers and internal policies and to execute such documents necessary to effect the spirit and intent of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

{Signature Page Follows}

BUNCOMBE COUNTY, NORTH CAROLINA By: _____ County Manager Buncombe County, North Carolina	This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act. _____ Finance Officer Buncombe County, North Carolina
ATTEST: By: _____ Clerk to the Board of Commissioners Buncombe County, North Carolina [Seal]	This instrument is approved as to form and legal sufficiency. _____ County Attorney/County Staff Attorney Buncombe County, North Carolina
TOWN OF BLACK MOUNTAIN, NORTH CAROLINA By:_____ Town Manager	This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act. _____ Town Finance Director Black Mountain, North Carolina
ATTEST: By: _____ Clerk to the Board of Commissioners Buncombe County, North Carolina [Seal]	This instrument is approved as to form and legal sufficiency. _____ Town Attorney Black Mountain, North Carolina

EXHIBIT A

Buncombe County's Current Fee Schedule for Inspections

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

Consent Agenda

Department: Sustainability

Presenter(s): Jeremiah LeRoy

Contact(s): jeremiah.leroy@buncombecounty.org

Subject: Amendment to ground lease for Woodfin Solar Facility

Brief Summary:
In August of 2018 the County entered into a lease agreement with Duke Energy for the purpose of Duke constructing a solar farm on the retired landfill in Woodfin. The original agreement was to have Duke pay the County $700 per usable acre of land, and to have the County purchase the Renewable Energy Certificates (RECs) at a below market rate of $.01 for the first five years and $1.00 for the remainder of the term.
The public staff of the NC Utilities Commission did not approve of this arrangement due to the REC purchase being well below market value. In order to get the project approved at the Utilities Commission, the County and Duke have agreed to an amended lease. This amendment will “net” the value of the leased acreage and the value of the RECs. This will result in no lease revenue, but also no cost for the County to receive the RECs. The Utilities Commission has approved the project to move forward if the lease is amended as stated.

Recommended Motion & Requested Action:
Approve lease amendment

County Manager’s comments and Recommendation:
County Manager recommends as presented

RESOLUTION #21-05-03

RESOLUTION AUTHORIZING AMENDMENT TO GROUND LEASE AGREEMENT WITH DUKE ENERGY PROGRESS, LLC TO DESIGN, INSTALL AND MAINTAIN A SOLAR PHOTOVOLTAIC POWER ARRAY ON THE OLD COUNTY LANDFILL PROPERTY

WHEREAS, by Resolution # 18-08-06 dated August 21, 2018, this Board approved a Ground Lease Agreement ("Lease") with Duke Energy Progress, LLC (“DEP”) for the property located at the closed landfill in Woodfin in order for DEP to conduct due diligence and to design, install, and maintain a solar farm;

WHEREAS, while due diligence efforts progressed, the NC Utilities Commission reviewed the Lease and require changes to the price adjustments for delivery of Renewable Energy Certificates ("RECs");

WHEREAS, under the Lease, DEP has exclusive ownership of the solar generated energy, and rather than employing a rather arbitrary value for the RECs for which the County would pay DEP, the NC Utilities Commission asked that the annual rent payments to be paid to County under the Lease be fully netted and offset by the annual consideration required to be paid by County to DEP for the RECs delivered to County during the Term;

WHEREAS, a proposed First Amendment of Ground Lease Agreement is attached hereto and the same has been approved by the NC Utilities Commission; and

WHEREAS, this Board is of the opinion that it is in the best interests of the citizens and residents of the County to accept the requested changes to the Lease.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the County of Buncombe as follows:

1. That this Board hereby authorizes the Chair of the Board of Commissioners and the County Manager, or any one of them, to execute the attached First Amendment of Ground Lease Agreement.

2. All acts and doings of officers, employees and agents of the County, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described above shall be, and the same hereby are, in all respects ratified, approved and confirmed.

3. That this resolution shall be effective upon its adoption.

This the 4th of May, 2021.

ATTEST

_____
_ Lamar Joyner, Clerk

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE

By: _____
Brownie Newman, Chair

APPROVED AS TO FORM

_____
_ County Attorney

Site No.: 115518
Land Unit No.: 1707771
Project No.: 115518 - 461031

FIRST AMENDMENT OF GROUND LEASE AGREEMENT

THIS FIRST AMENDMENT OF GROUND LEASE AGREEMENT (this "Amendment") is made and entered into as of the _____ day of _____, 2021 (the "First Amendment Effective Date"), by and between the **COUNTY OF BUNCOMBE**, a political subdivision of the State of North Carolina (the "Landlord") and **DUKE ENERGY PROGRESS, LLC**, a North Carolina limited liability company (the "Tenant"). (Landlord and Tenant are each a "Party" and are collectively the "Parties").

RECITALS:

WHEREAS, Landlord and Tenant previously entered into that Ground Lease Agreement dated as of August 21, 2018 (the "Lease") regarding Tenant's leasing of certain Premises from Landlord for purposes of constructing, installing, owning and operating a Solar Generating Facility, said Premises and Solar Generating Facility being more particularly described in the Lease; and

WHEREAS, in response to certain comments received during the Tenant's application process for a Certificate of Public Convenience and Necessity from the North Carolina Utilities Commission involving its proposed Solar Generating Facility (Docket E-2 Sub 1257), Landlord and Tenant desire to amend Section 5 of the Lease regarding Tenant's annual rent payments and the consideration to be paid by Landlord to Tenant for Tenant's delivery to Landlord of the Renewal Energy Certificates associated with generation of energy from the Solar Generating Facility.

NOW THEREFORE, in consideration of the foregoing recitals (which, by this reference, are incorporated into the operative provisions of this First Amendment) and the mutual covenants, terms, and conditions set forth herein, Landlord and Tenant, intending to be legally bound, agree to amend the Lease as follows:

1. **Amendment of Section 5**. Section 5 of the Lease is amended and restated in its entirety as follows:

> 5. **Rent and REC Payment Offset for Tenant's Delivery of Renewable Energy Certificates to Landlord**.
>
> (a) Annual Rent. Commencing on the Commencement Date, and subject to the REC Payment Offset (as set forth in Section 5(c)(iii) hereof), **Tenant shall pay Landlord annual rent during the Term in the sum of Seven Hundred Dollars ($700.00)** per Usable Acre of Land located within the Premises (prorated for any fractional acres), as evidenced and determined by the Survey. As used herein, "Usable Acre" shall mean the gross acreage of the Land including shade buffers, less any acreage located within public road right of way, wetlands, jurisdictional streams, NCDEQ-required stream buffers, watersheds, endangered species habitat, sites of protected cultural resources and/or flood plains, as determined by the Survey or Tenant's investigation of the Premises. Rent shall be payable on an annual basis, with the first annual payment of rent being due within thirty (30) days after the Commencement Date. All subsequent payments of rent during the Term shall be subject to the REC Payment Offset as set forth in Section 5(c)(iii) hereof.

(b) Rent Payments. The payment of rent for any fractional calendar year during the Term shall be prorated. The Tenant shall receive a credit against the first annual payment of rent in an amount that is the pro-rated portion paid by Tenant during the Construction Period attributable to the number of months from the Commencement Date through the date up to which Tenant previously made payments pursuant to Section 3(b) of this Lease. If Tenant fails to pay the first annual payment of rent to Landlord by the date that the same is due hereunder, and such failure continues for a period of (15) days after Landlord provides Tenant with written notice of such failure to pay, Tenant will pay a late fee to the Landlord in the amount of three percent (3.0%) of such unpaid delinquent rent amount.

(c) Delivery of Renewable Energy Certificates; Tenant's Ownership of the Solar Generated Energy; and REC Payment Offset.

(i) Renewable Energy Certificate - Defined. As used in this Lease, the term "Renewable Energy Certificate" means a tradable instrument that is equal to one megawatt hour of electricity or equivalent energy supplied by a renewable energy facility, new renewable energy facility, or reduced by implementation of an energy efficiency measure that is used to track and verify compliance with the requirements of the Renewable Energy and Energy Efficiency Portfolio Standard as determined by the North Carolina Utilities Commission (or any successor thereto). A "Renewable Energy Certificate" does not include the related emission reductions, including, but not limited to, reductions of sulfur dioxide, oxides of nitrogen, mercury, or carbon dioxide.

(ii) Tenant's Exclusive Ownership of the Solar Generated Energy. The Landlord recognizes, acknowledges and agrees that Tenant expressly retains the right to make public statements and claims that Tenant is the exclusive owner and operator of the Solar Generating Facility and all of the solar generated energy supplied and delivered from the Solar Generating Facility into the Tenant's electrical grid. Tenant shall retain title to and be the legal and beneficial owner of the Solar Generating Facility at all times. Landlord shall provide timely notice of Tenant's title and sole ownership of the Solar Generating Facility to all persons that have, or may come to have, an interest in or lien upon the Land comprising the Premises. Except as otherwise specifically provided in Section 5(c)(i) of this Lease, Tenant shall be the exclusive owner of the energy and all aspects of the energy generated by the Solar Generating Facility. Without limiting the generality of the foregoing, Tenant shall have the exclusive right to claim that the energy generated by the Solar Generating Facility was delivered into Tenant's electrical grid for use by Tenant's customers, and including but not limited to, any impacts of or avoidances resulting from such deliveries into Tenant's electrical grid.

(iii) Delivery of Renewable Energy Certificates; REC Payment Offset. During the Term (and any Renewal Term) of this Lease, and for the consideration hereinafter set forth, Tenant agrees to deliver to Landlord the Renewable Energy Certificates associated with the generation of energy from the Solar Generating Facility. Landlord and Tenant agree that the consideration to be paid by Landlord to Tenant annually for such Renewable Energy Certificates shall equal the total amount of annual rent then due and payable by Tenant to Landlord under this Lease, which effectively means all of Tenant's annual rent payments to Landlord under this Lease (except for Tenant's first annual rent payment) shall be fully netted and offset by the annual consideration required to be paid by Landlord to Tenant for Renewable Energy Certificates delivered during the Term (and any Renewal Term) (the "REC Payment Offset"); provided however, Tenant's first annual rent payment to Landlord due within thirty (30) days after the Commencement Date shall not be subject to the REC Payment Offset and shall be paid to Landlord in accordance with the terms of Section 5(a) and 5(b) of this Lease.

2. **Other Lease Terms**. All other terms, covenants, and agreements set forth in the Lease shall continue in full force and effect, except as otherwise provided in this First Amendment. Any capitalized terms used in this First Amendment that are not defined or amended herein shall have the same meaning ascribed to them in the Lease.

3. **Binding**. This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

4. **Counterparts; Governing Law**. This First Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. An executed counterpart delivered by email or facsimile transmission shall be deemed an original. This First Amendment shall be construed and enforced in accordance with the laws of the State of North Carolina.

[*Remainder of Page Intentionally Left Blank. Signature Page(s) Follow.*]

IN WITNESS WHEREOF, the parties hereto have duly executed this First Amendment of Ground Lease Agreement by authority duly given, as of the day and year first above written.

LANDLORD:

COUNTY OF BUNCOMBE

By: _____

Name: _____

Title: _____

TENANT:

DUKE ENERGY PROGRESS, LLC

By: _____

Name: _____

Title: _____

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

Consent Agenda

Department:
Budget

Presenter(s):
Jennifer Barnette, Budget

Contact(s): Don Warn, Finance Director

Subject: Methodist Home for Children

Brief Summary:
Buncombe County serves as a passthrough entity for funds allocated to the Western Area Multi-Purpose Juvenile Crisis and Assessment Center (Methodist Home for Children) from the NC Department of Public Safety (NCDPS). NCDPS is providing additional hazard pay for the employees at the center for an additional month. This amendment increases the grant budget by $6,360 to include the additional hazard pay.

Recommended Motion & Requested Action:
Approve budget amendment

County Manager's Comments & Recommendation:
County Manager recommends as presented

ORDINANCE #21-05-04

BUNCOMBE COUNTY, NORTH CAROLINA
Grant Projects Ordinance

BOARD MEETING DATE: May 4, 2021

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2020-2021 Grants Projects outlined below in Exhibit "A" to the budget,
NOW THEREFORE,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY 2020-2021 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 4th day of May, 2021.

Granting Agency:	NC Department of Public Safety, Community Programs
Grant Name:	Methodist Home for Children

Description:
Buncombe County serves as a passthrough entity for funds allocated to the Western Area Multi-Purpose Juvenile Crisis and Assessment Center (Methodist Home for Children) from the NC Department of Public Safety (NCDPS). NCDPS is providing additional hazard pay for the employees at the center for an additional month. This amendment increases the grant budget by $6,360 to include the additional hazard pay.

Funding Source:
Funds allocated by the NC Department of Public Safety. No county dollars are required

Exhibit A:	**Increase (Decrease)**	
Account Description	**Revenues**	**Expenditures**
Fund 327 - Grant: Methodist Home for Children - 4102:Grant Revenue	$ 6,360	
Fund 327 - Grant: Methodist Home for Children - 6520:Program Support		$ 6,360
TOTAL	$ 6,360	$ 6,360

ATTEST:

Lamar Gaynes
Clerk to the Board

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE:

By: Brownie W
Chairman of the Board

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

Presentations

Department: HHS **Presenter(s):** Stoney Blevins

Contact(s): Stoney Blevins

Subject: National Nurses Week Proclamation

Brief Summary: Recognition of National Nurses Week in Buncombe County for May 6-12.

County of Buncombe

Proclamation

of

National Nurses Week

WHEREAS, since 1990, May 6th through May 12th has been observed as National Nurses Week, culminating on the birthday of Florence Nightingale; and

WHEREAS, Public Health Nurses in Buncombe County continue to play a critical role in responding to the coronavirus disease 2019 (COVID-19) pandemic, investigating cases, conducting contact tracing, administering vaccine and providing guidance & education to community members; and

WHEREAS, Public Health Nurses on a routine basis promote health by providing education, preventive health screenings, interventions and support in clinics, schools and the community; advocate for programs and policies to support health equity; and identify and implement evidence-based programs to improve health and empower individuals and communities to achieve wellbeing; and

WHEREAS, Public Health Nurses in Buncombe County deliver compassionate and respectful care while embodying the principles of ethical practice in their profession; and

WHEREAS, Buncombe County Health and Human Services and its Clinical Services programs have recognized the observance of Nurses Week;

NOW, THEREFORE, I, Brownie Newman, as Chair of the Buncombe County Commission serving Buncombe County, North Carolina, do hereby proclaim May 6-12, 2021 as

"NURSES WEEK" in Buncombe County and commend its observance to all citizens.

PROCLAIMED AND APPROVED this 4th day of May, 2021.

Board of Commissioners for the
County of Buncombe

Brownie Newman

Brownie Newman, Chairman

County of Buncombe

Proclamation

PRO BONO CELEBRATION DAY

WHEREAS, the Buncombe County Bar's annual pro bono celebration highlights the amazing free legal work performed by hundreds of lawyers, paralegals, and volunteers across the County; and

WHEREAS, the Bar's pro bono committee works to honor the tremendous impact lawyers make in our community, recruit and train new pro bono volunteers, and create partnerships that form the basis of the private bar's most successful pro bono efforts; and

WHEREAS, every year thousands of citizens within Buncombe County benefit from the free legal work provided by members of the Buncombe County Bar; and

WHEREAS, over the last year over 300 volunteer attorneys provided over 3,343 hours of free legal work estimated to be worth over $835,750; and

WHEREAS, the following attorneys and pro bono projects have been recognized this year by the Buncombe County Bar for their exceptional pro bono work:

Barrett McFatter – Young Lawyer Pro Bono Award;
Julie Northup and Vann Vogel – Emeritus Lawyer Pro Bono Award;
Unemployment Insurance Benefit Project – Collaborative Legal Project Pro Bono Award;
Jean Lee – Outstanding Lawyer of the Year Pro Bono Award; and
William Christy – Lifetime Achievement Pro Bono Award; and

WHEREAS, the citizens of Buncombe County are better off when justice is not limited to only those who can pay for an attorney.

NOW THEREFORE, the Buncombe County Board of Commissioners do hereby proclaim May 12, 2021 as

PRO BONO CELEBRATION DAY

in Buncombe County and call upon all Buncombe County residents to recognize and appreciate the dedication and contributions of these legal professionals who enhance the lives of our citizens by providing free legal work to those most in need throughout our community.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the County of Buncombe to be affixed this 4th day of May, 2021.

Brownie Newman
Chairman, Buncombe County Board of Commissioners

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

Presentations

Department: A-B Tech Board of Trustees

Presenter(s): Dr. Dirk Wilmoth

Contact(s): Dr. Dirk Wilmoth

Subject: A-B Tech Board of Trustees Update

Brief Summary:

Update Board of Commissioners on the A-B Tech Board of Trustees.

Asheville-Buncombe Technical Community College

Update for Buncombe County Board of Commissioners

By John D. Gossett, A-B Tech President

May 4, 2021

About Us

Purpose

Founded in 1959, A-B Tech is the **largest higher education institution in Western North Carolina**, providing academic, continuing education and workforce training to **more than 23,000 students a year** in Buncombe and Madison counties.

One of 58 community colleges in the NC Community College System, A-B Tech offers more than 125 degrees, diplomas and certificates, as well as a wide range of workforce training and continuing education programs. A-B Tech alumni work in virtually every industry in the region, generating the largest economic impact of any college in WNC.

A-B Tech locations:

- Main campus on Victoria Road
- A-B Tech Enka (home of the A-B Tech Small Business Center and Business Incubation Program, Craft Beverage Institute of the Southeast and N.C. BioNetwork)
- A-B Tech Madison
- A-B Tech South A-B Tech Woodfin (Emergency Services campus)
- Goodwill Center in West Asheville

About Us

Board of Trustees Members

Appointed by Buncombe County:

- Nian Avery
- Himanshu Karvir
- Matt Kern
- Max Queen

About Us

Board of Trustees Members

Appointed by the Governor:

- Dr. Theresa Banks (Madison)
- Joe Brumit
- David King
- Libby Kyles

AB Tech Community College

About Us

Board of Trustees Members

Appointed by the Asheville City and Buncombe County Boards of Education:

- Dr. John Parham, Jr., Chair
- Dr. Roger Metcalf, Vice Chair
- Judy Lewis
- Vacant position

About Us

Board of Trustees Members

Appointed by Madison County:

- Wayne Brigman
- Frances Ramsey

Student Government Association President

- Vacant

Dates and Accomplishments

I. Financial Meetings

- Dr. Gossett will be presenting an update to the Commissioners on May 4
- Budget request for FY 2021-22 will be presented to Commissioners on May 11

II. A-B Tech Enka – TCC Building Conditions Assessment and Plan

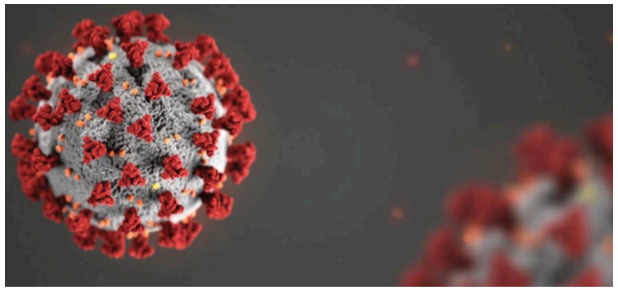
- Study, funded by Article 46, was launched August 2020
- Determined that the renovation costs of $28M would be less than that required for a new facility
- The results were presented at a Commissioners briefing on April 6
- Design contract for the TSS roof replacements is out to bid
- Plans for a comprehensive Enka master plan to include the Haynes Building are being developed

III. Joint Article 46 Capital Advisory Committee

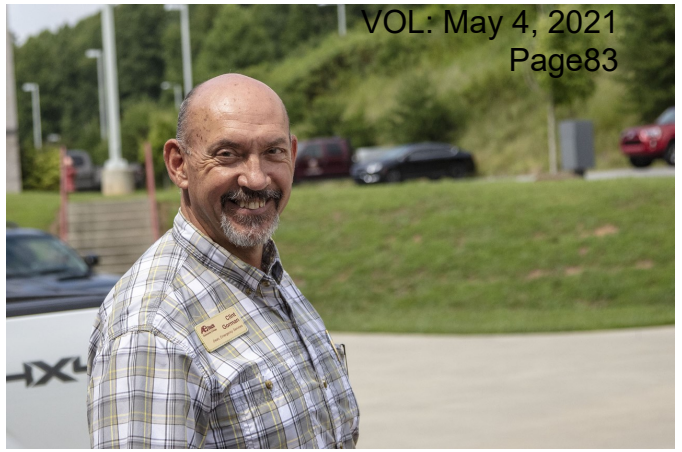
- Met October 2020 and February 2021 to review continuing and anticipated projects

Activities

- Overview of work completed since last update
  - Shifted to 95% online instruction in two weeks in March 2020
  - Dr. Gossett became A-B Tech's 7th president on July 1, 2020
  - Currently developing a five-year strategic plan to guide college
  - Preparing for a return to in-person instruction in Fall Semester
  - Developing training center and programming with Pratt & Whitney
  - Seeking a new location for A-B Tech South and improvements for A-B Tech Enka
- Legislative updates
  - Asking NC General Assembly to hold community colleges harmless for 2020-21 enrollment declines due to COVID-19
  - Seeking substantial salary increase for community college employees



Activities



- **COVID-19 Partnership with Buncombe County**
  - Hosted COVID testing site and Vaccine Clinic on Asheville campus
  - Hosted Mexican Consulate
  - Designated Clint Gorman to serve on Emergency Management Task Force
  - Trained First Responders in-person and via videos developed by A-B Tech EMS department
  - Donated PPE to county
  - Partnered to make hand sanitizer at A-B Tech Enka
  - Volunteered Nursing students to help administer vaccines
  - Served on several county COVID committees

Financial Update

- Scheduled to present FY22 budget proposal on May 11

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

Presentations

Department: Mountain Community Capital Fund

Presenter(s): Lynn Smith, Chair

Contact(s): Lynn Smith

Subject: Mountain Community Capital Fund Update

Brief Summary:

Update Board of Commissioners on the Mountain Community Capital Fund.

Mountain Community Capital Fund

Update for Buncombe County Board of Commissioners

About Us

Members

Lynn Smith-Chair

Jeff Kaplan- Vice Chair

Timothy Love

Dee Williams

Rachael Nygaard

Nikki Reid

Tony McDowell

Staff support team (Angelica Driver, Rosanna Mulcahy)

Purpose of the Committee

- This loan fund is especially intended to guarantee the loans for borrowers whose main weakness is lack of collateral.

- The loans offered are in the range of $5,000.00 to $70,000.00. We've partnered with Mountain BizWorks, Carolina Small Business and Self Help Credit Union.

Dates and Accomplishments

- **October 18, 2018** — Buncombe County Government along with the City of Asheville, signed an agreement to officially begin the Mountain Community Capital Fund.

- **April 5, 2019** — The committee had their first official meeting; during which the Rules of Procedure, Underwriting Guidelines and Loan Maintenance were all adopted.

2020 — The Buncombe County Board of Commissioners unanimously voted to extend the MCCF committee for an additional five years. This allows us to continue the work that will impact small businesses within our community in a positive way.

Financial Update

- The MCCF has 8 active loans
- The total loan amount: $290,499.62
- Total guarantee amount: (85% of each loan) $246,924.68

- The MCCF is a $450,000 fund ($203,075.32 remaining)

Impact

- Number of jobs created: **46** (full time & part time)
- Number of jobs retained: **22** (full time & part time)
- African American Men: **4**
- African American Women: **3**
- Other Minority: **1**

Goals

Look to partner with more organizations in order to grow the fund to allow for more loans, and continue to impact small business owners.

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

Public Hearings

Department: **Human Resources** **Presenter(s):** **Sharon Burke**

Contact (s): Sharon Burke, Human Resources Director

Subject: Juneteenth Holiday

Brief Summary:

During the spring of 2020, multiple requests and suggestions were made to consider adding a county holiday in celebration of Juneteenth. A commitment was made by Human Resources and County Management to review this request for consideration in 2021.

Research was completed by the Buncombe County Equity & Inclusion workgroup and in alignment with the Buncombe County Strategic Plan, County leadership is requesting that the Friday on or before June 19th is a County-paid holiday annually

Recommended Motion & Requested Action:

Consider approving the enhanced benefit changes as presented.

County Manager's comments and Recommendation:

County Manager recommends approval.

ORDINANCE NO. 21-05-05

AN ORDINANCE AMENDING BUNCOMBE COUNTY'S PERSONNEL ORDINANCE

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-94, a county may by ordinance adopt personnel rules that promote the hiring and retention of capable, diligent and honest career employees;

WHEREAS, the Buncombe County Personnel Ordinance was originally adopted by the Buncombe County Board of Commissioners on October 15, 1996;

WHEREAS, the beginnings of chattel slavery in America can be traced back as far as 1619. Accordingly, for over 200 years black people, some kidnapped from Africa as well those born into slavery on American soil, suffered torture and atrocities while legally enslaved here in America. On July 4, 1776, the Second Continental Congress unanimously adopted the Declaration of Independence, announcing the colonies' separation from Great Britain. Almost 87 years later, President Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863. The proclamation declared "that all persons held as slaves" within the rebellious states "are, and henceforward shall be free;"

WHEREAS, nevertheless, for at least 2 years after the signing of that proclamation many were illegally bound in slavery. On June 19, 1865, Union soldiers landed in Galveston, Texas and told the enslaved that they were free. That day, acknowledged as Juneteenth, is a day celebration of liberation, emancipation and freedom for African Americans and the oldest nationally celebrated commemoration of the ending of slavery in the United States;

WHEREAS, during the spring of 2020, multiple requests and suggestions were made to consider adding a county holiday in celebration of Juneteenth. A commitment was made by Human Resources and County Management to review this request for consideration in 2021.

WHEREAS, at this time, after research completed by the Buncombe County Equity & Inclusion workgroup and aligned with the Buncombe County Strategic Plan, County leadership is requesting that the Friday on or before June 19th is a County-paid holiday annually to represent an authentic and more inclusive history of freedom in America; and

WHEREAS, the Buncombe County Board of Commissioners desires to amend the Personnel Ordinance for the limited purpose of including Juneteenth as a paid holiday.

NOW THEREFORE, BE IT ORDAINED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS THAT:

Section 1. The Personnel Ordinance of Buncombe County as referenced in Section 3-1 of the Buncombe County Code of Ordinances on file with Buncombe County Clerk to the Board of Commissioners shall be amended as follows:

ARTICLE VI. HOLIDAYS AND LEAVE, Section 1. Paid Holidays Observed, is amended by including Juneteenth as a paid holiday to be observed on Friday on or the Friday immediately preceding June 19th on each year as follows.

Section 1. Paid Holidays Observed

A. The following days and such other days as the Board of Commissioners may designate are holidays with pay for full-time regular employees and officers of the County working the standard workweek.

- New Year's Day
- Martin Luther King Jr. Birthday (Observed)
- Easter
- Memorial Day
- Juneteenth (Observed)
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving (2 days: Thanksgiving and the following Friday)
- Christmas (3 days)

Section 2. All ordinances or portions of ordinances in conflict herewith are hereby repealed.

Section 3. Should any provision of the attached personnel ordinance be declared invalid or unconstitutional by any court of any competent jurisdiction, such declaration shall not affect the validity of the personnel ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Section 4. That the ordinance amendments set forth above shall be effective upon adoption.

This the 4th day of May, 2021.

ATTEST

Lamar Joyner, Clerk

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE

By: _____
Brownie Newman, Chairman

APPROVED AS TO FORM

County Attorney

Juneteenth Holiday

Presented by

Sharon Burke

Human Resources Director

Public Hearing – May 4, 2021

WHAT IS JUNETEENTH

- On July 4, 1776, the Second Continental Congress unanimously adopted the Declaration of Independence, announcing the colonies' separation from Great Britain.

- Almost 87 years later, President Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863. The proclamation declared "that all persons held as slaves" within the rebellious states "are, and henceforward shall be free.“

- Over 2 years later, on June 19, 1865, Union soldiers landed in Galveston, Texas and told the enslaved that they were free.
- Juneteenth signifies freedom and liberation for African Americans in the United States

- Juneteenth is the oldest nationally celebrated commemoration of the ending of slavery in the United States.

JUNETEENTH - COUNTY HOLIDAY

- Staff requests consideration adding this holiday
- Review Holiday Schedule through a racial equity lens
- Includes July 4th as commemoration of ***American Independence***
- ***No additional budget required.***
    - ***Employees required to work, will bank their holiday time***
- Mandatory Services will be maintained (as with other holidays)

RESEARCH & CONSIDERATIONS

Pro's:

- Represents an authentic and more inclusive history of America
- Celebration of Independence in America and freedom
- Opportunity to recognize the reality of what the American experience has been for African American people who live in the United States
- Celebration of the African American experience (struggle and resiliency)
- Acknowledgement & reconciliation can initiate unity and peace in America
- Encourage other jurisdictions and entities to add the holiday

RESEARCH & CONSIDERATIONS

Con's:

- Shows a complicated American history and may be considered divisive
- May be considered an unwanted reminder of a harsh past
- Inquiry of what other marginalized groups have a commemoration of American independence

Provides an opportunity to educate the community as a whole

PUBLIC ENTITY RESPONSE

THE DAY IS OBSERVED AS A CEREMONIAL HOLIDAY IN 47 STATES, INCLUDING NORTH CAROLINA

Municipality or County?	Location	Name	Action	Number of Holidays
County	NC	Bertie County	Yes	13 (including Juneteenth)
County	NC	Northampton County	Yes	13
County	NC	Orange County	Yes	12 (No veterans day)
County	NC	Wake County	Yes	14 holidays - 2021
Municipality	NC	Apex	Yes	13
Municipality	NC	Carrboro	Yes	12 (including Juneteenth)
Municipality	NC	Chapel Hill	Yes	13
Municipality	NC	City of Durham	Yes	12-13, depending on Christmas beginning 2021
Municipality	NC	Greensboro	Yes	13
Municipality	NC	Hillsborough	Yes	13 (including Juneteenth) Beginning 2021
Municipality	NC	OWASA (Orange)	Yes	12
Municipality	NC	Princeville	Yes	13
Municipality	NC	Raleigh	Yes	13
Municipality	NC	Winston-Salem	Yes	13 Trying to decide if new day or replace Christmas Eve. Also celebrates Presidents day & boxing day

REQUEST FOR BOARD ACTION

- Add Juneteenth as the 13th County Holiday
  - Friday on or before June 19th
  - Effective June 18th, 2021

- Educational Campaign:
  - Why Juneteenth is important
  - Highlight our progress and intentional work to advance racial equity
  - Illustrate continued commitment to equity

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

Public Hearings

Department: Planning/Legal

Presenter(s): Nathan L. Pennington, CFM, Planning Director

Brandon Freeman, Senior Attorney I

Contact(s): Nathan L. Pennington

Subject: Adoption of 160D – BC Code of Ordinances Integration

Brief Summary: Chapter 160D ("160D") is the culmination of years of work to significantly recodify and modernize city and county development regulations (enabling legislation). Work on this effort began back in 2013. 160D was established under Session Law 2019-111, enacted by the General Assembly in June, 2019 and signed by the Governor in July, 2019. Session Law 2019-111 included two parts with different effective dates.

The Ordinance, with a few exceptions, contains only those changes that are mandatory. Optional ("Mays") changes will be evaluated at later dates and in concert with the comprehensive planning process. It is important to note that many of the identified "musts" are already adhered to either because they are already in effect or because they were part of standards that were already codified in the County's development ordinances. The 160D changes are statutorily required and must be adopted by Buncombe County by July 1, 2021.

Recommended Motion & Requested Action: Approve the attached 160D text amendments as submitted.

County Manager's comments and Recommendation: Manager recommends approval as presented.

RESOLUTION #21-05-06

ORDINANCE AMENDING THE TEXT OF VARIOUS CHAPTERS OF THE BUNCOMBE COUNTY CODE OF ORDINANCES IN COMPLIANCE WITH SECTION 51.(b) OF NC SESSION LAW 2020-25

WHEREAS, Buncombe County maintains several ordinances concerning numerous development regulations (hereinafter the "Development Regulations"); and

WHEREAS, on April 11, 2019, the North Carolina General Assembly enacted Part II of NC Session Law 2019-111, which was intended to collect and organize existing statutes regarding local planning and development into a single Chapter of the General Statutes and to consolidate the statutes affecting cities and counties; and

WHEREAS, on June 19, 2020, the North Carolina General Assembly enacted NC Session Law 2020-25, which mandated that governments shall amend their development regulations to conform to the provisions of Part II of NC Session Law 2019-111 on or before July 1, 2021; and

WHEREAS, the modifications contained in Exhibit A attached hereto (hereinafter the "Proposed Amendments") are intended to, among other things,[1] amend the County's Development Regulations to conform to the provisions of Part II of NC Session Law 2019-111; and

WHEREAS, pursuant to N.C. Gen. Stat. §§ 160D-601; 160D-604, and Chapter 78, Section 719 of the Buncombe Zoning Ordinance, the Board of Commissioners may amend its development regulations after holding a public hearing and after the Buncombe County Planning Board has had the opportunity to review, comment, and make a recommendation to this Board regarding the amendment as well as whether the same is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable; and

WHEREAS, the Buncombe County Planning Board has reviewed the Proposed Amendments at a properly noticed public hearing that was opened during the March 22, 2021 regular meeting of the Planning Board held virtually and in accordance with law, and, in order to comply with N.C. Gen. Stat. § 166A-19.24(e) by allowing for written comments on the proposed amendments to be submitted 24 hours after the public hearing, continued to the April 5, 2021, regular meeting of the Planning Board; and

WHEREAS, the Buncombe County Planning Board recommended in a vote of 5 to 0 on April 19, 2021, that the Board of Commissioners adopt the Proposed Amendments; and

WHEREAS, in accordance with N.C. Gen. Stat. § 160D-601 and the provisions set forth in Chapter 78, Section 719, of the Buncombe County Code of Ordinances, the Board of Commissioners duly advertised and held a public hearing to consider the proposed amendment; and

---

[1] Other changes included correcting county department identities and responsibilities to align with current County practices and adjusting variance, appeal, and review authority to align with best practices as recommended by the UNC School of Government.

WHEREAS, after reviewing the written recommendation of the Buncombe County Planning Board, the Proposed Amendments, hearing public comment, and careful review, this Board determines that:

1. the Proposed Amendments are consistent with the Buncombe County Comprehensive Land Use Plan because said amendments would adjust the County's land use policies to account for changes within the regulatory environment;[2] Clarify existing ambiguities in land use policies and regulations;[3] and Implement new policies that address land use in an integrated and comprehensive manner.[4]

2. the Proposed Amendments are reasonable and in the public interest because said amendments are required by Part II of NC Session Law 2019-111, correct county department identities and responsibilities to align with current County practices, and/or adjust variance, appeal, and review authority to align with best practices as recommended by the UNC School of Government.

NOW, THEREFORE, BE IT ORDAINED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS THAT:

Section 1. That this Board does hereby adopt the Proposed Amendments as outlined in Exhibit A attached hereto.

Section 2. That if any section, subsection, clause or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance; and

Section 3. That all ordinances and clauses of ordinances in conflict herewith be and are hereby repealed to the extent of such conflict.

Section 4. This ordinance is effective upon adoption.

Read, approved, and adopted this 4th day of May, 2021.

ATTEST

Lamar Joyner, Clerk

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE

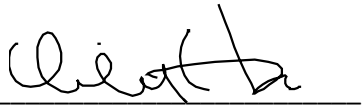
By: _____
Brownie Newman, Chairman

[2] Buncombe County Comprehensive Land Use Plan, 2013 Update, Sec.2 at p. 4.

[3] Id.

[4] Id.

APPROVED AS TO FORM



County Attorney

Exhibit A

Chapter 1 - GENERAL PROVISIONS

Sec. 1-1. - Designation and citation of Code.

The provisions in the following chapters and sections shall constitute and be designated as the "Code of Ordinances, Buncombe County, North Carolina," and may be so cited. Such Code may also be cited as the Buncombe County Code.

State Law reference— Authority of county to adopt and issue a code of its ordinances, G.S. 153A-49; pleading and proving county ordinances, G.S. 153A-50; general ordinance-making power, G.S. 153A-121; territorial jurisdiction of ordinances, G.S. 153A-122; authority not limited by enumeration of powers, G.S. 153A-124.

Sec. 1-2. - Rules of construction and definitions.

In the construction of this Code and of all ordinances, the following definitions and rules of construction shall be observed, unless inconsistent with the manifest intent of the board of county commissioners or the context clearly requires otherwise:

Board, board of county commissioners, board of commissioners. The terms "board," "board of county commissioners" and "board of commissioners" mean the board of commissioners of Buncombe County, North Carolina.

Bond. When a bond is required, an undertaking in writing shall be sufficient.

Code. The terms "the Code" and "this Code" mean the Code of Ordinances, Buncombe County, North Carolina, as designated in section 1-1.

Computation of time. In computing any period of time prescribed or allowed by this Code, by order of the court or by any applicable statute, including ordinances, orders or statutes respecting publication of notices, the day of the act, event, default or publication after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

State Law reference— Computation of time, G.S. 1-593, 1A-1, Rule 6(a).

County. The terms "the county" and "this county" mean Buncombe County, in the State of North Carolina.

Daytime, nighttime. Daytime is the period of time between sunrise and sunset, and nighttime is the period of time between sunset and sunrise.

Gender. Words importing the masculine, feminine or neuter gender include each of the other genders.

G.S. The designation "G.S." appearing in the text or in the state law references or other notes refers to the General Statutes of North Carolina, as amended.

Keeper, proprietor. The terms "keeper" and "proprietor" mean person, firm, association, corporation, club and partnership, whether acting by themselves or as a servant, agent or employee.

Month. The term "month" means a calendar month.

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Number. Words used in the singular include the plural, and words used in the plural include the singular number.

Oath. The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the terms "affirm" and "affirmed" shall be equivalent to the terms "swear" and "sworn."

Officials, boards, commissions, departments. Whenever reference is made to officials, boards, commissions and departments by title only, they shall be deemed to refer to the officials, boards, commissions and departments of Buncombe County.

Or, and. The word "or" may be read "and," and the word "and" may be read "or," if the sense requires it.

Owner. The term "owner," when applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety of the whole or part of such building or land.

Person. The term "person" includes a corporation, firm, partnership, association, organization and any other group acting as a unit, as well as an individual.

Personal property. The term "personal property" includes every species of property except real property.

Preceding, following. The terms "preceding" and "following" mean next before and next after, respectively.

Property. The term "property" includes real and personal property.

Real property. The term "real property" includes lands, tenements and hereditaments.

Residence. The term "residence" means the place adopted by a person as his place of habitation and to which, whenever he is absent, he has the intention of returning. When a person eats at one place and sleeps at another, the place where such person sleeps shall be deemed his residence.

Right-of-way. Except with respect to vehicle and traffic regulations, the term "right-of-way" means land that is dedicated or otherwise legally established for public use.

Roadway. The term "roadway" means that portion of a street improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder. If a street includes two or more separate roadways, the term "roadway" refers to any such roadway separately but not to all such roadways collectively.

Shall, may. The term "shall" is mandatory and not merely directory; the term "may" is permissive.

Sidewalk. The term "sidewalk" means that portion of the street right-of-way which is improved and designated for the use of pedestrians.

Signature, subscription. The terms "signature" and "subscription" include a mark where a person cannot write.

State. The terms "the state" and "this state" mean the State of North Carolina.

Street, highway. The term "street" means the entire width between property or right-of-way lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic. The terms "highway" and "street" shall be used synonymously.

Tenant, occupant. The terms "tenant" and "occupant," applied to a building or land, include any person who occupies the whole or part of such building or land, whether alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and the present.

Written, in writing. The terms "written" and "in writing" shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

Year. The word "year" means 12 consecutive months.

State Law reference— Similar provisions, G.S. 12-3, 20-4.01.

Sec. 1-3. - Provisions of Code considered continuations of existing ordinances.

The provisions appearing in this Code, so far as they are the same as those of prior county ordinances, shall be considered as continuations thereof and not as new enactments.

State Law reference— Similar provisions applicable to state statutes, G.S. 153A-2.

Sec. 1-4. - Repeal, expiration and revival of ordinances.

(a) The repeal of an ordinance, or its expiration by virtue of any provisions contained therein, shall not affect any right accrued, any offense committed, any penalty or punishment incurred or any proceeding commenced before the repeal took effect or the ordinance expired.

(b) When an ordinance which repealed another shall itself be repealed, the previous ordinance shall not be revived without express words to that effect.

State Law reference— Repeal of statute not to affect actions, G.S. 12-2; affect of county government law on prior laws and actions taken pursuant to prior laws, G.S. 153A-2; construction of General Statutes, G.S. 164-1 et seq.

Sec. 1-5. - Catchlines, history notes and references.

(a) The catchlines of the several sections of this Code are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.

(b) The history notes appearing in parentheses after each section and the references and notes scattered throughout the Code are for the benefit of the user of the Code and shall have no legal effect.

Sec. 1-6. - Severability.

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

Sec. 1-7. - General penalty.

(a) Any person violating or failing, refusing or neglecting to comply with any provision or requirement of any section or subsection of this Code, or any ordinance of this county now in force or hereafter enacted, to which no specific penalty is affixed, shall be punished by a fine not to exceed $500.00, or shall be imprisoned for not more than 30 days, for each offense.

(b) Any ordinance in this Code may be enforced by an appropriate legal remedy issuing from a court of competent jurisdiction. It shall not be a defense to the application of the county for equitable relief that there is an adequate remedy at law.

(c) Each day that any breach or violation of or any failure to comply with any provision or requirement of any section or subsection of this Code or any ordinance of this county now in force or hereafter enacted continues, or is allowed to continue, shall constitute a separate and distinct offense; but nothing contained in this section or this Code shall be construed to relieve, or shall have the effect of relieving, any offender of any fine, imprisonment or penalty for repeated violations on any one day of any ordinance now in force or hereafter enacted, or any section or subsection of this Code.

(d) The imposition of a penalty under the provisions of this Code shall not prevent the revocation or suspension of any license, franchise or permit issued or granted under this Code.

(e) If any violation of this Code is designated as a nuisance under the provisions of this Code, such nuisance may be summarily abated by the county in addition to the imposition of a fine or imprisonment.

(f) Any provision of this Code or other ordinance of the county may be enforced by any one or more of the remedies authorized by G.S. 153A-123.

State Law reference— Violations of county ordinances deemed misdemeanors, G.S. 14-4, 153A-123; prescribing alternate methods for enforcement of ordinances and authorizing the making of each day's continuing violation a separate offense; injunction, G.S. 1-485 et seq.

Sec. 1-8. - Amendments or additions to Code.

(a) Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this Code in the following language: "That section _____ of the Code of Ordinances, Buncombe County, North Carolina, is hereby amended to read as follows:…." The new provisions shall then be set out in full as desired.

(b) If a new section not heretofore existing in the Code is to be added, the following language shall be used: "That the Code of Ordinances, Buncombe County, North Carolina, is hereby amended by adding a section, to be numbered _____, which section reads as follows:…." The new section shall then be set out in full as desired.

Sec. 1-9. - Supplementation of Code.

(a) By contract or by county personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the board of commissioners. A supplement to the Code shall include all substantive, permanent and general parts of ordinances passed by the board during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In the preparation of a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier, meaning the person, agency or organization authorized to prepare the supplement, may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ through _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and

(5) Make other nonsubstantive changes necessary to preserve the original meanings of ordinance sections inserted in the Code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-10. - Ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall be construed to repeal or otherwise affect the validity of any of the following:

(1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code;

(2) Any ordinance or resolution promising or guaranteeing the payment of money for the county or authorizing the issuance of any bonds of the county or any evidence of the county's indebtedness;

(3) Any contract or obligation assumed by the county;

(4) Any ordinance fixing the salary of any county officer or employee;

(5) Any right or franchise granted by the county;

(6) Any ordinance dedicating, naming, establishing, locating, relocating, opening, widening, paving, etc., any street or public way in the county;

(7) Any appropriation ordinance;

(8) Any ordinance which by its own terms is effective for a stated or limited term;

(9) Any ordinance providing for local improvements and assessing taxes therefor;

(10) Any ordinance regulating subdivisions or dedicating or accepting any subdivision plat;

(11) Any ordinance related to social security and retirement benefits for county officers and employees;

(12) Any ordinance levying or imposing taxes not included in this Code;

(13) Any ordinance establishing or prescribing street grades;

(14) Any personnel ordinance;

nor shall such ordinance be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance which is repealed by the ordinance adopting this Code; and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

State Law reference— Authority of board to omit ordinances of the types enumerated above from the Code, G.S. 153A-49; statutes not repealed by General Statutes, G.S. 164-7.

Sec. 1-11 – General conflict of interest provisions.

(a) Board of County Commissioners. – A member of the Buncombe County Board of Commissioners shall not vote on any legislative decision where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(b) Appointed Boards. – Members of appointed boards shall not vote on any advisory or legislative decision where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the

property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(c) Administrative Staff. – No staff member shall make a final decision on an administrative decision if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest, the decision shall be assigned to the supervisor of the staff person. No staff member shall be financially interested or employed by a business that is financially interested in an undertaking subject to regulation under this Code of Ordinances, unless the staff member is the owner property involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(d) Quasi-Judicial Decisions. – A member of any board exercising quasi-judicial functions pursuant to this Code of ordinance 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 violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(e) Resolution of Objection. – If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(f) Familial Relationship. – For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. Board of County Commissioners. – A member of the Buncombe County Board of Commissioners shall not vote on any legislative decision where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(g) Appointed Boards. – Members of appointed boards shall not vote on any advisory or legislative decision where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the

property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(h) Administrative Staff. – No staff member shall make a final decision on an administrative decision if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest, the decision shall be assigned to the supervisor of the staff person. No staff member shall be financially interested or employed by a business that is financially interested in an undertaking subject to regulation under this Code of Ordinances, unless the staff member is the owner property involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(i) Quasi-Judicial Decisions. – A member of any board exercising quasi-judicial functions pursuant to this Code of ordinance 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 violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(j) Resolution of Objection. – If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

Familial Relationship. – For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.

(k)

Chapter 10 - BUILDINGS AND BUILDING REGULATIONS[1]

Footnotes:

--- **(1)** ---

Cross reference— Environment, ch. 26; fire prevention and protection, ch. 30; floods, ch. 34; historical preservation, ch. 38; manufactured homes and trailers, ch. 46; smoking in public buildings, § 50-1; planning and development, ch. 58; streets, sidewalks and other public places, ch. 66; subdivisions, ch. 70; zoning, ch. 78.

State Law reference— Authority of county to levy taxes for building inspection, G.S. 153A-149(c)(26).

ARTICLE I. - IN GENERAL

Secs. 10-1—10-25. - Reserved.

ARTICLE II. - REGULATORY CODES[2]

Footnotes:
--- (**2**) ---
State Law reference— State building code applicable throughout the state, G.S. 143-138; adoption of technical codes by reference, G.S. 153A-47.

Sec. 10-26. - Scope of article and codes.

The provisions of this article and of the regulatory codes adopted in this article shall apply to the following:

(1) The location, design, materials, equipment, construction, reconstruction, alteration, repair, maintenance, moving, demolition, removal, use and occupancy of every building or structure or any appurtenances connected or attached to such building or structure, including, but not limited to, mobile homes and manufactured buildings.

(2) The installation, erection, alteration, repair, use and maintenance of plumbing systems consisting of house sewers, building drains, waste and vent systems, hot and cold water supply systems, and all fixtures and appurtenances thereof.

(3) The installation, erection, alteration, repair, use and maintenance of mechanical systems consisting of heating, ventilating, air conditioning, and refrigeration systems, fuel burning equipment, and appurtenances thereof.

(4) The installation, erection, alteration, repair, use and maintenance of electrical systems and appurtenances thereof.

The adoption of this article and the codes adopted in this article by reference shall constitute a resolution within the meaning of G.S. 143-138(d) making the regulatory codes adopted in this article applicable to dwellings and out buildings used in connection therewith and to apartment buildings used exclusively as the residence.

(Ord. No. 19828, § 1-1, 5-21-91; Ord. No. 20371, § 1-1, 1-18-94)

Sec. 10-27. - Adoption of building code.

The current and subsequent editions of the state building code, volume I, general construction; volume I-A, administration and enforcement; and volume I-C, accessibility (handicapped), as adopted by the state building code council, as amended, are hereby adopted by reference as fully as though set forth in this section as the county building code to the extent such code is applicable for safe and stable design, methods of construction, minimum standards, and use of materials in buildings or structures hereafter erected, altered, repaired, or otherwise constructed or reconstructed.

(Ord. No. 19828, § 1-2, 5-21-91; Ord. No. 20371, § 1-2, 1-18-94)

Sec. 10-28. - Adoption of plumbing code.

The current and subsequent editions of the state plumbing code, as adopted and published by the state building code council, as amended, is hereby adopted by reference as fully as though set forth in this section as the county plumbing code.

(Ord. No. 19828, § 1-3, 5-21-91; Ord. No. 20371, § 1-3, 1-18-94)

Sec. 10-29. - Adoption of heating code.

The current and subsequent editions of the state heating code, as adopted and published by the state building code council, as amended, is hereby adopted by reference as fully as though set forth in this section as the county heating code.

(Ord. No. 19828, § 1-4, 5-21-91; Ord. No. 20371, § 1-4, 1-18-94)

Sec. 10-30. - Adoption of electrical code.

The current and subsequent editions of the state electrical code, which has adopted by reference the National Electrical Code of the National Fire Protection Association, as adopted by the state building code council, as amended, is hereby adopted by reference as fully as though set forth in this section as the county electrical code.

(Ord. No. 19828, § 1-5, 5-21-91; Ord. No. 20371, § 1-5, 1-18-94)

Sec. 10-31. - Adoption of residential building code.

The current and subsequent editions of the state uniform residential building code, as adopted by the state building inspectors association, and as published by the state building code council, as amended, is hereby adopted by reference as fully as though set forth in this section as the county residential building code for one- and two-family residential buildings.

(Ord. No. 19828, § 1-6, 5-21-91; Ord. No. 20371, § 1-6, 1-18-94)

Sec. 10-32. - Adoption of mobile and modular home code.

The current and subsequent editions of the state regulations of mobile homes, as adopted and published by the state department of insurance, as amended, is hereby adopted by reference as fully as though set forth in this section as the county mobile and modular home code.

(Ord. No. 19828, § 1-7, 5-21-91; Ord. No. 20371, § 1-7, 1-18-94)

Cross reference— Mobile homes, § 46-26 et seq.

Sec. 10-33. - Adoption of the state fire prevention code.

The current and subsequent editions of the North Carolina Building Code: Fire Prevention Code, shall be administered by the county fire marshal's office.

(Ord. No. 20371, § 1-9, 1-18-94; Ord. No. 10-08-25, § 1, 8-17-10)

Cross reference— Fire prevention code, § 30-26 et seq.

Sec. 10-34. - Amendments to codes.

Amendments and all appendices and additions to the regulatory codes adopted by reference in this article, which are from time to time adopted and published by the agencies or organizations referred to in this article shall be effective in the county at the time such amendments are filed with the clerk to the board of commissioners, as provided in section 10-35.

(Ord. No. 19828, § 1-8, 5-21-91; Ord. No. 20371, § 1-8, 1-18-94)

Sec. 10-35. - Compliance with codes.

(a) All buildings or structures which are hereafter placed, manufactured, constructed, reconstructed, shall meet the minimum standards and other provisions of either the state building code, general construction, the state uniform residential building code, or the state regulations for mobile homes, whichever is applicable, or of any or all, if applicable.

(b) Every building or structure, including manufactured or mobile home, intended for human habitation, occupancy, or use shall have plumbing, plumbing systems, or plumbing fixtures installed,

constructed, altered, extended, repaired, or reconstructed in accordance with the minimum standards, requirements, and other provisions of the state plumbing code.

(c) All mechanical systems consisting of heating, ventilating, air conditioning and refrigeration systems, fuel burning equipment and appurtenances shall be installed, erected, altered, repaired, used and maintained in accordance with the minimum standards, requirements, and other provisions of the state heating code.

(d) All electrical wiring, installations and appurtenances shall be erected, altered, repaired, used and maintained in accordance with the minimum standards, requirements, and other provisions of the state electrical code.

(Ord. No. 19828, § 1-9, 5-21-91; Ord. No. 20371, § 1-10, 1-18-94)

Sec. 10-36. - Copies of codes filed with clerk.

An official copy of each regulatory code adopted in this article, and official copies of all amendments thereto, shall be kept on file in the office of the clerk to the board of commissioners. Such copies shall be official copies of the codes and their amendments.

(Ord. No. 19828, § 1-10, 5-21-91; Ord. No. 20371, § 1-11, 1-18-94)

Secs. 10-37—10-55. - Reserved.

ARTICLE III. - ADMINISTRATION AND ENFORCEMENT

DIVISION 1. - GENERALLY

Secs. 10-56—10-65. - Reserved.

DIVISION 2. - DEPARTMENT OF ~~GENERAL SERVICES~~PERMITS AND INSPECTIONS

Sec. 10-66. - Organization of department of ~~general services~~permits and inspections.

An inspection department, known officially and designated as the department of ~~general services~~permits and inspections, is hereby established pursuant to G.S. 160D-402(b) and 404(c) 1102~~153A-351 et seq.~~, and shall consist of a building inspector, a plumbing inspector, a heat-air conditioning inspector, an electrical inspector, and such other inspectors or deputy or assistant inspectors as may be authorized by the board of commissioners. The board of commissioners or the County Manager may designate a department head.

(Ord. No. 19828, § 2-1, 5-21-91; Ord. No. 20371, § 2-1, 1-18-94)

Cross reference— Administration, ch. 2.

Sec. 10-67. - General duties of department and inspectors.

(a) It shall be the duty of the department of permits and inspections~~general services~~ to enforce all of the provisions of this chapter and of the regulatory codes adopted in this chapter, and to make all inspections necessary to determine whether or not the provisions of this chapter and such codes are being met.

(b) The state building code (general construction), the state uniform residential building code and the state regulations for mobile homes shall be enforced by the building inspector. The state plumbing code shall be enforced by the plumbing inspector. The state heating code shall be enforced by the heating-air conditioning inspector. The state electrical code shall be enforced by the electrical inspector.

(Ord. No. 19828, § 2-2, 5-21-91; Ord. No. 20371, § 2-2, 1-18-94)

Sec. 10-68. - Conflicts of interest.

Staff members, agents, or contractors responsible for building inspections shall comply with G.S. 160D-109(c). No member of an inspection department shall be financially interested or employed by a business that is financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building within the local government's planning and development regulation jurisdiction or any part or system thereof, or in the making of plans or specifications therefor, unless he is the owner of the building. No member of an inspection department or other individual or an employee of a company contracting with a local government to conduct building inspections shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government. The local government must find a conflict of interest if any of the following is the case:

(1) If the individual, company, or employee of a company contracting to perform building inspections for the local government has worked for the owner, developer, contractor, or project manager of the project to be inspected within the last two years.

(2) If the individual, company, or employee of a company contracting to perform building inspections for the local government is closely related to the owner, developer, contractor, or project manager of the project to be inspected.

(3) If the individual, company, or employee of a company contracting to perform building inspections for the local government has a financial or business interest in the project to be inspected.

The provisions of this section do not apply to a firefighter whose primary duties are fire suppression and rescue but who engages in some fire inspection activities as a secondary responsibility of the firefighter's employment as a firefighter, except no firefighter may inspect any work actually done, or materials or appliances supplied, by the firefighter or the firefighter's business within the preceding six years.~~No member of the department of general services shall be financially interested in the furnishing of labor, material or appliances for the construction, alteration or maintenance of any building or any part or system thereof, or in the making of plans or specifications therefor, unless he is the owner of such building. No member of the department of engineering services shall engage in any work which is inconsistent with his duties or with the interests of the county~~.

(Ord. No. 19828, § 2-3, 5-21-91; Ord. No. 20371, § 2-3, 1-18-94)

Sec. 10-69. - Reports and records.

The department of permits and inspections~~general services~~ and each inspector shall keep complete, permanent and accurate records in convenient forms of all applications received, permits issued, inspections, reinspections made, and all other work and activities of the department of permits and inspections~~general services~~. Periodic reports shall be submitted to the board of commissioners and to other agencies, as required.

(Ord. No. 19828, § 2-4, 5-21-91; Ord. No. 20371, § 2-4, 1-18-94)

Sec. 10-70. - Inspection procedure.

(a) *Inspections.* The department of ~~general services~~permits and inspections shall inspect all buildings and structures and work therein for which a permit of any kind has been issued as often as necessary in order to determine whether the work complies with this article and the appropriate codes. When deemed necessary by the appropriate inspector, materials and assemblies may be inspected at the point of manufacture or fabrication, or inspections may be made by approved and recognized inspection organizations; provided, however, that no approval shall be based upon reports of such organizations unless the same are in writing and certified by a responsible officer of such organization. All holders of permits, or their agents, shall notify the department of ~~general services~~permits and inspections and the appropriate inspector at each of the following stages of construction so that approval may be given before work is continued:

(1) *Foundation inspection.* The foundation inspection shall be made after trenches are excavated and the necessary reinforcement and forms are in place, and before concrete is placed. Drilled

footings, piles and similar types of foundations shall be inspected as installed. Frostline is established as an 18-inch minimum from the finished outside grade.

(2) *Framing and insulation inspection.* The framing and insulation inspection shall be made after all structural framing is in place and all roughing-in of plumbing, electrical and heating has been installed, after all fire blocking, chimneys, bracing and vents are installed, but before any of the structure is enclosed or covered. Poured-in-place concrete structural elements shall be inspected before each pour of any structural member. All insulation shall be inspected and in place before the walls are covered and the R-value for the structure shall comply with chapter 32 of volume I or chapter 25 of volume VII (one and two family residential code) of the state building code.

(3) *Fireproofing inspection.* The fireproofing inspection shall be made after all areas required to be protected by fireproofing are lathed, but before the plastering or other fireproofing is applied.

(4) *Inspection of natural gas piping systems for residential structures.* If the test required under the North Carolina State Building Code for a natural gas piping system serving a one or two family residential dwelling is not performed by a qualified code enforcement official, as defined in G.S. 143-151.8(a)(5), the licensed contractor who installed the system shall verify that the system complies with the test requirements and shall certify the results, in writing, to the director of ~~general services~~permits and inspections. In addition, the contractor shall fix a label to the appliance verifying who performed the test, date of test, and pressure and duration of test. The director of ~~general services~~permits and inspections or designee is authorized to witness pressure tests on any gas piping system or conduct tests independently to ensure compliance and to suspend a contractor's privilege to perform these tests without inspections due to noncompliance.

(5) *Final inspection.* The final inspection shall be made after the building or structure has all the doors hung, the fixtures are set, and is ready for occupancy, but before the building is occupied.

(b) *Request for inspections.* Request for inspections will be made to the office of the department of ~~general services~~permits and inspections or to the appropriate inspector at the time prescribed on calls for inspection sheet. The department shall make inspections as soon as practicable after the requested inspection date during normal working hours. Reinspections may be made at the convenience of the inspector. No work shall be inspected until it is in proper and complete condition ready for inspection. All work which has been concealed before a timely inspection and approval shall be uncovered at the request of the inspector and placed in condition for proper inspection. Approval or rejection of the work shall be furnished by the appropriate inspector in the form of a notice posted on the building or given to the permit holder or agent. Failure to request inspections or proceeding without approval at each stage of construction shall be deemed a violation of this chapter.

(c) *Street or alley lines.* Where the applicant for a permit proposes to erect any building or structure on the line of any street, alley or other public place, he shall secure a survey of the line of such street, alley or public place, adjacent to the property upon which such building or structure is to be erected, before proceeding with construction of such building or structure.

(d) *Certificate of occupancy and compliance.* No new building or part thereof shall be occupied; no addition or enlargement of any existing building, after being altered or moved, shall be occupied; and no change of occupancy shall be made in any existing building or part thereof, until the department of ~~general services~~permits and inspections has given permission to occupy or issued a certificate of occupancy and compliance per the G.S. ~~153A-363~~160D-1116. A temporary certificate of occupancy and compliance may be issued for a portion of a building which may safely be occupied prior to final completion and occupancy of the entire building. The department shall issue a certificate of occupancy and compliance when, after examination and inspection, it is found that the building in all respects conforms to the provisions of this chapter, the regulatory codes, the zoning ordinance for the occupancy intended, and applicable laws of the state. The permanent certificate of occupancy and compliance shall be maintained at the department of ~~general services~~permits and inspections.

(Ord. No. 19828, § 2-5, 5-21-91; Ord. No. 20371, § 2-5, 1-18-94; Ord. No. 98-5-6, § 1, 5-5-98)

State Law reference— Inspections authorized, G.S. ~~153A-360~~160D-1113.

Sec. 10-71. - Oversight not to legalize violation.

No oversight or dereliction of duty on the part of any inspector or other official or employee of the department of ~~general services~~permits and inspections shall be deemed to legalize the violation of any provision of this chapter or any provision of any regulatory code adopted in this chapter.

(Ord. No. 19828, § 2-6, 5-21-91; Ord. No. 20371, § 2-6, 1-18-94)

Sec. 10-72. - Powers of inspection officials.

(a) *Authority.* Inspectors are hereby authorized, empowered and directed to enforce all provisions of this chapter and the regulatory codes adopted in this chapter.

(b) *Right-of-entry.* Inspectors shall have the right of entry on any premises within the jurisdiction of the regulatory codes adopted in this chapter at reasonable hours for the purpose of inspection reenforcement of the requirements of this chapter and the regulatory codes, upon presentation of proper credentials.

(c) *Stop orders.* Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, in a hazardous manner or in violation of any provisions of this chapter or any other county ordinance, or in violation of any provision of any regulatory code adopted in this chapter, or in violation of the terms of the permit issued therefor, or in such manner as to endanger life or property, the appropriate inspector may order the specific part of such work which is in violation or presents such a hazard, to be stopped immediately. Such order shall be in writing to the owner of the property or to his agent, or to the person doing the work, and shall state the reasons therefor and the conditions under which the work may be resumed.

(Ord. No. 19828, § 2-7, 5-21-91; Ord. No. 20371, § 2-7, 1-18-94)

State Law reference— Stop orders, G.S. ~~153A-361~~160D-1114.

Sec. 10-73. - Contractors—Registration.

Every person carrying on the business of building contractor, plumbing contractor, heating-air conditioning contractor or electrical contractor within the county shall be a licensed North Carolina Contractor and can register at the office of the department of ~~general services~~permits and inspections, giving his name, place of business and license number. Provided, that every person or business entity carrying on or engaging in asbestos removal within the county shall be certified and accredited by the state and shall register certification with the Western North Carolina Regional Air Pollution Control Agency.

(Ord. No. 19828, § 3-1, 5-21-91; Ord. No. 20371, § 3-1, 1-18-94)

Cross reference— Businesses, ch. 14.

Sec. 10-74. - Same—Evidence of insurance required.

Every contractor must meet the requirements of the state contractors licensing board, G.S. 87-14 and G.S. ch. 97, workers' compensation insurance.

(Ord. No. 19828, § 3-2, 5-21-91; Ord. No. 20371, § 3-2, 1-18-94)

Secs. 10-75—10-85. - Reserved.

DIVISION 3. - PERMITS[3]

Footnotes:

--- (**3**) ---

State Law reference— Building permits generally, G.S. ~~153A-357~~160D-403; 1110.

Sec. 10-86. - Required.

(a) *Board of health approval required prior to issuance.* Prior to the issuance of any permit pursuant to this section, the county board of health approval for use of a septic tank and potable water is required where a sewage system cannot be connected to a city or county sewer.

(b) *Building permit.* No person shall commence or proceed with the construction, reconstruction, alteration, repair or removal of any building or other structure, or any part thereof, without first securing a written permit therefor from the building inspector; provided, however, that no building permit shall be required for any construction, installation, repair, replacement or alteration costing $5,000.00 or less in any single-family residence or farm building unless the work involves the addition, repair or replacement of load-bearing structure; the addition or change in the design of plumbing, heating, air conditioning, electrical wiring, devices, appliances or equipment; the use of material not permitted by the state uniform residential building code; or the addition, excluding replacement of the like grade of fire resistance, of roofing.

(c) *Plumbing permit.* No person shall commence or proceed with the installation, extension or general repair of any plumbing system without first securing a permit therefor from the plumbing inspector; provided, however, that no permit shall be required for minor repairs or replacements on the house side of a trap to an installed system of plumbing if such repairs or replacements do not disrupt the original water supply or the waste or ventilating system.

(d) *Heating-air conditioning permit.* No person shall commence or proceed with the installation, extension, alteration or general repair of any heating or cooling equipment system without first securing a permit from the heating-air conditioning inspector; provided, however, that no permit shall be required for minor repairs or minor burner services.

(e) *Electrical permit.* No person shall commence or proceed with the installation, extension, alteration or general repair of any electrical wiring, devices, appliances or equipment without first securing a permit therefor from the electrical inspector; provided, however, that no permit shall be required for minor repair work such as the connection of portable devices to suitable receptacles which have been permanently installed; provided, further, that no permit shall be required for the installation, alteration or repair of the electrical wiring, devices, appliances and equipment installed by or for an electrical public utility corporation for the use of such corporation in the generation, transmission, distribution or metering of electrical energy, or for the use of such corporation in the operation of signals or the transmission of intelligence.

(f) *Mobile and modular home permit.* No person shall proceed with the installation, placement, alteration, repair, removal or demolition of any mobile and modular home without first securing a permit from the department of ~~general services~~permits and inspections.

(g) *Demolition permit.* No person shall commence or proceed with the removal or demolition of any building or structure without first obtaining a demolition permit from the Western North Carolina Regional Air Pollution Control Agency at least 15 days prior to commencement of such demolition or removal.

(h) *Asbestos removal.* No person shall commence or proceed with the removal of any asbestos materials from any building or structure without first obtaining a written permit therefor from the Western North Carolina Regional Air Pollution Control Agency.

(Ord. No. 19828, § 3-3(a)—(f), 5-21-91; Ord. No. 20371, § 3-3(a)—(h), 1-18-94)

Cross reference— Mobile homes, § 46-26 et seq.

Sec. 10-87. - Work without permit; charge.

Work performed without a permit under section 10-97 shall result in a charge of the currently required late fee equal in amount to the fee specified in section 10-97, and, in addition thereto, the late fees so charged shall not be construed as a penalty, but as a charge for additional administrative expense.

(Ord. No. 19828, § 3-3(g), 5-21-91; Ord. No. 20371, § 3-3(i), 1-18-94)

Sec. 10-88. - Returned checks; charge.

Checks returned to the department of ~~general services~~permits and inspections from a financial institution for insufficient funds shall result in a charge in addition to the currently required permit fee. The fee so charged shall not be construed as a penalty, but as a charge for additional administrative expense.

(Ord. No. 19828, § 3-3(h), 5-21-91; Ord. No. 20371, § 3-3(j), 1-18-94)

Sec. 10-89. - Refund for unused permit; charge deducted.

A refund for an unused building permit will be allowed up to six months from the issue date with the approval of the director of ~~general services~~permits and inspections and/or the county engineer/inspections supervisor. A charge shall be deducted from the currently required permit fee and shall not be construed as a penalty, but as a charge for additional administrative expense. Refunds will be dispersed by the county finance department within 20 working days.

(Ord. No. 19828, § 3-3(i), 5-21-91; Ord. No. 20371, § 3-3(k), 1-18-94)

Sec. 10-90. - Application.

Written application shall be made for all permits required by this chapter and shall be made on forms provided by the department of ~~general services~~permits and inspections. Such application shall be made by the owner of the building or structure affected, or by his authorized agent or representative, and, in addition to such other information as may be required by the appropriate inspector to enable him to determine whether the permit applied for should be issued, shall show the following:

(1) Name, residence and business address of owner;

(2) Name, residence, and business of authorized representative or agent, if any; and

(3) Name and address of the contractor, if any, together with the evidence that he has obtained a certificate from the appropriate state licensing board for such contractors, if such is required for the work involved in the permit for which application is made.

(Ord. No. 19828, § 3-4, 5-21-91; Ord. No. 20371, § 3-4, 1-18-94)

Sec. 10-91. - Plans and specifications.

Adequate working drawings or detailed plans and specifications shall accompany each application for permit. Developers of a multiplatted project may be required to file a site plan with the developer's name, project name and the PIN number with the department of ~~general services~~permits and inspections. Plans shall be drawn to scale with sufficient clarity to indicate the nature and extent of work proposed, and the plans and specifications together shall contain information sufficient to indicate that the work proposed will conform to the provisions of this chapter and the appropriate regulatory codes. Where plans and specifications are required, a copy of the same shall be kept at the work site until all authorized operations have been completed and approved by the appropriate inspector.

(Ord. No. 19828, § 3-5, 5-21-91; Ord. No. 20371, § 3-5, 1-18-94)

Sec. 10-92. - Limitations on issuance.

(a) Where any provision of state law or any ordinance requires that work is done by a licensed specialty contractor of any kind, no permit for such work shall be issued unless it is to be performed by such licensed specialty contractor.

(b) Where detailed plans and specifications are required under this chapter, no building permit shall be issued unless such plans and specifications have been provided.

(Ord. No. 19828, § 3-6, 5-21-91; Ord. No. 20371, § 3-6, 1-18-94)

Sec. 10-93. - Issuance.

When proper application for a permit has been made, and the appropriate inspector is satisfied that the application and the proposed work comply with the provisions of this chapter and the appropriate regulatory codes, he shall issue such permit, upon payment of the fees as provided in section 10-97.

(Ord. No. 19828, § 3-7, 5-21-91; Ord. No. 20371, § 3-7, 1-18-94)

Sec. 10-94. - Revocation.

The appropriate inspector may revoke and require the return of any permit by notifying the permit holder in writing stating the reason for such revocation. Permits shall be revoked for any material departure from the approved application, plans or specifications; for refusal or failure to comply with requirements of this chapter and the appropriate regulatory codes; or for false statements or misrepresentations made in securing such permit. No permit fees will be refunded on a revoked permit. A permit mistakenly issued in violation of an applicable state or local law or ordinance or regulation may also be revoked.

(Ord. No. 19828, § 3-8, 5-21-91; Ord. No. 20371, § 3-8, 1-18-94)

Sec. 10-95. - Time limitations on validity.

All permits issued under this chapter shall expire by limitation six months after the date of issuance if the work authorized by the permit has not been commenced. If, after commencement, the work is discontinued for a period of 12 months, the permit therefor shall immediately expire, unless renewed. No work authorized by any permit which has expired shall thereafter be performed until a new permit or renewal therefor has been secured.

(Ord. No. 19828, § 3-9, 5-21-91; Ord. No. 20371, § 3-9, 1-18-94)

State Law reference— Similar provisions, G.S. 160D-403(c); 1111~~53A-358~~, 160D-403(d); 1112~~53A-359~~.

Sec. 10-96. - Changes in work.

After a permit has been issued, no changes or deviation from the terms of the application, plans, specifications or the permit, except where such changes or deviations are clearly permissible under the building codes adopted in this chapter, shall be made until specific written approval of such changes or deviations has been obtained from the appropriate inspector.

(Ord. No. 19828, § 3-10, 5-21-91; Ord. No. 20371, § 3-10, 1-18-94)

State Law reference— Similar provisions, G.S. 160D-403(d); 1112~~53A-359~~.

Sec. 10-97. - Fees.

Fees for permits shall be charged at the time of approval of the application and shall be collected prior to the beginning of any work. Each subcontractor or his agent shall be responsible for the payment of the permit fees charged to enable him to perform the work for which the permit is issued. The fees shall be set from time to time, and a schedule of such fees is on file and available in the county offices.

(Ord. No. 19828, § 3-11, 5-21-91; Ord. No. 20371, § 3-11, 1-18-94)

Sec. 10-98. - Number of inspections.

The schedule of permit fees referenced in section 10-97 shall entitle the person holding the permit to the required number of inspections for the completion of the installation of the fixtures involved, plus one additional reinspection for corrections to the installation of the fixtures involved. For inspection trips, in addition to such one additional to inspect a corrected installation, the currently required fee shall be imposed for each additional trip.

(Ord. No. 19828, § 3-11(h), 5-21-91; Ord. No. 20371, § 3-11(Sched. (G)), 1-18-94)

Sec. 10-99. - Late fee.

Any work performed without a permit shall be subject to a late fee equal in amount to the fees specified for the work in this chapter. Such late fee shall not be construed as a penalty, but as a surcharge for additional administrative expense.

(Ord. No. 19828, § 3-11(j), 5-21-91; Ord. No. 20371, § 3-3(i), 1-18-94)

Secs. 10-100—10-125. - Reserved.

Chapter 26 - ENVIRONMENT[1]

Footnotes:

--- (**1**) ---

Cross reference— Dead animals, § 6-31; buildings and building regulations, ch. 10; solid waste management, ch. 62; hazardous waste, § 62-71 et seq.

ARTICLE I. - IN GENERAL

Secs. 26-1—26-25. - Reserved.

ARTICLE II. - AIR POLLUTION CONTROL[2]

Footnotes:

--- (**2**) ---

Cross reference— Smoking in county buildings, § 50-1.

State Law reference— Local air pollution control programs, G.S. 143-215.112.

DIVISION 1. - GENERALLY

Sec. 26-26. - Authority of article.

G.S. 143-211 et seq. authorizes the governing body of any county, municipality or group of counties or municipalities within a designated area of the state, subject to the approval of the state board of water and air resources, to establish, administer and enforce a local air pollution control program for the county, municipality, or designated area of the state.

(Ord. No. 14014, art. I, 1-11-71)

Sec. 26-27. - Adoption of air quality standards, emission control standards, and regulations governing air pollution.

(a) *Notice; public hearings by board.* Prior to the adoption by the air pollution control board of air quality standards, emission control standards, and regulations governing air pollution and prior to the modification of any action previously taken, the air pollution control board shall give notice of its proposed action and shall conduct one or more public hearings. At such hearing, opportunity to be heard by the air pollution control board with respect to the subject under consideration shall be afforded to any interested person. Notice shall be published at least once in a newspaper of general circulation circulated within each county. The first notice must appear not less than 30 days before the hearing, and the second notice must appear not less than five or more than ten days before the date of the hearing.

(b) *Submission of evidence and argument.* After the hearing is held the air pollution control board shall permit anyone who so desires to file a written argument or other statement in relation to any proposed action of the air pollution control board any time within 30 days following the conclusion of any public hearing, or within any such additional time as the air pollution control board may allow by such notice as specified for holding a hearing. The notice shall include the details of such proposed action or where such proposed action is too lengthy for publication, the notice shall specify that copies of such detailed proposed action shall be obtained upon request from the office of the air pollution control board.

(c) *Adoption of final action.* Upon the completion of the hearings and consideration of submitted evidence and arguments concerning the proposed action of the air pollution control board with respect to the adoption of standards, rules and regulations and amendments thereto, the air pollution control board shall adopt its final action with respect thereto. Upon approval by the state air pollution control board, the regional air pollution control board shall publish such final action as part of its official standards, rules and regulations. Final action of the air pollution control board shall specify the effective date, and such effective date shall not be less than ten days from the filing of a certified copy with the clerk of superior court.

(Ord. No. 14014, art. III(A), 1-11-71)

Sec. 26-28. - Control of sources.

(a) *Existing sources.* After the effective date established for any air quality standard, emission control standard, or regulation, no person shall discharge any air contaminants into the outdoor atmosphere in violation thereof except in compliance with the terms of a temporary permit, special order or other appropriate instrument issued by the air pollution control board.

(b) *Control of new sources.* After the effective date established for any air quality standard, emission control standard, or regulation, no person shall do any of the following acts or carry out any of the following activities until or unless such person shall have applied for and shall have received from the air pollution control board a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

(1) Establish or operate any new air contaminant source.

(2) Build, erect, use or operate any new equipment which may result in the emission of air contaminants or which is likely to cause air pollution.

(3) Alter or change the construction or method of operation of any existing equipment or process from which air contaminants are or may be emitted.

(4) Enter into a contract for the construction and installation of any air cleaning device or allow or cause such device to be constructed, installed or operated.

(Ord. No. 14014, art. III(B), 1-11-71)

Sec. 26-29. - Air pollution control board's powers as to permits, temporary permits and variances.

(a) *Prevention.* The air pollution control board shall act upon all applications for permits, temporary permits and variances so as to prevent, insofar as is reasonably possible, any pollution or any increased pollution of the air.

(b) *Application for permit; grant or denial; hearing.* Application for a permit shall be accompanied by plans and specifications, and such other information as the air pollution control board may deem necessary to the proper evaluation of the application for a permit. Failure of the air pollution control board to take action on an application for a permit within 90 days shall be treated as approval of such application. Any person whose application for a permit is denied or is granted, subject to conditions which are unacceptable to such person, shall have the right to a hearing before the air pollution control board, provided that a written request for such a hearing is submitted to the air pollution control board within 30 days following the receipt by the applicant of such decision.

(c) *Suspension or revocation of permit; appeal.* Any permit may be suspended or revoked, provided that not less than 60 days' written notice is given by the air pollution control board. Any person whose permit has been suspended or revoked may make immediate appeal to the air pollution control board for relief from such action. Such appeal must be made within 30 days of receipt by the person of the written notice of the air pollution control board's action.

(d) *Temporary permit; application; granted when essential.* The air pollution control board shall have the power to grant any temporary permit, where conditions make such temporary permit essential, for such period of time as it may specify, even though the action allowed by such temporary permit may result in causing new pollution or increase existing pollution. A request for a temporary permit shall be filed on forms provided by the air pollution control board.

(e) *Variance application; establishing need.* A request for a variance shall be made in writing to the air pollution control board. The air pollution control board may refer any such request to the air control advisory council for its recommendation. Any person or his designated representative who owns, or is in control of any plant, building, structure, process or equipment may apply to the air pollution control board for a variance from rules and regulations. The air pollution control board may grant such variance if it is recognized that unusual conditions exist making it impossible or impractical to bring the quality of the ambient air into compliance with the general or specific requirements of the applicable air quality standards. For example, where no adequate or practical method of removal or treatment of a particular air pollutant is presently known and justifiable proof is offered to support such a condition, the air pollution control board may grant a variance.

(f) *Grant of variance; public hearing.* No variance shall be granted unless a public hearing is held by the air pollution control board and in no case shall a variance be granted for longer than one calendar year, provided that another variance may be granted after the preceding one expires.

(Ord. No. 14014, art. III(D), 1-11-71)

Sec. 26-30. - Inspections; right of entry.

The air pollution control board, through its authorized agents, shall have the authority to enter at all reasonable times upon any property for the purpose of investigating air pollution, air contaminant sources, or the installation and operation of any air cleaning device. No person shall refuse entry or access to any authorized agent of the air pollution control board who requests entry for the purpose of inspection and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(Ord. No. 14014, art. III(E), 1-11-71)

Sec. 26-31. - Confidentiality of certain records.

Any records or other information furnished to the air pollution control board concerning any air contaminant source, which relate to processing or production, shall be for confidential information concerning business activities carried on by him or under his supervision.

(Ord. No. 14014, art. III(F), 1-11-71)

Sec. 26-32. - Zoning and planning.

The air pollution control board shall make available to any city or county zoning or planning agency, where such exists within the jurisdiction, those facts concerning air pollution which pertain to zoning or planning. These facts include information concerning such approval documents, as issued by the state covering air pollution devices, which will be installed within the local area.

(Ord. No. 14014, art. III(G), 1-11-71)

Sec. 26-33. - Penalties and remedies for violation of article.

(a) Any person violating any of the requirements contained in this article shall, upon conviction, be punished in accordance with section 1-7. Each day in violation shall constitute a separate offense and shall be subject to the penalties provided by G.S. 143-215.3(A)(11)(E).

(b) The air pollution control board may institute a civil action in the superior court, brought in the name of the agency having jurisdiction, for injunctive relief to restrain any violation or immediately threatened violation of such ordinances, orders, rules, or regulations, and for such other relief as the court shall deem proper. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from the penalty prescribed by this article for any violation of this article.

(Ord. No. 14014, art. III(H), 1-11-71)

Sec. 26-34. - Limitations of article.

All acts of the local air pollution control board shall be consistent with the provisions of G.S. 143-211 et seq. and all rules and regulations promulgated under such state law provisions.

(Ord. No. 14014, art. III(I), 1-11-71)

Secs. 26-35—26-45. - Reserved.

DIVISION 2. - AIR POLLUTION CONTROL BOARD[3]

Footnotes:

--- (**3**) ---

Cross reference— Administration, ch. 2.

Sec. 26-46. - Organization.

(a) *Formation; membership; terms; succession.* The boards of county commissioners of this county and Haywood County and the council of the City of Asheville hereby agree to the formation of a regional air pollution control board to be called the Western North Carolina Regional Air Pollution Agency which shall consist of seven members, with the members to be chosen in the following manner: The county commissioners of this county shall choose three members, one of whom shall be appointed for a four-year term, the second for a two-year term and the third shall be appointed for a six-year term. The county commissioners of Haywood County shall appoint two members, one of whom shall be appointed for a four-year term; the other for a six-year term. The Asheville city council shall appoint two members; one of whom shall be appointed for a two-year term; the other for a six-year term. Upon the expiration of the terms of the initial members of the Western North Carolina Regional

Air Pollution Board, the respective governing bodies shall choose successors to those members they appointed. The successors shall serve six-year terms. All members of the air pollution control board shall reside within the area of jurisdiction.

(b) *Chairperson.* The chairperson is to be selected by vote of the air pollution control board.

(c) *Meetings; quorum.* A meeting may be called by the chairperson or any two members of the air pollution control board.

(d) *Secretary.* The secretary of the air pollution control board will be the air pollution control program director, or his authorized representative.

(e) *Frequency of meetings.* The air pollution control board must meet at least once every three months.

(f) *Compensation.* The air pollution control board shall meet separately from the air control advisory council, and the members shall serve without compensation, although subsistence and travel expenses incurred in the fulfillment of duty may be reimbursed.

(Ord. No. 14014, art. II(A), 1-11-71)

Sec. 26-47. - Administration; powers and duties.

The air pollution control board, as established, shall:

(1) Develop a comprehensive plan for the control and abatement of new and existing sources of air pollution.

(2) Conduct air quality monitoring to determine existing air quality and to define problem areas, as well as to provide background data to show the effectiveness of a pollution abatement program.

(3) Develop an emissions inventory to identify specific sources of air contamination and the contaminants emitted, together with the quantity of material discharged into the outdoor atmosphere.

(4) Establish and keep current annually a register of air contaminant sources within the area, and the registration of all persons operating or responsible for the operation of air contaminant sources. Such persons shall also, upon written request, file reports containing information concerning location, size and height of outlets, processes employed, fuels used, nature and rate and duration of emissions, and any other information which may be required.

(5) Adopt, after notice and public hearing, air quality and emission control standards or, by reference, such standards as are promulgated by the board of water and air resources.

(6) Provide for the establishment or approval of time schedules for the control or abatement of existing sources of air pollution and for the review of plans and specifications and issuance of approval documents covering the construction and operation of pollution abatement facilities at existing or new sources.

(7) Declare an emergency when it is found that a generalized condition of air pollution is causing danger to the health or safety of the public and to issue an order to the responsible person to reduce or discontinue immediately the emission of air contaminants. The person so ordered may immediately appeal to the air pollution control board for a hearing. Upon request for such a hearing, the secretary shall fix a time and a place, and such hearing shall be held not later than 24 hours after the request is received. After commencement of such a hearing and without adjournment thereof, the air pollution control board shall affirm, modify, or set aside the order previously issued.

(Ord. No. 14014, art. II(C), 1-11-71)

Sec. 26-48. - Staff.

The air pollution control program director shall be appointed by the air pollution control board and shall be qualified in administration and technology. The air pollution control board shall also retain, employ and compensate such technical and other personnel as may be necessary to carry out the provisions of this article and to secure necessary scientific, technical, administrative and operational services, including laboratory facilities, as may be required.

(Ord. No. 14014, art. II(D), 1-11-71)

Secs. 26-49—26-60. - Reserved.

DIVISION 3. - AIR CONTROL ADVISORY COUNCIL[4]

Footnotes:

--- (**4**) ---

Cross reference— Administration, ch. 2.

Sec. 26-61. - Organization.

(a) *Established; members.* There shall be established an air control advisory council, hereinafter called the council. The air pollution control board shall appoint the members of the council which shall have at least five members. All members shall reside within the area of jurisdiction. One-half of the original members shall be appointed for a two-year term, and the other half shall be appointed for a three-year term. All subsequent appointments or reappointments to the council shall be for a term of three years.

(b) *Chairperson; meetings; quorum; secretary.* A chairperson shall be elected annually from within the advisory council membership, and shall serve at the pleasure of the council. The council shall meet at least quarterly, and at more frequent intervals if called by the chairperson or a majority of the council. A simple majority of the membership shall constitute a quorum. The air pollution control program director, or his authorized representative, shall act as secretary to the council, and shall attend all meetings.

(c) *Function.* The council shall serve only in an advisory capacity to the air pollution control board and shall assist the air pollution control board in the development of rules, regulations, air quality and emission control standards, and shall advise in other matters relating to the air pollution control program which may be submitted to it by the air pollution control board.

(d) *Compensation.* The council shall meet separately from the air pollution control board, and the members shall serve without compensation, although subsistence and travel expenses incurred in the fulfillment of duty may be reimbursed. Councilmembers may from time to time be asked by the air pollution control board to attend air pollution control board meetings.

(Ord. No. 14014, art. II(B), 1-11-71)

Secs. 26-62—26-70. - Reserved.

DIVISION 4. - CONTROL AND REDUCTION STANDARDS[5]

Footnotes:

--- (**5**) ---

Cross reference— Fire prevention and protection, ch. 30.

Sec. 26-71. - Definitions.

The definition of any word and phrase used in this division shall be the same as given in G.S. 143-211 et seq. The following words, terms and phrases, which are not defined in the state statutes cited in this section, shall be construed to have the following meanings:

Act means "The North Carolina Water and Air Resources Act."

Ambient air means that portion of the atmosphere outside of buildings and other enclosures, stacks or ducts, and which surrounds human, animal or plant life, or property.

Combustible material means any substance which, when ignited, will burn in air.

Dustfall means particulate matter which settles out of the air and is expressed in units of grams per square meter per 30-day period.

Fuel burning equipment means equipment whose primary purpose is the production of thermal energy or power from the combustion of any fuel. Such equipment is generally that used for, but not limited to, heating water, generating or circulating steam, heating air as in warm air furnaces, furnishing process heat entirely through transfer by fluids or transmissions through process vessel walls.

Garbage means any animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.

Incinerator means a device designed and engineered to burn solid, liquid, or gaseous waste material.

Opacity means that property of a substance tending to obscure vision and is measured in terms of percent obscuration.

Open burning means any fire wherein the products of combustion are emitted directly into the outdoor atmosphere and are not directed thereto through a stack or chimney, approved incinerator, or other similar device.

Particulate matter means any material, except uncombined water, that exists in a finely divided form as a liquid or a solid at standard conditions.

Refuse means any garbage, rubbish and trade waste.

Rubbish means solid or liquid wastes from residences and dwellings, commercial establishments, and institutions.

Rural area means an area which is primarily devoted to, but not necessarily limited to, the following uses: Agriculture, recreation, wildlife management, state park, national park, or any area of natural cover.

Salvage operation means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including, but not limited to, metals, chemicals, motor vehicles, shipping containers, or drums.

Smoke means small gasborne particles resulting from incomplete combustion, consisting predominantly of carbon, ash and other burned or unburned residue of combustible materials that form a visible plume.

Smoke density measuring device means:

(1) The Ringelmann chart, published and described in the U.S. Bureau of Mines, Information Circular 8333, and on which are illustrated graduated shades of grey to black for use in estimating the light obscuring capacity of smoke;

(2) The pocket-sized Ringelmann chart and other adaptations commonly used by trained smoke inspectors; and

(3) Other equivalent standards as may be approved by the air pollution control board.

Sulfur oxides means sulfur dioxide, sulfur trioxide, their acids and the salts of their acids. For purposes of this division, measurements of sulfur dioxide, by the method specified in this division, shall be taken to indicate the concentration of sulfur oxides.

Suspended particulate means any material, except water in uncombined form, that is or has been airborne, and is quantitatively expressed in concentrations per unit of time; i.e., micrograms per cubic meter per unit of time.

Trade wastes means all solid, liquid or gaseous waste materials or rubbish resulting from combustion, salvage operations, building operations, or the prosecution of any business, trade or industry including, but not limited to, plastic products, paper, wood, glass, metal, paint, grease, oil and other petroleum products, chemicals and ashes.

(Ord. No. 14014, art. IV, § I, 1-11-71)

Cross reference— Definitions generally, § 1-2.

Sec. 26-72. - Regulation no. 1; control and prohibition of open burning.

(a) *Purpose of regulation.* This sections purpose is the prevention, abatement and control of air pollution resulting from air contaminants released in the open burning of refuse or other combustible materials.

(b) *Scope of regulation.* This section shall apply to all operations involving open burning except those specifically exempted by subsection (d) of this section.

(c) *Prohibited acts.* No person shall cause, suffer, allow or permit open burning of refuse or other combustible material except as may be allowed in compliance with subsection (c) of this section, or except those covered by a permit issued by the air pollution control board under section 143-215.1(c) of the Act or the regulations of a duly certified local air pollution control program having jurisdiction.

(d) *Permissible open burning.* While recognizing that open burning contributes to air pollution, the air pollution control board is aware that certain types of open burning may reasonably be allowed in the public interest; therefore, the following types of open burning are permissible, as specified, if burning is not prohibited by ordinances and regulations of governmental entities having jurisdiction. The authority to conduct open burning under the provisions of this section does not exempt or excuse a person from the consequences, damages or injuries which may result from such conduct nor does it excuse or exempt any person from complying with all applicable laws, ordinances, regulations, and orders of the governmental entities having jurisdiction even though the open burning is conducted in compliance with this section:

(1) Fires purposely set for the instruction and training of public and industrial firefighting personnel.

(2) Fires purposely set to agricultural lands for disease and pest control and other accepted agricultural or wildlife management practices.

(3) Fires purposely set to forest lands for accepted forest management practices.

(4) Fires purposely set in rural areas for rights-of-way maintenance.

(5) Campfires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions.

(6) Open burning of leaves, tree branches, or yard trimmings originating on the premises of private residences or dwellings of four families or less and burned on those premises where no provision is made for public collection, and no nuisance is created.

(7) The burning of trees, brush, and other vegetable matter in the clearing of land or rights-of-way with the following limitations:

a. Prevailing winds at the time of burning must be away from any city or town or built-up area, the ambient air of which may be significantly affected by smoke, fly ash, or other air contaminants from the burning.

b. The location of the burning must be at least 1,000 feet from any dwelling located in a predominantly residential area, other than a dwelling or structure located on the property on which the burning is conducted.

c. The amount of dirt on the material being burned must be minimized.

d. Heavy oils, asphaltic materials, items containing natural or synthetic rubber or any materials other than plant growth may not be burned.

e. Initial burning may generally be commenced only between the hours of 9:00 a.m. and 3:00 p.m., and no combustible material may be added to the fire between 3:00 p.m. of one day and 9:00 a.m. of the following day, except that, under favorable meteorological conditions, deviations from the above-stated hours of burning may be granted by the air pollution control agency having jurisdiction. It shall be the responsibility of the owner or operator of the open burning operation to obtain written approval for burning during periods other than those specified in this subsection.

(8) Motor vehicle salvage operations may be continued until July 1, 1971, subject to the following limitations:

a. Permission to burn must be granted in writing by the air pollution control board or the duly certified local air pollution control program having jurisdiction.

b. No automobile tires shall be burned or used in starting fires.

c. Permission granted by the air pollution control board under this section shall be subject to continued review and may be withdrawn at any time.

(Ord. No. 14014, art. IV, § II, 1-11-71)

Sec. 26-73. - Regulation no. 2; control and prohibition of visible emissions from combustion processes.

(a) *Purpose of regulation.* This regulation is for the purpose of preventing, abating, and controlling air pollution resulting from the emission of black smoke into the outdoor atmosphere.

(b) *Scope of regulation.* This regulation shall apply to all fuel burning operations. Its application to noncombustion sources is not intended.

(c) *Prohibited acts.* No person shall cause, suffer, allow or permit emissions from any fuel burning equipment which produces smoke, the shade of which is greater than No. 2 on the Ringelmann chart for an aggregate of more than five minutes in any one hour or more than 20 minutes in any 24-hour period for each fuel burning unit.

(d) *Effective date.* The effective date of this regulation shall be from and after July 1, 1970.

(Ord. No. 14014, art. IV, § II, 1-11-71)

Sec. 26-74. - Regulation no. 3; classifications for air contaminant sources.

(a) *Purpose of regulation.* This regulation is for the purpose of establishing a system for classifying air contaminant sources which will be used by the air pollution control board for assigning an appropriate classification to air contaminant sources which the air pollution control board believes to be of sufficient importance to justify classification or control.

(b) *Scope of regulation.* This regulation shall apply to all air contaminant sources, both combustion and noncombustion.

(c) *Classification system.* The following system for classifying air contaminant sources is hereby established:

(1) *Class I-C.* This class includes all sources of air contamination utilizing fuel burning equipment for the production of thermal energy for power generation for public utilization.

(2) *Class II-C.* This class includes all sources of air contamination utilizing fuel burning equipment for the production of steam and for other process uses at commercial and industrial establishments.

(3) *Class III-C.* This class includes all sources of air contamination utilizing fuel burning equipment for comfort heating at institutions, commercial and industrial establishments, and apartment houses having a central heating system serving more than four apartments.

(4) *Class IV-C.* This class includes all sources of air contamination resulting from the burning of trash, rubbish, refuse and similar materials in incinerators, teepee burners, and similar devices.

(5) *Class V-C.* This class includes all sources of air contamination resulting from the operation of internal combustion engines.

(6) *Class I-I.* This class includes all sources of air contamination resulting from industrial plants engaged in the production of pulp or paper.

(7) *Class III-I.* This class includes all sources of air contamination resulting from the mining and processing of minerals, stone, clay and cement products and includes, among others, phosphate ore, mica and feldspar operations, stone quarries and crushers, cement plants, concrete mixing plants, and masonry block plants.

(8) *Class IV-I.* This class includes all sources of air contamination resulting from industrial operations utilizing petroleum products and includes, among others, asphalt mix plants, roofing felts plants, and petroleum products storage areas.

(9) *Class V-I.* This class includes all sources of air contamination resulting from furniture, lumber and wood products plants.

(10) *Class VI-I.* This class includes all sources of air contamination resulting from textile manufacturing, textile dyeing and finishing plants.

(11) *Class VII-I.* This class includes all sources of air contamination resulting from the shelling, drying, storage, ginning and processing of tobacco, corn, soybeans, peanuts, cotton, fruits, vegetables, or other agricultural products.

(12) *Class VIII-I.* This class includes all sources of air contamination resulting from industries engaged in the processing of metals and includes, among others, smelting, casting, foundries, metal working and other similar operations.

(13) *Class IX-I.* This class includes all sources of air contamination resulting from slaughtering and processing of meat, poultry, fish, and similar products, including, among others, plants or facilities for rendering or the recovery of byproducts therefrom.

(14) *Class X-I.* This class includes all sources of air contamination resulting from industries which do not fall within the classifications described in this subsection and other provisions of law.

(d) *Effective date.* This regulation shall be effective from and after July 1, 1970.

(Ord. No. 14014, art. IV, § II, 1-11-71)

Sec. 26-75. - Ambient air quality standards.

(a) *Purpose of division.* It is the purpose of the following ambient air quality standards to establish certain maximum limits on parameters of air quality considered desirable for the preservation and enhancement of the quality of the state's air resources. Furthermore, it shall be the objective of the air pollution control board, consistent with the state Air Pollution Control Law to prevent significant deterioration in ambient air quality in any substantial portion of the state where existing air quality is better than the standards. An atmosphere in which these standards are not exceeded should provide for the protection of the public health, plant and animal life, and property. Ground level concentration of pollutants will be determined by sampling at fixed locations in areas beyond the premises on which a source is located. The standards are applicable at each such sampling location in the state.

(b) *Sulfur dioxide.*

(1) *Standards.* Sulfur dioxide (SO_2) concentrations in excess of those listed in the following table shall be considered as exceeding ambient air quality standards:

Ambient Air Quality Standard For
Sulfur Dioxide

Concentration of SO_2 in Micrograms
Per Cubic Meter Not To Be Exceeded
At A Site

One-Hour Averaging Time	24-Hour Averaging Time	Annual Arithmetic Mean
_____		
855	285	60

(2) *Sampling procedures.* Sampling shall be in accordance with either of the following methods:

a. *Bubbler method.* Collection efficiency of the absorbent in a single tube test must be 95 percent or better. Analysis shall be conducted in accordance with the West-Gaeke Method, as published in Public Health Service Publication No. 999-AP-11 dated May 1965, or the latest edition, or as a modified continuous measurement. Results shall be expressed as micrograms of sulfur dioxide per cubic meter of air at 0 degrees Celsius and 760 millimeter of mercury pressure.

b. *Conductivity method.* Calibration must be done by comparison with the standard bubbler method.

(c) *Suspended particulates.*

(1) *Standards.* Suspended particulate concentration in excess of those listed in the following table shall be considered as exceeding ambient air quality standards:

Ambient Air Quality Standard For
Suspended Particulates

Concentration of Suspended Particulates
in Micrograms Per Cubic Meter Not
To Be Exceeded At A Site

24-Hour Averaging Time	Annual Geometric Mean
_____	
210	60

(2) *Sampling procedure.* Suspended particulate matter shall be collected over a 24-hour period on an eight-inch by ten-inch glass fiber filter by using a high volume sampler, sampling at an initial

rate of approximately 60 cubic feet per minute. The sampler must be sheltered. Shelters used in the National Air Sampling Network are considered satisfactory.

(Ord. No. 14014, art. IV, § III, 1-11-71)

Secs. 26-76—26-120. - Reserved.

ARTICLE III. - JUNKYARDS[6]

Footnotes:

--- (**6**) ---

Cross reference— Solid waste management, ch. 62; zoning, ch. 78.

State Law reference— Junkyard Control Act, G.S. 136-141 et seq.

DIVISION 1. - GENERALLY

Sec. 26-121. - Purpose and intent of article.

The purpose and objectives for which this article is adopted and enacted are to:

(1) Promote the safety, health, and welfare of the public in the use of state-maintained public roads within the county.

(2) Keep the county attractive and promote the prosperity, economic well-being and general welfare of the county.

(3) Preserve and enhance the natural scenic beauty of areas in the vicinity of the state-maintained public roads.

(4) Protect the public from health nuisances and safety hazards by controlling vectors, concentrations of volatile or poisonous materials, and sources of danger to children.

(Ord. No. 19768, art. 1, 2-12-91; Ord. No. 99-2-12, §§ 1, 2, 2-16-99)

Sec. 26-122. - Jurisdiction of article.

This article shall be in effect in all unincorporated portions of the county which are not under the jurisdiction of any municipal zoning ordinance, unless this article is adopted by reference in those areas.

(Ord. No. 19768, art. 3, 2-12-91)

Sec. 26-123. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Automobile graveyard means any tract of land, establishment or place of business which is maintained, used or operated for storing, keeping, buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts for profit and shall include any tract of land, establishment or place of business upon which two or more such motor vehicles, which cannot be operated under their own power, are not being restored to operable condition, and which are kept or stored for profit for a period of 15 days or more.

Establishment means any place, land, building or structure on which or in which there is operated or maintained a business or going concern for profit.

Farm means singularly or jointly owned land parcel or contiguous parcels on which agricultural operations are conducted as the primary use. Agricultural operations include, but are not limited to, cultivation of crops, the husbandry of livestock, and forestry.

Garage means any establishment or place of business which is maintained and operated for the primary purpose of making mechanical and/or body repairs to motor vehicles, and which may store as

many as six motor vehicles that are not capable of being driven under their own power and are not being restored to operable condition, regardless of the length of time that individual motor vehicles are stored or kept at such property.

Health or safety nuisance means a motor vehicle, used machinery or other used materials declared a health nuisance or safety hazard when it is found to be:

(1) A breeding ground or harbor for mosquitoes or other insects, snakes, rats, or other pests;

(2) A point of collection for pools or ponds of water;

(3) A point of concentration of gasoline, oil or other flammable or explosive materials;

(4) So located that there is a danger of the vehicle falling or turning over;

(5) A source of danger for children through entrapment in areas of confinement that cannot be opened from the inside or from exposed surfaces of metal, glass or other rigid materials; or

(6) A point of concentration of car radiators, batteries or other materials that pose either immediate or longterm environmental degradation.

Junk means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, refrigerators, stoves, household appliances, salvaged building materials, salvaged machinery parts, dismantled or wrecked automobiles, or parts thereof, iron and steel and other scrap ferrous or nonferrous material.

Junked motor vehicle means a vehicle that does not display a current license plate and that:

(1) Is partially dismantled or wrecked;

(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move; or

(3) Is more than five years old and appears to be worth less than $100.00.

Junkyard means any establishment, place of business or place which is maintained, operated, or used for storing, keeping, buying or selling junk, or for maintenance or operation of an automobile graveyard and the term shall include garbage dumps and sanitary fills. An establishment or place of business which stores or keeps for a period of 15 days or more materials within the meaning of the word "junk" which had been derived or created as a result of industrial or commercial activity shall be deemed to be a junkyard within the meaning of this article. A junkyard shall be presumed to have been created when 600 square feet or more of junk materials are kept or stored at any given place. Materials enclosed in closed buildings, solid waste containers or rolling stock are excluded.

Junkyard Control Act means G.S. 136-141—136-155, which delegate to the state department of transportation the responsibility to regulate junkyards and automobile graveyards located on interstate and federal aid primary system highways.

Motor vehicle means any vehicle or machine designed or intended to travel over land by self-propulsion.

Public road means any road or highway which is now or hereafter designated and maintained by the state department of transportation as part of the state highway system.

Recycling center means a temporary or permanent site at which glass, aluminum cans, paper, plastic, clothes or similar materials commonly collected for recycling are collected and moved offsite or kept onsite in buildings, storage bins, solid waste containers, truck trailers and other rolling stock.

Residence means a house, an apartment, a group of homes, or a single room occupied or intended for occupancy as separate living quarters for one or more humans.

School means any public or private institution for the teaching of children under 18 years of age which is recognized and approved by the state board of education or other appropriate licensing board.

Service station means any establishment which is maintained and operated for the purpose of making retail sales of fuels, lubricants, air, water and other items for the operation and routine maintenance of motor vehicles, and/or for making mechanical repairs, servicing and/or washing of motor

vehicles and which is used to store not more than five motor vehicles that are not capable of being driven under their own power and are not being restored to operable conditions, regardless of the length of time that individual motor vehicles are stored, or kept at such property.

Unzoned area means an area where no zoning is in effect.

Vector means any organism that carries disease-causing microorganisms from one host to another, e.g., rats, mosquitoes, etc.

Vegetation means all seasonal or evergreen vegetation and shall mean evergreen trees with leaves or foliage at all seasons of the year and shall include, but not be limited to, white pine, southern pine, hemlock, and spruce trees.

Visible means capable of being seen without visual aid by a person of normal acuity.

(Ord. No. 19768, art. 4, 2-12-91)

Cross reference— Definitions generally, § 1-2.

Sec. 26-124. - Article exemptions.

(a) Bona fide service stations or garages are exempted.

(b) This article shall in no way regulate, restrict, prohibit, or otherwise deter any bona fide farm and its related uses.

(c) Recycling centers using enclosed structures or solid waste containers, bins, truck trailers and rolling stock to store materials and equipment are exempted from the provisions of this article.

(Ord. No. 19768, art. 7, 2-12-91)

Secs. 26-125—26-135. - Reserved.

DIVISION 2. - ADMINISTRATION AND ENFORCEMENT[7]

Footnotes:

--- (7) ---

Cross reference— Administration, ch. 2.

Sec. 26-136. - Enforcement officer.

This article shall be enforced by the county manager or his designee.

(Ord. No. 19768, art. 5, 2-12-91)

Sec. 26-137. - Enforcement by ordinance administrator; procedure.

(a) The ordinance administrator shall enforce this article and may call upon other agencies as necessary to assist in enforcement of this article. In addition, whenever the administrator receives a complaint alleging a violation of this article, he shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken. The owner, tenant, or occupant of any building or land or part thereof and agent or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this article may be held responsible for the violation and suffer the penalties and be subject to the remedies provided in this division.

(b) The following procedure shall apply upon discovery of a violation:

(1) If the administrator finds that any provision of this article is being violated, he shall send a written notice to the person responsible for such violation indicating the nature of the violation,

ordering the action necessary to correct it, and advising the violator of the number of days or months within which the violation shall be corrected. If applicable, the violator shall be informed of his right to appeal to the board of adjustment.

(2) Notwithstanding the subsection (b)(1) of this section, in cases when delay would seriously threaten the effective enforcement of this article or pose a danger to the public health, safety, or welfare, the administrator may seek enforcement without prior written notice by involving any of the penalties or remedies authorized in this article.

(Ord. No. 19768, art. 13, 2-12-91)

Sec. 26-138. - Penalties and remedies for violation of article.

Penalties and remedies for violations of this article shall be as follows:

(1) Violations of the provisions of this article or failure to comply with any of its requirements, including violations of any conditions and safeguards established, shall constitute a misdemeanor, punishable in accordance with section 1-7.

(2) Any act constituting a violation of the provisions of this article or a failure to comply with any of its requirements shall subject the offender to a civil penalty of $50.00 per violation. If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the county in a civil action in the nature of debt.

(3) This article may also be enforced by any appropriate equitable action. Such remedy may include a court order of abatement as part of a judgment in the case. The abatement order may include removal of junk from illegal junkyards and other actions required to make the property comply with the provisions of this article at the owner's expense.

(4) Each day that any violation continues after final notification by the administrator that such violation exists may be considered a separate offense for purposes of the penalties and remedies specified in this article.

(5) Any one, all, or any combination of the penalties and remedies described in this section may be used to enforce this article. In addition to such enforcement provisions, this article may be enforced by any remedy provided in G.S. 153A-123, including, but not limited to, all appropriate equitable remedies provided in G.S. 153A-123(d) and particularly the remedy of injunction and order of abatement as allowed in G.S. 153A-123(e).

(6) Any building permits associated with the property that has the junkyard permit may be revoked by the permit issuing authority, in accordance with the provisions of this article, if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this article, or any additional requirements lawfully imposed by the county board of commissioners. Before such other permits may be revoked, the permit recipient shall be given ten days' written notice of intent to revoke any relevant permit. The notice shall inform the recipient of the alleged reasons for the revocation and of his right to obtain an informal hearing on the allegations before the county manager. If any relevant permit is revoked, the administrator shall provide to the permittee a written statement of the decision and the reasons therefor.

(Ord. No. 19768, art. 13, 2-12-91; Ord. No. 99-2-12, § 3, 2-16-99)

Sec. 26-139. - Appeals to board of adjustment for relief; variances.

(a) *Relief.* Unless otherwise listed, appeals from the specific provisions of this article and appeals from any ruling of the ordinance administrator shall be submitted to the county board of adjustment within ten days of receipt of an adverse action or ruling. The board of adjustment may authorize relief from these provisions when, in its opinion, undue hardship may result from strict compliance.

(b) *Variance; authorized under certain conditions.* The board of adjustment may authorize, upon appeal in specific cases, such variance from the terms of this article as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this article will, in an individual case, result in practical difficulty or unnecessary hardship. So that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done, such variance may be granted in such individual case of unnecessary hardship upon a finding by the board of adjustment that the following conditions exist:

(1) There are extraordinary and exceptional conditions pertaining to the particular place or property in question because of its size, shape or topography that are not applicable to other automobile graveyards and junkyards governed by this article.

(2) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other operators of other automobile graveyards and junkyards governed by this article.

(3) A literal interpretation of the provisions of this article would deprive the applicant of rights commonly enjoyed by other operators of automobile graveyards or junkyards governed by this article.

(4) The requested variance will be in harmony with the purpose and intent of this article and will not be injurious to the neighborhood or to the general welfare.

(5) The special circumstances are not the result of the action of the applicant.

(6) The variance requested is the minimum variance that will make possible the legal use of the land in question.

In granting a variance, the board of adjustment shall make findings that the requirements of this section have been met. The board of adjustment shall make a finding, and written notice of the decision shall be prepared and furnished to the applicant. In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this article. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article.

(Ord. No. 19768, art. 13, 2-12-91)

Sec. 26-140. - Appeal of board of adjustment decisions.

Decisions of the board of adjustment may be appealed. The petition for the writ of certiorari must be filed with the county clerk of court within 30 days after the later of the two following occurrences:

(1) A written copy of the board of adjustment's decision has been filed in the office of the county planner; and

(2) A written copy of the board of adjustment's decision has been delivered by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy at the hearing of the case.

A copy of the writ of certiorari shall be served upon the county through the office of the county manager.

(Ord. No. 19768, art. 13, 2-12-91)

Sec. 26-141. - Permit.

(a) *Required; application.* No person shall establish, operate, or maintain a junkyard without obtaining a permit. The permit shall only be issued upon the person seeking the permit submitting a statement under oath that the existing or proposed junkyard does not violate any of the provisions of this article. The permit shall be valid until revoked for the nonconformance with this article. Application for the permit shall be made to the ordinance administrator on such forms as the ordinance administrator shall prescribe. A junkyard plan prepared by the applicant shall be submitted as part of the junkyard

permitting process. Every permit shall contain in bold type all capital letters the following statement: THIS PERMIT DOES NOT EXEMPT THE HOLDER FROM COMPLIANCE WITH ANY FEDERAL OR STATE LAWS OR OTHER BUNCOMBE COUNTY ORDINANCES, SPECIFICALLY INCLUDING BUT NOT LIMITED TO ENVIRONMENTAL PROTECTION LAWS.

(b) *Plan.* The plan shall indicate setbacks, location of public rights-of-way, all proposed structures, all structures within 300 feet of the junkyard, driveways, entrances, fencing, screening, types of fencing, types of screening, dimensions of the junkyard, gross acreage, owner's name, address, the preparer of the plan's name and address. The plan shall be on 18-inch × 24-inch sheets at a scale of either one inch = 50 feet, one inch = 100 feet, or one inch = 200 feet or one inch = 400 feet. Three copies shall be submitted, one of which shall be prepared on reproducible material.

(c) *Expansion of preexisting or newly permitted junkyard.* Any expansion of a junkyard, whether preexisting or newly permitted, shall require a permit and shall be permitted in accordance with this article as a new establishment.

(d) *Rejected; resubmission.* A rejected permit may be resubmitted within 30 days from the date of rejection without incurring an additional permit fee.

(e) *Nontransferable.* Permits under this article are issued to owners, not to junkyards, and are nontransferable. New owners of existing junkyards must obtain their own permits.

(f) *Renewal.* Permits shall be valid for one year from date of issuance. Applications for renewal of permits shall be granted so long as the permittee remains in compliance with such requirements as existed at the time of issuance of the original permit.

(Ord. No. 19768, art. 12, 2-12-91; Ord. No. 99-2-12, §§ 4—7, 2-16-99)

Sec. 26-142. - Registration and permitting of preexisting junkyards.

(a) All owners, operators, or maintainers of automobile graveyards or junkyards existing on February 12, 1991, shall register same with the county no later than May 1, 1999. All existing automobile graveyards or junkyards that have not been registered by May 1, 1999 shall be in violation of the provisions of this article.

(b) Registration shall be accomplished by acquiring a permit and paying the currently required permit fee. The ordinance administrator shall provide the permit form. A junkyard plan prepared by the owner or operator shall be submitted as part of the junkyard registration. The plan shall indicate setbacks, location of public rights-of-way, all proposed structures, all structures within 300 feet of the junkyard, driveways, entrances, fencing, screening, types of fencing, types of screening, dimensions of junkyard, gross acreage, owner's name, address, preparer of plan's name and address. Submission of information shall establish preexisting conditions. All permit requirements of section 26-141 shall be met. Plan may be drawn at a scale of either one inch = 50 feet, one inch = 100 feet, one inch = 200 feet, one inch = 400 feet or freehand with corners identified by the owner of the junkyard site and referenced on the plan. Three copies shall be submitted, one of which shall be on reproducible material.

(Ord. No. 19768, art. 10, 2-12-91; Ord. No. 99-2-12, § 8, 2-16-99)

Sec. 26-143. - Nonconforming existing junkyards.

(a) All junkyards existing on February 12, 1991, and registered in accordance with section 26-142, shall be granted a compliance period of 12 months from the effective date of registration to conform to article provisions. Thereafter the nonconforming junkyard shall be in violation of this article.

(b) Any owner or operator of an existing junkyard that has previously planted evergreen seedlings as a screen shall be allowed appropriate additional time for such seedlings or small trees to reach a minimum height of six feet. The enforcement officer shall monitor such facility at least annually to determine whether any diseased or dead trees shall be replaced or replanted by the owner.

(Ord. No. 19768, art. 11, 2-12-91)

Secs. 26-144—26-155. - Reserved.

DIVISION 3. - STANDARDS AND REQUIREMENTS

Sec. 26-156. - General standards.

(a) *Preexisting junkyards.* The following criteria shall be applicable to preexisting junkyards which are registered within 180 days of the effective date of the ordinance from which this article derives. No portion of any junkyard shall be operated, maintained or expanded, except those junkyards meeting any of the following conditions:

(1) Those which are screened by natural land features or vegetation, berms, plantings, opaque fences or other appropriate means which sufficiently preserves the policy and intent of this article so as not to be visible from the main-traveled way of any state-maintained public road at any season of the year.

(2) Those which are further than 1,000 feet from the main-traveled way of a state-maintained public road.

(3) Those which are either not visible from adjoining properties because of screening with natural land features or vegetation, berms, plantings, opaque fences or other appropriate means or are screened and/or fenced in accordance with section 26-157.

(4) However, if the topography and terrain of adjacent lands is such that screening would be ineffective or useless, the enforcement officer may waive all or parts of the fencing and screening requirements, but shall require fencing and screening insofar as is practical and feasible, at all points where such fencing and/or screening shall be necessary to screen or partially screen the view of persons from public roads, schools, or residential areas adjacent to or near the junkyard.

(b) *New junkyards.* The following criteria shall be applicable to new junkyards. All junkyards which are established from and after February 12, 1991, or that have been issued a current valid permit to establish, operate or maintain a junkyard, as provided in section 26-141, shall meet the following standards:

(1) Be situated on a continuous parcel of at least four acres, excluding rights-of-way that are undivided by road rights-of-way or public dedications.

(2) The lot must front a public right-of-way for at least 100 feet and the centerline of the driveway or entrance roadway may not be located closer than 30 feet from any side property line. This provision shall not be effective until January 1, 2000, and shall apply only to junkyards or expansions of junkyards permitted after said date.

(3) Have a minimum setback to the fence from front, side and rear property lines, excluding a road right-of-way of at least 15 feet.

(4) Not be located closer than 1,000 feet to either a preexisting church, school, day care center, nursing home, skilled health care facility, residence, hospital, public buildings, or public recreation facilities; excluding, however, onsite residences of the owner or his agent.

(5) Be screened as provided in section 26-157, or not visible from the main-traveled way of a state-maintained public road at any season of the year.

(6) Fenced, or fenced and screened and maintained as provided for in section 26-157(2).

(Ord. No. 19768, art. 6, 2-12-91; Ord. No. 99-2-12, § 9, 2-16-99)

Sec. 26-157. - Fencing and screening.

All preexisting and new junkyards established in accordance with this article may be operated, subject to the following fencing and screening conditions:

(1) *Preexisting.* Junkyards in existence on February 12, 1991, including any junkyard along any road or highway which may be hereafter designated as a public road, shall comply with this article by obtaining a permit, as provided in section 26-142 and meeting the requirements for preexisting junkyards as set forth in section 26-156(a)(1), (a)(2) or (a)(3), or meeting one of the following conditions:

a. Remove junk and equipment that may be located within 15 feet of the property lines to an area further than 15 feet from the property lines. Install an all season vegetation screening between junk materials and property lines.

b. Screen and fence the junkyard in accordance with the screening and fencing provisions of subsection (b) of this section; provided, however, if topography renders fencing and screening useless and ineffective, the enforcement officer may waive all or part of the fencing and screening requirements, as provided in section 26-156(a)(4).

(2) *New.* Junkyards established after February 12, 1991 shall comply with this article by registering, obtaining a permit, meeting the requirements of section 26-156(b) and meeting the following fencing and screening requirements:

a. The junkyard shall be entirely surrounded by an opaque fence at least six feet in height or by either a woven or welded wire (14 gauge minimum) or chainlink fence a minimum of six feet in height and with vegetation that provides a continuous all-seasons opaque screen at least six feet in height within four years of planting or setting such vegetation. The fence and vegetation shall surround the minimum area necessary for the junkyard to not be visible from a point at the same elevation as the junkyard. Vegetation not less than two feet in height at the time of planting shall be planted on the outbound side of the fence, contiguous to, and not more than eight feet from the fence. Vegetation that serves as screening shall be planted at intervals evenly spaced and in close proximity to each other so that a continuous, unbroken hedgerow, without gaps or open spaces, will exist to a height of at least six feet along the length of the fence surrounding the junkyard or automobile graveyard. The vegetation shall be maintained as a continuous, unbroken hedgerow for the period the property is used as a junkyard. Each owner, operator, or maintainer of a junkyard shall utilize good husbandry techniques, such as pruning, mulching, and proper fertilization, so that the vegetation will have maximum density and foliage. Dead or diseased vegetation shall be replaced at the next appropriate planting time.

b. All operations, equipment, junk and/or inoperable motor vehicles shall be kept within the confines of the fence at all times unless in motion by transport to or from the site.

(Ord. No. 19768, art. 8, 2-12-91)

Sec. 26-158. - Maintenance.

(a) All junkyards shall be maintained to protect the public from health nuisances and safety hazards.

(b) The county health department may inspect each junkyard to determine that no vectors are present. Should vectors be identified, the owner/operator/maintainer shall submit satisfactory evidence to the health department and planning department that vectors have been eliminated.

(c) Failure to comply with this section may result in revocation of the permit as well as other penalties and remedies for violation as provided for in division 2 of this article.

(Ord. No. 19768, art. 9, 2-12-91)

Secs. 26-159—26-180. - Reserved.

ARTICLE IV. - NOISE[8]

Footnotes:
--- (**8**) ---
Editor's note— Ord. No. 03-04-02, § §§ 1—5, adopted April 8, 2003, repealed the former Art. IV, §§ 26-181—26-186, and enacted a new Art. IV as set out herein. The former Art. IV pertained to similar subject matter and derived from Ord. No. 95-10-5, arts. I—VI, adopted Oct. 3, 1995; Ord. No. 97-4-9, §§ 1—4, adopted April 8, 1997; Ord. No. 99-6-12, § 1, adopted June 22, 1999.

State Law reference— Authority to regulate or prohibit the emission of noise or amplified speech, G.S § 153A-121, G.S. § 153A-123, G.S. § 153A-133.

Sec. 26-181. - Unnecessary noises.

(a) Subject to the provisions of this section, it shall be unlawful for any person or persons to make, permit, continue, or cause to be made or to create any unreasonably loud, disturbing, and unnecessary noise in the county. For purposes of this section, the following definitions shall apply:

(1) *Unreasonably loud.* Any noise which a reasonably prudent person would consider or find substantially incompatible with the time and location where created to the extent that such noise creates an actual or imminent interference with the peace, dignity or good order in the immediate area where created.

(2) *Disturbing.* Noise that is perceived by a person of ordinary sensibilities as interrupting the normal peace and calm of the area.

(3) *Unnecessary.* Any excessive or unusually loud sound or any sound which is of such character, intensity and duration as to disturb the peace and quiet of any neighborhood or which disturbs, injures or endangers the comfort, repose, health, peace or safety of any person and being a type of sound which could be lessened or otherwise controlled by the maker without unduly restricting his conduct.

In determining whether a noise is unreasonably loud, disturbing and unnecessary, the following factors incident to the noise are to be considered: time of day; proximity to residential structures; whether the noise is recurrent, intermittent or constant; the volume and intensity; whether the noise has been enhanced in volume or range by any type of mechanical means; the nature and zoning of the area; whether the noise is related to the normal operation of a business or other labor activity or is the result of some use for individual purposes; whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

(b) The following acts, among others are declared to be loud, disturbing and unnecessary noises in violation of this section but this enumeration shall not be deemed to be exclusive.

(1) *Blowing horns.* The sounding of any horn, whistle or signal device on any automobile, motorcycle, bus or other vehicle or railroad train, except as a danger signal or as required by law, so as to create any unreasonable, loud, or harsh sound or the sound of such device for any unnecessary and unreasonable period of time.

(2) *Radio, record players, etc.* The playing of any radio, television set, record player, musical instrument or sound-producing or sound-amplifying device in such a manner or with such volume, particularly but not limited to the hours between 11 p.m. and 7 a.m. as to annoy or disturb the quiet, comfort or repose of any person of normal sensibilities in any dwelling, motel, hotel or other type residence.

(3) *Pets.* The keeping of any animal or bird, which, by causing frequent or long continued noise, shall disturb the comfort and repose of any person in the vicinity.

(4) *Use of vehicles.* The use of any automobile, motorcycle, or vehicle so out of repair, so loaded, or operated in such a manner as to create loud or unnecessary grating, grinding, rattling, screeching of tires or other noises.

(5) *Blowing whistles.* The blowing of any steam whistle to any stationary boiler except as a warning of danger.

(6) *Exhaust discharge.* The discharge into open air of the exhaust of any steam engine, stationary internal combustion engine, or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(7) *Compressed air devices.* The use of any mechanical device operated by compressed air unless the noise created thereby is effectively muffled and reduced.

(8) *Discharging firearms.* Discharging a firearm within 300 feet of an occupied residential structure without the occupants express approval.

(9) *Building operations.* The erection (including excavation) demolition, alteration, or repair of any building in a residential district between the hours of 6 p.m. and 7 a.m. of any day, except in the case of urgent necessity in the interest of public safety and then only with a permit from the county manager, which permit may be renewed for a period of three days or less while the emergency continues.

(10) *Noises near schools, etc.* The creation of any excessive noise on any street adjacent to any school, institution of learning, library, or sanitarium, or court while the same is in session, or adjacent to any hospital, or any church during services, which unreasonably interferes with the operations of such institution.

(11) *Loading and unloading operations.* The operation of a loud and excessive noise in connection with loading or unloading any vehicle or the opening and destruction of bales, boxes, crates, and containers.

(12) *Bells and gongs.* The sounding of any bell or gong attached to any building or premises other than a church or religious institution, which disturbs the quiet or repose of persons in the vicinity thereof.

(13) *Hawking, peddling or soliciting.* The shouting and crying of peddlers, hawkers, vendors, which disturb the quiet and peace of the neighborhood.

(14) *Blowers, engines.* The operation of any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, unless the noise emitting therefrom is sufficiently muffled and the engine is equipped with a muffler device sufficient to deaden such noise, so that the same shall not cause annoyance to the public or unreasonably disturb the rest and quiet of persons on adjacent premises or within the vicinity thereof.

(15) *Appliances and other mechanical devices.* The operation of any noise-producing appliance or other mechanical device which, due to operational deficiencies, malfunction or other type of disrepair, causes loud and excessive noises in such a manner as to unreasonably annoy the public or disturb the rest and quiet of persons on adjacent premises or within the vicinity thereof.

(16) *Loudspeakers or amplifiers.*

a. The use of mechanical loudspeakers or amplifiers on trucks, airplanes or other vehicles or by any other means for advertising or other commercial purposes is prohibited.

b. In the exercise of noncommercial free speech, loudspeakers or amplifiers may be used, subject to the following conditions:

1. It shall be unlawful for any person to speak into a loudspeaker or amplifier within the limits of the county, when such loudspeaker or amplifier is so adjusted that the voice of the speaker is amplified to the extent that it is audible at a distance in excess of 150 feet from the person speaking: provided that such use in county recreational facilities shall be regulated by the rules of the county recreation services department; provided, further that the county health department may, upon obtaining a permit approved by the board, use loudspeakers or amplifiers as a part of its educational campaign.

2. No wires or other materials or connections for the transmission of power or for other purposes shall be placed on any street, sidewalk or on the ground in any public park or public place. Any such wires, materials or connections shall be placed not less than

seven feet above the street, sidewalk, or ground except at the point of connection to the loudspeaker or amplifier.

c. A violation of this section by any person shall subject the offender to a fine of up to $100.00. A second violation by the same person within one year shall subject such person to a fine of up to $300.00. All subsequent violations by the same person within one year shall subject such person to a fine of up to $500.00.

(Ord. No. 03-04-02, § 1, 4-8-03)

Secs. 26-182, 26-183. - Reserved.

Sec. 26-184. - Exceptions.

The following uses and activities shall be exempt from the noise regulations set forth in this article:

(1) Noises of safety signals and warning devices.

(2) Noises resulting from any authorized emergency vehicle, when responding to an emergency call or acting in time of emergency.

(3) Noises resulting from emergency work, to be construed as work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property form an imminent exposure to danger.

(4) Noises resulting from the normal operations of any commercial or industrial enterprise, except electronically amplified sound.

(5) Noises resulting from the normal operations of any governmental facility.

(6) Noises resulting from farming operations, including, but not limited to, noises generated by machinery, equipment and farm animals.

(7) a. The noise ordinance shall not apply to any shooting range operations originating on the premises of any firearm club, organization or association affiliated with the National Rifle Association if the point of discharge of the weapons is at least 500 feet from the nearest existing residence, church, school, hospital, day care facility or nursing home facility. Provided that if the operator of the shooting range obtains written permission form the occupant or person in charge of every residence, church, school, hospital, day care facility or nursing home facility within 500 feet of the point of discharge, then the shooting range operations originating on the premises of any firearm club organization or association affiliated with the National Rifle Association shall be entitled to an exemption and the provision of the noise ordinance shall not apply.

b. It is acknowledged that the North Carolina General Assembly adopted G.S. 14-409.46 titled Sport Shooting Range Protection and some existing shooting ranges in Buncombe County will be entitled to an exemption from the provision of this article.

c. If a shooting range was entitled to an exemption under this article as of May 1, 1999, because it met the criteria of being on the premises of any firearm club, organization or association then that shooting range can still qualify for an exemption if it meets the following test:

On or before September 1, 1999 the owner or operator of said shooting range obtained from the Buncombe County Sheriff's Department a written statement indicating that in the opinion of the sheriff's department the shooting range is in substantial compliance with the guidelines dealing with range safety set forth in the NRA Range Source Book revised June 19, 1998.

(8) The noise ordinance shall not apply to any event held in recognition of a community celebration of national, state, county events or public festivals.

(Ord. No. 03-04-02, § 3, 4-8-03)

Sec. 26-185. - Burden of proof regarding exceptions.

In any proceeding based upon this article, if an exception stated in this article would limit obligation, limit liability or eliminate either an obligation or liability, the person that would benefit from the application of the exception shall have the burden of proving that the exception applies and that the terms of the exception have been met.

(Ord. No. 03-04-02, § 4, 4-8-03)

Sec. 26-186. - Enforcement; violations; penalties.

(a) *Enforcement.* The Sheriff of Buncombe County shall be responsible for enforcing this article in the unincorporated areas of the county.

(b) *Penalties.* Any person who violates any provision of this article shall be guilty of a class 3 misdemeanor and fined not more than $200.00.

(c) *Violation.* Each day of a continuing violation shall constitute a separate violation under this subsection.

(Ord. No. 03-04-02, § 5, 4-8-03; Ord. No. 04-01-12, § 1, 1-27-04)

Secs. 26-187—26-205. - Reserved.

ARTICLE V. - SOIL EROSION AND SEDIMENTATION CONTROL[9]

Footnotes:

--- (**9**) ---

Cross reference— Subdivisions, ch. 70.

State Law reference— Authority to adopt rules and regulations to establish and enforce soil erosion and control programs, G.S. 113A-60.

DIVISION 1. - GENERALLY

Sec. 26-206. - Title and authority of article.

This article may be cited as the county soil erosion and sedimentation control ordinance, and is adopted pursuant to the authority granted in the North Carolina Sedimentation Pollution Control Act of 1973, G.S. 113A-50 et seq.

(Ord. No. 20172, § 1, 2-2-93)

Sec. 26-207. - Jurisdiction of article.

This article is hereby adopted by the county board of commissioners to apply to all of the county outside of the incorporated areas. Except as provided in this section, the provisions of this article shall not be applicable to and shall not be enforced within the corporate limits or jurisdiction of any municipality in the county. A municipality may come within the provisions of this article at any time by mutual agreement with the county and by the adoption of an appropriate resolution by the governing body of such municipality pursuant to G.S. 153A-122 agreeing that this article shall be enforced within the corporate limits or jurisdiction of the municipality.

(Ord. No. 20172, § 2, 2-2-93; Ord. No. 96-8-7, § 1, 8-20-96)

Sec. 26-208. - Purpose of article.

This article is adopted for the purposes of:

(1) Regulating certain land disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and

(2) Establishing procedures through which these purposes can be fulfilled.

(Ord. No. 20172, § 3, 2-2-93)

Sec. 26-209. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accelerated erosion means any increase over the rate of natural erosion as a result of land disturbing activity.

Act means the North Carolina Sedimentation Pollution Control Act of 1973, G.S. 113A-50 et seq., and all rules and orders adopted pursuant to it.

Adequate erosion control measure, structure, or device means one which controls the soil material within the land area under responsible control of the person conducting the land disturbing activity.

Affiliate means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control of another person.

Being conducted means a land disturbing activity has been initiated and permanent stabilization of the site has not been completed.

Borrow means fill material which is required for onsite construction and is obtained from other locations.

Buffer zone means the strip of land adjacent to a lake or natural watercourse.

Certificate of compliance means a certificate issued by the county indicating that the required temporary and/or permanent erosion control measures shown on the approved plan have been constructed correctly and are operating correctly and that the site has been satisfactorily stabilized except for routine maintenance requirements.

Coastal counties means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.

Commission means the state sedimentation control commission.

Completion of construction or development means that no further land disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

Department means the state department of environment, health, and natural resources.

Detention basin means a facility constructed or modified to represent flow of storm water to a prescribed maximum rate and to concurrently detain the excess waters that accumulate behind the outlet.

Director means the director of the division of land resources of the state department of environment, health, and natural resources.

Discharge point means that point at which runoff leaves a tract of land.

District means the county soil and water conservation district created pursuant to G.S. 139-1 et seq.

Energy dissipator means 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.

Erosion means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

Erosion control officer means the county erosion control officer or his duly authorized representatives.

Forest lands means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

Forest practices means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber.

Ground cover means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

High quality water (HQW) zones means areas that are within one mile of and drain to HQWs.

High quality waters means those classified as such in 15A NCAC2B.0101(e)(5)—General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14(c).

Lake or *natural watercourse* means 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 means any use of, or operations on, the land by any person in residential, industrial, educational, 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 disturbing permit means the document issued by the county which allows grading operations to commence and to proceed in accordance with the requirements of this article.

Local government means any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities acting through a joint program pursuant to the provisions of the Act.

Logging means the practice of harvesting products or timber from a tract or part of a tract of land and then perpetuating a stand of timber or forest products on the same tract of land within reasonable timeframes and accepted best management practice guidelines as recommended by the Forest Practice Guidelines Related to Water Quality pursuant to the provisions of G.S. ch. 150B.

Natural erosion means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

Parent means an affiliate that directly or indirectly, through one or more intermediaries, controls another person.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Person conducting land disturbing activity means any person who may be held responsible for a violation unless expressly provided otherwise by this article, the Act, or any order adopted pursuant to this article or the Act.

Person responsible for the violation means, as used in this article and G.S. 113A-64:

(1) The developer or other person who has or holds himself out as having financial or operational control over the land disturbing activity; or

(2) The landowner or person in possession or control of the land when he has directly or indirectly allowed the land disturbing activity or has benefitted from it, or he has failed to comply with any provision of this article, the Act, or any order adopted pursuant to this article or the Act as imposes a duty upon him.

Phase of grading means one of two types of grading, rough or fine.

Plan means an erosion and sedimentation control plan.

Sediment means 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 means 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 watercourse.

Siltation means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; 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.

Storm drainage facilities means the system of inlets, conduits, channels, ditches, and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

Stormwater runoff means the direct runoff of water resulting from precipitation in any form.

Subsidiary means an affiliate that is directly or indirectly, through one or more intermediaries, controlled by another person.

Ten-year storm means the surface runoff resulting from a rainfall of an intensity expected to be equalled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

Tract means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

Twenty-five-year storm means the surface runoff resulting from a rainfall of an intensity expected to be equalled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.

Uncovered means the removal of ground cover from, on, or above the soil surface.

Undertaken means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

Velocity means 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. Overload flows are not to be included for the purpose of computing velocity of flow.

Waste means surplus materials resulting from onsite construction and disposed of at other locations.

Working days means days, exclusive of Saturday and Sunday, during which weather conditions or soil conditions permit land disturbing activity to be undertaken.

(Ord. No. 20172, § 4, 2-2-93; Ord. No. 96-8-7, § 2, 8-20-96; Ord. No. 99-3-7, § 4, 3-16-99; Ord. No. 06-04-02, § 1, 4-4-06)

Cross reference— Definitions generally, § 1-2.

Sec. 26-210. - Scope of article and exclusions from article.

(a) *Geographical scope of regulated land-disturbing activity.* This article shall apply to land-disturbing activity within the territorial jurisdiction of Buncombe County and to the extraterritorial jurisdiction of Biltmore Forest, Black Mountain, Woodfin, Weaverville, and Montreat as allowed by agreement between local governments.

(b) *Exclusions from regulated land-disturbing activity.* Notwithstanding the general applicability of this article to all land-disturbing activity, this article shall not apply to the following types of land-disturbing activity:

(1) Activities including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:

a. Forages and sod crops, grains and feed crops, tobacco, cotton and peanuts.

b. Dairy animals and apiary products.

c. Poultry and poultry products.

d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.

e. Bees and dairy products.

f. Fur producing animals.

(2) Activities undertaken on forestland for the production or harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the board of commissioners.

(3) Activities for which a permit is required under the mining act, G.S. 74-46 et seq.

(4) For the duration of an emergency, activities essential to protect human life.

(5) Land disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

(Ord. No. 20172, § 5, 2-2-93; Ord. No. 96-8-7, § 3, 8-20-96; Ord. No. 06-04-02, § 2, 4-4-06)

Sec. 26-211. - General requirements.

(a) *Plan required.* No person shall initiate any land disturbing activity as defined in this section without an erosion control plan as described in section 26-228, approved by the county, and without having a land disturbing permit as described in section 26-226. For the purposes of this article, an erosion control plan shall be required for:

(1) Any land disturbing activity which uncovers one or more acres (43,560 square feet) on a tract of land.

(2) Reserved.

(3) Any residential land disturbing activity which uncovers one-quarter acre or more (10,890 square feet) on a lot, parcel, or tract with an average slope of 25 percent or greater in its natural state and applies to chapter 70, Subdivisions, section 70-68.

(b) *Protection of property.* Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activities.

(c) *More restrictive rules shall apply.* Any residential land disturbing activity which uncovers one-half acre or more (21,750 square feet) on a lot, parcel or tract with an average slope 15 to 25 percent in its natural state and applies to chapter 70, Subdivisions, section 70-68.

(Ord. No. 20172, § 6, 2-2-93; Ord. No. 96-8-7, § 4, 8-20-06; Ord. No. 03-05-19, 5-20-02; Ord. No. 03-08-11, § 1, 8-5-03; Ord. No. 06-04-02, § 3, 4-4-06; Ord. No. 06-08-04, § 1, 8-1-06)

Sec. 26-212. - Basic control objectives.

An erosion and sedimentation control plan may be disapproved pursuant to section 26-228 if the plan fails to address the following control objectives:

(1) *Identify critical areas.* Onsite areas which are subject to severe erosion and offsite areas which are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive special attention.

(2) *Limit time of exposure.* All land disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

(3) *Limit exposed areas.* All land disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

(4) *Control surface water.* Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(5) *Control sedimentation.* All land disturbing activity is to be planned and conducted so as to prevent offsite sedimentation damage.

(6) *Manage stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity at the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream. Plan designer must furnish a statement of an on site downstream evaluation for assessment of 25-year storm velocity impacts to adjoining property.

(Ord. No. 20172, § 7, 2-2-93; Ord. No. 06-04-02, § 3, 4-4-06)

Sec. 26-213. - Forest practice guidelines.

(a) It is the intent of the board of commissioners to adopt Forest Practice Guidelines Related to Water Quality (best management practices) pursuant to the provisions of G.S. ch. 150B. Until forest practice guidelines are adopted, activities undertaken on forest land for the production and harvesting of timber products will be subject to this article.

(b) If land disturbing activity undertaken on forest land for the production and harvesting of timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this article shall apply to such activity and any related land disturbing activity on the tract.

Secs. 26-214—26-225. - Reserved.

DIVISION 2. - ADMINISTRATION AND ENFORCEMENT[10]

Footnotes:

--- (**10**) ---

Cross reference— Administration, ch. 2.

Sec. 26-226. - Permits.

(a) *Required; exceptions.* Except as provided in section 26-210, no person shall undertake any land disturbing activity subject to this article without first obtaining a permit therefor from the county, except that no permit shall be required for any land disturbing activity:

(1) For the purpose of fighting fires;

(2) For the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against offsite damage; or

(3) Less than one acre (43,560 square feet) that does not apply to chapter 70, Subdivisions, section 70-68.

(4) In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

(b) *Requirements of applicant.* To obtain a land disturbing permit the following is required:

(1) Completed land disturbing permit application.

(2) Completed and signed erosion control plan checklist.

(3) Plan review fee.

(4) An approved erosion control plan (two copies).

(5) A copy of the approved stormwater plan, approval letter and permit.

In all circumstances where a stormwater permit is required in accordance with Buncombe County ordinances, such stormwater permit must be obtained before a land disturbing permit may be issued pursuant to this section.

Note: If the intent is to disturb land, which requires a land disturbing permit, regardless of time frame, a land disturbing permit must be obtained prior to beginning the land disturbing activity.

(c) *Issuance prerequisite to building permit.* The county shall not issue any building permits for projects on sites where a land disturbing permit is required unless and until a land disturbing permit has been issued.

(d) *Fees.* The county may establish fees as considered necessary to defray costs of administering this article. Plan review fees shall be double the normal fee amount when land disturbing activity begins before a land disturbing permit is obtained from the county.

An applicant shall be entitled to two plan reviews of any application without payments of an additional plan review fee. This shall be construed to mean review of the original application and review of the re-submittal of that application with or without revisions. Any re-submittal by the applicant thereafter shall be treated as a new application and must be accompanied by payment of the full plan review fee.

The county board of commissioners shall establish plan review fees, and may amend and update the fees annually during the budget process.

(e) *Display.* A land disturbing permit issued under this article shall be prominently displayed on the site until all construction is completed, all permanent sedimentation and erosion control measures are installed and the site has been substantially stabilized, as required.

(Ord. No. 20172, § 17, 2-2-93; Ord. No. 96-6-16, §§ 1—3, 6-18-96; Ord. No. 96-8-7, § 5, 8-20-96; Ord. No. 99-4-3, § 1, 4-13-99; Ord. No. 03-05-19, 5-20-02; Ord. No. 03-08-11, §§ 2—5, 8-5-03; Ord. No. 06-04-02, § 4, 4-4-06; Ord. No. 06-08-04, § 1, 8-1-06; Ord. No. 06-11-01, § 1, 11-7-06; Ord. No. 08-01-05, § 1, 1-8-08; Ord. No. 11-06-03, § 1, 6-7-11)

Sec. 26-227. - Revocation of permits.

(a) If inspection of a site of land disturbing activity indicates that the site is not in compliance with either this article or the erosion control plan approved for the site, the county shall serve a notice of violation by registered or certified mail or by any means authorized under G.S. 1A-1, Rule 4, or other means reasonably calculated to give actual notice, upon the person conducting the land disturbing activity and, if different from that party, the property owner.

The notice shall set forth the actions necessary to achieve compliance with the plan or this section, specify a reasonable time period within which such measures must be completed, and warn that failure to correct the violation within the time period will result in one or more of the following:

(1) Revocation of the land disturbing permit and all building permits;

(2) The issuance of a stop work order;

(3) The assessment of civil penalties; or

(4) Other enforcement action.

If the site of land disturbing activity is not brought into compliance with this section or the plan within the time stated in the notice, the county shall (1) revoke the land disturbing permit and immediately revoke all building permits granted for the site pursuant to N.C.G.S. § 160D-403(f); 1115 ~~153A-362~~ or (2) issue a stop work order pursuant to N.C.G.S. § 160D-404(b); 1114~~153A-361~~.

(b) When work under a land disturbing permit is not begun within six months following the date of issuance of the land disturbing permit, the land disturbing permit shall be deemed to be expired. If land disturbance has begun within six months of the date of issuance the land disturbing permit will expire five years from date of issuance. Renewal of the land disturbing permit will require a new application and new plan review fees. No grading work is to be performed until the new permit is issued.

(Ord. No. 20172, § 18, 2-2-93; Ord. No. 96-8-7, §§ 6, 7, 8-20-96; Ord. No. 99-4-3, § 2, 4-13-99; Ord. No. 06-08-04, § 1, 8-1-06)

Sec. 26-228. - Erosion and sedimentation control plans.

(a) *Filing; review; revision.* Persons conducting a land disturbing activity on a tract which requires a land disturbing permit shall file two copies of the erosion control plan with the county at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving the plan, if the county, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or offsite sedimentation exists, the county will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority. No person may initiate a land disturbing activity before notifying the county of the date that the land disturbing activity will begin. When deemed necessary a preconstruction conference may be required.

(b) *Statement of financial responsibility and ownership.* Erosion control plans may be disapproved unless accompanied by a notarized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. This statement shall be included on the land disturbing permit application form required by this article. If the person financially responsible is not a resident of the state, a state agent must be designated in the statement for the purpose of receiving notice of compliance or noncompliance with the plan, the Act, this article, or rules or orders adopted or issued pursuant to this article.

(c) *Review by county soil and water conservation district.* One copy of the erosion control plan shall be forwarded by the county to the county soil and water conservation district for its review. Within 20 days of receipt, or within such additional time as may be prescribed by the county, the district shall review such plan and submit its comments and recommendations to the county. Failure of the county soil and water conservation district to submit its comments and recommendations within 20 days or within the prescribed additional time shall not delay final action on the plan.

(d) *Review by county; approval or disapproval.* The county shall review each complete plan submitted to it and within 20 days of receipt thereof shall notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. However, the county shall make every attempt possible to complete its review of the plan within 20 days of receipt. Failure to approve or disapprove a complete erosion and sedimentation control plan within 20 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval. The county must approve, approve with modifications, or deny a revised plan within 15 days of receipt, or it is deemed to be approved. If, following commencement of a land disturbing activity pursuant to an approved plan, the county determines that the plan is inadequate to meet the requirements of this article, the county may require such revisions as are necessary to comply with this article. The approval of an erosion plan is conditioned on the applicant's compliance with federal and state water quality laws, regulations, and rules. A copy of the erosion control plan for any land disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table must be forwarded to the director of the division of water quality.

(e) *Environmental document.* Any plan submitted for a land disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act (G.S. 113A-1 et seq.) shall be deemed incomplete until a complete environmental document is available for review.

The county shall promptly notify the person submitting the plan that the 20-day time limit for review of the plan pursuant to subsection (d) of this section shall not begin until a complete environmental document is available for review.

(f) *Contents of plan* The erosion control plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this article. All erosion and sedimentation control plans shall contain a maintenance plan addressing short-term and long-term maintenance of measures. Long-term maintenance of ground covers must be addressed in the maintenance plan. The plan may be included in the construction sequence or vegetation specifications, if appropriate. However, more detailed maintenance plans will be required where deemed appropriate. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the county on request.

(g) *Conditions for disapproval of plan.* An erosion control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:

(1) Is conducting or has conducted land disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the commission or a local government pursuant to the Act and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time payment is due;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or

(4) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.

For purposes of this subsection an applicant's record may be considered for only the two years prior to the application date.

(h) *Amendment of plan.* Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as the amendment is approved by the county, the land disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

(i) *Failure to file; conducting activity without plan.* Any person engaged in land disturbing activity who fails to file a plan in accordance with this article, or who conducts a land disturbing activity, except in accordance with provisions of an approved plan, shall be deemed in violation of this article.

(j) All plans, applications and the checklist shall be accompanied by the requisite fee as established in the county fee schedule ordinance.

(Ord. No. 20172, § 19, 2-2-93; Ord. No. 96-8-7, §§ 8—10, 8-20-96; Ord. No. 99-3-7, § 3, 3-16-99; Ord. No. 99-12-4, § 1, 12-7-99; Ord. No. 00-09-10, § 1, 9-12-00; Ord. No. 01-02-20; § 2, 2-20-01; Ord. No. 03-05-19, 5-20-02; Ord. No. 03-08-11, § 6, 8-5-03)

Sec. 26-229. - Appeals from disapproval or approval with modifications of plans.

(a) Except as provided in subsection (b) of this section the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

(1) The disapproval or modification of any proposed erosion control plan by the county shall entitle the person submitting the plan to the erosion control officer to a hearing within 15 days after receipt of written notice of disapproval or modifications.

(2) Hearings held pursuant to this section shall be conducted by a plan review committee consisting of the county engineer, director of county ~~general services~~permits and inspections, and the director of planning and development, within 30 days after the date of the appeal or request for a hearing.

(3) The plan review committee shall decide appeals within 15 days after the date of the hearing on any erosion control plan.

(4) If the county plan review committee upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the person submitting the plan shall then be entitled to appeal the local government's decision to the state sedimentation control commission, as provided in G.S. 113A-61(c) and Title 15 N.C.A.C. 4B .0018(d).

(b) If an erosion control plan is disapproved pursuant to section 26-228(g), the county shall notify the director of the division of land resources of such disapproval within ten days. The county shall advise the applicant and the director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the county's disapproval of the plan pursuant to section 26-228(g) directly to the commission.

(Ord. No. 20172, § 20, 2-2-93)

Sec. 26-230. - Inspections and investigations.

(a) *Inspections required.* Agents, officials or other qualified persons authorized by the county will inspect the sites of land disturbing activity to determine compliance with the Act, this article, or rules or orders adopted or issued pursuant to this article; to determine whether the activity is being conducted in accordance with an approved plan; and whether the measures required in the plan are effective in controlling erosion and sediment resulting from land disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval.

(b) *Notice of violation; compliance time period specified; enforcement.* If, through inspection, it is determined that a person engaged in land disturbing activity has failed to comply with the Act, this article, or rules or orders adopted or issued pursuant to this article, or has failed to comply with an approved plan, a notice of violation shall be served upon that person by registered or certified mail or by any means authorized under G.S. 1A-1, Rule 4. The notice shall set forth the actions necessary to achieve compliance with the plan or this article, specify a date by which the person must comply with the Act, this article, and inform the person of the actions that need to be taken to comply with the Act, this article, and warn that failure to correct the violation within the time period shall result in the assessment of a civil penalty or other enforcement action. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. If the person engaged in land disturbing activity fails to comply within the time specified, enforcement action shall be initiated.

(c) *Right of entry.* The county shall have the power to conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this article, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land disturbing activity. No person shall refuse entry or access to any authorized representative or agent of the county who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out his official duties.

(d) *Requiring written statements; filing of reports.* The county shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land disturbing activity.

(e) *Certificate of compliance; issuance.* A certificate of compliance shall be issued to the person conducting the land disturbing activity upon satisfactory project completion.

(Ord. No. 20172, § 21, 2-2-93; Ord. No. 96-8-7, § 11, 8-20-96; Ord. No. 06-04-02, § 5, 4-4-06)

Sec. 26-231. - Penalties for violation of article.

(a) *Civil penalties.* Civil penalties may be imposed as follows:

(1) Any person who violates any of the provisions of this article, or rules or orders adopted or issued pursuant to this article, or who initiates or continues a land disturbing activity for which an erosion control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation of this article is $5,000.00. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by registered or certified mail, return receipt requested, or as provided in G.S. 113A-61-1(b), or other means reasonably calculated to give actual notice. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action. If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date the violation is detected. Refusal to accept the notice or failure to notify the county erosion control officer of a change of address shall not relieve the violator's obligation to pay such a penalty. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Each day of a continuing violation shall constitute a separate violation. The act clarifies that a person may be assessed a one-time civil penalty of up to $5,000.00 for the day the violation is first detected.

(2) Civil penalties shall be assessed for the violations listed below pursuant to the following schedule:

a. For failure to submit an acceptable erosion control plan for approval as required by this article, $100.00 per day. Any person who is subject to a civil penalty under this division may be subject to additional civil penalties for violation of other provisions of this article, or rules or orders adopted or issued pursuant to this article (section 26-228).

b. For failure to secure from the county erosion control office a valid land disturbing permit (section 26-226) prior to conducting a land disturbing activity, $50.00 per day.

c. For failure to take all reasonable measures to protect public property, private property, a lake or natural watercourse, from damage caused by land disturbing activities (section 26-211), $50.00 per day.

d. For failure to comply with the design and performance standards for High Quality Water (HQW) zones as per section 26-247(b), $50.00 per day.

e. For failure to conduct a land disturbing activity in accordance with the provisions of the erosion sedimentation control plan which was approved by the county erosion control office, (section 26-228), $50.00 per day.

f. For failure to install sedimentation and erosion control devices sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of the tract (sections 26-211 and 26-246), $50.00 per day.

g. For failure to provide along trout waters an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation by natural or artificial means within 25 percent of that portion of the buffer zone nearest the land disturbing activity, whichever is the greater width (section 26-246), $50.00 per day.

h. For failure to maintain temporary and permanent erosion and sedimentation control measures and facilities during the development of the site (section 26-252), $50.00 per day.

i. For failure to maintain on graded slopes and fills an angle sufficient to retain vegetative cover or other adequate erosion control devices or structures (section 26-246), $50.00 per day.

j. For failure within 15 working days or 30 calendar days, whichever period is shorter, after completion of any phase of grading to plant or otherwise provide exposed graded slopes or fills with ground cover, devices, or structures sufficient to retain erosion (section 26-246), $50.00 per day.

k. For failure to plant or otherwise provide ground cover sufficient to restrain erosion within 15 working days or 90 calendar days, whichever is the shorter, following completion of construction or development (section 26-246), $25.00 per day.

l. For failure to file an acceptable, revised erosion and sedimentation control plan after being notified by the county erosion control office of the need to do so (section 26-228), $25.00 per day.

m. For failure to retain along a lake or natural watercourse a buffer zone of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity (section 26-246), $25.00 per day.

(3) After determining the penalty, the erosion control officer shall recommend and the county planning director assess the penalty against the person or entity deemed to be in violation of this article by mailing by registered or certified mail, return receipt requested, or by any means authorized under G.S. 1A-1, Rule 4, or other means reasonably calculated to give actual notice, to the person responsible for the violation a notice of assessment and demand for payment, which shall include therein a detailed description of the violation for which the penalty has been imposed, the amount of the penalty and the reason for assessing the penalty.

(4) If payment is not received or equitable settlement reached within 30 days after the notice of assessment and demand for payment has been received, the matter shall be referred to the county attorney for institution of a civil action in the appropriate division of the general courts of justice to recover the amount of the assessment. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(5) Any monies received from the collection of penalties shall be deposited in the county planning department's operating budget in order to be used to enforce the purposes and requirements of this article.

(b) *Appeal of civil penalty assessment.*

(1) A person or entity assessed with a civil penalty must select one of the following options within 30 days after receipt of the notice of assessment and demand for payment:

a. Tender to the county planning director or county finance office full payment of the penalty; or

b. Submit in writing to the county planning director, a request for an administrative hearing specifying the factual or legal issues to be contested.

(2) Failure to request an administrative hearing as provided in subsection (1) above will be deemed a waiver of any and all rights of review, either by the board of adjustment or by the general courts of justice, of the assessment of the civil penalty.

(3) If the alleged violator requests an administrative hearing, no further demand for payment will be made by the erosion control officer unless a final decision is made by the board of adjustment which upholds the assessment of a penalty.

(4) Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d)~~Any person or entity who is aggrieved by a final decision by the board of adjustment is entitled to judicial review of such decision by the general court of justice,~~

~~superior court division, by proceedings in the nature of certiorari; provided such petition for review is filed with the clerk of superior court within 30 days after a written copy of the decision of the board is delivered to the aggrieved party, either by personal service or by registered or certified mail, return receipt requested, pursuant to G.S. 153A-345(e)~~.

(5) No provision of this section shall be construed to restrict or impair the right of the erosion control officer or the county to pursue any other remedy provided by law or equity for violations of this article, including the right to assess penalties for violations of this article occurring during the appeal process.

(c) *Criminal penalties.* Any person who knowingly or willingly violates any provision of this article, or rule or order adopted or issued pursuant to this article, or who knowingly or willfully initiates or continues a land disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a class 2 misdemeanor, which may include a fine not to exceed $5,000.00, as provided by G.S. 113A-64.

(Ord. No. 20172, § 22, 2-2-93; Ord. No. 96-8-7, § 12, 8-20-96; Ord. No. 99-3-7, § 1, 3-16-99; Ord. No. 99-12-4, § 2, 12-7-99; Ord. No. 01-02-20, § 1, 2-20-01)

Sec. 26-232. - Injunctive relief.

(a) Whenever the planning director or his designee has reasonable cause to believe that any person is violating or threatening to violate this article or any rule or order adopted or issued pursuant to this article, or any term, condition, or provision of an approved erosion control plan, the planning director or his designee may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the county for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the county superior court.

(b) Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation to ensure that restoration is performed or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this article.

(Ord. No. 20172, § 23, 2-2-93)

Secs. 26-233—26-245. - Reserved.

DIVISION 3. - LAND DISTURBING ACTIVITIES

Sec. 26-246. - Mandatory standards.

No land disturbing activity subject to the control of this article shall be undertaken except in accordance with the following mandatory requirements:

(1) *Buffer zone.* Buffer zone standards shall be as follows:

a. No land disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity. Waters that have been classified as trout waters by the state environmental management commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land disturbing activity, whichever is greater; provided, however, that the county may approve plans which include land disturbing activity along trout waters when the duration of the disturbance would be temporary and the extent of the disturbance would be minimal. This subsection shall not apply to a land disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

b. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land disturbing activity containing natural or artificial means of confining visible siltation.

c. The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.

d. Where a temporary and minimal disturbance is permitted as an exception by subsection (1)a of this section, land disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the director.

e. No land disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15 N.C.A.C. 2B.0211 "Fresh Surface Water Classification and Standards," in these waters.

(2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures and shall not have fill-slopes steeper than 2 H:1V, nor cut slopes steeper than 1.5H:1V at a maximum of 20 feet in height unless designed by a geotechnical engineer. In any event, slopes left exposed will, within 21 calendar days after completion of any phase of grading be planted or otherwise provided with temporary or permanent ground cover, devices or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints. In order to provide stabilization and maintenance of graded slopes and fills, a sufficient setback, as determined by the county erosion control officer, must be provided between all property lines and the top of graded slopes (cuts) and the toe of fills.

(3) *Ground cover.* Whenever land disturbing activity is undertaken on a tract requiring a land disturbing permit, the person conducting the land disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of the tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within 15 working days or 90 calendar days following completion, whichever period is shorter except as provided in section 26-247(b)(5).

(4) *Prior plan approval.* No person shall initiate any land disturbing activity on a tract requiring a land disturbing permit unless, 20 or more days prior to initiating the activity, an erosion and sedimentation control plan for the activity is filed with the county. Should the plan be filed, approved and a land disturbing permit be issued in less than 20 days from the filing of the plan, the land disturbing activity may commence.

(5) *Onsite meeting.* The person conducting land disturbing activity or an agent of that party shall contact the erosion control officer at least 48 hours before commencement of the land disturbing activity for the purpose of arranging an onsite meeting with the erosion control officer or duly authorized representative to review and discuss the approved plan and the proposed land disturbing activity.

(Ord. No. 20172, § 8, 2-2-93; Ord. No. 96-8-7, §§ 13, 14, 8-20-96; Ord. No. 99-3-7, § 2, 3-16-99; Ord. No. 00-09-10, § 2, 9-12-00; Ord. No. 03-05-19, 5-20-02; Ord. No. 03-08-11, §§ 7, 8, 8-5-03; Ord. No. 06-04-02, § 6, 4-4-06)

Sec. 26-247. - Design and performance standards.

(a) 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 twenty-five year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures.

(b) In high quality water (HQW) zones the following design standards shall apply:

(1) Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land disturbing activity within an HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the director.

(2) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(3) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70 percent for the 40 micron (0.04 mm) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Services "National Engineering Field Manual for Conservation Practices," or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(4) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization, unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(5) Ground cover sufficient to restrain erosion must be provided for any portion of a land disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.

(Ord. No. 20172, § 9, 2-2-93; Ord. No. 06-04-02, § 7, 4-4-06)

Sec. 26-248. - Stormwater outlet protection.

(a) *Generally.* Persons shall design and conduct land disturbing activity so that the post construction velocity of the twenty-five-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

(1) The velocity established by the table in subsection (d) of this section; or

(2) The velocity of the twenty-five-year storm runoff in the receiving watercourse prior to development.

Note: In any case a minimum ten-foot undisturbed setback to adjoining property at all drainage outfalls is required. Refer to subdivision ordinance for additional requirements section 70-66 general requirements.

If the condition in subsection (a)(1) or (a)(2) of this section cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the prior to development velocity by ten percent. In any case a minimum ten-foot undisturbed setback to adjoining property at all drainage outfalls is required. Refer to subdivision ordinance for additional requirements section 70-66 general requirements.

Note: Detention may be necessary and shall be sufficient to store all excess flows to twenty-five-year frequency twenty-four-hour storm. This is in excess of runoff that would occur from site left in pre-development.

(b) *Acceptable management measures.* Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The county 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. Some alternatives are to:

(1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious.

(2) Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections.

(3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures.

(4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

(c) *Exceptions.* This rule of this section shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

(d) *The following is a table for maximum permissible velocity for stormwater discharges:*

	Maximum Permissible Velocities	
Material Discharged Into	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	0.8
Sandy loan (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source. Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

(Ord. No. 20172, § 10, 2-2-93; Ord. No. 06-04-02, § 8, 4-4-06)

Sec. 26-249. - Borrow and waste areas.

When the person conducting the land disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained either onsite or offsite, and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the department's division of solid waste management shall be considered as part of the land disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land disturbing activity.

(Ord. No. 20172, § 11, 2-2-93)

Sec. 26-250. - Access and haul roads.

Temporary access and haul roads, other than public roads, constructed or used in connection with any land disturbing activity shall be considered a part of such activity.

(Ord. No. 20172, § 12, 2-2-93)

Sec. 26-251. - Operations in lakes or natural watercourses.

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. These activities must be in accordance with all existing federal, state, and local requirements.

(Ord. No. 20172, § 13, 2-2-93)

Sec. 26-252. - Responsibility for maintenance.

During the development of a site, 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 article, the Act, or any order adopted pursuant to this article or the Act. After site development, the landowner 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 or street right-of-way or easement accepted for maintenance by a governmental agency.

(Ord. No. 20172, § 14, 2-2-93)

Sec. 26-253. - Additional measures.

Whenever the county 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.

(Ord. No. 20172, § 15, 2-2-93)

Sec. 26-254. - Existing uncovered areas.

(a) All uncovered areas existing on February 2, 1993, which resulted from land disturbing activity, exceeding one acre (43,560 square feet), are subject to continued accelerated erosion, and are causing offsite damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control offsite sedimentation.

(b) The county will serve upon the landowner, or other person in possession or control of the land, a written notice of violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the county shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.

(c) The county reserves the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.

(d) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

(e) No fee shall apply to work required under this section.

(Ord. No. 20172, § 16, 2-2-93)

Sec. 26-255. - Restoration of areas affected by failure to comply with sedimentation control measures.

The county may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by section 26-246(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil penalty or injunctive relief authorized under this article.

Secs. 26-256—26-275. - Reserved.

ARTICLE VI. - JUNKED AND ABANDONED VEHICLES[11]

Footnotes:

--- (**11**) ---

Editor's note— Ord. No. 98-4-3, Arts. I—X, adopted Apr. 14, 1998, amended Art. VI in its entirety to read as herein set out. Former Art. VI, §§ 26-276—26-284, pertained to similar subject matter and derived from Ord. No. 17955, §§ 1—9, adopted July 17, 1984, and Ord. No. 18050, § 1, adopted Dec. 4, 1984.

Cross reference— Solid waste management, ch. 62; traffic and vehicles, ch. 74.

State Law reference— Authority to regulate, restrain or prohibit the abandonment of junk automobiles on public grounds and private property, G.S. §§ 153A-132, 153A-132.2.

Sec. 26-276. - Authority and purpose.

This article is enacted pursuant to the powers granted to Buncombe County by G.S. §§ 153A-121, 153A-132, and 153A-132.2. The purpose of this article is to protect the health, safety, natural scenic beauty, and property values of the county from potential adverse effects caused by the proliferation and improper disposal of junked motor vehicles.

(Ord. No. 98-4-3, Art. I, 4-14-98)

Sec. 26-277. - Jurisdiction.

This article shall be in effect in all unincorporated portions of the county, except areas within the extra-territorial jurisdiction of municipalities; and in any municipality which chooses to adopt this article.

(Ord. No. 98-4-3, Art. II, 4-14-98)

Sec. 26-278. - Administration.

The county director of ~~general services~~~~permits and inspections~~ planning and development or designee is responsible for the administration and enforcement of the provisions of this article.

(Ord. No. 98-4-3, Art. III, 4-14-98)

State Law reference— *Authority to prohibit the abandonment of motor vehicles, N.C.G.S. § 153A-132.*

Sec. 26-279. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned vehicle means a vehicle that is left:

(1) Upon a public street or highway in violation of a law or ordinance prohibiting parking; or

(2) On a public street or highway for longer than seven days; or

(3) On property owned or operated by the county for longer than 24 hours; or

(4) On private property without the consent of the owner, occupant or lessee thereof, for longer than two hours.

State Law reference— Similar definition, G.S. § 153A-132(b).

Junked motor vehicle means a vehicle that does not lawfully display a current North Carolina license plate and:

(1) Is partially dismantled or wrecked; or

(2) Cannot be self-propelled or moved in the manner in which it originally was intended to move.

State Law reference— Similar definition, G.S. § 153A-132(a).

Motor vehicle or *vehicle* means all machines designed or intended to travel over land (or water) by self-propulsion or while attached to any self-propelled vehicle.

Nuisance vehicle means a vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance, and unlawful, including a vehicle found to be:

(1) A breeding ground, nest or harbor for mosquitoes, other insects, rats or other pests;

(2) A point of heavy growth of weeds or other noxious vegetation over eight inches in height;

(3) A point of collection of pools or ponds of water;

(4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials;

(5) One which has areas of confinement which cannot be opened or operated from the inside of the area of confinement, such as trunks, hoods, etc.;

(6) So situated or located that there is a danger of it falling, dislodging or turning over;

(7) One which is a point of collection of refuse, trash, garbage, food waste, animal waste, or any other rotten or decaying matter of any kind;

(8) One which has parts which are jagged or contain sharp edges of metal, plastic or glass; or

(9) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the board of county commissioners.

Vector means any organism that carries disease-causing micro-organisms from one host to another (e.g. rats, mosquitoes, etc.).

(Ord. No. 98-4-3, Art. IV, 4-14-98; Ord. No. 02-07-01, § 1, 7-9-02)

Sec. 26-280. - Abandoned vehicle unlawful; removal authorized.

(a) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle and for the owner, lessee, or occupant of the real property upon which the vehicle is located to leave, or allow the vehicle to remain on the property after it has been declared an abandoned vehicle.

(b) Upon investigation, the director of ~~general services~~~~permits and inspections~~ planning and development or designee may determine that a vehicle is an abandoned vehicle and order the vehicle removed.

(Ord. No. 98-4-3, Art. V, 4-14-98)

Sec. 26-281. - Nuisance vehicle unlawful; removal authorized.

(a) It shall be unlawful for the registered owner or person entitled to possession of a motor vehicle and for the owner, lessee, or occupant of the real property upon which the vehicle is located to leave, allow or suffer the vehicle to remain on the property after it has been declared a nuisance vehicle.

(b) Upon investigation, the director of ~~general services~~~~permits and inspections~~ planning and development or designee may determine and declare that a vehicle is a health or safety hazard and a nuisance vehicle, as defined herein, and order the vehicle removed. Notice of the determinations made by the director of ~~general services~~~~permits and inspections~~ planning and development or designee may be combined with any other notices required under this article and provided to the registered owner or person entitled to possession of the motor vehicle and/or the owner, lessee or occupant of the real property by first class mail, except in situations where a name and address cannot be ascertained notice may be given by affixation on the windshield or some other conspicuous place on the vehicle.

(Ord. No. 98-4-3, Art. VI, 4-14-98)

Sec. 26-282. - Junked motor vehicle regulated; removal authorized.

(a) With the permission of the owner, lessee or occupant of the real property, up to two junked motor vehicles can be located, placed or stored on the property, but only upon strict compliance with the following requirements:

(1) The vehicle(s) cannot be dismantled or in parts.

(2) The vehicle(s) must be entirely concealed from view from a public street and from adjacent premises. A canvas, cloth or polyethylene covering shall be deemed acceptable. Tattered, torn coverings or coverings in a state of disrepair shall not be an acceptable covering.

(3) Vehicle(s) must not be located closer than ten feet from the adjacent property lines or road.

The director of ~~general services~~~~permits and inspections~~ planning and development or designee has the authority to determine whether a permitted junked motor vehicle complies with this section.

(b) All other junked vehicles shall be kept in a garage or building structure that provides a complete enclosure so that they cannot be seen from a public street or from adjacent property. For purposes of this section, a garage or building structure means either a lawful, nonconforming use or a garage or building structure erected pursuant to the lawful issuance of a building permit and which has been constructed in accordance with all zoning and building code regulations. A carport shall not be treated as an acceptable garage or enclosure under this section.

(c) It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle to place, store, leave or allow it to remain on any property in violation of this article or to allow it to remain on any property after the vehicle has been ordered removed from that property.

(d) It shall be unlawful for the owner, lessee or occupant of the real property upon which a junked motor vehicle is located to leave or allow the vehicle to remain on the property in violation of this article or after the vehicle has been ordered removed.

(Ord. No. 98-4-3, Art. VII, 4-14-98)

Sec. 26-283. - Enforcement provisions.

(a) The director of ~~general services~~~~permits and inspections~~ planning and development or designee shall enforce this article. He may call upon other agencies as necessary to assist in enforcement of this article.

(b) In addition, whenever the director of ~~general services~~~~permits and inspections~~ planning and development or designee receives a complaint alleging a violation of this article, he shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken.

(c) The owner, tenant, or occupant of any building or land or part thereof and agent or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this article may be held responsible for the violation and suffer the penalties and be subject to the remedies herein provided.

(d) The following procedure shall apply upon discovery of a violation:

(1) If the director of ~~general services~~~~permits and inspections~~ planning and development or designee finds that any provision of this article is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the violation, ordering the action necessary to correct it, and advising the violator of the number of days or months within which the violation shall be corrected.

(2) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this article or pose a danger to the public health, safety, or welfare, the director of ~~general services~~~~permits and inspections~~ planning and development or designee may seek enforcement without prior written notice by invoking any of the penalties or remedies authorized in this section.

(e) Penalties and remedies for violations shall be as follows:

(1) A violation of this article shall constitute a misdemeanor, punishable by a fine of up to $50.00 or a maximum 30 days imprisonment as provided in G.S. § 14-3(3) and G.S. § 14-4.

(2) Each day that any violation continues after final notification by the director of ~~general services~~~~permits and inspections~~ planning and development or designee that such violation exists may be considered a separate offense for purposes of the penalties and remedies specified in this section.

(3) In addition to the foregoing enforcement provisions, this article may be enforced by any remedy provided in G.S. § 153A-123, including, but not limited to, all appropriate equitable remedies provided in G.S. § 153A-123(d) and particularly the remedy of injunction and order of abatement as allowed in G.S. § 153A-123(e).

(Ord. No. 98-4-3, Art. VIII, 4-14-98)

Sec. 26-284. - Exceptions.

Nothing in this article shall apply to any vehicle which is located at a place of business maintained and operated primarily for the purpose of making repairs to motor vehicles or retail sales of items routinely used in motor vehicles, in an enclosed building, on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or used in the operation of a bona-fide farm.

This article shall not apply to any vehicle or vehicles which meet both of the following two provisions:

(1) The vehicle or vehicles cannot be seen from a public street or road; and

(2) The vehicle or vehicles cannot be seen from any property adjacent to the property on which said vehicle or vehicles are located.

(Ord. No. 98-4-3, Art. IX, 4-14-98)

State Law reference— Similar provisions, G.S. § 153A-132(h).

Sec. 26-285. - Changes in state law.

Should G.S. § 153A-132 and G.S. § 153A-132.2 or any other section of the General Statutes of North Carolina incorporated herein by reference or otherwise referred to herein be changed or amended, or should such statutes require or mandate a different procedure or change or impose new, different or additional requirements, then, in that event, this article shall be deemed to have been amended without further action to have complied with such new, additional or amended requirements.

(Ord. No. 98-4-3, Art. X, 4-14-98)

Secs. 26-286—26-300. - Reserved.

ARTICLE VII. - STORMWATER MANAGEMENT[12]

Footnotes:

--- (**12**) ---

Editor's note— Ord. No. 08-06-20, Divs. 1—7, adopted June 24, 2008, amended Art. VII in its entirety to read as herein set out. Former Art. VII, §§ 26-301—26-304, 26-331—26-333, 26-351—26-353, 26-371—26-373, 26-391—26-395, pertained to similar subject matter, and derived from Divs. 1—5 of Ord. No. 07-11-11, adopted Nov. 20, 2007.

DIVISION 1. - GENERAL PROVISIONS

Sec. 26-301. - Purpose.

The stormwater management regulations of this article shall protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of stormwater runoff associated with new development. Proper management of stormwater runoff will protect property, control stream channel erosion, prevent increased flooding associated with new development, protect floodplains, wetlands, water resources, riparian and aquatic ecosystems, and otherwise provide for environmentally sound use of the county's natural resources.

(Ord. No. 08-06-20, Div. 1, § 1, 6-24-08)

Sec. 26-302. - Scope.

Except as otherwise expressly stated, the stormwater management regulations of this article apply to all development within unincorporated Buncombe County outside the extraterritorial jurisdiction and incorporated boundaries of any municipality.

(Ord. No. 08-06-20, Div. 1, § 2, 6-24-08)

Sec. 26-303. - Applicability and exemptions.

The stormwater management regulations of this article do not apply to any of the following development activities:

(1) Activities including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to:

a. Forages and sod crops, grains and feed crops, tobacco, cotton and peanuts.

b. Dairy animals and apiary products.

c. Poultry and poultry products.

d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.

e. Bees and dairy products.

f. Fur producing animals.

(2) Activities undertaken on forestland for the production or harvesting of timber and timber products and conducted in accordance with best management practices as set out in Forest Practice Guidelines Related to Water Quality.

(3) Activities for which a permit is required under the mining act, G.S. 74-46 et seq.

(4) Commercial development on lots less than one acre and with total land disturbance less than one acre.

(5) Residential development that disturbs less than one acre, including total buildout of the site.

(6) Any development in which the owner has accrued a vested right. A vested right is recognized if either a preliminary plan has been approved by the planning board that meets the required specifications and standards of Buncombe County ordinances, or a land disturbing permit has been issued pursuant to Buncombe County Soil Erosion and Sedimentation Control ordinance in effect on or before the effective date of this article, and that such plan or permit remains unexpired. A vested right is recognized if created by virtue of statutory or common law, including but not limited to G.S. 160D; 160D-108; 160D-108.1.

(7) Land disturbing activities for the purpose of surveying, geotechnical exploration and access for percolation tests and wells not to exceed a maximum of one acre. This exemption does not include clearing for building pads or leach fields.

(8) Single family home site construction and associated land disturbing activities on a lot of record prior to September 27, 2006 that results in total impervious area of 15 percent or less on the lot.

A party in interest to a particular plan found to have no vested right to construct or develop on or before the effective date of this article may appeal to the Buncombe County Board of Adjustment for a hearing de novo. Such hearing shall be expedited and shall be limited to the issue of whether the landowner has a vested right to construct or develop his site under plans submitted prior to the effective date of this article.

Development and redevelopment that disturb less than one acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.

(Ord. No. 08-06-20, Div. 1, § 3, 6-24-08)

Sec. 26-304. - Definitions.

[The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:]

Applicant. An owner or developer of a site who executes the stormwater permit application pursuant to Buncombe County's Stormwater Ordinance.

Built-upon area. That portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Connection. Any ditch, pipe, or other device for the diversion or transmission of storm drainage, which will in any way affect the operation or maintenance of the drainageways.

Conveyance. Any feature of the landscape or earth, manmade or natural, that carries water in a concentrated flow.

Detain. To store and slowly release stormwater runoff following precipitation by means of a surface depression or tank and an outlet structure.

Ditch. "Ditch or canal" means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas.

Development. Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than a rebuilding activity that does not qualify as redevelopment.

Device. Any reference to "device" or "stormwater device" or "measures" or any other references to the means of accomplishing the purposes and goals of this article shall be considered a reference to "structural BMP" as hereinafter defined.

Drainage structures. Shall include swales, channels, storm sewers, curb inlets, yard inlets, culverts, and other structures designed or used to convey stormwater.

Ephemeral stream. Ephemeral (stormwater) stream means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events.

High density project. Any project that exceeds the low density threshold for dwelling units per acre and built-upon area.

Impervious surface. Any surface that, in whole or in part, restricts or prevents the natural absorption of water into the ground. Such surfaces may include, but are not limited to, gravel, concrete, asphalt or other paving material, and all areas covered by the footprint of buildings or structures.

Intermittent stream. Intermittent stream means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table.

Land disturbing activity. Any use of, or operations on, the land by any person in residential, industrial, educational, 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.

Low density project. A project that has no more than two dwelling units per acre or 24 percent built-upon area (BUA) for all residential and non-residential development.

One-year, 24-hour storm. The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24-hours.

Peak velocity. The velocity of flow through the cross section of the main channel at the peak flow of the storm of interest.

Person. Any person, firm, corporation, partnership or other entity, either singly or in cooperation with others, that undertakes any project coming under the provisions of this article.

Person responsible for maintenance. The developer(s), property owners association, and/or individual property owners having responsibility for the care and maintenance of stormwater improvements under the provisions of this article.

Perennial stream. Perennial stream means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year.

Responsible parties. Developer(s), property owners association, and/or individual property owners having responsibility for the care and maintenance of stormwater improvements as well as any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this article shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this article, or fails to take appropriate action, so that a violation of this article results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

Retain. To capture and hold stormwater runoff following precipitation by means of surface depression allowing the water to infiltrate into the soil, thus reducing the hydrologic and pollution impacts downstream.

Stormwater. Any surface flow, runoff, and drainage consisting entirely of water from rainfall events.

Stormwater administrator. Stormwater administrator shall be designated by the Buncombe County Board of Commissioners to administer and enforce this article. Any act authorized by this article to be carried out by the stormwater administrator of the county may be carried out by his or her designee.

Structural BMP. A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural BMP" is synonymous with "structural practice", "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this article.

Time; computation of time. The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action fails on a Saturday, Sunday, or holiday observed by the county, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the county. References to days are calendar days unless otherwise stated.

(Ord. No. 08-06-20, Div. 1, § 4, 6-24-08)

Secs. 26-305—26-320. - Reserved.

DIVISION 2. - ADMINISTRATION AND PROCEDURES

Sec. 26-321. - Review and decision-making entities.

Buncombe County Planning and Development will administer this article. The director of planning and development will designate a stormwater administrator. In addition to the powers and duties that may be conferred, the stormwater administrator shall have the following powers and duties under this article:

(1) To review and approve or disapprove applications for approval of plans pursuant to this article.

(2) To make determinations and render interpretations of this article.

(3) To establish application requirements and schedules for submittal and review of applications and appeals, to review and approve applications.

(4) To enforce the provisions of this article in accordance with its enforcement provisions.

(5) To make records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this article.

(6) To provide expertise and technical assistance to the county.

(7) To designate appropriate other person(s) who shall carry out the powers and duties of the stormwater administrator.

(8) To take any action necessary to administer the provisions of this article.

(Ord. No. 08-06-20, Div. 2, § 1, 6-24-08)

Sec. 26-322. - Review and appeals procedures.

(a) A stormwater permit is required for all development and redevelopment which equals or exceeds one acre of residential development, or on commercial lots that are one acre in size or more, unless exempt pursuant to this article.

(b) The county board of commissioners shall establish permit review fees as well as policies, and may amend and update the fees and policies when needed.

(c) An applicant shall be entitled to two readings of any application submitted without payment of an additional permit review fee. This shall be constructed to mean review of the original application and review of the re-submittal of that application with or without revisions. Any re-submittal by the applicant thereafter shall be treated as a new application and must be accompanied by payment of the full permit review fee in existence at the time of filing.

(d) For all activities which are subject to this article, no person shall initiate, proceed, or undertake any land disturbing or development activity for which a permit is required without first being issued a written stormwater control permit. All other required applications must be received and permits must be obtained prior to the start of the work. These may include but are not limited to soil erosion and sedimentation control, flood damage prevention, subdivision, building permits and inspections, NC Department of Transportation, NC Division of Water Quality, US Army Corps of Engineers, and NC DENR-Dam Safety.

(e) Plan review fees shall be double the amount when land disturbing activity begins before a stormwater permit is obtained from the county.

(f) Two copies of the stormwater plan submittal shall be submitted to planning and development for review.

(g) The department shall review the plan for completeness and for compliance with the requirements of this article. An incomplete or nonconforming stormwater plan will be returned to the applicant prior to review with an explanation of issues requiring resolution before plan review can be initiated.

(h) Within 30 days of receipt of application for stormwater plan approval, planning and development shall take action on the plan.

(i) Planning and development shall forward a copy of the plan to the Buncombe County Soil and Water Conservation District who, within 20 days of receipt of the plan, will review the plan and submit its comments and recommendations to the stormwater administrator at the Buncombe County Planning and Development Department. Failure of the soil and water conservation district to submit its comments and recommendations within 20 days shall not delay final action on the plan. Planning and development is solely responsible for plan(s) review and will incorporate review comments and recommendations from the soil and water conservation district into its examination of the plan application.

(j) Approval, approval with modifications, or denial of the proposed stormwater plan shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal the decision of the stormwater administrator at the county planning and development department to a plan review committee within 15 days after receipt of written notice of disapproval or approval with modifications. Only the applicant can appeal the decision of the stormwater administrator.

(1) A condition of plan approval will be the right to physical inspection of the drainage structures and stormwater management measures during and after construction.

(k) Hearings held pursuant to this section shall be conducted by a plan review committee consisting of the director of planning and development, the director of the soil and water conservation district, and the director of ~~general services~~permits and inspections within 30 days after the date of the appeal or request for hearing.

(l) The plan review committee shall decide appeals within 15 days after the date of the hearing on any stormwater plan. If the review committee upholds the disapproval or modification of a proposed plan following the hearing, the person submitting the plan shall then be entitled to appeal the local plan review committee's decision to the board of adjustment within 15 days.

(m) The board of adjustment will conduct a hearing in the nature of a quasi-judicial proceeding with all findings of fact supported by material evidence.

(n) Decisions appealing the final decision by the board of adjustment may be filed in Buncombe County Superior Court, to be reviewed by proceedings in the nature of certiorari, within 30 days of the final decision of the board of adjustment.

(o) The stormwater administrator shall take action on revisions to a stormwater plan which has been previously denied, within 15 days of receipt of the revised plan application for approval.

(p) If a revised application is not re-submitted within 60 calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee and pursuant to the current standards. One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this article.

(q) Application for an amendment to a stormwater plan in written and graphic form may be made at any time. Until such time that any amendment is approved by the stormwater administrator, it shall be unlawful to deviate from the approved plan.

(r) An approved plan shall become null and void if the applicant has failed to make progress on the site within six months after the date of approval. The stormwater administrator may grant a single, six-month extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan. In granting an extension, the stormwater administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

(Ord. No. 08-06-20, Div. 2, § 2, 6-24-08)

Sec. 26-323. - Penalties for violation.

Civil penalties may be imposed as follows:

(1) Any person who violates any of the provisions of this article, or rules or orders adopted or issued pursuant to this article, or who initiates or continues a development for which a stormwater plan is required, except in accordance with the terms, conditions and provisions of an approved plan, is subject to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the stormwater administrator. Civil penalties may be assessed up to the full amount of penalty to which Buncombe County is subject for violations of its Phase II Stormwater permit as

a result of the applicant's non-compliance. Each day of a continuing violation shall constitute a separate violation. Additional fees may be charged for remedies and enforcement of this article.

(2) No penalty shall be assessed until the applicant has been notified of the violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation can be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action.

(3) If the violation has not been corrected within the designated time period, a civil penalty may be assessed from the date the violation is detected.

(4) Refusal to accept the notice or failure to notify the stormwater administrator of a change of address shall not relieve the violator's obligation to pay such a penalty.

(5) The stormwater administrator or other authorized agent may refuse to issue a certificate of occupancy for any building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant has taken the remedial measures set forth in the notice of violation and cured the violations described therein.

(6) Buncombe County review or approval of any plans, applications, specifications or plats of any form or nature delivered to the county by any applicant in respect to this article shall not create a responsibility or liability of the county for their accuracy, sufficiency or compliance with other laws and regulations.

(Ord. No. 08-06-20, Div. 2, § 3, 6-24-08)

Secs. 26-324—26-340. - Reserved.

DIVISION 3. - STORMWATER PLAN SUBMITTAL

Sec. 26-341. - Permit application and plans.

(a) The stormwater permit application and plan shall refer to the drawings and technical documentation for planned site improvements necessary to fulfill the drainage and stormwater management requirements of this article. This shall include but not be limited to:

(1) Location and topographic maps with the total drainage area delineated including both on site and off site areas and sufficient information to define all ridges, existing streams, location of the 100-year floodplain and floodway, drainage ways, wetland areas, existing springs, and elevation of any proposed discharge point, and any additional information required to evaluate the existing and proposed drainage system, which may include a soil analysis.

(2) Architectural and engineering drawings showing plan, profile and details of piping, drainage structures, swales, and channels tying into a network of pre-existing manmade or natural channels.

(3) Written project specifications governing work performance and materials.

(4) Computations and assumptions sufficient to support the design of piping, drainage structures, retention/detention ponds, and permanent erosion control measures.

(5) Whatever other narrative statements necessary to adequately describe the proposed site improvements and the measures planned to comply with the requirements of this article.

(b) The stormwater permit application and plan shall be prepared by and shall bear the seal and signature of a professional engineer or landscape architect licensed in the state of North Carolina, competent to perform all aspects of design.

(c) The stormwater permit application and plan shall be prepared to meet the basic objectives and design standards for drainage and stormwater management as described in this article.

(d) The stormwater permit application and plan shall show the existing site topography and proposed site drainage improvements in sufficient detail to facilitate plan review and construction. The plan drawings shall be presented at a scale no smaller than one inch = 50 feet.

(Ord. No. 08-06-20, Div. 3, § 1, 6-24-08)

Sec. 26-342. - Maintenance manual.

(a) The stormwater permit application and plan shall be accompanied by an operations and maintenance manual. The manual shall contain a narrative describing each installed measure and device and its design specifications. The manual shall indicate for each installed measure and device what operation and maintenance actions are needed and what specific quantitative criteria will be used to determine when these actions will be taken. The manual must indicate the steps that will be taken to restore a measure or device to the design specifications if a failure occurs.

(b) After the permit and plan is approved and installation is complete, if changes have been made to any installed measure or device, the manual shall be revised to reflect these changes, and such changes shall be subject to the review and approval of the stormwater administrator.

(Ord. No. 08-06-20, Div. 3, § 2, 6-24-08)

Sec. 26-343. - As-built plans and specifications.

(a) The designer of the stormwater control plans shall provide as-built plans of all stormwater control and management plans showing the field location, size, depth, and planted vegetation of all measures and devices as installed. If the previously submitted plans remain unchanged, an as-built certification to the existing plans will be required. No certificate of compliance or occupancy shall be issued without said as-built plans.

(b) The designer shall certify, under seal, that the as-built stormwater measures and devices and their installation are in compliance with the county's stormwater ordinance.

(c) The designer shall submit a final electronic file of the stormwater plan that is readable by GIS systems. The county prefers electronic files submitted in the standard formats listed below.

(1) Shape Files (.shp, .dbf, .shx, .prj, and .sbx); or

(2) .dwg and .dxf

Each submission must include projection and datum information (i.e., NAD 83, NC state plane fleet). Contact the county for other acceptable standard formats.

(Ord. No. 08-06-20, Div. 3, § 3, 6-24-08)

Secs. 26-344—26-360. - Reserved.

DIVISION 4. - STANDARDS

Sec. 26-361. - Stormwater management objectives.

(a) In order to reduce drainage related damage and hazards, adequate natural drainage systems or stormwater management installations are required to collect and transmit stormwater flows into either existing drainage facilities or a natural drainage system.

(b) All storm drainage facilities shall be designed, constructed and maintained so that adjacent properties are not unreasonably burdened with surface waters as a result of such improvements. Specifically:

(1) Offsite areas which drain to or across a site proposed for development must be accommodated in the stormwater plans for the development. 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. If offsite flows are carried in the site system any detention system shall be sized to accommodate this flow. The flow must be released to the original drainage area.

(2) Storm drainage facilities shall be designed to limit the discharge from the site to the rate that existed prior to development of the site. For projects that are redeveloping a developed site, the discharge will be limited to that which occurs before any new development. The type and location of the discharge will be as occurred before the current development unless the discharge is to a manmade conveyance system.

(c) All site improvements shall be provided with a drainage system that is adequate to prevent the undue retention of surface water while promoting recharge of groundwater through infiltration on the development site.

(d) These goals for discharge can be accomplished by designing, constructing and maintaining all stormwater management installations to the extent practicable:

(1) Avoid increases in surface runoff volume and velocity by including measures which promote the infiltration of stormwater,

(2) Maximize the time of concentration of stormwater runoff, and

(3) Promote the filtration and precipitation of pollutants from stormwater runoff in order to protect the water quality of the receiving watercourse.

(e) Whenever practicable, the drainage system of a development site shall coordinate with and connect to the drainage systems or drainage ways on surrounding properties or streets. Permission must be received from other applicable entities for connection.

(f) To the extent practicable, all site improvements shall conform to the natural contours of the land, and without disturbance, utilize the preexisting natural and preexisting manmade drainage ways.

(g) To the extent practicable, lot boundaries within subdivisions shall be made to coincide with natural and preexisting man made drainage ways to avoid creation of lots that can only be built upon by altering such drainage ways.

(h) Stormwater shall not be diverted from one natural drainage basin into another.

(i) Stormwater shall not be channeled or directed into sanitary sewers.

(j) Stormwater controls shall not be located within the designated floodway.

(k) Stormwater controls shall not be located within 30 feet landward from any perennial and intermittent surface waters. A surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the US Department of Agriculture or the most recent version of the quadrangle topographic maps prepared by the USGS.

(l) Streams shall not be relocated unless it is demonstrated that the relocation of the stream will have a positive impact on water quality while reducing velocity. All other applicable permits must be received.

(Ord. No. 08-06-20, Div. 4, § 1, 6-24-08)

Sec. 26-362. - Stormwater management design standards.

(a) Design standards are established for the purpose of promoting sound development practices which respect, preserve and enhance the county's watercourses and are not intended to prohibit the use of innovative and alternative techniques which can be demonstrated to have the potential for successfully achieving the objectives stated in section 26-361.

(b) Design standards:

(1) Development standards for low-density projects. Low-density projects shall comply with each of the following standards:

a. Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

b. Low impact development techniques shall be utilized to the maximum extent possible.

c. The post development peak rate of runoff for the one-year 24-hour storm event shall not exceed the pre development rate.

d. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture of the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B.0233 (3)(a) or similar site-specific determination made using Division-approved methodology.

e. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(2) Development standards for high density projects. High-density projects shall comply with each of the following standards.

a. The measures for high density projects shall control and treat the difference in stormwater runoff volume leaving the project site between the pre- and post-development conditions for, at a minimum, the one-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.

b. All structural stormwater treatment systems used to meet the requirements of this subsection (b)(2) shall be designed to have a minimum of 85 percent average annual removal for total suspended solids (TSS).

c. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture of the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B.0233 (3)(a) or similar site-specific determination made using Division-approved methodology.

d. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(3) The hillside development standards of chapter 70 of this Code (section 70-68) apply. This section limits the density of disturbed area and impervious surfaces on steep slopes.

(4) The design of drainage facilities in flood hazard areas shall be consistent with the requirements of the county's flood damage prevention ordinance. No stormwater controls shall be allowed within the floodway. No stormwater controls shall be within 30 feet landward of any perennial and intermittent surface water.

(5) The computation of stormwater runoff shall follow established engineering practice. Acceptable methods of computation include the rational method, the peak discharge method as described in USDA Technical Release Number 55 (TR-55), and USGS Regression Equations, where applicable. If an alternate method is proposed, the method should be described and justification for using this method should be provided. The same method must be used for both the pre- and post-development conditions. The stormwater administrator may set the design precipitation amount used in the SCS Method in inches for the one-year 24-hour storm event for the county.

(6) Runoff coefficients shall be based on full development of the project and of the watershed to the extent of the current zoning or land use patterns, and shall include the complete development of the site through build-out, including roof tops and other impervious areas that may be proposed.

(7) 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 one-year, 24-hour storm. Inflow-outflow calculations shall also be submitted for any stormwater detention ponds.

(8) Stormwater controls that drain in whole or part to designated trout waters shall be designed and shall implement the best stormwater practices that do not result in a sustained increase in the receiving water temperature, while still meeting the other requirements of this article.

(9) Variances.

a. Any person may petition to the board of adjustment or such other local governing body having jurisdiction in the area where the project is located for a variance granting permission to use the person's land in a manner otherwise prohibited by this article. To qualify for a variance, the petitioner must show all of the following:

1. Unnecessary hardships would result from strict application of this article.

2. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

3. The hardships did not result from actions taken by the petitioner.

4. The requested variance is consistent with the spirit, purpose, and intent of this article; will secure public safety and welfare; and will preserve substantial justice.

b. The board of adjustment or other local governing body having jurisdiction may impose reasonable and appropriate conditions and safeguards upon any variance it grants, and any such hearing before the board of adjustment shall be conducted in the manner provided in the provisions of the county zoning ordinance for appeals and applications. Such hearings before any other local governing body having jurisdiction shall be conducted pursuant to its rules for hearing appeals of administrative decisions, or in accordance with the county zoning ordinance section 78-623.

(Ord. No. 08-06-20, Div. 4, § 2, 6-24-08)

Sec. 26-363. - Stormwater design manual.

The planning and development department may furnish additional guidance and standards for the proper implementation of the regulations of this article and may provide such information in the form of a stormwater design manual. Stormwater management practices that are designed, constructed, or maintained in accord with the stormwater design manual must be presumed to comply with these regulations. However, the stormwater administrator shall have the right to consult other engineers and duly qualified professionals, and to impose any conditions or require any modifications deemed necessary to meet the purpose, intent and requirements of this article.

If the specifications or guidelines of the design manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the design manual.

(1) Changes to standards and specifications. If the standards, specifications, guidelines, policies, criteria, or other information in the design manual are amended subsequent to the submittal of an application for approval pursuant to this article but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this article with regard to the application.

(Ord. No. 08-06-20, Div. 4, § 3, 6-24-08)

Secs. 26-364—26-380. - Reserved.

DIVISION 5. - CONSTRUCTION AND MAINTENANCE

Sec. 26-381. - Construction of stormwater management structures.

(a) Stormwater management facilities shall be constructed in accordance with approved plans and maintained in proper working condition. The applicant is responsible for ensuring that the construction of drainage structures and stormwater management measures are completed in accordance with the approved plan and specifications. Inspections which may be performed by Buncombe County during construction will not relieve the applicant of the responsibility to install stormwater management and drainage facilities in accordance with the approved plan.

(b) In response to a complaint, or as a compliance check with the requirements of the ordinance, the stormwater administrator or the designee shall perform a physical inspection of the construction of drainage structures and stormwater management measures, or monitor long term maintenance procedures.

(c) The applicant will be notified in writing of any substandard and/or non-conforming work identified by the stormwater administrator. The notification shall state the specific work that is out of compliance, the specific reasons for noncompliance, and the corrective measures necessary to bring the work into compliance.

(d) Failure of the applicant to correct substandard and/or nonconforming work identified by the stormwater administrator shall be sufficient reason to refuse or revoke building permits, and/or deny occupancy permits for buildings serviced by said work. Appeals on determination of nonconforming or substandard work and/or the adequacy of the corrective measures executed shall be made in accordance with section 26-322. Pending the ruling on the appeal, the determination of the stormwater administrator remains in effect.

(e) Revisions which affect the intent of the design or the capacity of the system shall require prior written approval by the stormwater administrator.

(Ord. No. 08-06-20, Div. 5, § 1, 6-24-08)

Sec. 26-382. - Performance security for installation and maintenance.

(a) Buncombe County will require the submittal of a surety performance bond made by a surety bonding company licensed and authorized to do business in North Carolina, a bond of the owner/developer with an assignment to the county of a certificate of deposit as security for the bond, a bond of the owner/developer by an official bank check drawn in favor of the county and deposited with the county, or cash or an irrevocable letter of credit deposited with the county prior to issue of a permit in order to ensure that the stormwater system is installed by the developer and functions as required by the approved stormwater plan.

(1) Surety bonds in the form of cash shall be held in accordance with policies and procedures as outlined by the finance department.

(b) The amount of an installation performance security shall be the total estimated construction cost of the system and devices approved under the permit, plus 25 percent.

(c) The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant in accordance with this article.

(d) Upon default of the applicant to construct, maintain, repair, and if necessary reconstruct any stormwater device in accordance with the applicable permit, the stormwater administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the applicant to comply with the permit. In the event of a default triggering the use of installation of performance security, the county shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

(e) If the county takes action upon such failure by the applicant, the county may collect the difference should the amount of the reasonable cost of such action exceed the amount of the security held. This difference will be collected from the applicant.

(f) Within 60 days of the final approval, the installation performance security shall be refunded to the applicant or terminated.

(Ord. No. 08-06-20, Div. 5, § 2, 6-24-08)

Sec. 26-383. - Completion.

The developer is responsible for completing all stormwater improvements in accordance with the requirements of this article and other applicable ordinance and laws.

(Ord. No. 08-06-20, Div. 5, § 3, 6-24-08)

Sec. 26-384. - Assurance that improvements will be maintained.

(a) The county may not approve a record plat, or in the case of single-lot development not requiring a record plat may not issue a building permit, until those stormwater improvements required of the developer have been completed or a performance guarantee has been provided.

(b) Upon completion of required improvements, the design professional must submit as-built plans, or certify the existing plans as as-built if no changes have occurred, of the installed stormwater improvements to the stormwater administrator. These plans must indicate that stormwater improvements were constructed in accordance with the county ordinance and approvals.

(Ord. No. 08-06-20, Div. 5, § 4, 6-24-08)

Sec. 26-385. - Maintenance.

All stormwater improvements must be maintained so they will continue to serve their intended functions.

(1) The developer must maintain stormwater improvements until accepted by a property owners association or lot owner. The developer must disclose which party will be responsible for continued maintenance on the record plat and on the stormwater management plan. The developer will be responsible for the installation, operations, and maintenance of the stormwater controls until ownership is conveyed. The responsibility and agreement for operations and maintenance for the stormwater system is transferred with title, as each property is conveyed.

(2) Before improvements are accepted for maintenance by the property owners association or lot owner, the developer or the developer's engineer or landscape architect, must certify to the property owners association or lot owner and to the county that improvements are complete and functioning as designed.

(3) The developer must reference on the record plat, deed, restriction or in covenants an operations and maintenance plan that instructs the property owners association or lot owner about the annual operations and maintenance tasks for at least a 20-year period.

(4) The person responsible for maintenance of any stormwater structure or feature installed pursuant to this article shall submit to the stormwater administrator an inspection report at least once every three years. However, the Stormwater Administrator shall have the right to demand an inspection report at any time should he/she reasonably believe that any stormwater structure or feature is constructed or being maintained in violation of this article. Such inspection report shall be prepared by a qualified registered North Carolina professional engineer, surveyor, or landscape architect performing services only in their area of competence. The report shall contain the following:

a. The name and address of the land owner.

b. The recorded book and page number of the lot of each stormwater control.

c. A statement that an inspection was made of all stormwater controls and features.

d. The date the inspection was made.

e. A statement that all inspected controls and features are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this article.

f. The signature and seal of the engineer, surveyor, or landscape architect.

Should the stormwater inspection reveal substantial maintenance or repair recommendations it shall be the owners responsibility to retain a registered professional engineer or landscape architect competent in the area of stormwater management to develop plans and specifications for such repairs. Plans for proposed repairs shall be submitted to the Buncombe County Stormwater Management Office for approval prior to construction except for emergency repairs supervised by a professional engineer or landscape architect. Plans and specifications for repairs made in emergency conditions shall be submitted to the stormwater management office within 30 days after the emergency.

All inspection reports shall be on forms supplied by the stormwater administrator. An original inspection report shall be provided to the stormwater administrator every three years thereafter on or before the date of the as-built certification.

It will be the responsibility of the property owners association or lot owner to update the plan annually.

(5) The developer must record, and reference on the record plat, a maintenance agreement, or restrictive covenant that sets forth the property owners association's or lot owner's continuing responsibilities for maintenance, including specifying how cost will be apportioned among lot owners served.

(6) Maintenance agreements. All maintenance agreements or covenants shall contain without limitation the following provisions:

a. A description of the property on which the device is located and all easements from the site to the device;

b. Size and configuration of the device;

c. A statement that properties which will be served by the device are granted rights to construct, use, inspect, replace, reconstruct, repair, maintain, access to the device and to transport, store, and discharge stormwater to and from the device;

d. A statement that the association and its individual members are responsible parties for repairs and maintenance of the devices and any unpaid ad valorem taxes, public

assessments for improvements and unsafe building and public nuisance abatement liens charged against the device, including all interest charges together with attorney fees, cost and expenses of collection. Such statement shall specify that each member shall have a duty to contribute to the maintenance of the stormwater device. That failure to maintain stormwater control measures is a violation of the Buncombe County Stormwater Ordinance potentially subjecting each lot owner subject to this legal document to significant daily civil penalties and other enforcement actions.

e. If an association is delegated these responsibilities, then membership into the association shall be mandatory for each parcel served by the device and any successive owner, the association shall have the power to levy assessments for these obligations, and that all unpaid assessments levied by the association shall become a lien on the member's individual parcel who fails to pay such assessments. Common expenses for the association shall include maintenance of stormwater control measures.

f. An operation and maintenance plan or manual together with a budget shall be provided by the applicant. The plan or manual shall indicate what operation and maintenance actions are needed, and what specific quantitative criteria will be used to determine when those actions are to be undertaken. The plan or manual must indicate the steps that will be taken to restore a stormwater system to design specifications if a failure occurs. The budget should include both annual costs such as routine maintenance, periodic sediment removal and replenishment of rip-rap, insurance premiums, taxes, mowing and reseeding, required inspections. These required documents shall be attached to the property association declaration as an exhibit.

g. A statement that stormwater control measures shall be maintained in accordance with the attached stormwater operations and maintenance manual and budget and at all times the stormwater control measures shall comply with all applicable laws, ordinances, regulations, rules and directives of governmental authorities, and that the stormwater control measures shall perform as designed.

h. Without limitation to potential liability for failure to repair and/or maintain any device(s) of the association and its individual members a statement that each such individual member shall be entitled to recover from any and all other association members a pro rata share, or an established apportionment, of any amounts that each such individual member may be found liable in excess of that individual member's pro rata share or apportionment.

(7) The developer must record easements for access, maintenance and inspections by any property owners association and by Buncombe County Government.

(8) All maintenance documents required by this article must be submitted to the stormwater administrator before record plat approval, and such documents must be referenced on the record plat, or, in the case of single-lot developments not requiring record plats, documentation must be submitted to the stormwater administrator before building permit issuance.

(Ord. No. 08-06-20, Div. 5, § 5, 6-24-08)

Secs. 26-386—26-400. - Reserved.

DIVISION 6. - ENFORCEMENT AND VIOLATIONS

Sec. 26-401. - General provisions.

(a) *Authority to enforce.* The provisions of this article shall be enforced by the stormwater administrator, his or her designee, or any authorized agent of the county. Whenever this section refers to the stormwater administrator, it includes his or her designee as well as any authorized agent of the county.

(b) *Violation unlawful.* Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this article, or the terms or conditions of any permit or other development or

redevelopment approval or authorization granted pursuant to this article, is unlawful and shall constitute a violation of this article.

(c) *Each day a separate offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.

(d) *Legal action.* In the event legal action by the county becomes necessary to enforce the provisions of this article, then the county shall name as necessary parties defendant any developer(s), property owners association, and/or individual property owners having responsibility for the care and maintenance of stormwater improvements under the provisions of this article as well as any other person, firm, corporation, partnership or other entity, either singly or in cooperation with others, that undertakes any project coming under the provisions of this article.

(Ord. No. 08-06-20, Div. 6, § 1, 6-24-08)

Sec. 26-402. - Remedies and penalties.

The remedies and penalties provided for violations of this article, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(1) *Remedies.*

a. *Witholding of certificate of occupancy.* The stormwater administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater devices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

b. *Disapproval of subsequent permits and development approvals.* As long as a violation of this article continues and remains uncorrected, the stormwater administrator or other authorized agent may withhold or may disapprove, any request for permit or development approval or authorization provided for by this article for the land on which the violation occurs.

c. *Injunction, abatements, etc.* The stormwater administrator, with the written authorization of the county manager, or her designee, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this article. Any person violating this article shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

d. *Correction as public health nuisance, costs as lien, etc.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. § 160A-193, the stormwater administrator, with the written authorization of the County Manager, or her designee, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

e. *Stop work order.* The stormwater administrator may issue a stop work order to the person(s) violating this article. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

f. *Civil penalties.* Violation of this article may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the stormwater administrator. Civil penalties may be assessed up to the full amount of penalty to which the county is subject for violations of its Phase II Stormwater permit.

g. *Criminal penalties.* Violation of this article may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

(Ord. No. 08-06-20, Div. 6, § 2, 6-24-08)

Sec. 26-403. - Procedures.

(a) *Initiation/complaint.* Whenever a violation of this article occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the stormwater administrator, who shall record the complaint. The complaint shall be investigated promptly by the stormwater administrator.

(b) *Inspection.* The stormwater administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this article.

(c) *Notice of violation and order to correct.* When the stormwater administrator finds that any building, structure, or land is in violation of this article, the stormwater administrator shall notify, in writing, the responsible party or other person violating this article. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The stormwater administrator may deliver the notice of violation and correction order personally, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the stormwater administrator may take appropriate action under this article to correct and abate the violation and to ensure compliance with this article.

(d) *Extension of time.* A responsible party who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the stormwater administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the stormwater administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 90 days. The stormwater administrator may grant 90-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this article. The stormwater administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(e) *Enforcement after time to correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the stormwater administrator, the stormwater administrator shall determine if the violation is corrected. If the violation is not corrected, the stormwater administrator may act to impose one or more of the remedies and penalties authorized by this article.

(f) *Emergency enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this article or pose an immediate danger to the public health, safety, or welfare, then the stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The stormwater administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

(Ord. No. 08-06-20, Div. 6, § 3, 6-24-08)

Secs. 26-404—26-420. - Reserved.

DIVISION 7. - RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS

Sec. 26-421. - Conflict of laws.

This article is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare, shall control.

(Ord. No. 08-06-20, Div. 7, § 1, 6-24-08)

Sec. 26-422. - Private agreements.

This article is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this article are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this article shall govern. Nothing in this article shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this article. In no case shall Buncombe County be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

(Ord. No. 08-06-20, Div. 7, § 2, 6-24-08)

Secs. 26-423—26-499. - Reserved.

ARTICLE VIII. - RETAINING WALLS

DIVISION 1. - GENERALLY

Sec. 26-500. - Title.

This article shall be known and may be cited as "The Retaining Wall Ordinance of Buncombe County, North Carolina" and may be referred to as the "retaining wall ordinance."

(Ord. No. 11-06-17, § 1, 6-21-11)

Sec. 26-501. - Authority.

In pursuant of the authority conferred by state law, the Buncombe County Board of Commissioners hereby ordains and enacts into law this article.

(Ord. No. 11-06-17, § 1, 6-21-11)

Sec. 26-502. - Jurisdiction.

The provisions of this article shall apply to all unincorporated portions of the County which are not under the jurisdiction of any municipal zoning ordinance.

(Ord. No. 11-06-17, § 1, 6-21-11)

Sec. 26-503. - Definitions.

Caliper means the measurement of the diameter of the trunk of the tree six inches above the ground.

Retaining wall means a wall or man-made soil retention system designed to resist lateral soil pressure and hold back, or "retain," higher level ground behind it. Retaining walls providing a cumulative vertical relief greater than ten feet are subject to the requirements set forth in this article. For the

purposes of this article, methods of soil retention regulated shall include, but not be limited to: cast-in-place walls, soil nailing, modular systems, h-beam systems, boulder walls, and gabions.

Retaining wall system means a cumulative system of walls or man-made soil retention systems designed to resist lateral soil pressure and hold back, or "retain," higher level ground behind them. Retaining wall systems providing a cumulative vertical relief greater than ten feet are subject to the requirements set forth in this article. For the purposes of this article, methods of soil retention regulated shall include, but not be limited to: Cast-in-place walls, soil nailing, modular systems, h-beam systems, boulder walls, and gabions.

(Ord. No. 11-06-17, § 1, 6-21-11)

Sec. 26-504. - Penalties for violations.

The provisions of this article shall be enforced pursuant to section 78-583 of the Buncombe County Code of Ordinances or as amended. Where "zoning administrator" is stated in section 78-583, "administrator" shall be substituted for the purposes of this article.

(Ord. No. 11-06-17, § 1, 6-21-11)

Sec. 26-505. - Remedies for violations of article.

If a retaining wall is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained in violation of this article, the ordinance administrator, in addition to other remedies, may institute appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use; to restrain, correct or abate the violation; to prevent use of the site; or to prevent any illegal act, conduct of business or use in or about the premises.

(Ord. No. 11-06-17, § 1, 6-21-11)

Sec. 26-506. - Abrogation or greater restrictions.

When provisions of this article impose higher standards than are required in any other statute or local ordinance or regulations, provisions of this article shall govern. When the provisions of any other statute or local ordinance or regulation impose higher standards than are required by the provisions made by this article, the provisions of that statute or local ordinance or regulation shall govern.

(Ord. No. 11-06-17, § 1, 6-21-11)

Secs. 26-507—26-519. - Reserved.

DIVISION 2. - ADMINISTRATION AND ENFORCEMENT

Sec. 26-520. - Enforcement generally; duties of enforcing officers and agencies.

All questions arising in connection with the enforcement of this article shall be presented first to the ordinance administrator who shall be responsible for the day-to-day administration of this article. The board of adjustment shall have the authority to rule on matters of interpretation of this article, consider appeals from decisions of the ordinance administrator, and grant variances from the standards set forth in this ordinance.

(Ord. No. 11-06-17, § 1, 6-21-11)

Sec. 26-521. - Administrator duties.

This article shall be administered by the planning director or his designee. It shall be the duty of the duly appointed administrator to administer and enforce the provisions of this article. If the administrator finds that any of the provisions of this article are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to

correct it. He shall order discontinuance of the illegal construction of retaining walls; removal of illegal retaining walls, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this article to ensure compliance with or to prevent violation of its provisions.

(Ord. No. 11-06-17, § 1, 6-21-11)

Sec. 26-522. - Certificate of compliance.

(a) *Required.* No retaining wall shall be erected, moved, added to or structurally altered, nor shall any building permit be issued until a certificate of compliance has been issued by the administrator. All retaining walls shall meet the requirements noted in this article. No certification of compliance shall be issued except in conformity with the provisions of this article.

(b) *Applications; contents.* Applications for certificates of compliance shall be accompanied by plans showing the actual dimensions of the lot to be built upon, and the location on the lot of the retaining wall(s) proposed to be erected or altered, the location of public or private streets, any planting required by this article, and such other information as may be necessary to provide for the enforcement of the provisions of this article.

(c) *Fees.* The county board of commissioners shall establish certificate of compliance review fees as well as policies, and may amend and update the fees and policies when needed.

(Ord. No. 11-06-17, § 1, 6-21-11)

Sec. 26-523. - Building permit required.

Upon receiving a certificate of compliance, a building permit shall be obtained from the Buncombe County Permits and Inspections Department for the construction or alteration of any retaining wall, pursuant to the section 10-66 et seq. herein.

(Ord. No. 11-06-17, § 1, 6-21-11)

Sec. 26-524. - Certificate of completion required.

In conjunction with the final building inspection, the ordinance administrator shall certify that all requirements of this article have been met. The applicant shall call the ordinance administrator and apply for such certification coincident with the final building inspection or within ten days following completion. A certificate of completion, either for the whole retaining wall system or for a part of the system, shall be issued within 30 days of the application for such certification if the erection or structural alterations of such retaining wall system, or part, shall have been completed in conformity with the provisions of this article. If the certificate of occupancy is denied, the ordinance administrator shall state in writing the reasons for refusal, and the applicant shall be notified of the refusal. A record of all certificates shall be kept on file in the office of the administrator.

(Ord. No. 11-06-17, § 1, 6-21-11)

Sec. 26-525. - Construction progress.

If no substantial construction progress has been made within one year of the date of the issuance of the certificate of compliance, the certificate of compliance becomes invalid. If the building permit issued by Buncombe County Permits and Inspections is rendered invalid for any reason, then the certificate of compliance will also be rendered invalid.

(Ord. No. 11-06-17, § 1, 6-21-11)

Sec. 26-526. - Prevention of violation by legal procedure.

In case any retaining wall is erected, constructed, reconstructed, altered, repaired, converted or maintained in violation of this article, the ordinance administrator or any other appropriate county authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.

(Ord. No. 11-06-17, § 1, 6-21-11)

Sec. 26-527. - Appeals from decision of the ordinance administrator.

(a) *Appeals.* All questions arising in connection with the enforcement of this article shall be presented first to the ordinance administrator, and such questions shall be presented to the board of adjustment only on appeal from a ruling of the administrator. Any order, requirement, decision, or determination made by the administrator may be appealed to the board of adjustment pursuant to the procedure found in section 78-623. Where "zoning administrator" is stated in section 78-623, "administrator" shall be substituted for the purposes of this article.

(Ord. No. 11-06-17, § 1, 6-21-11)

Secs. 26-528—26-539. - Reserved.

DIVISION 3. - STANDARDS

Sec. 26-540. - Retaining wall standards.

(a) *Terracing.* The terracing of retaining walls is required when the cumulative vertical height of the wall system exceeds 20 feet. Walls shall be terraced in order to provide for increased stability and maintenance of the wall. The lowest level of a terraced retaining wall system may be no more than 20 feet tall at its highest point, and each successive level of terracing may not exceed 15 feet in height. Terraces may be used for vegetative plantings as required by this ordinance. The required width of the terrace shall account for the type and size equipment needed for proper maintenance of the wall but in no case shall be less than ten feet. The above terracing requirements shall not apply where:

(1) The wall or wall system serves as the structural support wall of a connected building or structure.

(2) Soil-nailing techniques are utilized.

(b) *Landscaping.* Retaining walls shall be located in such a way as to provide for the required minimum planting requirements as set forth below. Foreground landscaping and attached vegetative screening shall be required for retaining walls and retaining wall systems if:

(1) The wall or wall system exceeds 20 feet in height and the base of the wall system is closer than 100 feet to the edge of the road surface of a public or private street.

(2) The cumulative vertical height is greater than 30 feet regardless of proximity to a public or private street.

Bushes must be placed on terraces as required below regardless of the cumulative height of the wall system or its proximity to a street.

Foreground landscaping or attached vegetative screening may be considered part of any required buffer, as applicable. The application of the required planting shall be based on the cumulative height of the terraced walls. Deciduous and evergreen tree planting requirements shall apply only to the ground level at the base of the retaining wall system. Trees shall not be planted in terraces. The required width of the planting strip for trees shall account for the species and respective drip line distance to ensure tree root systems do not impact the retaining wall foundation.

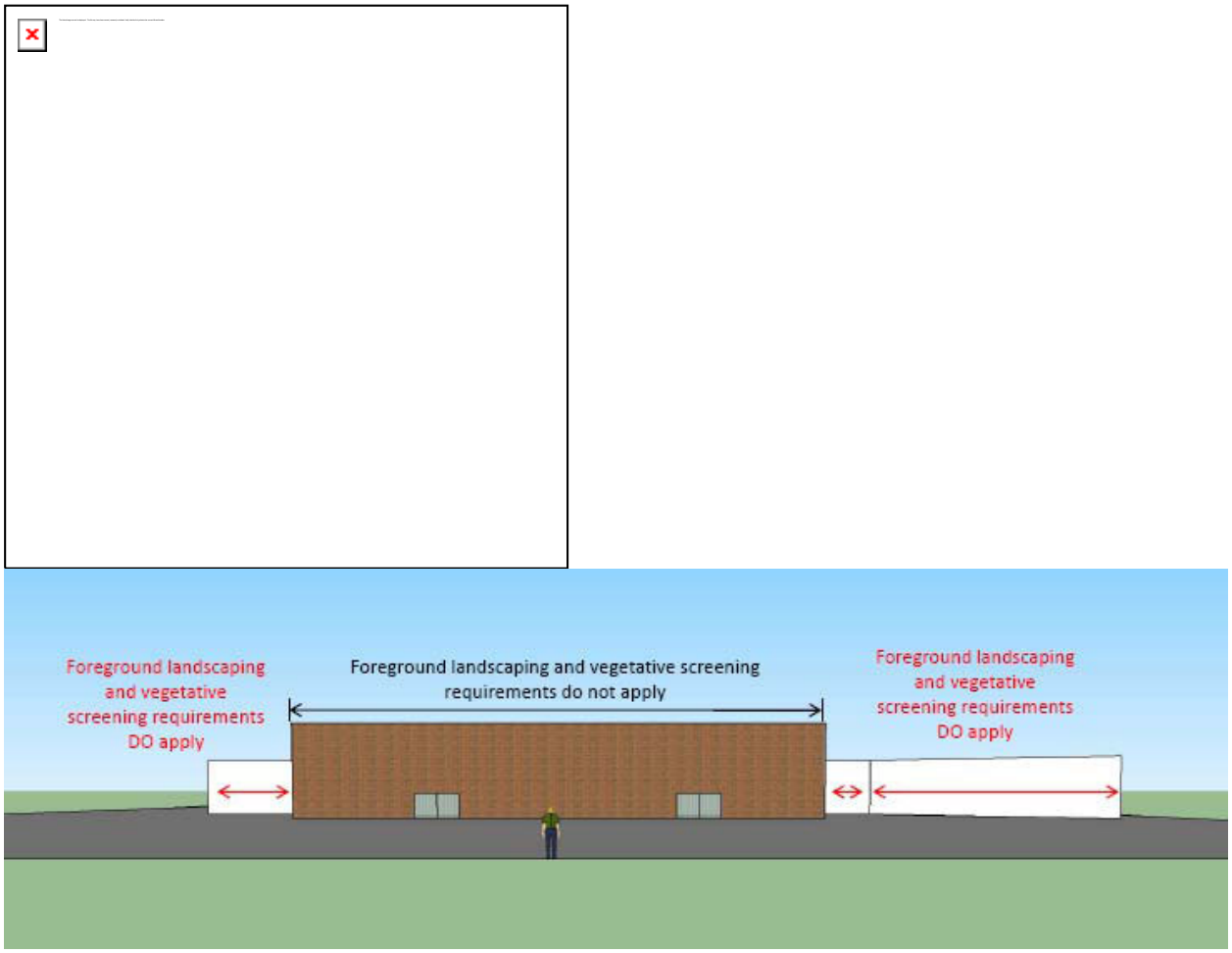
Planting of bushes and vegetative screening shall occur at each base level of any terraced system. Attached vegetative screening supports shall consist of vine supports structurally integrated into the wall to support vine planting.

Planting as required by this section must meet the spacing and species requirements as set forth below. Any of the required plantings which do not survive within the first year must be replaced to the specifications set forth in this ordinance.

(3) Exemptions:

a. In locations where the wall or wall system serves as the structural support wall of a connected building or structure the planting requirements set forth herein shall not apply.

b. Where the face of the wall shall be blocked from ground-level view by a building or structure when standing parallel to the plane of the wall on the property line aligned with the center of the structure, the foreground landscaping and vegetative screening requirements set forth herein shall not apply to that portion of the wall or wall system.



Planting Requirements

Retaining Wall System Height	Minimum Required Foreground Landscaping: Trees	Minimum Required Foreground Landscaping: Bushes	Minimum Required Terrace Landscaping: Bushes on Terraces	Minimum Required Attached Vegetative Screening
≤ 20 feet	none	none	none	none
> 20 feet to 30 feet	One small deciduous tree species and one evergreen species for every 30 linear feet, spaced 15	1 row of 3 gallon-sized bushes planted 5 feet on center with adequate	1 row of 3 gallon-sized bushes planted 5 feet on center with adequate	Attached vegetative screening supports covering 50% of the wall face and

	feet apart on center, alternating between deciduous and evergreen species	distance from terrace edges to provide for root growth	distance from terrace edges to provide for root growth	planting consisting of 2 gallon-sized vines planted 3 feet on center
>30 feet	One large deciduous tree species and one evergreen species for every 40 linear feet, spaced 20 feet apart on center, alternating between deciduous and evergreen species	2 rows of 3 gallon-sized bushes planted 5 feet on center with adequate distance from terrace edges to provide for root growth	2 rows of 3 gallon-sized bushes planted 5 feet on center with adequate distance from terrace edges to provide for root growth	Attached vegetative screening supports covering 75 percent of the wall face and planting consisting of 2 gallon-sized vines planted 3 feet on center

Approved Species List for Planting Requirements

East/North Facing	South/West Facing
Large Deciduous Trees (minimum 2" caliper)	
Tulip Poplar	Tulip Poplar
Sycamore	Sycamore
Red Maple	Red Maple
River Birch	River Birch
Winter King Hawthorne	Winter King Hawthorne
Sweetgum	Sweetgum
Southern Magnolia	Southern Magnolia
Chinese Elm	Chinese Elm
Japanese Zelcova	Japanese Zelcova
Blackgum	
Chestnut Oak	
White Oak	
Sugar Maple	
Small Deciduous Trees (minimum 1.5" caliper)	
Redbud	Redbud
Sourwood	Sourwood
Cherry	Cherry
Star Magnolia	Star Magnolia
Serviceberry	Kousa Dogwood
Dogwood	

Evergreen Trees (minimum 6' height)	
Nellie Stevens Holly	Nellie Stevens Holly
Green Giant Arborvitae	Green Giant Arborvitae
Nigra Arborvitae	Nigra Arborvitae
Virginia Pine	Virginia Pine
Hetzi Juniper	Hetzi Juniper
Eastern Red Cedar	Eastern Red Cedar
Attached Vegetative Screening (2 gallon-sized buckets)	
Virginia Creeper	Carolina Jessamine
Dutchman's Pipe	Trumpet Vine
Crossvine	
Boston Ivy	
Bushes (3 gallon-sized buckets)	
Otto Luykens Laurel	Otto Luykens Laurel
Schip Laurel	Schip Laurel
Juniper	Juniper
Littleleaf Japanese Holly	Littleleaf Japanese Holly
Littleleaf Boxwood	Littleleaf Boxwood
Hydrangea	Hydrangea
Virginia Sweetspire	Virginia Sweetshrub
Summersweet	Summersweet
Dwarf Winterberry	Dwarf Winterberry
Weigela	Weigela
Mountain Laurel	Yucca
Fotergilla	Smoot Sumac
Winter Jasmine	Winter Jasmine

(4) Variances. Application for a variance from the landscaping requirements set forth in subsection 26-540(b) may be made pursuant to the procedure found in section 78-623, shall be subject to the standards set forth in subsection 78-621(4), and will be heard by the board of adjustment.

The board of adjustment will consider evidence provided as to meet the standards set forth in subsection 78-621(4), as applicable to the request.

(c) *Safety barrier required.* The installation of fencing shall be required at the top level of the retaining wall or retaining wall system in order to deter unsafe activities near the edge of the wall. Fencing at a minimum shall be four feet tall, and shall consist of a chainlink or a solid visual barrier fence. Installation of a guardrail shall also be required where vehicular traffic will be within ten feet of the edge of the top level of the retaining wall.

(d) *Engineer certification required.* Retaining systems providing a cumulative vertical relief greater than ten feet shall provide final certification to the planning department by the design engineer that the constructed wall has been built to design specifications as approved by the Buncombe County Permits and Inspections Department and indicate:

(1) The foundation support system is adequate for the intended site conditions;

(2) Measurement of the quality of construction materials for conformance with building code specifications;

(3) Determination of the similarity of actual soil conditions to those anticipated in design; and

(4) Examination of backfill materials and any drainage systems for compliance with plans and specifications.

If the administrator has determined that the design engineer is unable to provide final certification, the administrator may choose to accept certification from another engineer.

(e) *Enabling the longterm monitoring of retaining wall systems.* Retaining walls which are large or lengthy can pose a public safety hazard or impact the environment upon failure. The purpose of this section is to enable or provide for the long term monitoring of large retaining walls to ensure public safety and protect natural resources.

Upon completion of a retaining wall system greater than 40 feet in cumulative height, the owner, at a minimum, shall have a survey performed by a North Carolina licensed surveyor of the location of the wall. Said survey(s) shall be performed within 30 days of the completion of any section of the wall to the standards set forth in this section and shall be recorded at the Buncombe County Register of Deeds.

(1) The survey shall include both vertical and horizontal data sufficient to establish a baseline datum for future inspections.

(2) Wall slope and any existing cracks, undulations or anomalies shall be included in the survey.

(3) The surveyor shall set no less than two permanent control markers on site, to be protected by a recorded easement. The permanent control markers shall be set in a location that is independent of any movement related to the retaining wall. The permanent control markers shall be set in a position such that the wall can be readily located and shall consist of concrete monuments with discs and markings easily related to the recorded plat. The permanent control markers shall contain coordinates and elevations tied to the North Carolina grid system and NAVD 88.

(4) Permanent reference marks on each retaining wall terrace shall be established and tied to the permanent control markers described in subsection (3) above. The surveyor, in cooperation with the design engineer, shall determine the appropriate amount and location of reference marks to be placed in the wall for monitoring purposes. The survey of the permanent reference marks tied to the wall system shall be performed to obtain a positional accuracy (error probability of 95 percent) of 0.007 m horizontally and 0.010 m vertically relative to the permanent control markers established on site separate from the wall system.

The design engineer shall consider methods and techniques which monitor and abate unfavorable conditions behind the wall. These conditions include, but are not limited to, water pore pressure, foundation settlement, increased lateral soil pressure, failure of lateral wall support and corrosive conditions.

(Ord. No. 11-06-17, § 1, 6-21-11)

Chapter 38 - HISTORICAL PRESERVATION[1]

Footnotes:

--- (**1**) ---

Cross reference— Buildings and building regulations, ch. 10; planning and development, ch. 58; zoning, ch. 78.

State Law reference— Authority to list, regulate and acquire historic districts and landmarks, G.S. 160~~A-400.1~~D-940 et seq.

ARTICLE I. - IN GENERAL

Sec. 38-1. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alteration means any change because of construction, repair, maintenance, or otherwise to buildings located within an historic district or designated as an historic property.

Archaeological resource means that material evidence of past human activity which is found below the surface of the ground or water, portions of which may be visible above the surface.

Building means any structure, place, or other construction built for the shelter or enclosure of persons, animals, chattels, or any part of such structure when subdivided by division walls or party walls extending to or above the roof and without opening in such separate walls.

Certificate of appropriateness means a document evidencing approval of the commission for work proposed in an historic district by an applicant.

City means the City of Asheville.

City council means the city council of Asheville, North Carolina.

Commission or *resources commission* means the Historic Resources Commission of Asheville and Buncombe County.

Commissioners means the members of the Historic Resources Commission of Asheville and Buncombe County.

Construction means the erection of any onsite improvements on any parcel of ground located within an historic district or on an historic site, whether the site is presently improved, unimproved, or hereafter becomes unimproved by demolition, destruction of the improvements located thereon by fire, windstorm, or other casualty.

Demolition means the complete or constructive removal by an applicant of a building on any site.

Department means the state department of cultural resources.

Designation means the creation of an historic district or an historic property through the passage of an ordinance by the appropriate governing body.

Exterior features means and includes 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 color and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, exterior features shall be construed to mean the style, material, size, and location of all such signs. Exterior features may, in the discretion of the local governing board, include color and important landscape and natural features of the area.

Governing body or *body* means the city council and/or the county board of commissioners as their authority applies.

Historic district means an area containing buildings, structures or places which have a special character and ambiance, based on one or more of the following:

(1) Historic value;

(2) Notable architectural features representing one or more periods or styles of architecture of an era of history; and

(3) The cultural and aesthetic heritage of the community, and which area constitutes a specific physical area of such significance to warrant its conservation, preservation and protection from adverse influences.

Historic property means any site, landmark, structure, artifact, above or below the ground or water, which is so designated by ordinance of either the city council or the county board of commissioners.

Local planning board means the planning and zoning commission of the city or similar agency to be named for the county.

Ordinary repairs and maintenance means work done on a building to prevent it from deterioration or to replace any part thereof in order to correct any deterioration, decay, or damage to a building on any part thereof in order to restore same as nearly as practical to its condition prior to such deterioration, decay or damage.

(Ord. No. 18594, § 2, 12-2-86)

Cross reference— Definitions generally, § 1-2.

Sec. 38-2. - Penalty for violation of chapter.

Any person violating any provision of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with section 1-7.

(Ord. No. 18594, § 5, 12-2-86)

Secs. 38-3—38-25. - Reserved.

ARTICLE II. - HISTORIC RESOURCES COMMISSION[2]

Footnotes:

--- (**2**) ---

Cross reference— Administration, ch. 2.

State Law reference— Authority to create historic preservation commission, G.S. 160A-400.7.

Sec. 38-26. - Establishment.

There is hereby established an historic resources commission which shall serve jointly as the Historic Districts and Historic Properties Commission for the city and the county under the authority of G.S. 160D-303 (former G.S. 160A-400.1) et seq.

(Ord. No. 18594, § 1(A), 12-2-86)

Sec. 38-27. - Membership.

(a) *Composition; terms.* The commission shall consist of 12 members. All members of the commission shall reside within the city or county. In addition, the members of the resource commission shall have demonstrated special interest, experience or education in history, archaeology or architecture. The terms of the commissioners shall be three years, with replacements to be appointed at the rate of four commissioners per year.

(b) *Appointment.* Initially, the commissioners shall be appointed for staggered terms in the following manner: six members shall be appointed by the city council and six by the county board of commissioners.

(c) *Replacement.* For replacement appointments two commissioners will be appointed by the city council and two commissioners by the board of commissioners.

(d) *Additional terms.* The members of the resources commission shall serve at the pleasure of the appointing governing body. Commissioners may be reappointed for additional terms at the discretion of the appointing governing body.

(Ord. No. 18594, § 1(B), 12-2-86; Ord. No. 10-08-17, § 1, 8-17-10)

Sec. 38-28. - Officers.

The resources commission shall select from among its members a chairperson, vice-chairperson, secretary and treasurer, who shall be elected annually by the commissioners.

(Ord. No. 18594, § 1(C), 12-2-86)

Sec. 38-29. - Adoption of bylaws.

Upon its first formal meeting, and prior to performing any duties under this chapter or under G.S. 160D-940 (former 160A-400.1) et seq., the resources commission shall adopt bylaws governing the commission's actions which are not governed by this chapter or state law.

(Ord. No. 18594, § 1(D), 12-2-86)

Sec. 38-30. - Appropriation of budget; use of funds.

An annual budget may be appropriated by the city council and the county board of commissioners by a predetermined participation ratio. These funds shall be used by the resources commission for necessary expenditures, including, but not limited to, the employment of such staff as it may require, and shall determine the staff's qualifications, duties and compensation. Further, the commission may, with the consent of the city council and the county board of commissioners call upon the city or county for such support services as it may require.

(Ord. No. 18594, § 1(E), 12-2-86)

Sec. 38-31. - Commission to act in dual role.

The historic resources commission shall perform the duties of both an historic districts commission and an historic properties commission and shall conform their actions to this chapter and the statutory directive when acting in either capacity.

(Ord. No. 18594, § 1(F), 12-2-86)

Secs. 38-32—38-50. - Reserved.

ARTICLE III. - HISTORIC DISTRICTS

DIVISION 1. - GENERALLY

Secs. 38-51—38-60. - Reserved.

DIVISION 2. - ROLE OF GOVERNING BODY

Sec. 38-61. - Designation of historic districts generally.

(a) Until and unless the county board of commissioners adopts a zoning ordinance, the provisions of this division shall apply only to the city.

(b) On recommendation by the resources commission and on completion of the procedure stated in this division, the governing body may enact an ordinance designating an historic district. No historic district may exist without an ordinance designating it as such.

(c) The board of commissioners shall enact ordinances pertaining to its jurisdiction, and the city shall enact ordinances pertaining to its jurisdiction. If the recommended district lies partially in both jurisdictions, then the city and the county must act together in passing the ordinance.

(Ord. No. 18594, § 3(A)(1), 12-2-86)

Sec. 38-62. - Ordinance procedure.

(a) The governing body may, as part of a zoning ordinance enacted or amended pursuant to this division, designate (and from time to time amend) one or more historic districts within the area subject to the ordinance. Such ordinance may treat historic districts either as a separate use districts classification or as districts which overlap other zoning districts. Where historic districts are designated as separate use districts, the zoning ordinances may include among permitted uses those uses found by the resources commission to have existed during the period sought to be restored or preserved, or to be compatible with the authentic restoration or preservation of the district. No historic district shall be designated until:

(1) The local planning board shall have made an investigation and report on the historic significance of the buildings, structures, features, sites or surroundings, evidence of which is above or below the surface of the ground or water, included in any such proposed district, and shall have prepared a description of the boundaries of such district.

(2) The department of cultural resources, acting through such agent or employee as may be designated by its secretary, shall have made an analysis of and recommendations concerning such report and description of proposed boundaries. Failure of the department to submit its analysis and recommendations to the municipal governing body within 30 days after a written request for such analysis has been mailed to it shall relieve the governing body of any responsibility for awaiting such analysis, and such body may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

(b) The governing body may also, in its discretion refer the planning board's report and proposed boundaries to the resources commission or other interested body for its recommendations prior to taking action to amend the zoning ordinance.

(c) On receipt of these reports and recommendations, the governing body may proceed in the same manner as would otherwise be required for the adoption or amendment of any appropriate zoning ordinance provisions.

(Ord. No. 18594, § 3(A)(2), 12-2-86)

Secs. 38-63—38-75. - Reserved.

DIVISION 3. - ROLE OF RESOURCES COMMISSION

Sec. 38-76. - Designation of historic districts generally.

(a) The resources commission may initiate proposals to the governing body pertaining to the designation of any historic district.

(b) The resources commission shall work with the local planning board in its effort to investigate and report on the historic significance of any proposed historic district.

(c) The resources commission may supplement the report of the local planning board as the commission desires.

(Ord. No. 18594, § 3(B)(1), 12-2-86)

Sec. 38-77. - Issuance of certificates of appropriateness for certain uses.

(a) From and after the designation of an historic district, no exterior portion of any building or other structure, including stone or masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features; nor aboveground utility structure; nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the resources commission. Further, no archaeological resource associated with such a structure shall be altered, moved or removed within such district until after an application for a certificate of appropriateness as to the archaeological evidence has been submitted to and approved by the resources commission. The governing body shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for 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 division. A certificate of appropriateness shall be required whether or not a building or other permit is required.

(b) For purposes of this division, exterior features shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind of texture of the building material, size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In case of outdoor advertising signs, exterior features shall be construed to mean the style, material, size and location of all such signs. Such exterior features may, in the discretion of the local governing board, include color and important landscape natural features of the area.

(c) The commission shall have no jurisdiction over interior arrangement and shall take no action under this section except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, other significant features or preventing the alteration, move or removal of archaeological evidence in the district which would be incongruous with the special character of the district.

(d) Prior to issuance or denial of a certificate of appropriateness the commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application made by the property owners. An appeal may be taken to the board of adjustment from the commission's action in granting or denying the certificate in the same manner as any other appeal to such board. Any appeal from the board of adjustment's decision in any such case shall be heard by the county superior court in which the municipality is located.

(e) The state department of cultural resources, acting through any agent or employee designated by its secretary, shall, either upon the request of the department or at the initiative of the resources commission, be given an opportunity to review, comment and make recommendations upon the substance and effect of any application for a certificate of appropriateness in any historic district established pursuant to this article and G.S. 160D-940 (former 160A-400.1) et seq. Its comments and recommendations may be provided in writing to the resources commission or made orally at any public hearing held in connection with the application. The commission shall consider these comments and recommendations prior to the issuance of a certificate of appropriateness. If any certificate is issued contrary to the recommendations of the department, the commission shall enter the reasons therefor in the minutes of the meeting at which such action is taken, and a copy of the minutes shall be forwarded to the department by the commission's secretary.

(f) If the department does not submit its comments or recommendations in connection with any application within 30 days following receipt by the department of any materials needed for its review of the application, whether such review is at the request of the department or the commission, the commission and any city or county governing board shall be relieved of any responsibility to consider those comments and recommendations. In this case, the certificate of appropriateness may thereafter be issued without regard to the requirements of this section.

(Ord. No. 18594, § 3, 12-2-86)

Sec. 38-78. - Permitted uses.

Nothing in this division shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in an historic district which does not involve a change in design, material, color, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition.

(Ord. No. 18594, § 3(A)(3), 12-2-86)

Sec. 38-79. - Delay in demolition of historic buildings.

From and after the designation of an historic district, no building or structure therein shall be demolished or otherwise removed until the owner thereof shall have given the resources commission 180 days' written notice of his proposed action. During such 180-day period, the resources commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the building. If the resources commission finds that the building involved has no particular historic significance or value toward maintaining the character of the district, it may waive all or part of such 180-day period and authorize earlier demolition or removal. However, nothing herein shall prevent the property owner from demolishing the structures after the expiration of the 180-day period.

(Ord. No. 18594, § 3, 12-2-86)

Secs. 38-80—38-100. - Reserved.

ARTICLE IV. - HISTORIC PROPERTIES

DIVISION 1. - GENERALLY

Sec. 38-101. - Appropriations.

The local governing board is authorized to make appropriations to the resources commission established pursuant to this article in any amount that it may determine necessary for the expenses of the operation of the commission, and may make available any additional amounts necessary for the acquisition, restoration, preservation, operation and management of historic properties, including historic buildings, structures, sites, areas or objects designated as historic properties, or of land on which historic buildings or structures are located or to which they may be removed.

(Ord. No. 18594, § 4(F), 12-2-86)

Sec. 38-102. - Ownership of property.

All historic properties acquired by funds appropriated by the city or county shall be acquired in the name of the city or county unless otherwise provided by the governing board. So long as they are owned by the city or county, historic properties may be maintained by or under the supervision and control of the city or county. However, all historic properties acquired by the resources commission from funds other than those appropriated by the city or county may be acquired and held in the name of the commission, the city or county, or both.

(Ord. No. 18594, § 4(G), 12-2-86)

Sec. 38-103. - Application of article to publicly owned buildings and structures.

Nothing in this article shall be construed to prevent the regulation or acquisition of historic properties owned by the state or any of its political subdivisions, agencies, or instrumentalities.

(Ord. No. 18594, § 4(H), 12-2-86)

Sec. 38-104. - Remedies.

In case any building, structure, site, area or object designated a historic property is about to be demolished, whether as the result of deliberate neglect or otherwise; or materially altered, remodeled or removed, except in compliance with this article, the city or county or the resources commission may institute any appropriate action or proceeding to prevent such unlawful demolition, material alteration, remodeling or removal; to restrain, correct or abate such violation; or to prevent any illegal act or conduct with respect to such historic property.

(Ord. No. 18594, § 4(I), 12-2-86)

Sec. 38-105. - Appeals; statute of limitations.

(a) Any person aggrieved by any decision or the action of the historic resources commission shall have the right to appeal such action to the governing body who has jurisdiction in the area where the property is located.

(b) Likewise, any person aggrieved by any decision of the board of commissioners and the city council in enacting any ordinance under the powers conferred by this article shall have the right to file a civil suit in a court of competent jurisdiction within 60 days from the date of decision by the governing body.

(Ord. No. 18594, § 5(A), 12-2-86)

Secs. 38-106—38-115. - Reserved.

DIVISION 2. - ROLE OF GOVERNING BODY

Sec. 38-116. - Designation of historic properties generally.

The designation of an historic property shall be effected through an ordinance passed by the governing body in whose jurisdiction the recommended property is located.

(Ord. No. 18594, § 4(A)(1), 12-2-86)

Sec. 38-117. - Adoption of an ordinance; criteria for designation.

(a) Upon complying with G.S. 160D-946~~160A-400.6~~, the governing body may adopt and from time to time amend or repeal an ordinance designating one or more historic properties. No property shall be recommended for designation as a historic property unless it is deemed and found by the properties commission to be of special significance in terms of its history, architecture, and/or cultural or archaeological importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association. In addition, the governing body may consider also the suitability of the property for preservation or restoration; educational value; cost of acquisition, restoration, maintenance, operation or repair; possibilities for adaptive or alternative use of the property; appraised value; and the administrative and financial responsibility of any person or organization willing to underwrite all or a portion of the costs.

(b) The ordinance shall describe each property designated in the ordinance, the name of the owner of the property, and any other information the governing board deems necessary within the authority of this article and G.S. 160D-940 et seq~~160A-400.1—160A-400.14~~. For each building, structure, site, area or object designated as an historic property, the ordinance shall require that a 180-day waiting period is observed prior to its demolition, material alteration, remodeling or removal. For each designated historic property, the ordinance shall also provide for a suitable sign on the property stating that the property has been designated. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way.

(Ord. No. 18594, § 4(A)(2), 12-2-86)

State Law reference— Similar provisions, G.S. 160D-945~~160A-400.5~~.

Secs. 38-118—38-130. - Reserved.

DIVISION 3. - ROLE OF RESOURCES COMMISSION

Sec. 38-131. - Powers.

The resources commission appointed or designated pursuant to this article shall be authorized to:

(1) Recommend to the city or county governing board structures, sites, areas or objects to be designated by ordinance as "historic properties."

(2) Within budgetary limits acquire the fee or any lesser included interest to any such historic properties, to hold, manage, restore and improve the same, and to exchange and dispose of the same by sale, lease or otherwise subject to the rights of public access and other covenants and in a manner that will conserve the property for the purposes of this article.

(3) Restore, preserve and operate such historic properties.

(4) Recommend to the governing body that designation of any building, structure, site, area or object as a historic property be revoked or removed.

(5) Conduct an educational program on historic properties within its jurisdiction.

(6) Cooperate with the state, federal and local governments in pursuance of the purposes of this ordinance. The governing body or the commission when authorized by the governing body may contract with the state, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with state or federal law.

(7) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination of survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.

(8) All meetings or hearings of the commission shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public in accordance with G.S. 143-318.9 et seq., the open meetings statute.

(Ord. No. 18594, § 3, 12-2-86)

State Law reference— Similar provisions, G.S. 160D-942~~160A-400.8~~.

Secs. 38-132—38-140. - Reserved.

DIVISION 4. - ORDINANCES

Sec. 38-141. - Required procedures.

(a) No ordinances designating an historic building, structure, site, area or object nor any amendment thereto may be adopted, nor may any property be accepted or acquired by the resources commission or the governing board of a city or county, until the following procedural steps have been taken:

(1) The commission shall make or cause to be made an investigation and report on the historic, architectural, educational, archaeological and cultural significance of each historic property proposed for designation or acquisition.

(2) The department of cultural resources, or another agent or employee of the department designated by the secretary, shall make an analysis of and recommendations concerning the report of this historic properties commission. This requirement is waived if the department fails to submit its analysis and recommendations to the governing board within 30 days after written request for the analysis has been mailed to the department by the clerk of the city or county governing board. This requirement is also waived with respect to any building, structure, site, area or object of national, state and local historical significance that is currently listed (as certified by the secretary of cultural resources) on the National Register of Historic Places

established by the National Historic Preservation Act of 1966, Public Law 89-655, 16 USCA Section 470a, as amended.

(3) The resources commission and the governing board shall hold a public hearing on the proposed ordinance. Notice of the hearing shall be published at least once in a newspaper generally circulated within the city or county in which the property or properties to be designated or acquired are located, and written notice of the hearing shall be mailed by the resources commission to all owners and occupants of properties whose identity and current mailing address can be ascertained by the exercise of reasonable diligence. All such notices shall be published or mailed not less than ten nor more than 20 days prior to the date set for the public hearing.

(4) Following the joint public hearing, the governing board may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposal.

(5) Upon adoption of the ordinance, the owners and occupants of each designated historic property shall be given written notification of such designation by the governing board, insofar as reasonable diligence permits. One copy of the ordinance and each amendment thereto shall be filed by the historic resources commission in the office of the register of deeds of the county in which the property or properties are located. Each historic property designated in the ordinance shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the register of deeds office, and the resources commission shall pay a reasonable fee for filing and indexing. In the case of any property lying within the zoning jurisdiction of a city, a second copy of the ordinance and each amendment thereto shall be kept on file in the office of the city or town clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and each amendment thereto shall be given to the city or county building inspector, if any. The fact that a building, structure, site, area or object has been designated an historic property shall be clearly indicated on all tax maps maintained by the county or city for such period as the designation remains in effect.

(6) Upon the adoption of the historic properties ordinance or any amendment thereto, it shall be the duty of the commission to give notice thereof to the tax supervisor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes.

(7) From and after designation, no local historic property, nor any associated advertising sign, shall be materially altered, restored, moved, or demolished without issuance of a certificate of appropriateness indicating approval of the action or change. This provision applies to stone walls, fences, exterior light fixtures, steps, pavement, doors, and windows and any other features of the property specifically designated as significant to its historic or architectural character. The governing body shall require such a certificate to be issued by the commission prior to the issuance of a building permit or any other permit granted for purposes of construction or altering structures. A certificate of appropriateness shall be required whether or not a building permit is required.

(8) Prior to issuance or denial of a certificate of appropriateness, the commission shall take such steps as may be reasonably required in the ordinance or rules of procedure to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application. Notification of the public hearing shall be given to all parties having interest no later than ten days prior to the date of the hearing. All meetings of the commission shall be open to the public in accordance with the state open meetings law, G.S. 143-318.9 et seq.

(9) An appeal may be taken to the board of adjustment from the commission's action in granting or denying the certificate in the same manner as any other appeal to such board. Any appeal from the board of adjustment's decision in any such case shall be heard by the Superior Court of Buncombe County.

(10) Guidelines for Rehabilitating Old Buildings published by the U.S. Department of the Interior shall be the standards by which applications for certificate of appropriateness by local historic property owners shall be evaluated.

(11) The department of cultural resources, acting through any agent or employee designated by its secretary, or the state advisory council on historic preservation, shall, either upon the request of the department or at the initiative of the historic resources commission, be given an opportunity to review, make comment and make recommendations upon the substance and effect of any application for a certificate of appropriateness on any local historic property established pursuant to this article and G.S. 160D-940~~160A-400.1~~ et seq. Its comments and recommendations may be provided in writing to the historic commission or made orally at any public hearing held in connection with the application. The commission shall consider these comments and recommendations prior to the issuance of a certificate of appropriateness. If any certificate is issued contrary to the recommendations of the department, the commission shall enter the reasons therefor in the minutes of the meeting at which such action is taken, and a copy of the minutes shall be forwarded to the department by the commission's secretary.

(b) Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any portion or architectural feature of a local historic property which does not involve a change in design, material, color or general appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which the building inspector shall certify is required by the public safety because of an unsafe or dangerous condition.

(Ord. No. 18594, § 4, 12-2-86)

Sec. 38-142. - Prohibitions; required waiting period.

A property which has been designated as an historic property by ordinance as provided in this article may, after notice has been made to the owner, as provided in G.S. 160D-940~~160A-400.1~~ et seq., be demolished, materially altered, remodeled or removed only after 180 days' written notice of the owner's proposed action has been given to the historic resources commission. During this period, the commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the property. During this period, or at any time prior thereto following notice of designation to the owner, as provided in section 38-141(a)(5), and, where such action is reasonably necessary or appropriate for the continued preservation of the property, the commission may enter into negotiations with the owner for the acquisition by gift, purchase, exchanges or otherwise of the property or any interest therein authorized by G.S. 160D-940~~160A-400.1~~ et seq. The commission may reduce the waiting period required by this section in any case where the owner would suffer extreme hardship, not including loss of profit, unless a reduction in the required waiting period were allowed. The commission shall have the discretionary authority to waive all or any portion of the required waiting period, provided that the alteration, remodeling or removal is undertaken subject to conditions agreed to by the commission ensuring the continued maintenance of the architectural or historical integrity and character of the property.

(Ord. No. 18594, § 4(C), 12-2-86)

Sec. 38-143. - Permitted uses.

Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior feature in or on an historical property that does not involve a change in design, material, or outer appearance thereof nor to prevent the construction, reconstruction, alteration, restoration, demolition or removal of any such feature when a building inspector or similar official certifies to the commission that such action is required for the public safety because of an unsafe or dangerous condition. Nothing in this section shall be construed to prevent a property owner from making any use of his property not prohibited by other statutes, ordinances, or regulations.

(Ord. No. 18594, § 4(D), 12-2-86)

Sec. 38-144. - Authority to acquire historic building.

(a) *Resources commission.* The resources commission may, with the approval of the proper governing body, acquire property designated by ordinance as historic property, and may pay therefor out of any funds which may be appropriated for that purpose.

(b) *Governing body.* The governing body may do the following:

(1) Within the limits of its jurisdiction, the governing board may acquire property designated by ordinance as historic property and may pay therefor out of any funds which may be appropriated for that purpose.

(2) The governing body may acquire, maintain, manage, repair, restore, exchange or dispose of any historic resources designated as a historic property under this article.

(3) If the property is acquired under this article but is not used for some other governmental purpose, it shall be deemed to be a museum under the provisions of G.S. 160A-488, and G.S. 153A-445, notwithstanding the fact that the property may be or remain in private use, so long as the property is made reasonably accessible to and open for visitation by the general public.

(Ord. No. 18594, § 4(E), 12-2-86)

Chapter 46 - MANUFACTURED HOMES AND TRAILERS[1]

Footnotes:

--- (**1**) ---

Cross reference— Buildings and building regulations, ch. 10; planning and development, ch. 58, subdivisions, ch. 70; zoning, ch. 78.

State Law reference— Annual registration by counties authorized, G.S. 153A-138; appearance and dimensional criteria authorized, G.S. 160D-910~~153A-341.1~~.

ARTICLE I. - IN GENERAL

Sec. 46-1. - Entrance, movement and setup of all pre-1976 mobile homes within the county.

(a) *Authority.* The county hereby exercises its authority to adopt and enforce a pre-1976 mobile home ordinance under the provision granted by G.S. 153A-121; ~~and~~ 160D-702~~153A-340~~ and 160D-913~~347~~.

(b) *Purpose.* The purpose of this section is to promote the protection of the health, safety and welfare of the communities and to provide an acceptable environment for all the residents of Buncombe County. This section is designed to accomplish the following objectives:

(1) To secure safety from fire, panic and other dangers.

(2) To protect individuals from hazards associated with electrical dangers.

(3) To protect surrounding properties and residents.

(c) *Jurisdiction.*

(1) These regulations shall govern the entrance, movement and set-up of any and all pre-1976 mobile homes within Buncombe County, North Carolina. These regulations apply to all lands lying within the territorial jurisdiction of the county and within the planning jurisdiction of any municipality whose governing body by resolution agrees to such regulation.

(2) No person or persons may locate or cause to be located, any mobile home manufactured prior to 1976 on any lands situated within the county at anytime after the adoption of this section; provided, however, owners of pre-1976 mobile homes currently inhabited shall not be affected by this section but movement of said mobile home is restricted to relocation and inhabitance by the lawful owner or his or her spouse, parent, grandparent and/or child.

(d) *Compliance with other ordinances.* Any and all proposed movement, location and inhabitance of pre-1976 manufactured mobile home within the county, shall comply with all the requirements of any officially adopted ordinance within Buncombe County, North Carolina.

(e) *Effect of existing legislation.* Where this section conflicts with existing ordinances, statutes, or regulations effective in the jurisdiction of this section and enacted by the county, state, or federal government or their agencies, then the ordinance, statute or regulation requiring the higher standard shall apply.

(f) *Penalty.* Any person or persons violating the provisions of this section shall be guilty of a misdemeanor and shall be subject to fine and/or imprisonment as provided by G.S. 14-4(a) and shall be fined not more than $500.00. Each day's continuing violation of this section shall be a separate and distinct offense.

Nothing in this section shall be construed to limit the use of remedies available to the county.

(Ord. No. 05-05-07, Art. I, 5-3-05)

Secs. 46-2—46-25. - Reserved.

ARTICLE II. - RESERVED[2]

Footnotes:

--- (**2**) ---

Editor's note— Ord. No. 97-6-8, § 1, adopted June 17, 1997, rescinded art. II, §§ 46-26, 46-27, 46-41—46-48. Formerly, such sections pertained to mobile homes and derived from Ord. No. 18040, §§ 1—10, 1-1-85; Ord. No. 18914, § 1, 12-1-87.

Secs. 46-26—46-60. - Reserved.

ARTICLE III. - MANUFACTURED HOME PARKS

Sec. 46-61. - Authority and purpose.

This article is enacted pursuant to the general police powers granted to the County by G.S.153A-121. The purpose of this article is to protect the health, safety, and general welfare of citizens of the county, particularly those who are residents of manufactured home parks.

(Ord. No. 96-4-5, art. I, § A, 4-2-96; Ord. No. 98-12-3, 12-15-98)

Sec. 46-62. - Definitions.

The following words, terms and phrases, shall have the specific meaning ascribed to them herein. All other words, terms and phrases shall have their ordinary meaning of common usage in the English language:

All-weather surface means a road surface constructed in compliance with street construction standards in section 46-65.5 below.

Developer means any person, corporation, partnership, or other legal entity engaged in development, or proposed development, of a manufactured home park.

Driveway means access to no more than two manufactured homes or home spaces. A shared driveway shall not exceed 20 percent grade.

Manufactured home means (1) a manufactured, year-round, single-family residential dwelling unit, meeting or exceeding the United States Department of Housing and Urban Development code requirements for manufactured homes (all manufactured homes built after June 14, 1976) or (2) a transportable, factory-built home, designed to be used as a year-round, single-family residential dwelling unit and manufactured prior to the United States Department of Housing and Urban Development code requirements for manufactured homes.

Manufactured home park means a parcel of land upon which three or more manufactured homes, occupied as residences and for which payment to the landowner is being required, are located. Situations where an individual property owner allows relatives to maintain manufactured homes upon his property free of charge are not considered manufactured home parks for purposes of this article, and manufactured homes occupied by lineal relatives of the park owner or collateral relatives of the park owner within the sixth degree of kinship or closer as determined by G.S. Ch. 104A shall not be counted for purposes of defining a manufactured home park. Temporary or seasonal accommodations for travel, vacation or recreational purposes, such as recreational vehicles or "park model" recreational vehicles, except for those recreational vehicles which are located within manufactured home parks at the effective date of this resolution shall not be permitted in manufactured home parks.

Manufactured home park construction permit means a permit issued by the planning department authorizing the manufactured home park developer to construct a manufactured home park in accordance with an approved park plan.

Manufactured home park, major means a manufactured home park having 20 or more spaces.

Manufactured home park, minor means a manufactured home park having up to 19 spaces.

Manufactured home park operating permit means a permit issued by the planning department to a manufactured home park owner or operator upon completion of a manufactured home park which conforms to the requirements of this chapter.

Manufactured home park review board means the board established by this article to oversee enforcement and resolve requests for variances.

Ordinance administrator means the individual designated by the county manager to enforce the provisions of this article.

Recreational vehicle means a vehicular type accommodation, other than a manufactured home, designed as temporary or seasonal accommodations for travel, vacation or recreational purposes, which is propelled by its own motive power or is mounted on or drawn by another vehicle.

Site number means the number attached or painted in four-inch high permanent lettering to the street facing the manufactured home.

(Ord. No. 96-4-5, art. I, § B, 4-2-96; Ord. No. 98-12-3, 12-15-98; Ord. No. 01-07-06, § 1, 7-24-01; Ord. No. 02-03-05, §§ 1—3, 3-19-02)

Sec. 46-63. - Jurisdiction of article.

The provisions of this article shall applicable to all new and existing manufactured home parks and any addition or expansion of existing manufactured home parks lying within the unincorporated areas of the county, but shall not be applicable to and shall not be enforced within the corporate limits or jurisdiction of any municipality unless the governing body of said municipality by resolution agrees to the enforcement of this article therein. Section 46-65 shall not apply to manufactured home parks existing at the effective date of this article, as amended on December 15, 1998.

(Ord. No. 96-4-5, art. I, § C, 4-2-96; Ord. No. 98-12-3, 12-15-98)

Sec. 46-64. - Manufactured home park review board.

The ~~planning board~~board of adjustment shall serve as the manufactured home park review board and shall oversee enforcement of this article and resolve request for variances.

(Ord. No. 96-4-5, art. II, 4-2-96; Ord. No. 98-12-3, 12-15-98; Res. No. 01-01-06, § 1, 1-16-01; Ord. No. 02-12-08, § 1, 12-17-02)

Sec. 46-65. - Permit required to establish manufactured home park.

It shall be unlawful for any person, corporation, partnership or other entity to establish within the jurisdiction of this article any manufacturing home park as heretofore defined without first obtaining a manufactured home park construction permit from the ordinance administrator.

(Ord. No. 96-4-5, art. III, 4-2-96; Ord. No. 98-12-3, 12-15-98; Ord. No. 01-07-06, § 2, 7-24-01)

Sec. 46-65.5. - Criteria for issuance of permit.

In determining whether or not to issue a construction permit for the establishment of a manufactured home park, the ordinance administrator shall require the applicant to submit two copies of the preliminary site plan along with the manufactured home park permit application. The plan shall be clearly and legibly drawn at a scale of not less than one inch = 200 feet. The plan shall depict or have attached the following information:

Title block containing the following:

(1) Name and address of the owner(s) of record;

(2) Name of the manufactured home park;

(3) Location (township, county, state);

(4) Date of plan;

(5) Scale (graphic or written); and

(5.1) All plans or requests for any permit submitted pursuant to this chapter must comply with the Buncombe County Fire Prevention Ordinance. No permit shall be issued without the prior approval of the county fire marshal, or designee.

(6) Tax parcel identification number, PIN.

The following project data:

(1) Total area to be developed; and

(2) Total number of lots.

The following road information:

(1) Location of roads and drives within or abutting the park (show dimensions and grade); and

(2) Road names.

The following utilities information:

(1) Provisions for electrical and telephone service;

(2) Proposed sanitary sewer and water distribution system; and

(3) Provisions for cable television and natural gas service, if applicable.

Other details to be shown are as follows:

(1) North arrow;

(2) Any natural features affecting the site;

(3) The location of the flood hazard, floodway and flood fringe boundaries, if available from county flood maps; and

(4) Location of lots and lot numbers.

An as-built (as constructed) site plan shall be provided prior to issuance of the park permit. If the preliminary plan is identical to the as-built plan, the final site plan is not required. The plan shall be clearly

and legibly drawn at a scale of not less than one inch = 200 feet. The plan shall depict or have attached the following information:

Title block containing the following:

(1) Name and address of the owner(s) of record;

(2) Name of the manufactured home park;

(3) Location (township, county, state);

(4) Date of plan;

(5) Scale (graphic or written); and

(6) Tax parcel identification number, PIN.

The following project data:

(1) Total area developed; and

(2) Total number of lots.

The following road information:

(1) Location of roads and drives within or abutting the park (show dimensions and grade); and

(2) Road names.

The following utilities information:

(1) Provision of electrical and telephone service;

(2) Sanitary sewer location and approval by the Metropolitan Sewage Department or the county health department, as applicable;

(3) Water distribution system location and approval by the Asheville Regional Water Authority, county health department or the state Department of Health, as applicable; and

(4) Provision of cable television and natural gas service, if applicable.

Other details to be shown are as follows:

(1) North arrow;

(2) Any natural features affecting the site;

(3) The location of the flood hazard, floodway and flood fringe boundaries, if available from county flood maps; and

(4) Location of lots and lot numbers.

The plan must satisfactorily document that the following provisions will be adhered to and such provisions must be adhered to throughout the operation of the manufactured home park:

(1) *Street construction standards.*

a. Convenient access to each manufactured home space shall be provided by streets or drives with a minimum of 16 feet graded, drained, and all-weather surfaced for automobile circulation. The owner and/or operator of the manufactured home park shall provide for maintenance of such streets.

b. Streets or drives within the manufactured home park shall intersect as nearly as possible at right angles, and no street shall intersect at less than 60 degrees. Where a street intersects to a public street or road, the design standards of the state department of transportation shall apply.

Road names—Proposed roads which are obviously in alignment with existing roads should be given the same name. All roads shall comply with the applicable provisions of the county street name, street address, and display ordinance.

c. A minimum of two automobile parking spaces (all weather surfaced) shall be provided adjacent to each manufactured home space but shall not be located within any public right-of-way or within any street in the park.

d. Manufactured home park streets to be designated as private shall conform to the following minimum design standards:

Minimum recorded access road right-of-way width: 15 feet

Access roads to manufactured home parks shall traverse a surveyed right-of-way centerline showing calls and distances and its beginning and ending points in relation to adjoining properties.

Minimum manufactured home park street right-of-way: 35 feet

Minimum cul-de-sac right-of-way radius: 45 feet

Horizontal centerline design standards:

Minimum centerline radius: 35 feet

For all roads and drives exceeding 500 feet in length, a turn-around shall be provided by:

1. A cul-de-sac with a minimum street radius of 35 feet; or
2. A T-turnaround to allow a vehicle with a wheel base of at least 25 feet to complete a turning movement with a maximum of one backing movement.

Manufactured home park minimum street width: 16 feet

Street widths and base course shall be increased by 25 percent where street centerline radius is less than 70 feet.

Finished grade, typical cross section, and profiles shall be prepared by a registered land surveyor, professional engineer, or landscape architect currently licensed in the state by the state board of registration for professional engineers and land surveyors of the state board of registration for landscape architects.

e. All roads within a major manufactured home park shall be paved and have a six-inch minimum compacted aggregated base course (ABC) No. 7 stone and have a minimum of 1 ½ inches of bituminous surface treatment, type SA or I-2 as specified by NCDOT. No base course shall be placed on muck, pipe clay, organic matter or other unsuitable matter; minimum compaction rate of subgrade prior to paving shall not be less than 90 percent by modified proctor method, and certified by a licensed engineer.

f. All roads less than or equal to 12 percent in grade within a minor manufactured home park shall have a six-inch minimum aggregated base course (ABC) No. 7 stone. All roads exceeding 12 percent grade shall meet major manufactured home parks street construction standards. No base course shall be placed on muck, pipe clay, organic matter or other unsuitable matter; minimum compaction rate of subgrade shall not be less than 90 percent by modified proctor method, and certified by a licensed engineer.

g. Minimum shoulder width on fill slopes shall not be less than two feet.

h. Maximum grades:

Maximum centerline grade: 18 percent

Tangent grades in excess of 15 percent shall not exceed 200 feet in length and shall have a maximum entrance and exit grade of 15 percent. i.e. Grade 1 = maximum 15 percent, Grade 2 = 15.1 percent to 18 percent, i.e. Grade 1 = 15 percent to 18 percent, Grade 2 maximum 15 percent.

Maximum grade 15 percent where road centerline radius is less than 90 feet.

Grades for 30 feet each way from an intersection shall not exceed 10 percent.

Grades for cul-de-sac and T-turnarounds shall not exceed 10 percent.

(2) *Manufactured home spaces.*

a. Public sewer: All manufactured homes shall be located on individual manufactured home spaces. Each manufactured home space shall contain at least 6,223 square feet of ground area (seven spaces per acre) measured from the centerline of the major or minor manufactured home park road.

No public sewer: All manufactured homes shall be located on individual manufactured home spaces. Each manufactured home space shall contain at least 10,000 square feet of ground area measured from the centerline of the major or minor manufactured home park road. When individual septic tanks are proposed, the minimum space size specified above shall be increased if required by the County Health Department.

b. Each manufactured home space shall be clearly defined.

c. Each manufactured home space shall be located on ground not susceptible to flooding and graded so as to prevent any water from ponding or accumulating on the premises.

d. Each manufactured home shall be located at least 20 feet from any other manufactured home, at least 15 feet from the manufactured home park boundary and at least ten feet from the edge of any interior street.

(3) The county ~~general services~~permits and inspections department shall inspect electrical service before a park may receive final approval.

(4) Every manufactured home park owner or operator shall maintain an accurate record or register which indicates the name of owner and/or occupant of each manufactured home, manufactured home space number, and date of arrival and departure of the occupants. Such records shall be maintained for each owner or occupant for a minimum of three years subsequent to departure.

(5) The ordinance administrator, the county health department, the county ~~general services~~permits and inspections department, and erosion control division of the planning department are authorized and directed to make such inspections as necessary to determine satisfactory compliance with this article, and shall have free access to the premises of manufactured home parks at reasonable times for the purpose of inspections.

(6) Each manufactured home will have a four-inch site number of permanent nature attached or painted to its street side.

(7) It is recommended that each manufactured home have an accessible water cutoff valve outside the skirting.

(8) All applications for a permit must be accompanied by a payment of a nonrefundable processing fee to help cover the costs of design reviews and inspections. The county board of commissioners shall establish plan review fees, and may amend and update the fees annually during the budget process.

(Ord. No. 96-4-5, art. IV, 4-2-96; Ord. No. 96-5-9, § 1, 5-7-96; Ord. No. 98-12-3, 12-15-98; Ord. No. 01-07-06, § 3, 7-24-01; Ord. No. 02-01-01, § 1, 1-5-02; Ord. No. 06-11-08, § 1, 11-21-06; Ord. No. 11-06-04, § 1, 6-7-11)

Sec. 46-65.7. - Issuance of a manufactured home park construction permit and manufactured home park operating permit.

(a) After the manufactured home park application is approved, the planning department shall issue a manufactured home park construction permit. The intent of this permit is to enable the execution of the park plan in the field and shall not be construed to entitle the recipient to offer spaces for rent or lease or to operate a manufactured home park as defined in this article.

(b) If the construction of the park has not begun within 12 months from the issue date of the manufactured home park construction permit, the permit shall be null and void. The administrator may grant a one-year extension of the manufactured home park construction permit if the developer shows cause.

(c) When the construction of the manufactured home park is completed, the developer shall apply to the planning department for a manufactured home park operating permit. If the manufactured home park conforms to the park plan approved by the administrator and other agencies, the planning department shall issue the developer a manufactured home park operating permit. If the park does not conform to the approved plan, the planning department shall delay issuance of the manufactured home park operating permit until it comes into conformity. The manufactured home park operating permit issued to the developer shall constitute authority to lease or rent spaces in the manufactured home park.

(Ord. No. 01-07-06, § 4, 7-24-01)

Sec. 46-66. - Requirements for all manufactured home parks.

The following requirements shall be applicable to all manufactured home parks, whether new, existing or an expansion of an existing park:

(1) It is the duty of each park owner to arrange for the provision of solid waste receptacles of a type approved by the director of ~~general services~~~~permits and inspections~~ solid waste of the county. Each container shall be constructed of a durable material in such a manner as to be strong, not easily corrodible and shall have tight fitting covers. Containers shall be kept clean so that no insect breeding, odor or other nuisance will exist. A sufficient number of containers shall be provided to hold at least one week's accumulation of garbage. All waste receptacles shall be emptied and such waste removed from the park property at least once a week. The owner may remove such wastes himself or contract with a collector serving the area.

(2) Each park owner shall maintain the park property in a clean, sanitary and orderly appearance and vegetation shall be neatly trimmed. The park owner shall not permit the accumulation upon such property, except in approved receptacles, of garbage, refuse, rubbish, litter, trash or other discarded materials, including used building materials, batteries, scrapped appliances, rags, paper, rubber, dismantled or wrecked automobiles or parts thereof, and other ferrous or nonferrous material. Safety hazards such as, but not limited to, open wells, open manholes and abandoned appliances shall be promptly corrected or removed.

(3) It is the duty of the park owner to ensure that all manufactured homes be equipped with underskirting within 60 days of approval of electrical service. If the park owner also owns the home, the underskirting shall be provided by the park owner. All skirting shall be of a material and type manufactured for that purpose and shall be securely attached. Skirting shall be sized from the ground to the lower perimeter of the structure and shall be maintained free from broken sections or pieces. Masonry foundation shall be approved as an alternative to this requirement.

(4) Every home shall be provided with an adequate potable water supply system. "Potable water supply" means direct connection to a well, to a public water utility or equivalent water service

delivery system, and does not include water delivered through a hose or via containers. Every home shall be properly connected to an approved water and sewer system as long as the home is occupied.

(5) It is the duty of the park owner to ensure that all manufactured homes be equipped with anchored steps or stairs from at least two exits. If the park owner also owns the home, steps for the two exits shall be provided by the park owner. Stairs and steps shall be free of holes, grooves and/or cracks large enough to constitute accident hazards. Risers shall be reasonably uniform in height. Handrails, continuous on all open sides of stairs exceeding four risers, shall be installed at least 30 inches high.

(Ord. No. 98-12-3, 12-15-98; Ord. No. 01-07-06, § 5, 7-24-01)

Sec. 46-67. - False statements; penalty for violation.

(a) It shall be unlawful for any person to make any false statement or to submit any altered document in connection with or in support of any application for a permit to establish and operate a manufactured home park. Any violation of this section shall be punishable as class 3 misdemeanor as provided in G.S. 14-4(a).

(b) The establishment or maintenance of a manufactured home park in violation of this article shall be a misdemeanor subject to the penalties and enforcement provisions of G.S. 153A-123. Whenever the ordinance administrator determines that a mobile home park is being operated in violation of the ordinance, a notice will be issued to the owner and/or operator of the park which shall describe the violations with particularity. The owner and/or operator shall have 45 days from the issuance of the notice to correct the deficiencies before any legal proceedings are initiated, except that the notice period may be reduced to no less than five working days upon a finding by the ordinance administrator that the violations are of such serious nature as to constitute an immediate danger to health and safety. No legal action shall be initiated against the park owner, if the park owner files an action for summary ejectment against the owner of the manufactured home, which is the subject of the notice to correct deficiencies, within the 45-day notice period.

(Ord. No. 96-4-5, art. V, 4-2-96; Ord. No. 98-12-3, 12-15-98; Ord. No. 03-02-05, § 1, 2-18-03)

Sec. 46-68. - Appeals and requests for variances.

The denial of a permit by the ordinance administrator, the imposition of any conditions precedent to the issuance of such permit by the ordinance administrator, or any other actions taken by the ordinance administrator in the enforcement of this article, may be appealed to the manufactured home park review board by giving written notice within 15 days of notification of the ordinance administrator's action. Further appeal shall be to the superior court of the County in the nature of certiorari. A petition for writ of certiorari in the superior court must be filed with the clerk of superior court within 30 days after the decision of the manufactured home park review board is sent by first class mail to the adversely affected party. All requests for variances from the requirements set forth in sections 46-65.5 and 46-66 shall be submitted in writing to the manufactured home park review board, and shall state with particularity the reasons for the request and the nature and extent of the variance requested. The board shall act upon the request within 30 days. Appeal from the denial of a variance shall be to the superior court of the county in the nature of certiorari, and shall follow the same procedures as heretofore provided for other appeals from decisions of the manufactured home park review board.

(Ord. No. 96-4-5, art. VI, 4-2-96; Ord. No. 98-12-3, 12-15-98)

Sec. 46-69. - Effective date.

This article shall become effective upon adoption.

(Ord. No. 98-12-3, 12-15-98)

Chapter 58 - PLANNING AND DEVELOPMENT[1]

Footnotes:

--- (**1**) ---

Cross reference— Buildings and building regulations, ch. 10; floods, ch. 34; historical preservation, ch. 38; manufactured homes and trailers, ch. 46; subdivisions, ch. 70; zoning, ch. 78.

State Law reference— Planning and regulation of development, G.S. ~~153A-320~~160D-201 et seq.

ARTICLE I. - IN GENERAL

Secs. 58-1—58-10. - Reserved.

ARTICLE II. - PLANNING BOARD[2]

Footnotes:

--- (**2**) ---

Editor's note— Ord. No. 16-11-05 , § 1, adopted Nov. 1, 2016, amended Art. II in its entirety to read as herein set out. Former Art. II, §§ 58-11—58-15 pertained to similar subject matter, and derived from Ord. No. 20272, §§ 1—5, adopted Sept. 7, 1993; and Ord. No. 96-6-10, §§ 1, 2, adopted June 18, 1996.

State Law reference— Authority to create a planning agency, G.S. ~~153A-321~~160D-301.

Sec. 58-11. - Creation.

The board of commissioners hereby establish the county planning board under the authority granted in G.S. 160D-301~~153A-321 and G.S. 153A-322~~.

(Ord. No. 16-11-05 , § 1, 11-1-16)

Sec. 58-12. - Composition and vacancies.

The county planning board, referred to in this article as the planning board, shall consist of nine members. A quorum shall consist of five planning board members. A record of members present should be maintained. All planning board members shall be citizens and residents of the county, and shall be appointed by the board of commissioners. Members of the county planning board shall serve staggered terms. New appointments for terms of three years shall be made. Vacancies shall be filled as they occur by the board of commissioners for the period of the unexpired term.

(Ord. No. 16-11-05 , § 1, 11-1-16)

Sec. 58-13. - Organization; rules; meetings; records.

The planning board shall annually elect a chair and a vice-chair from among its members. The term of the chair and other officers shall be one year, with eligibility for reelection. The planning board shall keep a record of its members' attendance.

The planning board shall hold at least one meeting monthly at a specified time and place and all of its meetings shall be open to the public. Special meetings of the planning board may be called at any time by the chair or by request of four or more members of the planning board. At least 48 hours' written notice of the time and place of meeting shall be given by the chair to each member of the planning board. All planning board meetings are to be held in accordance with G.S. 143-318.9 et seq., commonly referred to as the Open Meeting Law.

Cancellation of meetings. Whenever there are no applications or other business for the planning board, or whenever so many regular members notify planning staff of their inability to attend such that a quorum will not be available, the planning director or his/her designee may dispense with a meeting by giving written or oral notice to all members.

The planning board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and also keep records of its examinations and other official actions.

(Ord. No. 16-11-05 , § 1, 11-1-16)

Sec. 58-14. - Reserved.

Sec. 58-15. - Powers and duties.

The planning board shall have the power to perform the following duties:

(1) Make studies of the area within its jurisdiction.

(2) Determine objectives to be sought in the development of the study area.

(3) Prepare and adopt plans for achieving these objectives.

(4) Develop and recommend policies, ordinances, administrative procedures and other means of carrying out plans in a coordinated and efficient manner.

(5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans.

(6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct.

(7) Perform any other related duties that the board of commissioners may direct.

(Ord. No. 16-11-05 , § 1, 11-1-16)

Sec. 58-16. - Rules of conduct.

(a) Members of the planning board may be removed by the board of commissioners for cause, including violation of the rules stated in this section.

(b) Faithful attendance at meetings of the planning board and conscientious performance of the duties required of members of the planning board shall be considered a prerequisite of continuing membership on the planning board.

(c) No planning board member shall accept any gift, whether in the form of a service, a loan, a thing of value, or a promise, from any person, firm, or corporation that, in the member's knowledge, is interested directly or indirectly in any manner whatsoever in business dealings with the county.

(d) No planning board member shall accept any gift, favor, or thing of value that may tend to influence that board member in the discharge of duties.

(e) No planning board member shall grant any improper favor, service, or thing of value in the discharge of duties.

(f) The chair, or in his or her absence the vice-chair, may administer oaths and request the attendance of witnesses in accordance with G.S. 160D-406~~153A-345.1~~.

(g) All regular members shall vote on any issue unless they have disqualified themselves for one or more of the reasons listed in this article or as may be required by law. The concurring vote of four-fifths of the board shall be necessary to grant a variance, or as otherwise required by law. In all other matters, the vote of a majority of the members present and voting shall decide issues before the planning board. For purposes of this article, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority.

(Ord. No. 16-11-05 , § 1, 11-1-16)

Sec. 58-17. - Regular business.

(a) *Order of business.*

(1) The order of business at regular planning board meetings shall be as follows:

a. Discussion/adjustment/approval of agenda.

b. Approval of minutes of previous meeting.

c. Business.

d. Discussions.

e. Public comment.

f. Adjournment.

The case before the board shall be presented by staff and parties in interest shall have privileges of the floor as designated by the chair.

(2) The order of business at special meetings of the planning board shall be as follows:

a. Business as announced in the notice of the special meeting.

b. Adjournment.

(3) Action by the board: The board shall proceed by motion. Any member, including the chair, may make a motion. All motions require a second before the motion can be discussed. A member may make only one motion at a time. A substantive motion is out of order while another substantive motion is pending. A motion shall be adopted by a majority of the votes cast. The chair shall state the motion and then open the floor to board members for debate. The chair shall preside over the debate according to these general principles:

a. The introducer (the member who makes the motion is entitled to speak first);

b. A member who has not spoken on the issue shall be recognized before someone who has already spoken;

c. To the extent possible, the debate shall alternate between opponents and proponents of the measure.

(4) Procedural motions: These procedural motions, and no others, shall be in order. All motions require a second before the motion can be discussed. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority vote for adoption.

In order of priority (if applicable), the procedural motions are:

a. To adjourn. The motion may be made at any time by a member of the board and would require majority vote.

b. To take a recess.

c. Call to follow the agenda. The motion must be made at the first reasonable opportunity or it is waived.

d. To suspend the rules. The motion requires a vote equal to a quorum.

e. To divide a complex motion and consider it by paragraph.

f. Call of the previous question. The motion is not in order until every member of the board has had at least one opportunity to speak.

g. To postpone to a certain time or day.

h. To amend. An amendment to a motion must be germane to the subject matter of the motion, but it may achieve the opposite effect of the motion.

i. To reconsider. The motion must be made by a member who voted with the prevailing side. The motion must be made at either the same meeting at which the original vote was taken or the next regular meeting. The motion cannot interrupt deliberation or a pending matter but is in order at any time before adjournment or the next regular meeting.

j. To rescind or repeal.

k. To ratify.

l. Withdrawal of a motion. A motion may be withdrawn by the introducer at any time before a vote.

(5) Reference to Robert's Rules of Order: To the extent not provided for in these rules and to the extent that the reference does not conflict with the spirit of these rules, the board shall refer to Robert's Rules of Order for unresolved procedural questions.

(Ord. No. 16-11-05 , § 1, 11-1-16)

Sec. 58-18. - Quasi-judicial hearings.

Quasi-judicial hearings shall be conducted as follows:

(1) Appeals and hearings on variance requests. The ~~planning board~~board of adjustment shall hear and decide all subdivision ordinance variance requests as well as appeals from any order, requirement, decision, or determination made by the subdivision administrator where such decision complies with one or more generally stated standards requiring a discretionary decision. The board of adjustment~~planning board~~ will also hear appeals pursuant to any chapter or article of the Code of Ordinances for Buncombe County indicating that such appeals shall be heard by the board of adjustment~~planning board~~.

(2) A member of the ~~planning board~~board of adjustment 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, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed ex parte communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome of the matter. 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.

(3) No ~~planning board~~board of adjustment member shall discuss any case with any parties thereto prior to the public hearing on that case; provided however, that a member may receive and/or seek information pertaining to the case from planning staff or any other member of the board of adjustment~~planning board~~.

(4) Members of the board of adjustment~~planning board~~ shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(5) Procedure for filing appeals. All statute of limitations and procedures for filing an appeal or variance request to the board of adjustment~~planning board~~ are set forth in G.S. 160D-1405~~153A-345.1~~ or as amended.

(6) Conduct of hearing. Any party may appear in person or by agent as authorized by law or by attorney at the hearing. The order of business for the hearing shall be as follows:

a. The chair, or such person as he/she shall direct, shall give a preliminary statement of the case.

b. The applicant shall present the argument in support of his application.

c. Persons opposed to granting the application shall present the argument against the application.

d. Both sides will be permitted to present rebuttals to opposing testimony.

e. The chair shall summarize the evidence, which has been presented, giving the parties opportunity to make objections or corrections.

Witnesses may be called and factual evidence may be submitted, but the board of adjustment~~planning board~~ shall not be limited to consideration of only such evidence as would be admissible in a court of law. The board of adjustment~~planning board~~ may view the property before arriving at a decision. All witnesses before the board of adjustment~~planning board~~ shall be placed under oath and an opposing party may cross examine them. The procedural motions as set forth above should govern action by the board of adjustment~~planning board~~.

(Ord. No. 16-11-05 , § 1, 11-1-16)

Sec. 58-19. - Quasi-judicial decisions and judicial review.

(a) *Hearings.* All quasi-judicial~~planning board~~ hearings shall be conducted in accordance with G.S. 160D-406~~153A-345.1~~ or as amended.

(b) *Decisions.* All quasi-judicial~~planning board~~ decisions shall be made in accordance with G.S. 160D-406~~153A-345.1~~ or as amended.

(c) *Filing of decisions.* ~~D~~Quasi-judicial decisions are effective upon filing the written decision with the clerk assigned to the decision-making board. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.~~of the planning board are effective upon filing the written decision with the planning director or his/her designee following delivery of such decision 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. The person required to provide notice of the decision shall certify that proper notice has been made~~.

(Ord. No. 16-11-05 , § 1, 11-1-16)

Secs. 58-20—58-25. - Reserved.

ARTICLE III. - FARMLAND PRESERVATION PROGRAM[3]

Footnotes:

--- (**3**) ---

Editor's note— Ord. No. 16-11-01 , § 1(Exh. A), adopted Nov. 1, 2016, amended Art. III in its entirety to read as herein set out. Former Art. III, §§ 58-26, 58-27, 58-41—58-45, 58-56—58-62, 58-71—58-78, pertained to similar subject matter, and derived from Ord. No. 11-02-01, § 1(a), adopted Feb. 1, 2011.

DIVISION 1. - GENERALLY

Sec. 58-26. - Authority and purpose of article.

This article is adopted pursuant to authority conferred by the North Carolina General Statutes ("G.S.") 106-735 through 106-744, ~~and~~ ch. 153A, and ch. 160D.

The purpose of this article is to promote agricultural values and the general welfare of Buncombe County, and more specifically: to increase identity and pride in the agricultural community and its way of life; to encourage the economic and financial health of agriculture, horticulture and forestry; and to increase protection from non-farm development and other negative impacts on properly managed farms.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-27. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Advisory board means the county agricultural advisory board created pursuant to G.S. 106-739 to administer the farmland preservation program.

Agricultural conservation easement (sometimes herein "ACE") shall have the meaning defined in G.S. 106-744(b).

Chairperson means chairperson of the advisory board.

Board of commissioners means the Buncombe County Board of Commissioners.

Conservation agreement means conservation agreement as same is defined in G.S. 121-35(1).

Conservation easement, for the purposes of this article shall have the meaning as agricultural conservation easement as same is defined in G.S. 106-744, and to the extent not inconsistent with G.S. 106-744 generally means a written agreement between a landowner and a qualified conservation organization or public agency under which:

- The landowner agrees to keep the land available for agriculture and/or forestry and restrict subdivision or non-farm development and other uses that are incompatible with commercial agriculture and forestry; and

- The conservation organization or public agency is responsible for monitoring the easement to ensure the terms of the easement are met.

Enhanced Voluntary Agricultural District (sometimes herein "EVAD") shall have the meaning defined in G.S. 106-743.1.

Voluntary Agricultural District (sometimes herein "VAD"), shall have the meaning defined in G.S. 106-738.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Secs. 58-28—58-40. - Reserved.

DIVISION 2. - AGRICULTURAL ADVISORY BOARD

Sec. 58-41. - Creation.

A county agricultural advisory board, to consist of nine members appointed by the board of commissioners, is hereby established to implement the provisions of this article.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-42. - Membership.

(a) *Requirements.* Requirements for membership shall be as follows:

(1) Each advisory board member, except those serving in an ex officio capacity, shall be a county resident.

(2) At least five of the nine members shall be actively engaged in agriculture as defined in G.S. 106-581.1. There shall be at least one member from each of the four regions of Buncombe County as designated below. This is to ensure that these four quadrants of the county have representatives on the advisory board to ensure their regional concerns are met. This determination shall be made without reference to ex officio members.

a. Northwest: Sandy Mush, Leicester, and French Broad Townships.

b. Northeast: Black Mountain, Swannanoa, Ivy, Flat Creek, Reems Creek, Beaverdam, and Haw Creek Townships.

c. Southwest: Lower Hominy, Upper Hominy, Avery's Creek, and Hazel Townships.

d. Southeast: Fairview, Broad River, Limestone, and Biltmore Townships.

(3) The nine members shall be selected for appointment by the board of commissioners from the names of individuals submitted to the board of commissioners by the Soil and Water Conservation District board of supervisors, the Buncombe County Office of the North Carolina Cooperative Extension Service and the United States Farm Service Agency Committee.

(4) Additional members may be appointed to the advisory board in an ex officio capacity from the Soil and Water Conservation District board of supervisors, the Buncombe County Office of North Carolina Cooperative Extension, the U.S. Farm Service Agency, or other agencies, as deemed necessary by the board of commissioners. Members serving in an ex officio capacity shall neither vote nor count toward quorum requirements.

(b) *Tenure.* The members are to serve for terms of three years, except that the initial advisory board is to consist of three appointees for a term of one year; three appointees for terms of two years; and three appointees for terms of three years. Thereafter, all appointments are to be for terms of three years, with reappointments permitted.

(c) *Vacancies.* Any vacancy on the advisory board is to be filled by the board of commissioners for the remainder of the unexpired term.

(d) *Removal.* Any member of the advisory board may be removed by a majority vote of the board of commissioners. No cause for removal shall be required.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-43. - Funding.

(a) *Compensation.* The per diem compensation, if any, of the members of the advisory board shall be fixed by the board of commissioners.

(b) *Appropriations for performance of duties.* Funds may be appropriated by the board of commissioners to the advisory board to perform its duties. The board of commissioners may provide operating funds to Buncombe County Soil and Water Conservation District assisting the advisory board's needs.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-44. - Procedure.

(a) *Chairperson.* The advisory board shall elect a chairperson and vice-chairperson each year at its first meeting of the fiscal year. The chairperson shall preside over all regular or special meetings of the advisory board. In the absence or disability of the chairperson, the vice-chairperson shall preside and shall have and exercise all the powers of the chairperson so absent or disabled. Additional officers may be elected as needed.

(b) *Jurisdiction and procedures; supplementary rules.* The jurisdiction and procedures of the advisory board are set out in this article, except that the advisory board may adopt supplementary rules of procedure not inconsistent with this article or with other provisions of law.

(c) *Advisory board year.* The advisory board shall use the county fiscal year as its meeting year.

(d) *Meetings.* Meetings of the advisory board shall be held at the call of the chairperson and at such other times as the advisory board in its rules of procedure may specify. A called meeting shall be held at least every two months. Meeting dates and times shall be posted no less than one week before the meeting by giving notice by an electronic mail or a mailed notification to each advisory board member, and by posting a copy of the notice on the principal bulletin board of the advisory board or at the door of its usual meeting room or on the building in an area accessible to the public. A copy of the notice shall also be delivered to the clerk to the board of commissioners for delivery to

the media as well as to other persons who have made requests for notices. All meetings shall be open to the public.

(e) *Voting.* The concurring vote of a majority of the members of the advisory board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official or agency, to decide in favor of an applicant, or to pass upon any other matter on which it is required to act under this article.

(f) *Duty to Vote.* Once a meeting has been convened, every member, including the chairperson, must vote unless excused by a majority vote of those members present. A member who wishes to be excused from voting shall so inform the chairperson, who shall take a vote of the remaining members. The advisory board may excuse a member from voting, but only upon questions involving his/her own financial interest or his/her official conduct or on matters on which the member is prohibited from voting under G.S. 14-234. Refusal to vote (without just cause) shall be recorded as an affirmative vote.

(g) *Records.* The advisory board, or its designee, shall keep minutes of the proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Soil and Water Conservation District office and shall be a public record.

(h) *Administrative services.* The advisory board shall contract with the Soil and Water Conservation District office to serve the advisory board for recordkeeping, correspondence, application procedures under this article and whatever other services the advisory board needs to complete its duties. The farmland preservation coordinator will fulfill these and other appointed program duties.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-45. - Duties.

The advisory board shall:

(1) Review and approve or disapprove applications of landowners for enrollment of qualified farmland, horticultural land, or forestland in either VAD or EVAD and applications for conservation easements;

(2) Make recommendations concerning the establishment and modification of VAD or EVAD or conservation easements;

(3) Conduct public hearings;

(4) Advise the board of commissioners on projects, programs, or issues affecting the agricultural economy and agricultural, horticultural or forestry activities within the county that will affect VAD and EVAD and conservation easements;

(5) Review and make recommendations concerning proposed amendments to this article;

(6) Develop and maintain a countywide farmland protection plan as defined in G.S. 106-744(e) for presentation to the board of commissioners;

(7) Study additional methods of protection for farming, horticulture, forestry, and the attendant land base, and make recommendations to the board of commissioners;

(8) Perform other agricultural, horticultural, and forestry-related tasks or duties assigned by the board of commissioners; and

(9) Develop methodology for prioritization of projects.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Secs. 58-46—58-55. - Reserved.

DIVISION 3. - CONSERVATION AGREEMENTS FOR VAD/EVAD

For purposes of this program, "conservation agreement" is defined as a right, whether or not stated in the form of a restriction, reservation, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or improvement thereon or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use, to forbid or limit any or all of the following:

(1) Construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground;

(2) Dumping or placing soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;

(3) Removal or destruction of trees, shrubs or other vegetation;

(4) Excavation, dredging or removal of loam, peat, gravel, soil, rock, or other mineral substance in such manner as to affect the surface;

(5) Surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition;

(6) Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation; or

(7) Other acts or uses detrimental to such retention of land or water areas.

None of the above limitations should be interpreted to prevent a landowner from conducting agricultural activities, including, but not limited to, the production of crops, forestry products, horticultural specialties, livestock, and livestock products. Associated uses allowable are sales and processing necessary and customarily incidental to the agricultural activities on-site which are in keeping with the purpose of the program.

Definition of open space. For purposes of this program, "open space" is defined as land used for recreation, natural resource protection, amenities, and/or buffer yards. Open space may include, but is not limited to lawns, walkways, active recreation areas, playgrounds, wooded areas, greenways, and water courses.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-56. - Application for and certification for qualifying farmland in a VAD or EVAD.

(a) *Requirements.* To be eligible for certification the following requirements must be satisfied:

(1) Certification as qualifying farmland. To secure county certification as a qualifying farmland, a farm must be:

a. Real property that is engaged in agriculture as defined in G.S. 106-581.1.

b. If highly erodible land exists on the farm it shall be managed in accordance with the Natural Resources Conservation Service erosion-control practices for highly-erodible land.

c. The subject of a conservation agreement (VAD/EVAD), as defined in G.S. 121-35, between the county and the owner of such land that prohibits nonfarm use or development of such land for a period of at least ten years, except for the creation of not more than three lots that meet applicable county zoning and subdivision regulations.

d. Located in the unincorporated area of Buncombe County, unless a municipality of the county has by resolution requested that this article be applicable within that municipality and such request has been formally granted by Buncombe County.

(2) A landowner, or landowners, may apply for certification of qualifying farmland for inclusion in either the Voluntary Agricultural District or the Enhanced Voluntary Agricultural District program. Such application shall be made with the chairperson or farmland preservation coordinator and

must designate whether the application is for Voluntary Agricultural District status or Enhanced Voluntary Agricultural District status. The application shall be on forms provided by the advisory board or farmland preservation coordinator.

a. A conservation agreement, as required by G.S. 106-737 and G.S. 106-743.3, and defined in G.S. 121-35, suited to district type (Voluntary Agricultural District or Enhanced Voluntary Agricultural District) designated by the landowner(s) to sustain, encourage, and promote agriculture, must be executed by the landowner(s) and be reviewed and approved by the advisory board. The conservation agreement for the Enhanced Voluntary Agricultural District must be recorded with the Buncombe County Register of Deeds as required pursuant to G.S. 121-41.

b. Requirements to participate are as follows:

1. A VAD or EVAD shall consist of at least 50 contiguous acres of qualifying farmland or two or more qualifying farms consisting of a total of at least 50 acres and lying within one mile of each other.

2. An agreement to sustain, encourage and promote agriculture must be executed by the landowners in the VAD or EVAD with the county and EVAD shall be recorded therein.

c. Review process:

1. To secure county certification as a qualifying farm, and if so desired by the applicant, as a VAD or EVAD, a landowner for such certification will apply to the advisory board. Application forms may be obtained from the advisory board or farmland preservation coordinator.

2. Upon receipt of an application, the advisory board or farmland preservation coordinator will forward copies immediately to:

i. The county planning department;

ii. The county tax assessor; and

iii. The Soil and Water Conservation District and the Natural Resources Conservation Service office. Such offices shall evaluate, complete and return their copies to the chairperson within 30 days of receipt. The evaluation by the Soil and Water Conservation District and the Natural Resources Conservation Service office may be made jointly.

(3) Decision by the advisory board; notification of applicant. Within 60 days of receipt of the evaluations, the advisory board shall meet and render a decision regarding the application. The chairperson or designee shall notify the applicant by mail if the real property for which certification is sought satisfies the criteria established in subsection (a) of this section and if the land has been certified as qualifying farmland, and also as a VAD or EVAD, if application was so sought.

(4) Appeal upon denial. If the application is denied by the advisory board, the applicant has 30 days to appeal the decision to the board of commissioners. Such appeal shall be presented in writing. The decision of the board of commissioners is final.

(b) VAD or EVAD; marking on maps; public display. VAD or EVAD shall be marked on county maps which shall be available for public inspection in the following county offices:

(1) Register of deeds;

(2) Code enforcement;

(3) Soil and Water Conservation District;

(4) Agricultural cooperative extension;

(5) Land records office; and

(6) Any other office deemed necessary by the advisory board.

(c) Encouragement of VAD or EVAD. The county may take such action as it deems appropriate through the advisory board or other body or individual to encourage the formation of VAD or EVAD and to further their purposes and objectives, including at a minimum a public information program to reasonably inform landowners of the farmland preservation program.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-57. - Revocation and enforcement.

(a) *Transfer.*

(1) Transfers of land in a Voluntary Agricultural District due to death of the landowner, sale, or gift shall not revoke the conservation agreement, if all new landowner(s) affirm the conservation agreement and affirm, on a supplemental application, updated information demonstrating that the enrolled land still qualifies for enrollment under section 58-56(a). In the event that there are water or sewer assessments held in abeyance by this article, and where the new owner(s) fail(s) to agree in writing to accept liability for those assessments when land is withdrawn either voluntarily or involuntarily from the VAD, the conservation agreement shall be revoked. Revocation shall be undertaken pursuant to the provisions of section 58-57(c).

(2) Transfers of land in an Enhanced Voluntary Agricultural District due to death of the landowner(s), sale, or gift shall not revoke the conservation agreement. The conservation agreement for the Enhanced Voluntary Agricultural District shall be binding upon all successors in interest to the landowner, except for successors in interest resulting from the exercise of rights under a security interest or lien that preceded the conservation agreement.

(b) *Renewal.*

(1) *VAD.* Absent noncompliance by the landowner, neither the advisory board nor the board of commissioners shall fail to renew any conservation agreement unless this article or its authorizing legislation has been repealed.

(2) *EVAD.* A conservation agreement for the enhanced district shall be deemed automatically renewed for an additional term of three years, unless either the advisory board or the landowner gives written notice to the contrary prior to the termination date of the conservation agreement.

(c) *Revocation.*

(1) *VAD.* By providing 30 days' advance written notice to the advisory board, a landowner of qualifying farmland within a VAD may revoke the conservation agreement or the advisory board may revoke the same conservation agreement based on noncompliance by the landowner, subject to the same provisions as contained in section 58-56(a) for appeal of denials. Such revocation shall result in loss of qualifying farm status and loss of eligibility to participate in a VAD. Absent noncompliance by the landowner, neither the advisory board nor the board of commissioners shall revoke any conservation agreement prior to its expiration. If the advisory board shall revoke this conservation agreement for cause, the landowner shall have the appeal rights set forth in section 58-56(a).

(2) *EVAD.* Conservation agreements for land within enhanced districts are irrevocable for a period of ten years.

(3) *Revocation.* If at the end of the term, the agreement is not automatically renewed or renewed voluntarily by the landowner, then a notice of revocation shall be recorded in the county land record system sufficient to provide notice that the land has been withdrawn from the Enhanced Voluntary Agricultural District program.

(d) *Enforcement.*

(1) *VAD.* By providing 30 days' advance written notice to the advisory board, a landowner of qualifying farmland within a VAD may revoke the conservation agreement or the advisory board

may revoke the same conservation agreement based on noncompliance by the landowner, subject to the same provisions as contained in section 58-56(a) for appeal of denials. Such revocation shall result in loss of qualifying farm status and loss of eligibility to participate in a VAD. Absent noncompliance by the landowner, neither the advisory board nor the board of commissioners shall revoke any conservation agreement prior to its expiration. If the advisory board shall revoke the conservation agreement for cause, the landowner shall have the appeal rights set forth in section 58-56(a).

(2) *EVAD.* Conservation agreements for land within enhanced districts are irrevocable for a period of ten years. Enforcement of the terms of the conservation agreement may be through an action for injunctive relief and/or damages in the General Courts of Justice for Buncombe County, North Carolina. The county may also terminate any benefits to the owner under this program either permanently or during the period of violation, as appropriate. If the advisory board shall revoke the conservation agreement for cause, the landowner shall have the appeal rights set forth in section 58-56(a). The right to terminate program benefits is in addition to any legal rights that the county may have under either this article or the terms of the applicable conservation agreement. The county may seek costs of the action including reasonable attorney fees if such a provision is incorporated into the conservation agreement. A notice of revocation shall be recorded in the county land record system sufficient to provide notice that the land has been withdrawn from the Enhanced Voluntary Agricultural District program.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-58. - Public hearings regarding condemnation.

(a) *Purpose.* Pursuant to G.S. 106-740, no state or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a VAD or EVAD until such agency or unit has requested the advisory board to hold a public hearing on the proposed condemnation, this subsection provides for such hearings.

(b) *Procedure.* The hearing procedure shall be as follows:

(1) *Time period.* The total time period from the day that the request for a hearing has been received to the day that a final report is issued to the decision making body or the agency proposing the condemnation, shall not exceed 30 days. Five days prior to holding a public meeting, the advisory board must publish notice of said public hearing in a newspaper of general circulation where the VAD or EVAD is located and posting a copy of the notice by any electronic means. If the agency agrees to an extension, the agency and the advisory board shall mutually agree upon a schedule to be set forth in writing and made available to the public.

(2) *Review.* The advisory board shall meet to review:

a. If the need for the project has been satisfactorily established by the agency or unit of government involved, including a review of any fiscal impact analysis conducted by the agency involved; and

b. Whether there are alternatives to the proposed action that have less impact and are less destructive to the agricultural activities of the VAD or EVAD within which the proposed action is to take place.

(3) *Consultation.* The advisory board shall consult with the County Cooperative Extension Service, USDA Natural Resources Conservation Service, and may consult with any other individuals, agencies or organizations, public or private, necessary to the advisory board's review of the proposed action. Land value will not be a factor in the selection between properties under consideration for the proposed action.

(4) *Report of findings.* After a public hearing, the advisory board shall make a report containing its findings and recommendations regarding the proposed action. The report shall be made available to the decision-making body of the agency proposing acquisition and the general public.

(5) *Formal initiation of condemnation.* Pursuant to G.S. 106-740, the county shall not permit any formal initiation of condemnation by local agencies while the proposed condemnation is properly before the advisory board within these time limitations.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-59. - Waiver of water and sewer assessments.

(a) *Purpose of section.* The purpose of this section is to help mitigate the financial impacts on farmers by some local and state capital investments unused by such farmers.

(b) *Procedure.* The waiver procedure shall be as follows:

(1) Landowners belonging to VAD or EVAD shall not be assessed for, or required to connect to, county water and/or sewer systems.

(2) Water and sewer assessments shall be held in abeyance, without interest, for farms inside a VAD or EVAD, until improvements on such property are connected to the water or sewer system for which the assessment was made.

(3) When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(4) Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest.

(5) Assessment procedures followed under G.S. 153A-185 et seq. shall conform to the terms of this article with respect to qualifying farms that entered into preservation agreements while such article was in effect.

(6) Nothing in this section is intended to diminish the authority of the county to hold assessments in abeyance under G.S. 153A-201.

(c) *Conflict with county water and/or sewer system construction and improvements grants.* To the extent that this section conflicts with the terms of federal, state, or other grants under which county utility systems are constructed this section shall not apply. This section shall not apply to utilities that are not owned by the county unless the county has entered into an agreement with the entity(ies) owning the utilities and that agreement provides that this article shall apply.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-60. - Notice of proximity to a Voluntary or an Enhanced Voluntary Agricultural District.

(a) *Purpose.* The purpose of this section is to help meet the needs of agriculture as an industry and prevent conflicts between VAD or EVAD participants and nonfarm landowners in proximity to VAD or EVAD.

(b) *VAD or EVAD established.* The county has established VAD or EVAD for farmland preservation to protect and preserve agricultural lands and activities. These VAD or EVAD have been developed and mapped by the county to inform all purchasers of real property that certain agricultural activities, including, but not limited to, pesticide spraying, manure spreading, machinery operations, livestock operations, sawing, and similar activities may take place in these VAD or EVAD any time during the day or night. Maps and information on the location and establishment of these VAD or EVAD can be obtained from the county planning and development office.

(c) *Notification generally.* The advisory board, in cooperation with the county, shall provide notification to property owners, residents and other interested persons in and adjacent to any designated agricultural district. The purpose of such notification is to inform all current and potential residents and property owners in and adjacent to an agricultural district that farming and agricultural activities may take place in this VAD or EVAD any time during the day or night. These activities may include,

but are not limited to pesticide spraying, manure spreading, machinery operations, livestock operations, sawing, and similar activities.

(d) *Limit of liability.* In no event shall the county or any of its officers, employees, members of the advisory board, or agents be held liable in damages for any misfeasance, malfeasance, or nonfeasance occurring in good faith in connection with the duties or obligations imposed by this article.

(e) *No cause of action.* In no event shall any cause of action arise out of the failure of a person researching the title of a particular tract to report to any person the proximity of the tract to a qualifying farm or VAD or EVAD as defined in this article.

(f) *Types of notification.* Notification shall be provided as follows:

(1) Signs identifying approved VAD or EVAD may be placed along major roads, however, signs shall not be placed within the right-of-way of any state maintained road.

(2) Maps identifying approved VAD or EVAD shall be provided to Buncombe County offices including: the register of deeds, code enforcement, the Soil and Water Conservation District office, the cooperative extension office, the land records office, and any other office or agency the advisory board deems necessary.

(3) The following notice, of a size and form suitable for posting, shall be posted and available for public inspections in the register of deeds' office, and any other office or agency the advisory board deems necessary:

Notice to real estate purchasers in Buncombe County of each voluntary agricultural district or enhanced voluntary agricultural district for farmland preservation. Buncombe County has established VAD or EVAD to protect and preserve agricultural lands and activities. These VAD or EVAD have been developed and mapped by the county to inform all purchasers of real property that certain agricultural and forestry activities, including but not limited to pesticide spraying, manure spreading, machinery and truck operation, livestock operations, sawing, burning, and other common farming activities may occur in these VAD or EVAD any time during the day or night. Maps and information on the location and establishment of these VAD or EVAD can be obtained from the North Carolina Cooperative Extension Service office, the Soil and Water Conservation District office, the office of the register of deeds, the county planning office, or the Natural Resources Conservation Service office.

(4) *Geographic information system.* Voluntary and Enhanced Voluntary Agricultural Districts shall be mapped in the county geographic information system.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-61. - State agency notification.

(a) The advisory board, or its designee, may consult with the North Carolina Cooperative Extension office, the Soil and Water Conservation District office, the Natural Resources Conservation Service office, the North Carolina Department of Agriculture and Consumer Services, and with any other individual, agency, or organization the advisory board, or its designee, deems necessary to the proper conduct of its business.

(b) A copy of this article shall be sent to the office of the North Carolina Commissioner of Agriculture and Consumer Services, the North Carolina Cooperative Extension office, and the Soil and Water Conservation District office after adoption. At least once a year the county shall submit a written report to the commissioner of agriculture and consumer services, including the status, progress and activities of the county's farmland preservation program, including VAD or EVAD information regarding:

(1) Number of landowners enrolled;

(2) Number of acres enrolled;

(3) Number of acres certified during the reporting period;

(4) Number of acres not certified during the reporting period;

(5) Number of acres for which applications are pending;

(6) Municipalities with which memorandums of understanding have been signed;

(7) Municipalities with which memorandums of understanding are no longer in effect;

(8) Municipalities that have adopted this article for the purpose of the county enforcing this article within their corporate boundaries;

(9) Copies of any amendments to this article or memorandums of understanding signed with municipalities; and

(10) Any other information the advisory board deems useful.

(c) Copies of the reports cited in subsection (b) of this section will be sent to:

(1) State department of transportation;

(2) Secretary, state department of commerce;

(3) Asheville Area Chamber of Commerce; and

(4) Any other entities the advisory board, or its designee, deems appropriate.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-62. - Additional benefits for Enhanced Voluntary Agricultural Districts.

(a) Land enrolled in the EVAD program is entitled to all of the benefits available under the VAD program, and to the following additional benefits:

(1) *Sale of nonfarm products.* Landowners participating in EVAD may receive up to 25 percent of gross sales from the sale of nonfarm products and still qualify as a bona fide farm that is exempt from county zoning regulations under G.S. 160D-903~~153A-340(b)~~. A farmer seeking to benefit from this subsection shall have the burden of establishing that the property's sale of nonfarm products did not exceed 25 percent of its gross sales. A county may adopt an ordinance pursuant to this section that sets forth the standards necessary for proof of compliance.

(2) *Agricultural cost share program.* Landowners participating in EVAD are eligible under G.S. 143-215.74(b) to receive the higher percentage of cost-share funds for the benefit of that farmland under the agriculture cost share program established pursuant to part 9 of article 21 of chapter 143 of the General Statutes to benefit that farmland.

(3) *Priority consideration.* State departments, institutions, or agencies that award grants to farmers are encouraged to give priority consideration to landowners participating in EVAD.

(4) *Utility assessment waiver.* As provided in section 58-59, waiver all county utility assessments in addition to waiver of water and sewer assessments is available to all participants in EVAD.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-63. - County land use planning.

(a) *Duty of advisory board.* It shall be the duty of the advisory board to advise the board of commissioners, or the agency or office to which the board of commissioners delegates authority to oversee county land use planning, on the status, progress, and activities of the county's Voluntary Agricultural District program and Enhanced Voluntary Agricultural District program and to also coordinate the formation and maintenance of VAD and EVAD with the county's land use planning activities and the county's land use plan.

(b) *Areas where VAD and EVAD are not permitted.* At such time as the county might establish designated growth corridors, VAD and EVAD shall not be permitted in those designated growth corridors, as delineated on the official county planning map, without the approval of the board of commissioners. VAD and EVAD located in growth corridors designated after the effective date of this program may remain, but shall not be expanded within the growth corridor area without the approval of the board of commissioners.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-64. - Legal provisions.

(a) *Severability.* If any section, subsection, clause, phrase, or portion of this article is for any reason found invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this article.

(b) *Conflict with other ordinances and statutes.* Whenever the provisions of this article conflict with other ordinances of Buncombe County, the provisions of those other ordinances shall govern. Whenever the provisions of any federal or state statute conflict with this article, the provisions of such federal or state statute shall govern. The sole remedy for a land use not complying with this article shall be revocation of the conservation agreement and removal of the non-qualifying land from the Buncombe County Voluntary Agricultural District program. Recreational use of land that does not interfere with agricultural uses as defined in G.S. 106-581.1 shall not be considered non-compliant with this article.

(c) *Amendments.* This article may be amended by the board of commissioners.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Secs. 58-65—58-70. - Reserved.

DIVISION 4. - AGRICULTURAL CONSERVATION EASEMENT PROGRAM

Sec. 58-71. - Purpose.

(a) *General.* The preservation of the county's best agricultural land in a manner that directs and accommodates growth and development is a high priority to the residents of the county. To this end the county establishes the following goals:

(1) To protect and conserve those soils in the county best suited to agricultural uses;

(2) To identify and harmonize policies of government at all levels which may conflict with the goal of protection of farmland;

(3) To reduce land use conflicts between agricultural and other land uses; and

(4) To promote agriculture as an integral part of the county's economy.

These program guidelines contain policies and procedures for administering an agricultural conservation easement program.

(b) *Duties and responsibilities of the advisory board.* The advisory board shall act on behalf of the county in administering the agricultural conservation easement program within the farmland preservation program. The planning department shall make recommendations to the advisory board on the selection of properties for purchase, lease, and/or donation and on the development of purchase and lease priorities. The Soil and Water Conservation District attorney shall draft and approve as to form any and all documents necessary to purchase, lease, and/or accept donations of conservation easements and perform any other such acts necessary for the implementation of this program. The advisory board shall administer this program utilizing the financial resources provided by the board of commissioners.

(c) Agricultural conservation easement, as set forth in g.s. 106-744, or as amended, means a negative easement in gross restricting residential, commercial, and industrial development of land for the purpose of maintaining its agricultural production capability. Such easement:

(1) May permit the creation of not more than three lots that meet applicable county zoning and subdivision regulations;

(2) May permit agricultural uses as necessary to promote agricultural development associated with the family farm; and

(3) May be perpetual in duration, provided that, at least 20 years after the purchase of an easement, a county may agree to reconvey the easement to the owner of the land for consideration, if the landowner can demonstrate to the satisfaction of the county that commercial agriculture is no longer practicable on the land in question.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-72. - Purchase of conservation easements.

(a) *General.* The county may purchase conservation easements in agricultural and/or open space lands. All applications for the purchase of conservation easements will be evaluated based upon the farmland preservation ranking system as described in section 58-79. Applications will be ranked based upon various site factors. Conservation easements may be purchased in accordance with the ranking of farm properties and the availability of allocated funds. Compensation for conservation easements will be based on the advisory board's determination of the difference between fair market value and agricultural or open space value appraisals. The purchase price will be subject to negotiation.

(b) *Description.* The purchase of conservation easements is legally binding, restricting the owner and future owners to agricultural and/or open space use of the land. The conservation easements will be held in public trust by the county, or transferred to a private nonprofit conservation organization. Conservation easements will be in perpetuity and in compliance with the North Carolina Conservation and Historic Preservation Agreements Act and applicable federal and state tax laws.

(c) *Authority.* Buncombe County Soil and Water Conservation District acts as a department of Buncombe County. Buncombe County gives Soil and Water Conservation District the authority to apply for grant funding on behalf of the county. Buncombe County gives the Soil and Water Conservation District director and designated staff signature authority on conservation easement applications, and allows Soil and Water Conservation District to use Buncombe County's tax ID and DUNs number to apply for conservation easement grant funding on behalf of Buncombe County. Buncombe County gives the Buncombe County Soil and Water District authority to enter into cooperative agreements with the United States Department of Agriculture Natural Resource Conservation Service (USDA NRCS), North Carolina Department of Agriculture and Consumer Sciences Agricultural Development and Farmland Preservation Trust Fund (NCDA&CS ADFP) or other agencies to facilitate easement purchase.

(d) *Minimum eligibility criteria.* The agricultural and/or open space land must be at least ten acres in size or contiguous to a ten-acre tract for which a perpetual conservation easement exists, and be in agricultural and/or open space use.

(e) *Application procedure.* An application must be submitted to the advisory board or its designee on behalf of Buncombe County.

(f) *Review and ranking of application.* The applications will be ranked by the Soil and Water Conservation District and the county planning department. The Soil and Water Conservation District will rank each of the applications using the soil assessment and the conservation criteria in the farmland preservation ranking system. The Soil and Water Conservation District will forward the application and the soil assessment to the planning department which will rank each of the applications using the site assessment criteria of the farmland preservation ranking system. After the Soil and Water Conservation District and county planning department have ranked the application, the Soil and Water Conservation District will prioritize applications and make recommendations to the advisory board.

(g) *Acquisition.*

(1) The Soil and Water Conservation District attorney will obtain two appraisals on tracts considered for entry into the program. One appraisal will establish current fair market value of the property at its current highest and best use. The second appraisal will establish the value of the property for agricultural or open space use. Payment for these appraisals will be based upon negotiations with the landowner at the county's discretion.

(2) Upon receiving the written appraisals, the Buncombe County Farmland Preservation Coordinator will review the appraisals and determine if they meet landowner objectives. The farmland preservation coordinator will review the appraisals with the landowner to insure the landowner has an understanding of the process and the contents of the appraisals.

(3) The Soil and Water Conservation District attorney will cause any necessary title examinations to be performed and all documentation to be prepared. If the property in question is subject to mortgage(s) or lien(s), a subordination agreement or waiver must be secured from the mortgage or lien holder. Closing will not take place until this requirement is met. The Soil and Water Conservation District attorney will assist in securing this agreement with the mortgage or lien holder, at the request of the landowners.

(4) Upon preparation of appropriate legal documents covering titles, deeds, surveys, and subordination agreements, the closing will be scheduled. Prior to closing, all legal documents will be reviewed by the county and the Soil and Water Conservation District attorneys for verification and accuracy. At closing, the owner will execute appropriate full warranty documents conveying conservation easements to the county in perpetuity. After proper recordation of necessary instruments, the landowner will be presented a check. The county may bear all closing and related costs.

(h) *Public disclosure.* During negotiations concerning the purchase of conservation easements, information will be kept confidential, as allowed by law. Following a purchase agreement, information may be made public as provided by law.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-73. - Lease of conservation easement.

(a) *General.* The county can lease conservation easements in agricultural lands. Applications will be ranked based upon various site factors. Conservation easements will be leased in accordance with the ranking of farm properties and the availability of allocated funds. Compensation for conservation easements will be based on the advisory board's determination of cash rent values for comparable land. The lease price will be subject to negotiation. The leasing of conservation easements will be a low priority, used only when insufficient interest in the purchase of conservation easements exist.

(b) *Description.* The lease of conservation easements is legally binding, restricting the owner and future owners to agricultural and/or open space use of the land. The conservation easements will be held in public trust by the county or transferred to a private nonprofit conservation organization.

(c) *Minimum eligibility criteria.* The agricultural and/or open space land must be at least ten acres in size or contiguous to a ten-acre tract for which a perpetual conservation easement exists, and be in agricultural and/or open space use.

(d) *Application procedure.* An application must be submitted to the advisory board, or its designee.

(e) *Review and ranking of applications.* The applications will be ranked by the Soil and Water Conservation District and the county planning department. The Soil and Water Conservation District will rank each of the applications using the soil assessment and the conservation criteria in the farmland preservation ranking system. The Soil and Water Conservation District will forward the application and soil assessment to the county planning department which will rank each of the applications using the site assessment criteria of the farmland preservation ranking system. After the Soil and Water Conservation District and county planning department have ranked the application, the Soil and Water Conservation District will prioritize applications and make recommendations to the advisory board.

(f) *Acquisition.*

(1) The advisory board will calculate a maximum cash rent value for each application. A cash rent value factor will be set by a committee consisting of the NRCS District conservationist, the county cooperative extension director, and three residents of the county selected by the advisory board, who derive a majority of their income from agricultural production. The advisory board will call the meeting of this committee and document the findings. The cash rent value factor will include the lease price per acre for the first five years of the lease and the formula for annual payments for the term of the lease.

(2) Upon calculating the lease value, the Soil and Water Conservation District attorney will present the value to the landowner by certified mail. The landowner will have 30 days from receipt of the values to submit an offer to lease his/her conservation easements. Failure to respond in writing within the required time may constitute waiver of the opportunity. Upon receiving an offer to lease, the Soil and Water Conservation District attorney will meet with the landowner and accept, reject, or negotiate a compromise price with the landowner. If an agreement is reached, a contract to convey will be signed promptly by the landowner and the board of commissioners or their designee.

(3) The Soil and Water Conservation District attorney will cause any necessary title examinations to be performed and all documentation to be prepared. If the property in question is subject to mortgage(s) or lien(s), a subordination agreement or waiver must be secured from the mortgage or lien holder. Closing will not take place until this requirement is met. The Soil and Water Conservation District attorney will assist in securing this agreement with the mortgage or lien holder, at the request of the landowner.

(4) Upon preparation of appropriate legal documents covering the lease of a conservation easement the county and the Soil and Water Conservation District attorneys shall review all necessary documents prior to the execution by both parties. The Soil and Water Conservation District attorney will cause a copy of any lease to be recorded with the county office of the register of deeds.

(5) The board of commissioners may extend any stated time limit, as circumstances require. The deviations will be reported to the chairperson of the advisory board and the landowner.

(g) *Public disclosure.* During negotiations concerning the lease of conservation easements, information will be kept confidential, as allowed by law. Following closing of each lease, information may be made public as provided by law.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-74. - Donation of conservation easements.

(a) *General.* The board of commissioners may accept a voluntary donation or devise of conservation easements.

(b) *Description.* The donation of conservation easements is legally binding, restricting the owner and future owners to agricultural and/or open space use of the land. The conservation easements will be held in public trust by the County or transferred to a private nonprofit conservation organization. Conservation easements will be in perpetuity and in compliance with the North Carolina Conservation and Historic Preservation Agreements Act and applicable federal and state tax laws.

(c) *Minimum eligibility criteria.* The agricultural and/or open space land must be at least ten acres in size or contiguous to a ten-acre tract for which a perpetual conservation easement exists, and be in agricultural and/or open space use.

(d) *Application procedure.* Guidance documents for donating conservation easements are housed at the Soil and Water Conservation District office. Upon contact by a landowner, a meeting will be set with the Soil and Water Conservation District attorney and a member of the advisory board, or its designee, to discuss donation of conservation easements.

(e) *Review and ranking of applications.* The applications will be ranked by the Soil and Water Conservation District and the county planning department. The Soil and Water Conservation District will rank each of the applications using the soil assessment and the conservation criteria in the farmland preservation ranking system. The Soil and Water Conservation District will forward the application and the soil assessment to the county planning department which will rank each of the applications using the site assessment criteria of the farmland preservation ranking system. After the Soil and Water Conservation District and county planning department have ranked the application, the Soil and Water Conservation District will prioritize applications and make recommendations to the advisory board.

(f) *Acquisition.*

(1) The Soil and Water Conservation District attorney will obtain two appraisals on tracts considered for entry into the program. One appraisal will establish current fair market value of the property at its current highest and best use. The second appraisal will establish the value of the property for agricultural or open space use. Payment for these appraisals will be based upon negotiations with the landowner at the county's discretion.

(2) Upon receiving the written appraisals, the Soil and Water Conservation District attorney will prepare a donation verification statement to document the value of the interest conveyed to the county. This statement will be based on the difference between the appraised values. If an agreement is reached, a contract to convey will be signed promptly by the landowner and the board of commissioners or their designee.

(3) The Soil and Water Conservation District attorney will cause any necessary title examinations to be performed and all documentation to be prepared. If the property in question is subject to mortgage(s) or lien(s), a subordination agreement or waiver must be secured from the mortgage or lien holder. Closing will not take place until this requirement is met. The Soil and Water Conservation District attorney will assist in securing this agreement with the mortgage or lien holder, at the request of the landowner.

(4) Upon preparation of appropriate legal documents covering titles, deeds, surveys, and subordination agreements, the closing will be scheduled. Prior to closing, all legal documents will be reviewed by the county and the Soil and Water Conservation District attorneys for verification and accuracy. At closing, the owner will execute appropriate full warranty documents conveying conservation easements to the county in perpetuity. After proper recordation of necessary instruments, the chairperson of the board of commissioners, or his or her designee, will sign and present the donation verification statement to the landowner. The county may bear all closing and related costs.

(g) *Public disclosure.* During negotiations concerning the donation of conservation easements, information will be kept confidential as allowed by law. Following a donation agreement, information may be made public as provided by law.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-75. - Repurchase of conservation easements.

(a) *General.* The purchase of conservation easements is intended to create areas with sufficient amount of contiguous agricultural and/or open space land to facilitate the permanent agricultural and/or open space use of land. While program activity will be directed toward that goal, success is dependent on the voluntary participation of landowners. If a landowner or several owners of small tracts are the only participants in their area, the goal may not be achieved. These landowners could become land locked by development and agricultural and/or open space use may become impractical. In such a situation it may be in the best interest of the landowner and the public to allow repurchase of the conservation easements for the property in question. Other circumstances could also affect a property's suitability for continued agricultural and/or open space use. Repurchase of conservation easements by a landowner is foreseen as an unusual and infrequent occurrence, and would take place with the concurrence of the advisory board and the board of commissioners.

(b) *Eligibility criteria.* In order for a repurchase request to be considered, the following criteria must be met: The original purchase of conservation easements must have occurred at least 20 years prior to the request for repurchase and the conservation easements must have been purchased by and not donated to the county.

(c) *Repurchase procedure.* A landowner requesting a review of his property for possible repurchase of conservation easements should do so by certified letter to the advisory board. The letter should state the reason for the request and the date that the property was entered into the program. Any repurchase agreement included in a perpetual conservation easement must comply with the North Carolina Conservation and Historic Preservation Agreements Act and applicable federal and state tax laws. Upon approval in principle to the repurchase, the landowner must submit two appraisals of value for the property in question. One appraisal will establish the fair market value of the property at its current highest and best use. The second appraisal will establish the value of the property for agricultural or open space use. Other appraisals may be secured as necessary. The advisory board, or its designee, will review the appraisal values and decide to either recommend a repurchase price to the board of commissioners or decline to recommend repurchase. If a repurchase price is approved by the board of commissioners, the landowner will be notified. If the price is acceptable to the landowner, he/she will submit a written offer to purchase the conservation easements. The county may accept the bid and advertise for upset bids. If an agreement is reached, a contract to convey will be signed promptly by the landowner and the board of commissioners or their designee. The landowner will secure all legal documents necessary for the closing and will bear all associated costs. When legal documents are prepared and adequate financing is available, a date, time, and location for closing will be agreed upon. Payment shall be made directly to the county at closing by a certified check or equivalent payment.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-76. - Baseline documentation and monitoring.

(a) *Baseline documentation purpose*. This policy establishes the procedure for the collection, compilation, and storage of baseline documentation for conservation easements managed by Buncombe County Soil and Water Conservation District. The Soil and Water Conservation District must have baseline documentation for all properties it protects. This information establishes the condition of a property at the time of acquisition, allowing comparisons with findings during subsequent monitoring events. Such information is also required by the IRS for landowners seeking a federal income tax deduction for conservation easement donations. In most cases, the Soil and Water Conservation District will collect this information for the conservation easement donor. Baseline documentation is important in defending conservation properties from threats, including conservation easement violations. The baseline documentation may be relied upon during litigation to establish the condition of a property prior to a conservation easement violation. The Soil and Water Conservation District will collect and store all baseline documentation for conservation easements in a manner that maximizes effectiveness for enforcement purposes.

(1) *Baseline data collection.* The volume and specificity of the information included in the baseline documentation report may vary depending on the terms of the easement and the conservation objectives for the property. It is the Soil and Water Conservation District's policy that baseline data will be collected by staff, or paid contractors.

Baseline data collected during a site visit will generally include:

a. Boundary photos, photos of special features, and photos of structures and other improvements;

b. Global positioning system (GPS) data and locations on a map of each photo, special feature, structure, and other improvement;

c. Web soil survey soils map;

d. USGS topographic map;

e. Buncombe County tax map;

f. Forest management plan;

1. If there is forestland on the property, then a forestry management plan is required within the baseline document.

2. The forest management plan can change over time, depending on varying landowner objectives (harvest, wildlife, old growth etc.) but the plan must be followed.

g. Flora and fauna lists, including rare species, within general natural communities (upland, floodplain, etc.);

h. Natural communities map (delineated from aerial photos and/or site visit);

i. Written description of the property outlining the landscape, biological composition, historical or cultural features being protected, land use history and restrictions on future land uses;

j. Photos with a photo point location map and descriptive captions; and

k. Management issues that warrant future consideration.

(2) *Baseline data compilation and storage.* Baseline data will be compiled using archival materials. The original copy of the baseline data will be kept at the Soil and Water Conservation District office. A copy also will be provided to the landowners. For conservation easements, the baseline documentation will be reviewed by the landowner. Landowners will certify review of the baseline documentation by signing the acknowledgement of the baseline document.

(b) *Monitoring of conservation easements purpose.* To protect conservation values and maintain safety on its fee simple properties, Soil and Water Conservation District will conduct regular monitoring and maintain detailed records of inspections, problems on the property and actions taken to address such problems, and report these results to the advisory board.

(1) *Monitoring personnel.* Overall supervision of monitoring is the responsibility of the Farmland Preservation Coordinator. The Soil and Water Conservation District Director may delegate monitoring duties to any of the soil and water soil conservationists if needed.

(2) *Monitoring procedure.* Comprehensive monitoring shall be performed annually, with additional monitoring visits and reports to be generated as needed. Monitoring can take place on foot, off-road vehicle, or on-road vehicle using the Buncombe County Soil and Water monitoring form and the North Carolina Department of Agriculture and Consumer Services/United States Department of Agriculture monitoring form which will vary based on funding.

(3) *Safety precautions.* Monitors should take safety precautions as appropriate, including informing others when leaving on a monitoring visit, packing extra water, sunscreen, hat, appropriate shoes, GPS, and cell phone.

(4) *Monitoring tools.* Property maps, soil maps and topography maps shall be brought on the site visit for reference to show the location of any situation requiring action. GPS will be used to help locate points of interest, safety hazards, and trespassing locations. These points will be recorded on the monitor form.

(5) *Recordkeeping.* Monitor activities will be recorded on the Buncombe County Soil and Water monitoring form. Monitoring reports, including the monitoring form, maps, and photos from the visit will be kept on record by the Soil and Water Conservation District farmland preservation coordinator. All monitoring reports will be kept on file in the farmland preservation coordinator's office and an electronic copy will be stored.

(6) *Problems and violations.* Threats to conservation values or safety problems that require action shall be reported to the Soil and Water Conservation District Director. The person responsible for taking action shall work to remedy the problem in a timely manner and shall be required to report actions taken and that report will be a permanent record.

(7) *Revising the policy.* From time to time the monitoring policy may be revised for the following reasons, to correct errors or clarify ambiguities in order to comply with Soil and Water Conservation District's standards and practices. Any revisions to the monitoring policy require the prior approval and adoption by the advisory board before implementation.

(8) *Monitoring form.* The monitoring form shall, at a minimum, contain the following information:

a. Site information;

b. Current condition of the property;

c. Conservation values;

d. Natural threats to the conservation values;

e. Hazards present;

f. Human use;

g. Evidence of overuse;

h. Structures and improvements;

i. Current management activities;

j. Neighboring properties;

k. Recommendations for actions;

l. List all persons present during the inspection:

m. Attachments such as map and photos; and

n. Monitor's signature and date.

Sec. 58-77. - Appraisal policy—Tax code and appraisal requirements.

(a) Soil and Water Conservation District shall inform each landowner by letter of the tax code and appraisal requirements relevant to the transaction, and also that the Soil and Water Conservation District will not knowingly participate in transactions where it has significant concerns regarding a tax benefit claimed by the landowner. Two signed originals of the letter shall be sent to the landowner, with the request that one of the originals signed by the landowner be returned to Soil and Water Conservation District before Soil and Water Conservation District accepts the donation of any interest in real property.

(b) A Uniform Appraisal Standards for Federal Land Acquisitions ("yellow book") certified appraiser who has also been certified as a conservation easement appraiser shall be hired to perform these appraisals. He or she shall be capable of producing an IRS qualified appraisal if applicable. To seek a federal income tax deduction the landowner (not Soil and Water Conservation District) must obtain what the IRS terms a "qualified" appraisal of the value of the donated conservation easement, conducted by a "qualified" appraiser who follows Uniform Standards of Professional Appraisal Practice (USPAP).

(1) Section 1.170A-13(c)(5)(i) of the Treasury Regulations defines a "qualified appraiser" as a person who:

a. Holds himself or herself out to be an appraiser or performs appraisals on a regular basis;

b. Because of his or her qualifications, is qualified to make appraisals of the type of property being valued;

c. Is not an excluded individual, e.g., the donor or related party to the donor; and

d. Understands that an intentionally false overstatement of property value may subject him or her to a penalty for assisting in an understatement of tax liability.

(2) A "qualified appraisal," as defined in Treasury Regulation § 1.170A-13(c)(3), is an appraisal which:

a. Is made no earlier than 60 days prior to the date of contribution;

b. Includes certain information, which is described below;

c. Is prepared, signed and dated by a "qualified appraiser"; and

d. Does not involve a prohibited appraisal fee, such as a fee based on the percentage of the valuation.

(3) A "qualified appraisal" must include the following information:

a. A description of the property in sufficient detail to determine that the property appraised was the property donated;

b. The physical condition of the property;

c. The date (or expected date) of donation;

d. The terms of any agreement or understanding entered into (or expected to be entered into) by the donor that relates to the use or sale of the donated property;

e. The name, address and identifying number of the qualified appraiser. Note that often two ID numbers can be required: the appraiser's social security number and the employer's ID number;

f. The qualifications of the qualified appraiser;

g. A statement that the appraisal was prepared for income tax purposes;

h. The date on which the property was appraised;

i. The appraised fair market value on the date (or expected date) of contribution;

j. The method of valuation used to determine fair market value, such as the income approach or comparable sales approach; and

k. The basis for the valuation.

(c) Any determination of the value of the donation is the responsibility of the donor. Conservation easement appraisals are complex and subject to special rules with which the appraiser should be familiar. For federal income tax purposes, the appraisal generally should be dated no earlier than 60 days prior to the donation/closing, but no later than the due date of the return in which the contribution is claimed (i.e., April 15, 2016 for the calendar year 2015 returns).

(d) Title investigation and subordination. The Soil and Water Conservation District attorney shall investigate title to each property for which it intends to acquire title or a conservation easement to be sure that it is negotiating with the legal owner(s) and to uncover liens, mortgages, mineral or other leases, water rights and/or other encumbrances or matters of record that may affect the transaction. Mortgages, liens and other encumbrances that could result in extinguishment of the conservation easement or significantly undermine the conservation values on the property shall be discharged or properly subordinated to the conservation easement.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-78. - Property use restrictions and violations.

(a) *Property use restrictions.* In addition to restrictions set out elsewhere in these guidelines, the following restrictions will apply to property included in the purchase, lease or donation of conservation easements program. A waiver of any restriction may be granted only upon approval by the advisory board in writing. Additional funding sources may be more restrictive based on their program deed requirements.

(1) Residences permitted on the land from which conservation easements have been conveyed are existing dwellings and the replacement of existing dwellings. No more than three dwellings

will be permitted on the property included in the purchase, lease or donation of conservation easements. Request for additional dwellings shall be considered on a case by case basis.

(2) All permitted nonagricultural structures shall, when feasible, be located in the immediate vicinity of existing structures, described as the homestead or curtilage, as reasonable expansions of the homestead or curtilage or on the area(s) of the property of least productive capability. Such permitted structures shall, when feasible, utilize existing or common driveways, lanes or rights-of-way.

(3) The extraction of minerals by surface mining and extraction and removal of topsoil from the property are prohibited. The extraction of subsurface or deep-mined minerals, including natural gas and oil, and the non-commercial extraction of minerals including limestone, shale and other minerals shall be permitted, as long as the removal activity does not significantly diminish the agricultural potential of the land.

(4) Use of the property for dumping, storage, processing, or landfill of non-agricultural solid waste or hazardous materials generated off-site is prohibited. Land application of biosolids is acceptable.

(5) Use of the property for dumping, storage, processing, or landfill of hazardous or nuclear waste is prohibited.

(6) Signs, billboards, and outdoor advertising structures may not be displayed on the property except to state the name of the property, the name and address of the occupant, to advertise an on-site activity and to advertise the property for sale or rent, as allowed by the county sign ordinance.

(7) Agricultural land will be managed in accordance with sound soil and water conservation practices in a manner which will not destroy or substantially or irretrievably diminish the productive capability of the property.

(8) County officials shall have the right to enforce these restrictions by injunction and all other appropriate proceedings allowable by law. Representatives of the county may enter upon the property for the purposes of inspection concerning compliance with the agricultural conservation easement program.

(9) The county will hold the conservation easements in public trust for farmland preservation and/or open space purposes and will not voluntarily assign these rights except to another organization bound to hold such rights for the same purposes.

(10) All tracts of land from which conservation easements were purchased with federal or state funds will be subject to federal and state regulations concerning farmland preservation.

(11) Timbering shall be permitted when based on a valid management plan prepared by a registered forester or consulting forester.

(b) *Conservation easement violations.*

(1) *Purpose.* This policy establishes the procedure the Soil and Water Conservation District shall follow in the event of an easement violation and the assessment of the appropriate enforcement action. The Soil and Water Conservation District is legally obligated to enforce the terms of its conservation easements. In addition to protecting the conservation values of the land, enforcement is necessary to generate public confidence in the Soil and Water Conservation District's mission to conserve land, to uphold the organization's legal authority to enforce the terms of its conservation easements, and to maintain the ability to accept future donations of easements and its tax-exempt status. The Soil and Water Conservation District may discover a violation on a monitoring visit, through a neighbor or other interested party, or during informal observation. It is important to note that a violation may have been caused by the landowner, an adjacent property owner or a trespasser. The Soil and Water Conservation District's first response must be twofold: thoroughly document the violation, and contact the landowner to discuss and understand the situation. The Soil and Water Conservation District's response to a violation should match the severity of the violation. Minor infractions (i.e., roadside trash, minor

tree cutting) may warrant a written acknowledgement of the violation from Soil and Water Conservation District staff. The more egregious transgressions (e.g. construction, excavation, timber harvest, hazardous material dumping) require a swift and formal response.

(2) *Procedures for enforcement.*

a. After discovering the potential violation, Soil and Water Conservation District staff shall review the conservation easement document. If staff concludes the action to be a violation of the easement's terms and/or the violation is of an on-going nature, the staff shall involve the Soil and Water Conservation District director and the advisory board chairperson immediately.

b. Document the violation with photographs, measurements of damage to the affected resource, signed and dated field notes, and explicit comparison with the baseline data. A thorough record will be essential should the Soil and Water Conservation District pursue legal action. The violation should be documented for an audience that is unfamiliar with the property.

c. If discovery of the violation is after the fact, evaluation and formulation of remedies will include the advisory board. If the violation is ongoing and response time is of the essence, staff and the chairperson of the advisory board shall evaluate the violation and formulate a plan for remedy.

d. Soil and Water Conservation District staff shall contact the landowner by telephone, explain the situation and the Soil and Water Conservation District's policy on easement violations, request correction of the violation, replacement and/or cessation of the activity, and set a deadline for compliance.

e. Soil and Water Conservation District staff shall follow up the telephone call with a letter reiterating the oral explanation and request and the need for a compliance inspection. Soil and Water Conservation District staff will send the correspondence via certified mail.

f. Soil and Water Conservation District staff and the chairperson of the advisory board shall inspect the property on the deadline date for compliance. The inspection may proceed without the chairperson of the advisory board.

g. If the matter ends with prompt compliance, Soil and Water Conservation District staff shall send a written acknowledgement of compliance to the landowner.

h. If the landowner does not comply by the established date, Soil and Water Conservation District staff shall send a second letter restating the required corrections and establishing a second deadline date. A copy of the letter will be sent to the district's attorney.

i. Soil and Water Conservation District staff and the chairperson of the advisory board shall inspect the property on the second deadline date. The inspection can proceed without the advisory board chairperson.

j. If the landowner complies with the required corrections, Soil and Water Conservation District staff will send a written acknowledgement to the landowner of compliance.

k. If the landowner does not comply by the second deadline date, the advisory board shall re-evaluate the situation. The advisory board has the option to recommend that the Soil and Water Conservation District pursue enforcement through more formal legal channels (i.e., arbitration, mediation, litigation). Judicial proceedings should be viewed as a last resort.

If a violation requires court action, the Soil and Water Conservation District shall:

a. Be certain there are adequate funds to cover legal expenses;

b. Retain and prepare the best legal counsel available;

c. Actively participate in the formulation of the case;

d. Use the Soil and Water Conservation District's documentation of the violation, baseline and monitoring documentation, and experience on the property to its fullest advantage.

e. There may be occasions when actions (i.e., unauthorized timber harvest, construction, etc.) by a landowner or third party can or will result in a serious threat to the conservation values of the property. To protect the conservation values in such cases, the action(s) must be stopped immediately. If an attempt to rectify the situation by working with the landowner or responsible party is unsuccessful, Soil and Water Conservation District staff will use the following protocol for such situations:

1. Staff will ensure the action is a legitimate violation of the conservation easement;
2. Notify the Soil and Water Conservation District director;
3. Notify the advisory board;
4. Director should seek the approval of the advisory board for an immediate response in the form of an injunction;
5. Inform the soil and water board of the situation at the next board meeting; and
6. Execute injunction process and attempt to re-establish productive communication with the landowner or responsible party.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-79. - Farmland preservation ranking system.

The farmland preservation ranking system will be used to rank, or prioritize, applications received from landowners seeking sale, lease or donation of their conservation easements. The system can be used for evaluating conversion impact. Site and soil assessment criteria shall be maintained by the advisory board. The system consists of two parts:

(1) *Site assessment criteria*. The focus of this system is to determine suitability of a particular farm parcel for conservation. Each factor is assigned a point value based on its relative importance to other factors.

(2) *Soil assessment criteria.* All soils in the county have been rated and placed into groups ranging from the most productive farmland to the least productive. A relative value has been determined for each group.

To determine the total value of a given parcel, the values for the soil assessment and site assessment criteria are added together.

Site assessment criteria includes but is not limited to:

(1) Tract size.

(2) Percentage of tract in agricultural and/or open space use.

(3) Proximity to public water and sewer.

(4) Probability of conversion.

(5) Proximity to planned development.

(6) Proximity to land under conservation easement or conservation agreement.

(7) Capital investment in farm operation.

(8) Conservation program.

(9) Historic, scenic, environmental qualities.

(10) Specialty products.

(Ord. No. 16-11-01 , § 1(Exh. A), 11-1-16)

Sec. 58-80. - Reserved.
ARTICLE IV. - RESERVED[4]

Footnotes:
--- (**4**) ---
Editor's note— Ord. No. 07-05-02, § 1, adopted May 1, 2007, repealed Art. IV, §§ 58-81—58-90, which pertained to community based planning program and derived from Ord. No. 03-04-01, §§ 1—10, adopted April 8, 2003.

Secs. 58-81—58-100. - Reserved.
ARTICLE V. - RESERVED[5]

Footnotes:
--- (**5**) ---
Editor's note— The provisions of Art. V, §§ 58-101—58-116, have been repealed at the direction of the city. The former provisions of Art. V pertained to multifamily dwellings, and derived from Ord. No. 07-05-02, adopted May 1, 2007. The N.C. Court of Appeals ruled that Ord. No. 07-05-02 was not passed in accordance with the statutory requirements of N.C.G.S. § 153A-323 (the predecessor of N.C.G.S. § 160D-601), and therefore was invalid. (See Case #(COA08-229, 17 March 2009); Thrash Ltd. Partnership v. County of Buncombe, 673 S.E.2d 689, (N.C. App.,2009)).

Secs. 58-101—58-116. - Reserved.
Chapter 70 - SUBDIVISIONS[1]
Footnotes:
--- (**1**) ---
Editor's note— Section 1 of Ord. No. 10-10-05, adopted Oct. 5, 2010, repealed the former ch. 70, arts. I—IV, §§ 70-1—70-13, 70-36—70-44, 70-66—70-68, 70-91—70-94, and enacted a new ch. 70 as set out herein. The former ch. 70 pertained to similar subject matter and derived from Ord. No. 20354, adopted Nov. 30, 1993; Ord. No. 97-1-12, adopted Jan. 21, 1997; Ord. No. 98-12-8, adopted Dec. 15, 1998; Ord. No. 01-08-05, adopted Aug. 21, 2001; Ord. No. 02-06-03, adopted June 4, 2002; Ord. No. 03-05-20, adopted May 20, 2003; Ord. No. 05-06-20, adopted June 21, 2005; Ord. No. 05-12-03, adopted Dec. 6, 2005; Ord. No. 06-04-03, adopted April 4, 2006; and Ord. No. 07-01-06, adopted Jan. 16. 2007.

Cross reference— Any ordinance dedicating or accepting any subdivision plat saved from repeal, § 1-10(10); buildings and building regulations, ch. 10; soil erosion and sedimentation control floods, § 26-206 et seq.; floods, ch. 34; standards for subdivision proposals regarding floods, § 34-69; manufactured homes and trailers, ch. 46; planning and development, ch. 58; zoning, ch. 78; subdivision regulations regarding watershed protection, § 78-76 et seq.

State Law reference— Authority to regulate the subdivision of land, G.S. 160D-801~~153A-330~~ et seq.

ARTICLE I. - IN GENERAL
Sec. 70-1. - Short title of chapter.
This chapter shall be known and cited as the "Land Development and Subdivision Ordinance of Buncombe County, North Carolina," and may be referred to as the "Subdivision Regulations."

(Ord. No. 10-10-05, § 1, 10-5-10)

Sec. 70-2. - Authority and enactment clause of chapter.
Pursuant to the authority and provision conferred by G.S. 160D-801 ~~153A-330~~ et seq., the board of commissioners hereby ordains and enacts these articles and sections.

(Ord. No. 10-10-05, § 1, 10-5-10)

Sec. 70-3. - Jurisdiction of chapter.

This chapter shall apply to every subdivision or development in the county which is located outside the planning jurisdiction of a municipality, as established pursuant to G.S. 160D-201~~160A-360~~. The power to review plans shall be treated as if it were a power authorized by G.S. 160D-201~~160A-360~~ et seq. Municipalities within the county may elect to allow this chapter to be effective within their corporate limits or their extraterritorial jurisdictions.

(Ord. No. 10-10-05, § 1, 10-5-10)

Sec. 70-4. - Purpose of chapter.

The purpose of this chapter shall be to:

(1) Establish procedures and standards for the subdivision of land within the jurisdiction of the county, and to provide for orderly growth in a manner and under conditions that facilitate the adequate provision of streets, water, sewage disposal and other considerations essential to public health, safety, and the general welfare.

(2) Provide the county commissioners, planning board, planning department, and other local government agencies and officials with information regarding land development taking place in the county. This information will assist county officials in projecting the need for various public programs and facilities, in estimating population growth, and in projecting revenues and expenditures.

(Ord. No. 10-10-05, § 1, 10-5-10)

Sec. 70-5. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Common open space means land within or related to a development, not individually owned or dedicated for public use, that is designated and intended for the common use of the residents of the development and their guests and that may include complementary structures and improvements.

Communal infrastructure means infrastructure that is common to the development including, but not limited to, roadways, shared drives, sidewalks, public utilities, and stormwater controls. Recreational facilities shall not be considered communal infrastructure.

Develop means to convert land to a new purpose so as to use its resources, or to use the land for residential, commercial, or industrial purposes, including, but not limited to, any manmade change to improved or unimproved real estate.

Developer means any person, firm, corporation, or duly authorized agent who develops land.

Easement means a grant by the property owner for the use by the public, a corporation, or person of a strip of land for specified reasons.

Family subdivision means a proposed subdivision of five or fewer lots which will result after the subdivision is complete and resulting lots are to be conveyed to a linear relative within the second degree of kinship or closer or for private development or sale. Family subdivisions shall contain no more than three lots for private development or sale. No more than one lot shall be conveyed to each individual relative. Lots within a family subdivision may not be further subdivided for three years after the date of the recordation of the final plat creating said subdivision. Any further subdivision that occurs within three years from the date of the recordation shall be considered a minor subdivision.

Final plat means a complete and exact plan of a development or subdivision prepared for final official review which, if approved, will be submitted to the county register of deeds for recording.

Floodway means the channel of a river or other watercourse and the adjacent land areas which must be reserved in order to discharge the base flood (100-year flood) without cumulatively increasing the water surface elevation more than one foot.

Global stability means a geotechnical analysis of characteristics within a reinforced soil mass evaluating potential slip surfaces or failure planes that can go behind or through the reinforced soil mass. The analysis takes into consideration the following factors: 1) the overall geometry of the structural system installed including, but not limited to, foundation and retaining walls, footings, etc., and the slopes above and below the system, 2) loading or surcharge conditions (e.g., 250 pounds per square foot (3.65 kPa) for highway loading); any superimposed load shall be considered surcharge, 3) soil parameters (shear strength and unit weight of the soil) determined by the laboratory tests of the soil conducted as part of a geotechnical survey or assessment or as determined by a licensed geotechnical engineer, and 4) subsurface and surface water conditions (groundwater can have a negative effect on slope stability).

Impervious surface means any surface that, in whole or in part, restricts or prevents the natural absorption of water into the ground. Such surfaces may include, but are not limited to, gravel, concrete, asphalt or other paving material, and all areas covered by the footprint of buildings or structures.

Land disturbing activity means any use of, or operations on, the land by any person in residential, industrial, educational, 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.

Lot means a portion of a subdivision or any other portion of a parcel and/or tract of land intended as a unit for transfer of ownership for development, or both. Lot size shall be calculated based on that portion of the lot to be under control of and deeded to the property owner, exclusive of road rights-of-way. Common open spaces, public safety tower lots, cemetery lots, lots for infrastructure, and lots for utilities shall not be subject to minimum lot size, and shall not be counted towards the number of lots in a family, minor, major, or special subdivision. A subdivision consisting entirely of the exceptions listed above shall be considered a special subdivision.

Lot of record means a lot which has not been recombined or merged that is a part of a subdivision, a plat of which has been recorded in the office of the county register of deeds prior to adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter unless the lot has been recombined or merged thereafter.

Major subdivision means a proposed subdivision where 11 or more lots will result after the subdivision is complete.

Minor subdivision means a proposed subdivision of land where four to ten lots will result after the subdivision is complete. One phase of a development cannot be considered a minor subdivision unless the entire development does not exceed ten lots.

Parcel and/or *tract* means the entire site to be developed, and includes, but is not limited to, all lots adjacent to each other and held under common ownership and the total acreage intended for development, including but not limited to easements, rights-of-way, areas of future development, and communal infrastructure. The parcel and/or tract shall include parcels that are part of a larger common plan of development or sale, even though multiple, separate or distinct entities own the parcel and/or tract.

Plat means and includes the terms: map, plan, or replat; and also means a map or plan of a parcel of land which is to be or which has been developed or subdivided.

Preliminary plat means a proposed development or subdivision plan prepared for review and consideration prior to preparation of a final plat.

Road means a dedicated public or designated private right-of-way for vehicular traffic.

Access road means a roadway for vehicular traffic from a DOT road to property being divided, when such roadway traverses property not owned or controlled by the subdivider.

Cul-de-sac means local roads with one end open for vehicular access and the other end terminating in a vehicular turnaround. The length of the cul-de-sac road shall be measured along the centerline from its intersection with the centerline of the road from which it runs to the center of the cul-de-sac turnaround.

Service alley means a minor street which generally is parallel to and adjacent to arterial streets, and which provides access to abutting properties and protection from through traffic.

Rock cliff means a naturally occurring vertical, near vertical, or overhanging rock exposure at least 25 feet in height.

Shared private driveway means a shared right-of-way or easement for access to no more than two lots in either a minor or a major subdivision. A shared driveway in either a minor or major subdivision shall conform to the standards set forth in section 70-67(3)(c) and (d).

Site plan means a graphic layout showing the location of all improvements and land-disturbing activities proposed as part of the subdivision of land.

Special subdivision means a proposed subdivision where three or fewer lots will result after the subdivision is complete. Lots within a special subdivision may not be further subdivided for three years after the date of the recordation of the final plat creating said subdivision. Any further subdivision that creates more than three lots total and occurs within three years from the date of the recordation shall be considered a minor subdivision.

Subdivider means any person who subdivides or develops any land deemed to be a subdivision.

Subdivision means all divisions 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 are created for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets. However, the following are not included within this definition and are not subject to any regulations enacted pursuant to this part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;

(2) The division of land into parcels greater than ten acres if no street right-of-way dedication is involved and all lots within said subdivision are greater than 10 acres. No land that is subdivided into exempt lots greater than ten acres shall be further divided into lots less than ten acres until all subdivision requirements of this article are met;

(3) The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system corridors; ~~and~~

(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations;~~.~~

(5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the North Carolina General Statute; and

(6) The division of a tract or a parcel of land in single ownership that meets the standards listed below:

(a) A plat shall be recorded that meets the standards of the North Carolina General Statutes and other applicable County Standards.

(b) The division shall not be a portion of an exempt subdivision of lots of 10 acres or greater.

(c) No part of the tract or parcel to be divided has been divided under this exemption in the 10 years prior to the proposed division.
(d) The entire area of the tract or parcel to be divided is greater than five acres.
(e) After division, no more than three lots result from the division.
(f) After division, all resultant lots comply with all of the following:
1. Any lot dimension size requirements of the applicable land-use regulations, if any.
2. The use of the lots is in conformity with the applicable zoning requirements, if any.
3. A permanent means of ingress and egress is recorded for each lot.

Surface water means a water feature that is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the U.S. Department of Agriculture or the most recent version of the quadrangle topographic maps prepared by the USGS.

Wetlands means "waters" as defined by G.S. 143-212(6) and are areas that are inundated or saturated by an accumulation of surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands classified as waters of the state are restricted to waters of the United States as defined by 33 CFR 328.3 and 40 CFR 230.3.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17; Ord. No. 19-10-05 , § 1, 10-15-19)

Sec. 70-6. - Penalties for violation of chapter.

Any person who, being the owner or agent of any land located within the planning jurisdiction of the county, thereafter subdivides his land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of plat showing a subdivision and recorded in the office of the county register of deeds, shall be guilty of a misdemeanor as set forth in G.S. § ~~153A-335~~160D-807 or as amended. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transactions from this penalty. The county, through its attorney or other official designated by the board of commissioners, may enjoin illegal subdivision, transfer, or sale of land by action for injunction. Building permits required pursuant to G.S. 160D-1110~~153A-357~~ may be denied for lots that have been illegally subdivided. In addition to other remedies, a county 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. Further, violators of this chapter shall be subject to the remedies as set forth in section 1-7. The county may also assess a $100.00 per-day civil penalty for each day that the plat or property is not in compliance with this chapter. Each day that such plat or property is not in compliance with this chapter shall constitute a separate and distinct offense.

Approval of an erosion control plan alone shall not constitute approval of a subdivision plan. Plan review fees shall be double the normal fee amount when land disturbing activity begins before preliminary approval of a subdivision is obtained from the county. Any land disturbing activity begun prior to preliminary approval of a subdivision shall be subject to a civil penalty of $100.00 per day. Each day the violation continues shall be considered a separate offense.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17)

Sec. 70-7. - General procedure for plat approval.

(a) No plat of a subdivision of land within the county's jurisdiction shall be filed or recorded until it has been submitted to and approved by ~~the county planning board and/or~~ the planning director or his

designee, and until this approval is entered in writing on the face of the plat by ~~the chairperson of the planning board or~~ the planning director or his designee.

(b) The county register of deeds shall not file or record a plat of a subdivision of land located within the planning jurisdiction of the county that has not been approved in accordance with these provisions.

(c) When work under an approved minor or major subdivision plan is not begun within two years following the date of issuance of the preliminary approval, the preliminary approval shall be deemed to be expired. Work shall be defined as substantial progress towards construction of communal infrastructure such as, but not limited to site grading, installation of stormwater controls, or installation of utilities. A single, 12-month extension may be granted by the planning department ~~or the planning board,~~ upon receiving a written request from the applicant before the expiration of the approval, when reasonable cause is shown. If work is not begun within 12 months following the extension of the preliminary approval, the application shall be deemed expired and a new application and application fee will be required.

(1) When phased development is approved, the provisions above shall apply to each individual phase approval issued by the ~~planning board or~~ planning department, and not to the approval of the master plan.

~~(d) When a complete application scheduled for preliminary review by the planning board is removed from the agenda by the applicant, and there is no planning board review of the application for six months from that scheduled review due to the applicant's actions, the application shall be deemed expired and a new application and application fee will be required.~~

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17)

Sec. 70-8. - Administrator.

The county planning department through and by the county planning director is hereby designated a planning agency, pursuant to G.S. ~~153A-321~~153A; 160D-201; and 160D-301, and is appointed to serve as the subdivision administrator.

(Ord. No. 10-10-05, § 1, 10-5-10)

Sec. 70-9. - Administration fee.

A fee, as currently required, for reviewing and approving subdivisions and plats shall be established by the county board of commissioners and posted in the planning department.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17)

Sec. 70-10. - Variances.

The purpose of a variance is to provide relief when a strict application of these regulations would impose unnecessary hardships on the applicant. A variance may also be proper when environmental concerns are viewed in light of the spirit and intent of the planning ordinances. The board of adjustment~~planning board~~ is responsible for considering applications for variances. The variance request must specify which requirements are to be varied from and must specify alternative methods to be used. An application for a variance shall be with the planning department. A request in complete form shall be received no less than 30 days prior to the board of adjustment~~planning board~~ meeting at which the request will be heard.

When unnecessary hardships would result from carrying out the strict letter of the subdivision ordinance, the board of adjustment~~planning board~~ shall vary any of the provisions of the ordinance upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. 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.

(3) The hardship did not result from actions taken by the applicant or the property owner. 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.

(4) 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.

Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

The board of adjustment~~planning board~~ shall make a finding, and written notice of the decision shall be prepared as prescribed in chapter 58 of the Buncombe County Code of Ordinances. In granting any variance, the board of adjustment~~planning board~~ may prescribe appropriate conditions and safeguards in conformity with this article. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article and punishable as described in the Buncombe County Code of Ordinances and North Carolina law.

Variances shall expire if development or building activity is not initiated within two years of the approval date. A single extension may be granted, upon receiving a written request from the applicant before the expiration of the approval, by the board of adjustment~~planning board~~ when reasonable cause is shown. When any preliminary plan approval expires, any and all variance approvals shall also expire.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 16-11-04 , § 1, 11-1-16)

Sec. 70-11. - Amendments.

The board of commissioners may from time to time amend the terms of this chapter, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the planning board for review and recommendation. The planning board shall have 30 working days from the time the proposed amendment is submitted to it within which to submit its recommendation to the county commissioners. If the planning board fails to submit a report within the specified time, it shall be deemed to have recommended approval of the amendment. No amendment shall be adopted by the board of commissioners until they have held a public hearing on the amendment. Notice of the hearing shall be published in a newspaper of general circulation in the county at least once a week for two successive calendar weeks prior to the hearing.

(Ord. No. 10-10-05, § 1, 10-5-10)

Sec. 70-12. - Abrogation or greater restrictions.

It is not intended that this chapter repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations, or permits previously adopted or issued pursuant to law. However, where this chapter imposes greater restrictions, the provisions of this chapter shall govern.

(Ord. No. 10-10-05, § 1, 10-5-10)

Sec. 70-13. - Inspection.

The director of the planning department or their designee shall have the power to conduct such investigation as may be deemed necessary to carry out the duties as prescribed in this article, and for this purpose to enter at reasonable time upon any property for the purpose of investigating and inspecting the sites of any developmental activities regulated by this article.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17)

Secs. 70-14—70-35. - Reserved.

ARTICLE II. - APPROVAL OF PLATS

Sec. 70-36. - Required.

(a) Plats shall be prepared and approved pursuant to the provisions of this chapter whenever land is subdivided. A final plat must be prepared, approved, and recorded pursuant to this chapter whenever a subdivision of land occurs.

(b) No land disturbing or construction activity with the exception of utility testing, engineering testing and surveying to be carried out in conjunction with the subdivision of land shall be commenced until the land disturbing permit is approved by the county planning department. The final building inspection for construction in conjunction with a lot in a subdivision shall not take place until the final plat is approved by ~~the county planning board or~~ the county planning department. The county register of deeds shall not file or record a plat of a subdivision subject to this chapter that has not been approved in accordance with these provisions, and the clerk of superior court shall not order or direct the recording of a plat if the recording would be in conflict with this chapter.

(c) The planning department shall assure that the following agencies shall be given an opportunity to make recommendations concerning an individual subdivision plat for both minor and major subdivisions before the plat is given final approval by planning department staff ~~or the planning board~~:

(1) The district engineer as to proposed state streets, state highways, and related drainage systems;

(2) The county health director;

(3) The office of the county fire marshal; and

(4) Any other agency or official designated by the board of commissioners.

(d) All plans or requests for any permit submitted pursuant to this chapter must comply with the Buncombe County Fire Prevention Ordinance. No permit shall be issued and no preliminary plan will be approved without the prior approval of the county fire marshal, or designee.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17)

Sec. 70-37. - Review of special and family subdivisions.

(a) The subdivider shall submit to the county planning department a preliminary plat for approval. Any special or family subdivision that creates a private road, is served by a private road, or creates a private driveway that serves two lots or more shall be reviewed and approved by the Buncombe County Fire Marshal.

(b) The planning department shall approve, approve with conditions, or disapprove the preliminary plat within three working days after the plat is submitted for review.

(c) Failure of the planning department to act on the final plat within the specified response time shall be deemed a basis for appealing to the county ~~planning board~~board of adjustment.

(d) Once the preliminary plat has been approved, the applicant may bring a final plat in a format acceptable to the buncombe county register of deeds to the buncombe county planning department for approval. The final plat shall include the following signed certificates and statement:

Certificate of Approval for Special Subdivisions

This final plat has been reviewed by the Buncombe County Planning and Development Department and meets the requirements for a special subdivision. Access to this subdivision is considered a private driveway or private road. Additional lots past the first two (2) recorded lots within this special subdivision may not be further subdivided for three (3) years after the date of the recordation of this plat. Any further subdivision that occurs within the three (3) years from the date of recordation shall be considered a minor subdivision. This approval shall be void unless the final plat is recorded in the office of the Buncombe County Register of Deeds within 180 days from the date of approval by the Planning and Development Department.

_____ Date	_____ County Planner

Certificate of Approval for Family Subdivisions

This final plat has been reviewed by the Buncombe County Planning and Development Department and meets the requirements for a family subdivision. Access to this subdivision is considered a private driveway or private road. Lots within this subdivision may not be further subdivided for three (3) years after the date of the recordation of this plat. Any further subdivision that occurs within the three (3) years from the date of recordation shall be considered a minor subdivision. This approval shall be void unless the final plat is recorded in the office of the Buncombe County Register of Deeds within 180 days from the date of approval by the Planning and Development Department.

_____ Date	_____ County Planner

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17; Ord. No. 19-10-05 , § 1, 10-15-19)

Editor's note— Ord. No. 17-01-10 , § 1, adopted Jan. 17, 2017, changed the title of § 70-37 from "Review of special subdivisions" to read as herein set out.

Sec. 70-38. - Review of minor subdivisions.

(a) *Preliminary plat submission and review.* The procedure for obtaining preliminary plat approval is as follows:

(1) The subdivider shall submit to the county planning department three copies of a preliminary plat and one digital copy of the preliminary plat in a format acceptable to the planning department containing the information required in section 70-40.

(2) The planning department shall review the preliminary plat for general compliance with the requirements of this chapter and any other applicable county or state regulations; and shall discuss with the subdivider or his agent any changes deemed advisable in the proposed subdivision or require any additional information necessary for review of the minor subdivision.

(3) The planning department shall approve or disapprove the preliminary plat and shall notify the subdivider in writing of its decision regarding approval within ten working days after the complete preliminary plat is submitted for review. If the plat conforms to the provisions of this chapter, it shall be approved.

(4) If any changes are made to the approved preliminary plat, the subdivider shall submit a revised preliminary plat and one digital copy in an acceptable format to the planning department for review and approval.

(b) *Final plat and as-built drawing submission and review.* Upon approval of the preliminary plat by the planning department, the subdivider may proceed as follows:

(1) Upon approval of the preliminary plat by the planning department, the subdivider may proceed with the installation of or provide a guarantee for required improvements such as roads and utilities in accordance with the approved preliminary plat and the requirements of section 70-40. The subdivider shall have installed the improvements specified in article IV of this chapter or guaranteed their installation as provided in this section prior to submission of a draft final plat;

(2) The subdivider shall submit one copy of a draft as-built drawing and one digital copy in an acceptable format to the planning department. The planning department shall approve, or disapprove the draft as-built drawing and shall notify the subdivider, in writing, of its decision regarding final approval within ten working days after the drawing is submitted for review. The as-built drawing shall be prepared, signed, and sealed by a professional land surveyor or professional engineer currently licensed in the state by the state board of examiners for engineers and land surveyors;

(3) The subdivider shall submit one copy of a draft final plat and one digital copy in an acceptable format to the planning department. The planning department shall approve, approve conditionally with modifications to bring the plat into compliance, or disapprove the draft final plat and shall notify the subdivider, in writing, of its decision regarding final approval within ten working days after the plat is submitted for review. If the development has been installed as specified in the approved preliminary plat the draft final plat shall be approved;

(4) The final plat shall be prepared by a professional land surveyor currently licensed in the state by the state board of examiners for engineers and land surveyors. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in G.S. 47-30, as amended, and as set forth in the Standards of Practice for Land Surveying in North Carolina, and shall comply with the provisions of G.S. 136-102.6;

(5) The final plat shall meet the requirements set forth in section 70-40; and

(6) Once the draft final plat has been approved, the applicant may bring a plat in a format acceptable to the Buncombe County Register of Deeds to the Buncombe County Planning Department for approval.

(c) *Appeal procedures.* The decision of the planning department regarding a minor subdivision application may be appealed to the ~~planning board~~board of adjustment. If appealed, the application shall be placed on the next regular meeting agenda of the ~~planning board~~board of adjustment. The ~~planning board~~board of adjustment shall have final approval authority, and, where applicable, all final plats shall contain information and/or conditions approved by the ~~planning board~~board of adjustment. The ~~planning board~~board of adjustment in all such appeals shall make findings of fact in support of its decision. The subdivider shall be notified, in writing, of the ~~planning board~~board of adjustment's decision within ten days after the decision is made.

(d) *Submission to county planning board.* At the planning director's discretion, a preliminary or final plat may be submitted to the county planning board for its approval or disapproval.

(e) The following signed certificates and statements shall accompany or be attached to the final plat:

Certificate of Ownership and Dedication

I hereby certify that I am (we are) the owner(s) of the property shown and described hereon, and that I (we) hereby adopt this plan of subdivision with my (our) free consent, and dedicate all road rights-of-way and other sites and easements to public use as noted in the Disclosure of Private Roadways, where applicable.

_____	_____
Date	Owner

Certification of Private Roads
(if applicable)

The roads within this subdivision are designated as private. The road maintenance agreement, in accordance with G.S. 136-102.6, is or will be recorded in the Office of the Register of Deeds for Buncombe County. Buncombe County Government shall not be responsible for maintenance or repair of the roads within this subdivision. I hereby certify that I am the developer and/or financially responsible party of this property shown and described hereon, and shall maintain said private roads and repair any deterioration, defects or defaults, including but not limited to subgrade, base course, or asphalt, until said roads are dedicated to a responsible party.

_____	_____
Date	Developer/Financially Responsible Party

Certification of Public Roads
(if applicable)

I hereby certify that I am the developer and/or financially responsible party of this property shown and described hereon, and shall maintain the roads within this development, and repair any deterioration, defects or defaults, including but not limited to subgrade, base course, or asphalt, until said roads are dedicated to the North Carolina Department of Transportation or to a responsible party.

_____	_____
Date	Developer/Financially Responsible Party

Statement of Waste Water Treatment
and Water Service
(If applicable)

The waste water treatment and water service are provided by _____ and Buncombe County Government shall not be responsible for maintenance or repair of said waste water treatment and water systems within this subdivision.

Certificate of Survey and Accuracy

State of North Carolina, _____ County, I, _____, certify that this plat was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description recorded in Book (File) _____, Page _____ (Slide)_____, etc.) (other); that the precision of the survey before adjusting was one part in _____ as calculated by latitudes and departures, and that this map was prepared in accordance with G.S. 47-30, as amended. Witness my original signature, registration number, and seal this _____ day of _____, 20___.

Official Seal	_____ Professional Land Surveyor
	_____ Registration Number

Certification of Road Grades and Suitability (if applicable)

State of North Carolina, _____ County, I, _____ certify that the newly constructed or proposed road grades were (calculated by me) (calculated under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) and do not exceed (insert highest approved road grade) percent. Witness my original signature, registration number, and seal this _____ day of _____, 20 ___.

Official Seal	_____ Professional Land Surveyor
	_____ Registration Number

Certificate of Approval

This final plat has been reviewed by the Buncombe County Planning and Development Department and meets the requirements for a minor subdivision. This approval shall be void unless the final plat is recorded in the office of the Buncombe County Register of Deeds within 180 days from the date of approval.

_____ Date	_____ County Planner

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17)

Sec. 70-39. - Review of major subdivisions.

Whenever any subdivision of any tract of land is proposed for a major subdivision, the subdivider shall contact the Buncombe County Planning Department prior to submittal of the preliminary plat to schedule a pre-application conference. Preliminary plans may be shown in order to receive general guidance but will not be submitted or accepted during the pre-application conference. General requirements of the subdivision, erosion control, stormwater management, zoning, flood damage prevention, and fire prevention ordinances will be discussed. After a pre-application conference has been completed, the subdivider shall submit the proposed subdivision plat to the planning department ~~for preliminary approval~~for approval.

(1) *Preliminary plat submission and review.* The procedure for obtaining preliminary plat approval is as follows:

a. The subdivider shall submit ~~13~~ 4 copies of the preliminary plat and one digital copy of the preliminary plat in a format acceptable to the planning department~~ at least 30 calendar days prior to a regularly scheduled meeting of the planning board~~. The preliminary plat and plans shall contain the information required in section 70-40.

b. The preliminary plat shall be reviewed for the entire tract or parcel of land which is to be subdivided. Areas not intended for immediate development should be identified as future development.

c. ~~Prior to submission of the preliminary plat to the planning board, t~~The plat shall be reviewed by the planning department to ensure conformance of the proposed subdivision with the various development standards set forth by state agencies, if applicable, and county standards including those set forth in article III of this chapter. When preliminary plans are initially submitted to the Buncombe County Planning Department and such preliminary plans plainly do not meet all the specifications and standards of this land development and subdivision ordinance for unqualified approval for preliminary plans, the planning department staff shall have discretion to either reject such preliminary plans~~ or to schedule review of such preliminary plans before the planning board~~.

d. Following ~~acceptance by the planning department or~~ appeal of the applicant, all data pertinent to the plat shall be transmitted to the ~~planning board~~board of adjustment.

e. The planning director or said director's designee~~board~~ shall review the preliminary plat and shall approve, approve conditionally, or disapprove the plat. If approved conditionally, the applicant shall have 90 days from preliminary plat approval to submit a revised preliminary plat to the planning department meeting conditions related to subdivision design standards set forth in this ordinance. The director or said director's designee~~planning board~~ shall indicate which conditions are designated as design standards. Failure to meet said conditions within 90 days of the granting of preliminary approval shall constitute expiration of said preliminary approval. If the planning director or said director's designee~~board~~ disapproves the preliminary plat, the reasons for such action shall be stated in writing and references shall be made to the specific regulations with which the preliminary plat does not comply and possible modifications may be indicated for further considerations. If the plat conforms to all the specifications and standards of the provisions of this chapter, it shall be approved.

f. Appeal procedures. The decision of the planning department regarding the rejection of a preliminary plan for a major subdivision application may be appealed to the ~~planning board~~board of adjustment. If appealed, the application shall be placed on a regular meeting agenda of the ~~planning board~~board of adjustment within 6~~3~~0 days. The board of adjustment~~planning board~~ shall have final approval authority, and, where applicable, all

plans shall contain information and/or conditions approved by the planning department. The board of adjustment~~planning board~~ in all such appeals shall make findings of fact in support of its decision. The subdivider shall be notified, in writing, of the board of adjustment~~planning board~~'s decision within 20 days after the decision is made.

g. If any changes are made to the approved preliminary plat, the applicant shall submit a revised plat to the planning department. If said changes are insignificant deviations from the approved preliminary plat, the planning department shall approve said changes internally. A deviation is insignificant if it has no discernable impact on neighboring properties, the general public, or those intended to occupy or use the proposed development. If changes are deemed by the planning department as significant the subdivider shall submit 4~~13~~ copies of the revised preliminary plat and one digital copy to the planning department ~~at least 15 days prior to a regularly scheduled meeting of the planning board~~ for review and approval. Significant changes shall be defined as ones that have discernable impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.

(2) *Final plat and as-built drawing submission and review.* The procedure for obtaining final plat approval is as follows:

a. Upon approval of the preliminary plat ~~by the planning board~~, the subdivider may proceed with the installation of or provide a guarantee for required improvements such as roads and utilities in accordance with the approved preliminary plat and the requirements of section 70-40. The subdivider shall have installed the improvements specified in article IV of this chapter or guaranteed their installation as provided in this section prior to submission of a draft final plat.

b. The subdivider shall submit one copy of a draft as-built drawing and one digital copy in an acceptable format to the planning department. The planning department shall approve, or disapprove the draft as-built drawing and shall notify the subdivider, in writing, of its decision regarding final approval within ten working days after the drawing is submitted for review. The as-built drawing shall be prepared, signed, and sealed by a professional land surveyor or professional engineer currently licensed in the state by the state board of examiners for engineers and land surveyors.

c. The final plat may, at the discretion of the planning department, be reviewed in separate phases, provided that the requirements for submission and review of final plats have been met for each phase.

d. The subdivider shall submit two copies of a draft final plat and one digital copy in an acceptable format to the planning department. The planning department shall approve, approve conditionally, or disapprove the draft final plat and shall notify the subdivider, in writing, of its decision regarding final approval within ten working days after the plat is submitted for review. If the development has been installed as specified in the approved preliminary plat, the draft final plat shall be approved.

e. The final plat shall be prepared by a professional land surveyor currently licensed in the state by the state board of examiners for engineers and land surveyors. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in G.S. 47-30, as amended, and set forth in the Standards of Practice for Land Surveying in North Carolina, and in section 70-40.

f. Approval of the final plat by the planning department shall be affixed to the final plat and shall serve as the original for all subsequent copies.

g. The following signed certificates and statements shall accompany or be attached to the final plat:

Certificate of Ownership and Dedication

I hereby certify that I am (we are) the owner(s) of the property shown and described hereon, and that I (we) hereby adopt this plan of subdivision with my (our) free consent, and dedicate all road rights-of-way and other sites and easements to public use as noted in the Disclosure of Private Roadways, where applicable.

_____	_____
Date	Owner(s)

Certification of Private Roads
(if applicable)

The roads within this subdivision are designated as private. The road maintenance agreement, in accordance with G.S. 136-102.6, is or will be recorded in the Office of the Register of Deeds for Buncombe County. Buncombe County Government shall not be responsible for maintenance or repair of the roads within this subdivision. I hereby certify that I am the developer and/or financially responsible party of this property shown and described hereon, and shall maintain said private roads and repair any deterioration, defects or defaults, including but not limited to subgrade, base course, or asphalt, until said roads are dedicated to responsible party.

_____	_____
Date	Developer/Financially Responsible Party

Certification of Public Roads
(if applicable)

I hereby certify that I am the developer and/or financially responsible party of this property shown and described hereon, and shall maintain the roads within this development, and repair any deterioration, defects or defaults, including but not limited to subgrade, base course, or asphalt, until said roads are dedicated to the North Carolina Department of Transportation or another responsible party.

_____	_____
Date	Developer/Financially Responsible Party

Statement of Waste Water
Treatment and
Water Service
(If applicable)

The waste water treatment and water service are provided by _____ and Buncombe County Government shall not be responsible for maintenance or repair of said waste water treatment and water systems within this subdivision.

Certificate of Survey and Accuracy

State of North Carolina, _____ County, I, _____, certify that this plat was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description recorded in Book (File) _____, Page _____ (Slide) _____, etc.) (other); that the precision of the survey before adjusting was one part in _____ as calculated by latitudes and departures, and that this map was prepared in accordance with G.S. 47-30, as amended. Witness my original signature, registration number, and seal this _____ day of _____, 20 ___.

Official Seal	_____ Professional Land Surveyor
	_____ Registration Number

Certification of Road Grades and Suitability (if applicable)

State of North Carolina, _____ County, I, _____ certify that the newly constructed or proposed road grades were (calculated by me) (calculated under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) and do not exceed (insert highest approved road grade) percent. Witness my original signature, registration number, and seal this _____ day of _____, 20 ___.

Official Seal	_____ Professional Land Surveyor
	_____ Registration Number

Certificate of Approval

This final plat has been reviewed by the Buncombe County Planning and Development Department and meets the requirements for a major subdivision. This approval shall be void unless the final plat is recorded in the office of the Buncombe County Register of Deeds within 180 days from the date of approval by the Planning and Development Department.

_____ Date	_____ County Planner

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17)

Sec. 70-40. - Specifications for preliminary plats, as-built drawings and final plats for recordation.

(a) Specifications for minor and major subdivision preliminary plat. The preliminary plat shall depict or have attached the following information. Preliminary plat shall be clearly and legibly drawn at a scale of not less than one inch = 200 feet and shall be drawn on an appropriate standard sheet size.

(1) *Title block.* The title block shall contain the following:

a. Name and address of owners and subdivider of record;

b. Name of subdivision;

c. Location (township, county, state);

d. Dates of plans;

e. Graphic scale and written scale;

f. Name, address, telephone number, and proof of current registration of designing engineer, landscape architect, or surveyor (i.e. licensed professional); and

g. Tax parcel identification number, PIN(s).

(2) *Roads.* The following information shall be supplied about roads:

a. Existing, platted, and proposed roads within or abutting subdivision (show rights-of-way and dimensions); and

b. Road names.

(3) *Utilities.* The following information shall be shown for utilities if applicable:

a. Utility and other easements of record within and abutting the subdivision;

b. Provisions for electrical services;

c. Provision of natural gas lines; and

d. Sanitary sewers, waterlines, culverts, detention ponds, and other drainage facilities (proposed/existing).

(4) *Project data.* Project data shall include the following:

a. Total area of tract to be subdivided;

b. Total number of lots;

c. Linear feet in roads (centerline); and

d. Approximate delineation of wooded and open areas.

(5) *Slope analysis map.* Each application for a major subdivision and any subdivision subject to section 70-68, Hillside Development Standards or section 70-69, Conservation Development Standards shall include a detailed slope analysis conducted using the Buncombe County slope raster data set at a cell resolution of 50 feet showing the following information:

a. Areas designated as high hazard or moderate hazard on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey;

b. Surface waters, as shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States; Department of Agriculture or the most recent version of the quadrangle topographic maps prepared by the United States Geological Survey, and surface water buffers including, but not limited to, trout stream buffers and required stormwater setbacks;

c. Location of the flood hazard and floodway boundaries;

d. Wetlands;

e. A map showing the following categories of slope in the assigned colors:

Less than 15 percent slope; light green;

Fifteen percent but less than 25 percent; dark green;

Twenty-five percent but less than 30 percent; blue;

Thirty percent but less than 35 percent; yellow;

Thirty-five percent but less than 50 percent; orange;

Fifty percent and greater slope; red.

f. The number of acres and the percent of the tract in each slope category as shown above; and

g. The number of acres and percent of the tract that is 35 percent slope and above.

(6) *Other details.* Other details to be shown are as follows:

a. Vicinity map showing the relationship between the proposed subdivision and surrounding area;

b. Surveyed boundaries of the tract, shown with bearings and distances and/or standard curve data;

c. North arrow;

d. Site-specific topographic information with a minimum five-foot contour interval, prepared by a professional land surveyor or engineer licensed by the State of North Carolina, and indicating the source of the topographic information;

e. Any natural features affecting the site;

f. The location of the flood hazard and floodway boundaries with the effective FEMA map date, map number, and flood zone;

g. The location of any known cemeteries;

h. Existing structures, railroads, and bridges within the subdivision;

i. Approximate lot lines, area of each lot in acres and lot numbers;

j. Names of adjacent property owners and parcel identification numbers (PIN);

k. The existing uses of the land within and abutting the subdivision;

l. Proposed common open spaces; and

m. Location of retaining walls including height and width.

(7) *[Permission for waste system.]* Statement of permission for waste system by one or more of the following as applicable.

a. A written statement from the North Carolina Department of Environment and Natural Resources permitting plans for the community sanitary sewer system;

b. Proof of a preliminary soils investigation that will evaluate the feasibility of developing a subdivision served by individual septic systems, which shall be done by a professional such as a soils engineer or soils scientist; or

c. The Metropolitan Sewerage District system design and allocation, and upon issuance, an approval letter from the Metropolitan Sewerage District shall also be provided.

(8) *[Permission for water system.]* Permission for water system by one or more of the following as applicable.

a. A written statement from the North Carolina Department of Environment and Natural Resources approving and permitting plans for a community water system; or

b. System design and allocation for a public water system shall be provided, and upon issuance, an approval letter from the appropriate water authority shall also be provided.

Note: An investigation evaluating the feasibility of developing a subdivision served by private wells is strongly suggested prior to submission of preliminary plans.

(9) *Approved erosion control plan.* A copy of the erosion control plan and a written statement from the county erosion control officer stating that an erosion control plan has been submitted and approved for the project, if applicable.

(10) *Subdivision roads disclosure statement.* A subdivision roads disclosure statement prepared in accordance with G.S. 136-102, if applicable.

(11) *Other applicable information.* Any other information considered by the subdivider~~, the planning board,~~ and/or planning director to be pertinent to the review of the plat.

(12) *Approval of proposed road and highway plans.* A written statement from the district engineer of the NCDOT certifying approval of any proposed road and highway plans, if applicable.

(13) *Approved NCDOT driveway permit.* A copy of an approved NCDOT driveway permit must be submitted, if applicable.

(b) *Specifications for minor and major subdivision as-built drawings*. The as-built drawing shall be clearly and legibly drawn at a scale of not less than one inch = 200 feet and shall be drawn on an appropriate standard sheet size. No major or minor subdivision lot shall be recorded and no portion of a guarantee of improvements shall be released until said as-built drawing is provided. Minor or major subdivisions that have no communal infrastructure improvements shall not be required to submit an as-built drawing. The as-built drawings shall depict or have attached the following information:

(1) *Title block*. The title block shall contain the following:

a. Name and address of owners of record;

b. Name of subdivision;

c. Location (township, county, state);

d. Dates of as-built drawings;

e. Graphic scale and written scale;

f. Name, address, phone number of design professional; and

g. Tax parcel identification numbers, (PIN).

(2) *Roads.* The following information shall be supplied about roads:

a. Existing and platted roads within or abutting subdivision (show rights-of-way and dimensions);

b. Road names;

c. Actual surveyed road grades; and

d. Indication that the roads are either public or private.

(3) *Utilities.* The following information shall be shown for utilities if applicable:

a. Utility and other easements of record to be recorded within or abutting the subdivision;

b. Provision of electrical service;

c. Provision of natural gas lines;

d. Indication of provision of water and waste water treatment facilities, if not provided by MSD and a local water authority;

e. Sanitary sewers, location, line size, top and invert elevations and approval by MSD or plat book and page number of recorded MSD easements;

f. Waterlines, location, line size and approval by local water authority or plat book and page number of recorded waterline easement; and

g. Storm sewers, culverts, detention ponds, and other drainage facilities.

(4) *Project data.* Project data shall include the following:

a. Total area of tract subdivided;

b. Total number of lots; and

c. Linear feet in roads (centerline).

(5) *Other details.* Other details to be shown are as follows:

a. Vicinity map showing the relationship between the subdivision and surrounding area;

b. Exact boundaries of tract and lots shown with bearings and distances and/or standard curve data;

c. North arrow and orientation reference;

d. Site-specific and field verified topographic information with a minimum five-foot contour interval prepared by a professional land surveyor or engineer licensed by the State of North Carolina;

e. Any natural features affecting the site;

f. The location of the flood hazard and floodway boundaries with the effective FEMA map date, map number, and flood zone;

g. The location of any known cemeteries;

h. Existing structures, railroads, and bridges within or abutting the subdivision;

i. Area of each lot in acres and lot numbers;

j. Names of adjacent property owners and parcel identification numbers (PIN);

k. The existing uses of the land abutting the subdivision;

l. Common open spaces; and

m. Location of retaining walls, including height and width.

(c) *Final plat for recordation.* The final plat for recordation for any subdivision shall include the following:

(1) Compliance with G.S. 47-30, as amended, and Standards of Practice for Land Surveying as adopted by the state board of examiners for engineers and land surveyors;

(2) All utility and drainage easements, if applicable;

(3) All common open spaces;

(4) All certificates required in sections 70-38 and 70-39, if applicable;

(5) Any other required certifications or approvals;

(6) Indication of the type, date, amount, and holder of any financial guarantee related to subdivision infrastructure that has not been completed prior to recordation of the final plat; and

(7) The location of the flood hazard and floodway boundaries with the effective FEMA map date, map number, and flood zone.

Final plat approval shall be void unless the final plat is recorded in the office of the Buncombe County Register of Deeds within 180 days from the date of approval.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17)

Editor's note— Ord. No. 17-01-10 , § 1, adopted Jan. 17, 2017, changed the title of § 70-40 from "Specifications for preliminary plans, as-built drawings and final plats for recordation" to read as herein set out.

Sec. 70-41. - Phased development.

If a subdivider proposes that a subdivision will be constructed in phases, the following procedure shall apply:

(1) No master plan shall be filed as part of a subdivision plan or preliminary plan unless it includes at least one phase of a multi-phase development intended for immediate development, or constitutes the master plan for the entire development intended to be developed immediately.

(2) A master plan showing the entire proposed subdivision and the phases of subdivision, proposed density, proposed type and location of utilities, and proposed development timetable shall be submitted to the planning department staff for review. Approval of a master plan by planning department staff ~~or by the planning board~~ as part of the preliminary plan application process for a subdivision shall not constitute approval of the preliminary plan nor shall such approval of a master plan be considered as an acceptance of a preliminary plan, in whole or in part.

(3) Subdividers of phased developments are hereby put on notice that the terms and conditions of the land development and subdivision ordinance of Buncombe County, North Carolina will change from time to time. In addition to any rights conferred by G.S. 143-755 & 160D-108 ~~P~~plans submitted to the planning department for review within 30 days of the next scheduled meeting of the planning board that comply with all the specifications and standards of the ordinance for any and all phases of the proposed development shall be deemed to have a vested right pursuant to North Carolina General Statutes to continue under the terms and conditions of the ordinance as written on the date said plans were submitted.

(4) Each phase of subdivision shall be preceded by submission and approval of a preliminary plat.

(5) As each phase is completed, a final as-built plan and final recordable plat must be submitted and approved for that phase, prior to the sale or conveyance of any lot in that phase.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 16-11-04 , § 1, 11-1-16)

Sec. 70-42. - Resubdivision procedures.

For any replatting or resubdivision of land, the same procedures, rules and regulations shall apply as prescribed in this article.

(Ord. No. 10-10-05, § 1, 10-5-10)

Sec. 70-43. - Amendments to and modification of master plans.

(a) Insignificant deviations from an approved master plan are permissible and the planning department may authorize such insignificant deviations unless development has not proceeded in accordance

with an approved plan ~~in which case the planning board must approve the changes~~. A deviation is insignificant if it has no discernable impact on neighboring properties, the general public, or those intended to occupy or use the proposed development.

(b) Significant changes to master plan approvals will be processed as new applications. Significant changes include, but are not limited to: those that significantly change the essential character of the use or activity that has been previously authorized; those that increase the density of the proposed development~~; those that a majority of the planning board may, in its sole and complete discretion, determine substantially amounts to a new plan~~.

(c) The planning director shall determine whether amendments to or modifications of approved master plans constitute an insignificant deviation or a significant change as set forth above. The determination of the planning director shall constitute a final decision and may be appealed to the ~~planning board~~board of adjustment. The determination of the ~~planning board~~board of adjustment shall constitute a final decision of the county.

(d) If any changes are made to the approved master plan, the subdivider shall submit a revised master plan and one digital copy in an acceptable format to the planning department for review and approval.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17)

Editor's note— Ord. No. 17-01-10 , § 1, adopted Jan. 17, 2017, changed the title of § 70-43 from "Amendments to and modification of master and preliminary plans" to read as herein set out.

Sec. 70-44. - Notice to adjoining properties.

The applicant must provide documentation that written notice by certified mail has been sent to all landowners adjoining proposed minor and major subdivisions. The notice shall state tax lot PIN(s) (or parcel identifying numbers), and address of the parcel(s) to be developed as well as the developer's name and address, the number of acres to be developed and the number of proposed building lots. No minor or major subdivision application will be granted preliminary approval without this documentation.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17)

Secs. 70-45—70-65. - Reserved.

ARTICLE III. - STANDARDS

Sec. 70-66. - General requirements.

(a) *Conformity to existing maps or plans.* The plat of a subdivision shall conform to any official map or plan adopted by the board of commissioners, existing on November 30, 1993, or thereafter adopted.

(b) *Continuation of adjoining road systems.* Whenever possible, the proposed road or road layout should be coordinated with the existing road system of the surrounding area. Where possible, proposed roads should be the extension of existing roads.

(c) *Road names.* Proposed roads which are obviously in alignment with existing roads should be given the same name. All roads shall comply with the applicable provisions of the county street name, street address, and display ordinance, section 66-26 et seq. Public road names designated on a plat shall conform to G.S. 153A-240.

(d) *Public roads.* A maintenance and financial responsibility plan for the roads within the subdivision, covering the period between the time lot sales begin and when the roads are accepted by the NCDOT must be submitted and approved before final plat approval. Prior to approval of a final plat with proposed public roads or prior to a release of a guarantee of improvements for said subdivision, the developer shall submit a notarized statement of financial responsibility for road maintenance

which shall remain valid until the roads are dedicated to the North Carolina Department of Transportation or another responsible party.

(e) *Private roads.* Private roads may be platted in any subdivision and shall conform to the standards set forth in section 70-67. Private roads shall be set out in protective covenants, deeds, or on plats or any combination of those methods, and shall clearly state that the state and/or county will not be obligated to take over or maintain the road. Prior to approval of the final plat for a subdivision with proposed private roads or prior to a release of guarantee of improvements for said subdivision, the developer shall submit a notarized statement of financial responsibility for road maintenance within the subdivision until said roads are dedicated to an appropriate organization such as a homeowners' association.

(f) *Lots.* Lot size shall be regulated as required by the county health department for septic tank purposes, where applicable.

(g) *Lot frontage.* Lot frontage shall be regulated when the average land slope perpendicular to the street exceeds 18 percent. Any residential subdivision lot where the side slope of the land, at a right angle to the frontage street, is in excess of 18 percent slope shall have a minimum of 50 feet street frontage, and the lot street frontage shall be increased four feet for each side slope percentage point over the 18 percent base for such calculations. Example: A side slope of 50 percent requires lot frontage of 178 feet (50 feet, plus 128 feet for the excess side slope of 32 percent). Planned unit developments and community oriented developments as defined by and approved under the Buncombe County Zoning Ordinance shall not be subject to this requirement.

(h) *Flood damage.* All subdivision proposals shall be consistent with the need to minimize flood damage as provided for in the county flood damage prevention ordinance, chapter 34 of this Code.

(i) *Permanent reference points.* Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended.

(j) *Installation of utilities.* All public or private water and sewer systems shall be installed and shall meet the requirements of the county health department or other governmental authorities having jurisdiction thereof.

(k) *Flag lots.* Flag lots (lots accessed by a deeded access driveway) will have a minimum "pole" width of 20 feet. If the side slope of the land is in excess of 18 percent, then the minimum width will be established in accordance with subsection (g) of this section.

(l) *Common open space.* All common open space shall be designated on the preliminary plat, as-built drawing, and final plat. The final plat shall indicate that common open space shall not be further developed, and the developer shall indicate on the final plat how the common open space will be maintained and ownership of said open space.

(m) *Traffic impact study.* A traffic impact study shall be submitted for subdivisions with 75 lots or more. Multi-phase subdivisions shall be required to submit a traffic impact study when the total number of lots of all phases is greater than 75 lots. Said study shall meet the guidelines for traffic impact studies provided in the North Carolina Department of Transportation's "Policy on Street and Driveway Access to North Carolina Highways." Major subdivisions of 75 lots that would generate a decrease in service to a level D or lower as defined by the Highway Capacity Manual (HCM) and the AASHTO Geometric Design of Highways and Streets shall be required to submit an approved NCDOT driveway permit or an approved driveway permit from the controlling municipality with submittal for preliminary approval.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17; Ord. No. 19-10-04 , § 1, 10-15-19)

Sec. 70-67. - Road and design standards.

Subdivision roads may be designated public or private and are subject to final approval by the Buncombe County Fire Marshal as follows:

(1) *Public use.* Subdivision roads to be dedicated to public use and to be maintained by the NCDOT, after construction, shall conform in all respects to G.S. 136-102.6. Public subdivision roads shall conform to the following standards:

a. No major subdivision shall be reviewed by the Buncombe County Planning Board until application has been made to the NCDOT for review of the public roads. No minor subdivision shall be granted preliminary approval until application has been made to the NCDOT for review of the public roads.

b. Public subdivision roads shall at a minimum meet the standards for private subdivision roads provided in this section.

c. The subdivider shall furnish the county planning department proof that the district engineer of the NCDOT has issued a design certificate of approval. Upon completion of roads to be dedicated to public use, the developer shall submit confirmation by the NCDOT or a professional engineer that the roads have been constructed to NCDOT standards.

(2) *Private use.* Subdivision roads for major and minor subdivisions to be designated as private shall conform to the following minimum design standards:

a. Minimum deeded and recorded access road right-of-way widths shall be 20 feet.

b. Access roads to both major and minor subdivisions shall traverse a surveyed right-of-way centerline showing calls and distances and its beginning and ending points in relation to adjoining properties. Access roads to subdivisions shall have an eight-inch minimum aggregated base course (ABC) No. 7 stone and shall be a minimum width of 16 feet, subject to Buncombe County Fire Prevention Ordinance and approval by the Buncombe County Fire Marshal. If access road width is less than 20 feet turnouts shall be provided every 200 feet. Turnouts shall be a minimum of 20 feet wide for 36 feet of length.

c. Minimum subdivision road rights-of-way for both minor and major subdivisions are shown on Figure 1, which follows item h. of this section, and are described as follows:

1. Collector or any residential lot frontage road, 45 feet;

2. Service or utility access or alley not used as primary residential access, 20 feet;

3. Minimum cul-de-sac radius, 50 feet; and

4. Shared private driveways, 20 feet.

d. Horizontal centerline design standards for both minor and major subdivisions are as follows:

1. Minimum centerline radius, 35 feet;

2. T-turnarounds, minimum length of perpendicular cord will be 120 feet;

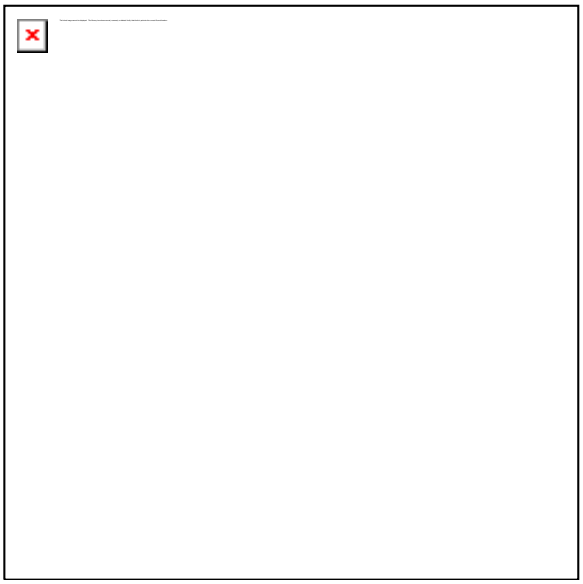
3. L-turnarounds, minimum length of each cord will be 60 feet; and

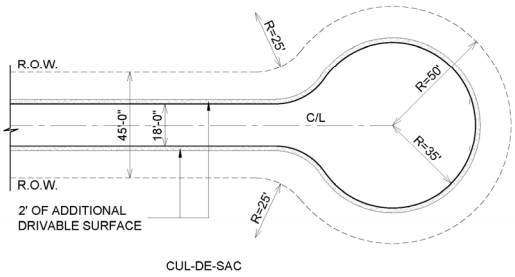
4. Y-turnarounds, minimum length of each cord will be 60 feet.

e. All major subdivision roads (i.e., including features such as streets, cul-de-sacs, and T-turnarounds) shall be paved in accordance with NCDOT "Subdivision Road Minimum Construction Standards," Pavement Design 1(E), current edition. Specify soil conditions and which combination of base and pavement design (see DOT guidance) will be used. Use worst-case design criteria if soil testing is not provided. Final plans will include a statement by a professional engineer that roads are in compliance with the standards of this chapter. No base course shall be placed on muck, pipe, clay, organic matter or other unsuitable matter, and a minimum compaction rate of subgrade prior to paving shall not be less than 95 percent by standard proctor method and certified by a professional engineer. The following provisions shall also apply:

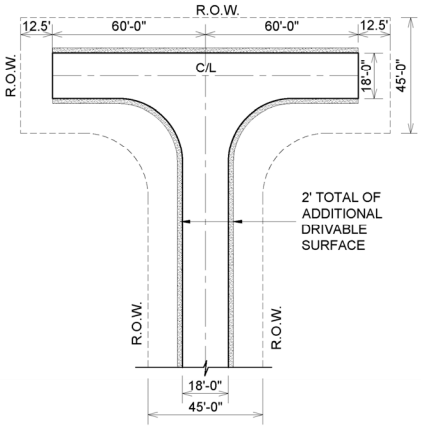
1. Minimum pavement width shall be 18 feet. Two feet of additional drivable surface shall be provided constructed of asphalt, concrete or other approved driving surface (including compacted stone) capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds. The two-foot additional drivable surface requirement may be reduced by the Buncombe County Fire Marshal or his or her designee by use of, but not limited to, residential sprinklers, municipal water supply, loop roads, pull outs, etc. Requests for a variance from the provisions of this article must be accompanied by a letter from the fire marshal approving the alternate method.
2. The minimum pavement width for turnarounds shall be as follows as shown in Figure 1 below:
   i. Cul-de-sac, minimum pavement radius, 35 feet;
   ii. T-turnarounds, minimum pavement length of perpendicular cord will be 120 feet;
   iii. L-turnarounds, minimum pavement length of each cord will be 60 feet; and
   iv. Y-turnarounds, minimum pavement length of each cord will be 60 feet.

Figure 1

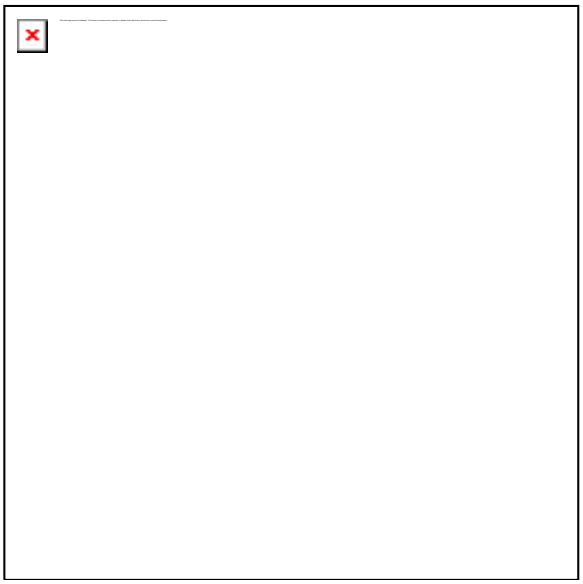


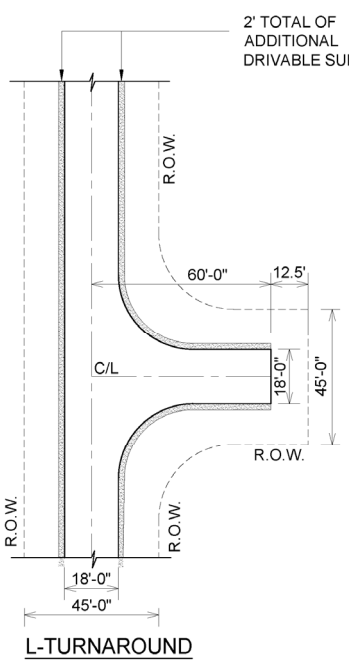


CUL-DE-SAC

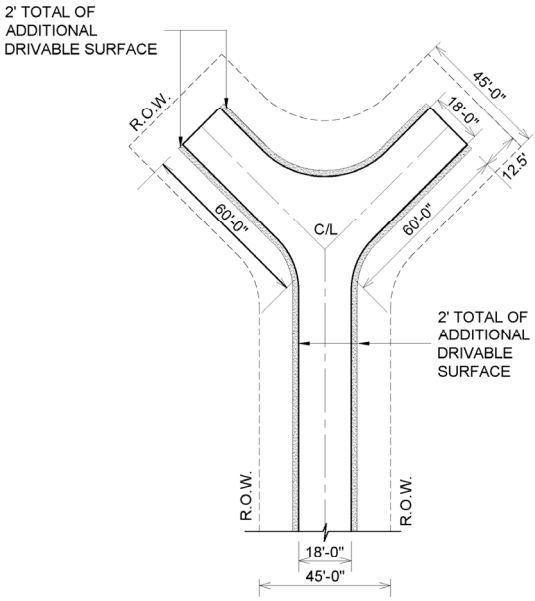


T-TURNAROUND





L-TURNAROUND



Y-TURNAROUND

3. The pavement width and base course shall be increased where the road centerline is less than a 90-foot radius. If radius is 70 to 90 feet, increase pavement width 25 percent; if radius is 60 to 70 feet, increase pavement width 35 percent; if radius is 50 to 60 feet, increase pavement width 45 percent; if radius is less than 50 feet, increase pavement width 50 percent;

4. Finished grade, typical cross section, and profiles shall be prepared by a professional land surveyor or professional engineer, currently licensed in the state by the state board of examiners for engineers and land surveyors; and

5. Where two accesses are required for a development by the Buncombe County Fire Marshal, they shall be remote from each other.

f. All minor subdivision roads (i.e., including features such as streets, cul-de-sacs, and T-turnarounds) less than or equal to ten percent in grade shall have an eight-inch minimum aggregated base course (ABC) No. 7 stone. All roads exceeding ten percent grade shall

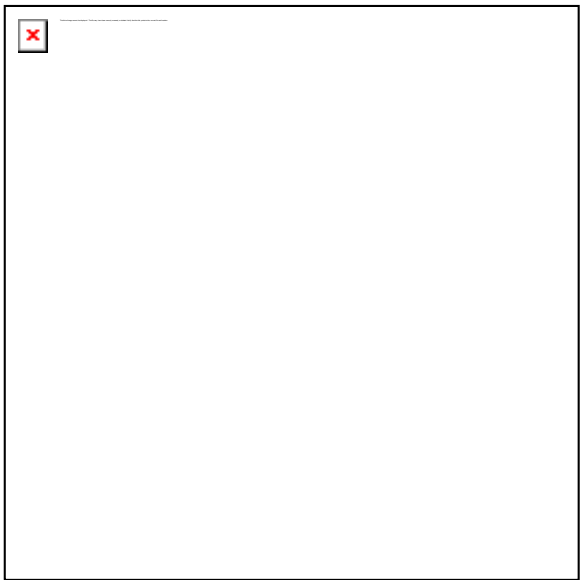
meet major subdivision road construction standards. Final plans will include a statement by a professional engineer that roads are in compliance with the standards of this chapter. No base course shall be placed on muck, pipe clay, organic matter or other unsuitable matter, and a minimum compaction rate of subgrade prior to paving (if required) shall not be less than 95 percent by standard proctor method and certified by a professional engineer. The following provisions shall also apply:

1. Minimum road width shall be 18 feet. Two feet of additional drivable surface shall be provided constructed of asphalt, concrete or other approved driving surface (including compacted stone) capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds. The two foot additional drivable surface requirement may be reduced by the Buncombe County Fire Marshal or his or her designee by use of, but not limited to, residential sprinklers, municipal water supply, loop roads, pull outs, etc. Requests for a variance from the provisions of this article must be accompanied by a letter from the Fire Marshal approving the alternate method.
2. The minimum stone or pavement width for turnarounds shall be as follows (as shown in Figure 1 above):
    i. Cul-de-sac, minimum stone or pavement radius, 35 feet;
    ii. T-turnarounds, minimum stone or pavement length of perpendicular cord will be 120 feet;
    iii. L-turnarounds, minimum stone or pavement length of each cord will be 60 feet; or
    iv. Y-turnarounds, minimum stone or pavement length of each cord will be 60 feet.
3. The road width shall be increased where the road centerline is less than a 90-foot radius. If radius is 70 to 90 feet, increase road width 25 percent; if radius is 60 to 70 feet, increase road width 35 percent; if radius is 50 to 60 feet, increase road width 45 percent; if radius is less than 50 feet, increase road width 50 percent;
4. Finished grade, typical cross section, and profiles shall be prepared by a professional land surveyor or professional engineer, currently licensed in the state by the state board of examiners for engineers and land surveyors; and
5. Where two accesses are required for a development by the Buncombe County Fire Marshal, they shall be remote from each other.

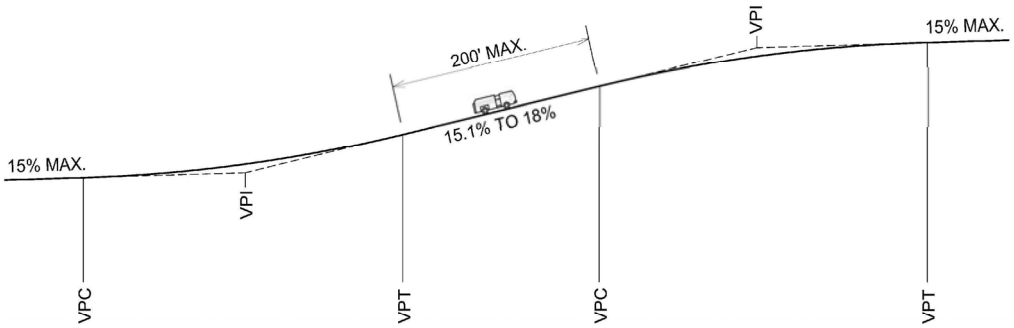
g. Minimum shoulder width on fill slopes for both minor and major subdivisions shall not be less than two feet.

h. Maximum grades for both minor and major subdivisions shall be as follows:
    1. Maximum centerline grade, 18 percent.
    2. As shown in Figure 2 below, tangent grades in excess of 15 percent shall not exceed 200 feet in length and shall have a maximum entrance and exit grade of 15 percent for example:

Figure 2



VPC- VERTICAL POINT OF CURVE
VPI- VERTICAL POINT OF INTERSECTION
VPT- VERTICAL POINT OF TANGENCY



ROAD GRADE

3. Maximum grade, 15 percent, where road centerline radius is less than 90 feet.
4. Grades for 30 feet each way from an intersection shall not exceed ten percent.
5. Grades for turnarounds shall not exceed ten percent.

i. Cut and fill slopes for both minor and major subdivisions shall be constructed to ensure adequate stability of the natural materials encountered.

j. All storm drainage for both minor and major subdivisions shall be in accordance with the Buncombe County Stormwater Management Ordinance, and shall be adequate to facilitate the road maintenance without excessive cost, and not cause flooding on private property from storm runoff of the design frequency.

k. If a right-of-way or road is indicated at the boundary of development, then the master plan for both minor and major subdivisions shall include a description of proposed future development; including at a minimum the acreage and anticipated density in houses per acre, if known. If a subdivision is expanded to a minor or major subdivision then the entire subdivision shall be brought up to minor or major subdivision road standards. A professional engineer may certify through available and recognized ASTM International testing that the existing subgrade compaction, base course, and pavement depth are in general conformance with the standards contained in this article.

l. Use NCDOT "Subdivision Roads Minimum Construction Standards," Minimum Design and Construction Criteria (B) for Bridges and Dams, current edition for subdivisions. Prior to recordation of a final plat or release of guarantee of improvements, a signed and sealed engineer's letter certifying that bridges or dams were constructed to the NCDOT "Subdivision Roads Minimum Construction Standards," shall be provided.

m. Retaining walls utilized to support a roadbed or the adjacent slope for both minor and major subdivisions shall be designed and constructed under the supervision of a professional engineer. Retaining wall height, location, and width shall be indicated on the preliminary plat. Prior to final subdivision approval or release of a guarantee of improvements, a professional engineer shall certify that the retaining wall meets the requirements of North Carolina Building Code and the Retaining Wall Ordinance, if applicable.

n. Alternatives to conventional subdivision roads for both minor and major subdivisions will be considered in the variance process that provide for safe and efficient transportation, while reducing disturbance and tree cutting. This could include, but is not limited to, one way or loop roads, steeper side slopes where soil stability will allow varying grades and those other means that reduce land disturbance, increase environmental protection, and maintain safe and efficient transportation. Trees should be protected within the development whenever possible using temporary fencing. Plant screening is recommended for all retaining walls and cut and fill slopes. These measures should be used in conjunction with required methods of stabilization. The density of new plant material should approximate the density of vegetation prior to development.

o. The temporary terminus of any major or minor subdivision road shall be constructed with a temporary turnaround. No major or minor subdivision lot shall be recorded and no portion of a subdivision bond shall be released until said temporary turnaround is provided. If a subdivision is subject to the hillside development standards, the disturbance required for temporary turnarounds shall count towards the limits for disturbance of communal infrastructure and shall be shown on preliminary subdivision plans. The temporary turnaround shall have an eight-inch minimum aggregated base course (ABC) No. 7 stone and shall meet the following design standards:

1. Temporary cul-de-sacs shall have a minimum centerline radius of 35 feet;

2. Temporary T-turnarounds shall have a minimum perpendicular cord of 120 feet and shall be 20 feet wide;

3. Temporary L- turnarounds shall have a minimum perpendicular cord of 60 feet and a minimum horizontal cord of 60 feet, and shall be 20 feet wide; or

4. Y-turnarounds, minimum stone or pavement length of each cord will be 60 feet.

(3) Public and private use. Roads for both minor and major subdivisions to be designated either public or private shall conform to the following minimum standards in addition to the standards set forth in subsections (1) and (2) above:

a. Any subdivision road shall be contained within a corridor that shall not exceed 90 feet in width along 80% of its total length; up to 20 percent of the length of the road corridor may be graded to a maximum width of 135 feet. The corridor height, defined as the height of a combined cut and fill slope, shall not exceed 60 feet.

b. Consultation with a geotechnical engineer shall be required for road construction in areas of a tract in excess of 30 percent natural slope and for all areas designated as high hazard or moderate hazard on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey, and an investigation for colluvial deposits shall be made. Recommendations of the geotechnical engineer shall be submitted with the application for review. Prior to final subdivision approval or release of a guarantee of improvements, a report by the geotechnical engineer shall be required certifying that recommendations were followed during construction.

c. Private driveways. Individual private driveways shall be shown on the preliminary plan for the first 20 linear feet, and if traversing a cut or fill slope, the driveway must be shown to the point where it exits the cut or fill slope where the distance is greater than 20 linear feet.

d. Shared private driveways shall be shown on the preliminary plat and shall be completed by the developer as a part of the installation of communal infrastructure. Shared private driveways shall also conform to the following minimum standards:

1. A minimum driveway width of ten feet unless the driveway is 500 linear feet or greater, at which point the entire driveway shall be at least 13 feet wide.

2. Shared driveways shall be comprised of asphalt, concrete or other approved driving surface (including compacted stone) capable of supporting the imposed load of fire apparatus weighing at least 75,000 pounds. Driving surface shall be approved by the Buncombe County Fire Marshal.

3. Shared private driveways shall be no greater than ten percent grade for the first 30 feet and not exceed 20% grade after that.

4. Turnarounds shall be provided if required by the fire marshal at the terminus of said shared private driveway and shall meet the following standards:

i. Shall be less than ten percent grade;

ii. Shall have a radius of 35-foot drivable surface for cul-de-sacs;

iii. Shall have a 120-foot perpendicular cord for T-turnarounds;

iv. Shall have a 60-foot perpendicular cord for L-turnarounds; or

v. Y-turnarounds, minimum stone or pavement length of each cord will be 60 feet.

e. If the subdivision is to be gated, it shall be indicated as such on the preliminary plat. If a gate is utilized, the developer shall coordinate with the local fire department that serves the subdivision in order to provide emergency service access to the subdivision.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17)

———

Sec. 70-68. - Hillside development standards.

(a) *Hillside area definition.* For the purposes of this section, a hillside area is defined as any lot, parcel, or tract of land which meets all of the following standards:

(1) Is located within the jurisdiction of Buncombe County as defined in section 70-3 of this chapter.

(2) Is defined by section 70-5 as a minor or major subdivision.

(3) Has an average slope of its natural terrain of 25 percent or greater, or has an average slope of its natural terrain of less than 25 percent, but 30 percent of the tract is greater than 35 percent slope based on the submitted slope analysis and may follow the standards set forth in subsection a. below.

a. *Drastic variation hillside development subdivision.* A submitted subdivision plan that has an average slope of its natural terrain of less than 25 percent slope, but 30 percent of the tract is greater than 35 percent slope as shown on the submitted slope analysis, may separate the property into two separate areas (area A and area B) if the proposed subdivision meets the following requirements:

1. Development area A shall be exempted from the hillside development standards and shall meet the following standards:

i. Ninety percent of the phase shall be in areas less than or equal to 25 percent slope as shown on submitted slope analysis.

ii. The phase shall have an average slope of its natural terrain of less than 25 percent.

2. Development area B shall be the remainder of the tract to be subdivided and shall be subject to hillside development standards.

(b) *Previously approved developments exempt.* Any portion of the lot, parcel, or tract of land which has been approved by the planning department ~~or planning board~~ as a minor or major subdivision prior to the adoption of this section, or developed prior to the adoption of this section, shall not be included within the definition of a hillside area if no further subdivision is proposed within that portion of the lot, parcel, or tract of land. Subsequent phases of a minor or major subdivision, as well as approved subdivision projects where the site plan has been changed, or approved subdivisions where the lot design has changed, shall indicate the proposed contours, limit and area of grading, and percentage of the site to be graded.

(c) *Average slope determination.*

(1) *Contour map required.* Each application for a minor or major subdivision which meets the standards set forth in the hillside definition shall include a contour map which includes a scale and contour interval on the site plan to determine the average slope of the entire tract of land and the average slope of each proposed lot in its natural state.

(2) *Calculation of natural average slope.* The natural average slope is calculated using the following formula:

$$S\% = \frac{0.0023 \times I \times L}{A}$$

Where:

S = Average natural slope of parcel or lot in percent

I = Contour interval of map in feet, with said contour intervals to be five feet or less

L = Total length of the contour lines within the parcel or lot in feet

A = Area of the parcel or lot in acres

0.0023 = Constant which converts square feet into acres

In addition, property owners may submit an alternate method of slope calculation for consideration by the planning ~~board~~department. These methods may include, but are not limited to, the following methods: weighted average, slope mapping, other field-based techniques, etc.

Once "S" or the average natural percent of the tract is calculated, round to the nearest whole number when "S" is 25 percent or greater. The density table, as set forth hereinafter, shall be used to determine the maximum number of lots allowed. "S" shall also be calculated for each lot and, when "S" is 25 percent or greater, rounded to the nearest whole number. The density table shall be used to determine the minimum size allowed for each proposed lot.

(d) *Density table.*

(1) *Development regulated; exceptions.* For the purposes of this section, developments which meet the standards set forth in the definition of hillside area shall further be regulated with regard to the permitted density on both the site to be developed as well as to the individual lot. The permitted density shall be determined by first calculating the average natural slope for a

site to be developed in accordance with the density table, and, second, by calculating the average slope of the lot to be transferred or developed. The minimum land area for proposed lots shall be calculated based on that portion of the lot to be under control of and deeded to the property owner, exclusive of road rights-of-way.

(2) *Density table.* The density table to be used in this section is shown in Figure 2 below.

FIGURE 2

Slope %	Maximum Density Lots Per Acre	Minimum Lot in Acres
25	1.250	0.80
26	1.064	0.94
27	0.926	1.08
28	0.820	1.22
29	0.735	1.36
30	0.667	1.5
31	0.625	1.6
32	0.588	1.7
33	0.556	1.8
34	0.526	1.9
35	0.500	2.0
36	0.446	2.24
37	0.398	2.51
38	0.356	2.81
39	0.318	3.15
40	0.284	3.52
41	0.253	3.95
42	0.226	4.42
43	0.202	4.95
44	0.180	5.55
45	0.161	6.21
46	0.144	6.96
47	0.128	7.79
48	0.115	8.73
49	0.102	9.77

50 and above	0.100	10.0

(3) Any proposed development or lot which meets the definition of hillside area and whose average natural slope is above 50 percent is subject to the most restrictive density and lot size requirements as set forth in the Density Table. Any proposed individual lot whose average natural slope is below 25 percent within a development which meets the definition of hillside area will not be subject to a minimum lot size as set forth in the density table.

(4) A reduction in minimum lot size and increase in density and percentage of disturbance for lots that are 30 percent average natural slope and below may be earned when the gross area disturbed for communal infrastructure installation is 13 percent of the tract or less, as shown in Figure 3 below.

FIGURE 3

Slope	13% Disturbance for Infrastructure (.9 Multiplier Reduction in Minimum Lot Size)			12% Disturbance for Infrastructure (.85 Multiplier Reduction in Minimum Lot Size)			11% Disturbance for Infrastructure (.8 Multiplier Reduction in Minimum Lot Size)			10% Disturbance for Infrastructure (.75 Multiplier Reduction in Minimum Lot Size)		
	Minimum Lot Size	Allowed Disturbance	% of Lot	Minimum Lot Size	Allowed Disturbance	% of Lot	Minimum Lot Size	Allowed Disturbance	% of Lot	Minimum Lot Size	Allowed Disturbance	% of Lot
25	0.72	0.24	33.33%	0.68	0.24	35.29%	0.64	0.24	37.50%	0.6	0.24	40.00%
26	0.846	0.282	33.33%	0.799	0.282	35.29%	0.752	0.282	37.50%	0.705	0.282	40.00%
27	0.972	0.324	33.33%	0.918	0.324	35.29%	0.864	0.324	37.50%	0.81	0.324	40.00%
28	1.098	0.366	33.33%	1.037	0.366	35.29%	0.976	0.366	37.50%	0.915	0.366	40.00%
29	1.224	0.408	33.33%	1.156	0.408	35.29%	1.088	0.408	37.50%	1.02	0.408	40.00%
30	1.35	0.45	33.33%	1.275	0.45	35.29%	1.2	0.45	37.50%	1.125	0.45	40.00%
	Maximum density will be 110% of that allowed in 70-68(d)(2) Density Table			Maximum density will be 112% of that allowed in 70-68(d)(2) Density Table			Maximum density will be 114% of that allowed in 70-68(d)(2) Density Table			Maximum density will be 116% of that allowed in 70-68(d)(2) Density Table		

(e) *Hillside area development review process.*

(1) *Information required subdivision plan review.* Compliance with this section shall be evaluated as part of the subdivision review process set forth in article II of this chapter. In addition to the application information required for a subdivision review, those proposed developments which meet the standards of the hillside area definition must include the following information:

a. A site plan which includes the boundaries and acreage of the parcel, scale and contour interval, existing and proposed contours;

b. Average natural slope calculations for the parcel and individual lots which include the average natural slope in percent, contour intervals of five feet or less, individual and total length of contour lines in feet and area of the parcel and lots in acres;

c. Areas with a natural slope over 30 percent shall not have fill slopes steeper than a 2H:1V, nor cut slopes steeper than 1.5H:1V unless designed by a geotechnical engineer.

d. Guardrails, installed to NCDOT specification or to the standard specifications for construction of roads and bridges on federal highway projects, and shoulders of four feet minimum width may be required in construction of roads over 15 percent grade and with downhill slopes of 30 percent or more.

e. Soils maps shall be submitted from the natural resource conservation service (NRCS).

f. Global stability analysis shall be performed for homesites on a 35 percent or greater slope or in an area designated as high hazard or moderate hazard on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey.

g. Other information or descriptions or maps which may be requested by the planning director or ~~the planning board~~said director's designee to address concerns regarding geologic hazards, soil stability, building-to-site relationships, and similar characteristics.

h. Limitations on disturbed area and impervious surfaces.

1. Limitations on disturbed area and impervious surfaces for communal infrastructure installation shall be:

Maximum gross area disturbed = 15 percent

Maximum gross area impervious = ten percent

These limits shall apply to infrastructure installation that is common to the development including, but not limited to, roadways, shared drives, sidewalks, public utilities and stormwater controls.

2. Limitations on disturbed area and impervious surfaces for individual lot development, excluding rights-of-way, shall be:

25—35 percent slopes

Maximum gross area disturbed = 30 percent

Maximum gross area impervious = 15 percent

>35 percent slopes

Maximum gross area disturbed = 15 percent

Maximum gross area impervious = eight percent

These limits shall apply to individual lot improvements, including but not limited to individual driveways, and well and septic systems. Recreational facilities, including, but not limited to, golf courses, club houses, pools and tennis courts shall be located on an individual lot(s) and shall be considered individual lot improvements.

3. The preliminary plan shall show the maximum amount of disturbed and impervious acreage and percent of total for infrastructure installation and shall also show the boundaries of the disturbed and impervious areas for the proposed infrastructure installation. Acreage shall be carried out to two decimal places and shall not be rounded.

4. The limitations on disturbed and impervious area applied to the tract during infrastructure installation shall not be included in the disturbed and impervious area calculations when the individual lots are developed.

(2) *[Site plan required for individual lot development].* Owners or developers of individual lots that are subject to the requirements of section 70-68, effective July 1, 2006, shall be required to submit a site plan to the planning department, drawn to scale, with the following information:

a. Topographic data including existing and planned contours for the area of construction or land disturbance, (cuts and fills for structures, driveways, etc.) shown in five-foot contour intervals. This shall be drawn by the homeowner, or his designated representative, using reliable sources such as Buncombe County topographic maps or appropriate software;

b. All proposed impervious surfaces (including but not limited to building footprints, driveway, parking area, patio, etc.), retaining walls, septic tank and drainfield locations; and

c. Written and graphic area and percentage of parcel to be disturbed and area and percentage of parcel to have impervious surface.

The site plan shall be approved prior to the issuance of any development or building permits.

(3) *[Land disturbing activity.]* Land disturbing activity is limited to specific areas within a parcel or lot not to exceed amounts shown in section 70-68 (e)(1)(h). This area does not include setbacks, buffers, easements, etc. There must be an adequate amount of buildable land for proposed structure(s) and all land disturbing activities (including but not limited to roadways, driveways, septic/sewage areas, structures, etc.). Grading shall not take place prior to site plan approval by the planning department and issuance of any permit required by the Buncombe County Soil Erosion and Sedimentation Control Ordinance. Only areas that have been approved for disturbance may be disturbed, and then only after all erosion measures and other regulations have been met. Grading areas shall be clearly marked before any grading begins. Highly visible fencing is required to prohibit earthmoving equipment from moving beyond designated grading boundaries.

a. No development or land disturbance activity may occur in the following areas of a parcel or lot. These areas may be included in the area used to calculate compliance with the minimum standards shown in subsection 70-68(e)(1)(h):

Rock cliffs, wetlands, buffer areas along surface waters or mapped floodways, significant historical and archeological resource areas defined by the National Register of Historic Places or other federal or state agencies.

The provisions of this section shall not apply to the crossing of streams and creeks for utility corridors and roadways if construction is approved by all applicable agencies.

(4) *[State of property during development.]* Any new development will create areas that will temporarily be deforested and/or unsightly. Every effort to reduce the length of time the development remains in this state should be taken.

a. A minimum of the property, as specified in subsection 70-68(e)(1)(h), is required to remain in a natural state. A natural state is defined as the condition prior to development or other human activity. The only activities that may take place outside the areas of disturbance documented on an approved site plan are:

1. Fire fuel reduction (fire fuel reduction may include the installation of firebreaks in the area immediately adjacent to structures and the removal of underbrush);
2. Control of invasive species (as defined in Figure 4. Other species may be approved by the planning department when demonstrated to be non-native invasive species.);
3. Removal of dead or diseased specimens;
4. Maintenance of the area to ensure adequate screening and buffering (i.e., selective thinning of saplings);
5. Maintenance of the area to ensure public health and safety; and
6. Nonmotorized passive recreation (such as running, walking, biking trails, gardening, primitive camping areas, and similar low impact outdoor activities). The location, type, and materials which will be used to construct passive recreation facilities shall be submitted on the preliminary plans ~~and shall be approved by the planning board~~. The development of passive recreation areas within the natural state area shall not exceed five percent of the total acreage of the tract.

When removing vegetation for the purposes of exceptions 1. through 5. above, vegetation can only be removed through the use of hand-held devices (i.e., chainsaws, pole pruners, hedge trimmers, weed eaters, etc.). Bulk application of chemical herbicides is prohibited. The removal of vegetation shall be conducted in such a manner as to preserve ground cover (through a vegetated cover or through the use of a substrate that will prevent sediment runoff from the site). Removal of healthy tree specimens greater than three-inch diameter at breast height (DBH) is prohibited except when installing passive recreation facilities.

Clear cutting will be allowed only for the footprint of the house, driveways, septic systems, and normal landscaping including yards, gardens and flowerbeds. Clear cutting for view will not be allowed. However, selective cutting that eliminates the tunnel effect caused by clear cutting will be allowed. Reducing clear cuttings reduces the potential for erosion, stormwater runoff and landscaping and grading costs. Keeping mature greenery is recommended wherever possible to provide immediate aesthetic, environmental and potential monetary value.

FIGURE 4

Scientific Name	**Common Name**
Ailanthus altissima (Mill.) Swingle	Tree of Heaven
Albizia julibrissin Durz.	Mimosa
Alliaria petiolata (Bieb.) Cavara & Grande	Garlic-mustard
Alternanthera philoxeroides (Mart.) Griseb.	Alligatorweed
Celastrus orbiculatus Thunb.	Asian bittersweet
Elaeagnus angustifolia L.	Russian olive
Elaeagnus umbellata Thunb.	Autumn olive
Hedera helix L.	English ivy
Hydrilla verticillata (L.f.) Royle	Hydrilla
Lespedeza bicolor	Bicolor lespedeza
Lespedeza cuneata (Dum.-Cours.) G. Don	Sericea lespedeza
Ligustrum sinense Lour.	Chinese privet
Lonicera fragrantissima Lindl. & Paxton	Fragrant honeysuckle
Lonicera japonica Thunb.	Japanese honeysuckle
Microstegium vimineum (Trin.) A. Camus	Japanese stilt-grass
Murdannia keisak (Hassk.) Hand.-Mazz.	Asian spiderwort
Myriophyllum aquaticum (Vell.) Verdc.	Parrotfeather
Paulownia tomentosa (Thunb.) Sieb. & Zucc. ex Steud.	Princess tree
Phragmites australis (Cav.) Trin. ssp. australis	Common reed
Polygonum cuspidatum Seib. & Zucc.	Japanese knotweed

Pueraria montana (Lour.) Merr.	Kudzu
Rosa multiflora Thunb.	Multiflora rose
Salvinia molesta Mitchell	Aquarium water-moss
Vitex rotundifolia L.f.	Beach vitex
Wisteria sinensis (Sims) DC	Chinese wisteria

b. Re-vegetation is required on all disturbed areas that remain after construction, including areas around permanent structures, resurfaced areas such as driveways and areas of cuts and fills, pursuant to land disturbance regulations. Where trees have been removed due to insect damage or disease, and this tree removal increases the land disturbance percentage in amounts that exceed amounts specified in subsection 70-68(e)(1)(h):, replanting is required according to the re-vegetation plan shown in subsection 70-68(e)(5).

c. All surface water buffers are to be maintained in a natural state pursuant to Buncombe County Soil Erosion and Sedimentation Control Ordinance and North Carolina Department of Environment and Natural Resources.

(5) *Re-vegetation plan.*

ELEVATION UNDER 4,000 FEET	
East/North Facing	South/West Facing
Overstory Species	
Eastern White Pine	Black Locust
Yellow Poplar	Virginia Pine
Chestnut Oak	Shortleaf Pine
Northern Red Oak	Southern Red Oak
Black Walnut	White Oak
Native Ash	Chestnut Oak
Sycamore	Hickory
Beech	Red Maple
Yellow Buckeye	Sycamore
Red Maple	
Sugar Maple	
Understory Species	
Sourwood	Native Blueberry
Dogwood	Eastern Redbud
Mountain Laurel	American Holly

Native Rhododendron	Box Elder
Sumac	Sassafras
American Hornbeam	Dog Hobble
	Persimmon
ELEVATION 4,000 FEET AND OVER	
East/North Facing	South/West Facing
Overstory Species	
Sugar Maple	Pitch Pine
Black Birch	Chestnut Oak
Yellow Birch	Northern Red Oak
Beech	Black Cherry
Red Spruce	Eastern White Pine
Black Cherry	
Eastern White Pine	
Northern Red Oak	
Understory Species	
Native Rhododendron	Hawthorn
	Striped Maple
Mountain Maple	Serviceberry
Native Blueberry	
Native Crabapple	
American Mountain Ash	

All planted species shall be on a ten-foot by ten-foot spacing. A mix of one overstory and one understory species from the table above, appropriate for site elevation and aspect, shall be planted on each 100 square feet.

Pines shall be three to four feet in height, with a minimum stem diameter at the ground of one inch. The root ball shall be 14—18 inches.

Hardwoods shall be 14—18 inches in height, with a minimum stem diameter at the ground of one-half to three-fourths-inches. These trees can be bare-rooted at planting.

All overstory and understory plants shall be limed and slow-release fertilizer stakes shall be inserted around each plant.

All plants shall be mulched with organic mulch to control weeds. Mulch shall extend two feet around each plant.

(6) *Issuance of land disturbing permit.* No land disturbing permit shall be issued for a site plan review or a subdivision review which meets the standards set forth in the definition of hillside area until the site plan review and subdivision plat review have been completed.

(f) *Alternative path hillside development subdivision*. Alternative path development shall provide design flexibility that will allow for preservation of environmentally sensitive features. The alternative path is intended to limit disturbed areas and preserve ridge tops, woodlands, open spaces, floodplain, moderate and high risk landslide hazard areas and other environmentally sensitive areas. The following shall apply to all development seeking to be approved through the Alternative Path:

(1) Minimum lot frontage required in section 70-66(g) and lot sizes are not applicable to alternative path development. The total number of lots shall not exceed that allowed in section 70-68(d)(2), however a cumulative density bonus will be available for additional measures taken as set forth below.

(2) No more than two percent of the total acreage of the tract may be developed for communal infrastructure in areas of 50 percent slope or greater per the slope analysis submitted as part of the application; home sites shall not be located in areas greater than or equal to 35 percent slope per the submitted slope analysis.

(3) The development shall either be classified as a cluster development or a building and grading envelope conservation development, and as classified, shall follow the standards set forth below.

a. *Cluster development.* Cluster development is intended to preserve ridge tops, woodlands and open spaces and to provide an alternative for those seeking to construct more cost-effective homes on tracts by providing no lot size requirements and density bonuses by clustering development on the lower elevations and less steep portions of the property. Clustering of lots on lower elevations, less steep slopes and less environmentally sensitive areas is allowed under the following conditions:

1. Thirty percent of the overall tract shall be conserved. Areas to be conserved will be designated as primary and secondary conservation areas.

i. The following areas shall be included in primary conservation areas:

(1) Moderate and high risk landslide hazard areas as shown on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey;

(2) Surface waters and surface water buffers including, but not limited to, trout stream buffers and required stormwater setbacks;

(3) 100-year floodplain;

(4) Wetlands; and

(5) Areas shown as orange and red (having an average natural slope greater than or equal to 35 percent) on the submitted slope analysis.

ii. Secondary conservation areas shall consist of:

(1) Land in a currently undeveloped or natural state not meeting the definition of primary conservation areas above;

(2) Existing farmland; and

(3) Other areas subject to review and approval of the Buncombe County Planning Board.

iii. Areas to be conserved must be located within identified primary conservation areas; if the percentage to be conserved exceeds the amount of primary conservation areas on the tract, areas deemed as secondary conservation areas

will be allowed to count toward the required percentage. The final plat of the subdivision shall indicate which areas are conserved open space.

iv. Conserved open space shall remain in an undeveloped state except for the provision of non-motorized passive recreation such as running, walking, biking trails, gardening, primitive camping areas, and similar low impact outdoor activities. The development of golf courses, club houses, pools, tennis courts, etc. shall not be included in the definition of passive recreation. The location, type, and materials which will be used to construct passive recreation facilities shall be submitted on the preliminary plans and ~~shall~~ must be approved by ~~the planning board or~~ the Buncombe County Planning Department. The development of passive recreation areas within the conservation/open space areas shall not exceed five percent of the total acreage of the tract.

v. The conserved area, with the prior written consent of Buncombe County, shall be designated and established of record prior to, or concurrent with, the recording of the first final subdivision plat. Method of conservation of open space shall be stated on the submitted subdivision plans and shall be approved by the Buncombe County Planning Board or the Buncombe County Planning Department. Conservation space shall be dedicated to, owned, and maintained in perpetuity by any of the following:

(1) A homeowners' association in which membership is mandatory for all homeowners within the development;

(2) A perpetual conservation easement on the open space held and enforced by an established land trust or conservation organization;

(3) With its prior express written consent, a governmental body (e.g., Buncombe County Parks and Recreation, State of North Carolina, United States Government); or

(4) Any other structure or entity designed to afford such perpetual maintenance for the conserved area as same may be approved in advance by Buncombe County.

2. Disturbed and impervious area shall be calculated for the entire tract and shall include any and all disturbance and impervious surface. This shall include, but is not limited to home sites, infrastructure installment for individual lots, communal buildings such as clubhouses, and communal infrastructure such as roads and stormwater measures. Cluster developments that utilize septic systems for wastewater treatment shall include, as part of their soils investigation report required by section 70-40 of this chapter, the conclusion that the amount of disturbance allowed on each individual lot is adequate for, at a minimum, a three-bedroom septic system and the construction of a 1,500 square foot single-family home. Limitations on disturbed area and impervious surfaces for the total tract shall be:

Maximum gross site area disturbed = 30 percent

Maximum gross site area impervious = 15 percent

The development plan and the final plat shall state, in both percentage and number of acres, the maximum allowed disturbed and impervious area for the entire tract. The preliminary plan and final plat shall provide the maximum amount of disturbed and impervious acreage which will include infrastructure installation and lot development. The preliminary plan and the final plat shall delineate areas that may be disturbed and show areas to be dedicated to conservation space.

b. *Building and grading envelope conservation development.* Building and grading envelope conservation subdivisions are intended to limit disturbed areas; preserve ridge tops,

woodlands, open spaces, floodplain, and other environmentally sensitive areas; and to provide flexibility in design of a subdivision. By allowing flexibility of design, design professionals have the ability to develop a subdivision while conserving environmentally sensitive areas such as steep slopes, floodplains, wetlands, and ridgelines. Building and grading envelope conservation development shall be allowed under the following conditions:

1. The submitted site plan shall clearly define the disturbance limitations for infrastructure installation. Communal infrastructure installation disturbance shall not constitute more than 15 percent of the overall tract. Communal infrastructure impervious surface shall not constitute more than ten percent of the overall tract. The preliminary plat and the final plat shall state, in both percentage and number of acres, the disturbed and impervious area for the entire tract for infrastructure installment.

2. Structures shall only be constructed within building and grading envelopes. Building and grading envelopes shall meet the following standards:

    i. Building and grading envelopes shall not be located in any of the following areas:

        (1) Thirty-five percent slope or greater as identified on the submitted slope analysis.

        (2) Moderate and high risk landslide hazard areas as shown on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey.

        (3) Surface waters and surface water buffers.

        (4) 100-year floodplain.

        (5) Wetlands.

    ii. Building and grading envelopes shall be spaced at least 150 feet apart. Spacing between building envelopes shall consist of preserved vegetation.

    iii. Building and grading envelopes shall be no greater than 0.6 acres and shall be inclusive of the structure, parking, well, and driveway. The location of individual septic systems shall be determined by the Buncombe County Health Department. The size of the building and grading envelope shall dictate the size of the lot to be subdivided, where the lot size shall equal at least 300 percent of the size of the building and grading envelope.

    iv. No land disturbing activity for construction of structures or individual lot infrastructure, excluding individual septic systems, shall occur outside the building and grading envelope.

    v. Envelopes must be delineated on the preliminary plat; clearly delineated on site during construction by fencing; and recorded on the final plat. Amount and location of disturbance shall be certified prior to final certificate of occupancy by a surveyor, landscape architect, or other licensed professional.

3. Acreage not included in lots, envelopes, or for the installation of communal infrastructure shall be conserved space. Fifteen percent of the overall tract shall be conserved. Areas to be conserved will be designated as primary and secondary conservation areas.

    i. The following areas shall be included in primary conservation areas:

        (1) Moderate and high-risk landslide hazard areas as shown on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey;

        (2) Surface waters and surface water buffers including, but not limited to, trout stream buffers and required stormwater setbacks;

(3) 100-year floodplain;

(4) Wetlands; and

(5) Areas shown as orange and red (having an average natural slope greater than or equal to 35 percent) on the submitted slope analysis.

ii. Secondary conservation areas shall consist of:

(1) Land in a currently undeveloped or natural state not meeting the definition of primary conservation areas above;

(2) Existing farmland; and

(3) Other areas subject to review and approval of the Buncombe County Planning Board.

iii. Areas to be conserved must be located within identified primary conservation areas; if the percentage to be conserved exceeds the amount of primary conservation areas on the tract, areas deemed as secondary conservation areas will be allowed to count toward the required percentage. The final plat of the subdivision shall indicate which areas are conserved open space.

iv. Conserved open space shall remain in an undeveloped state except for the provision of nonmotorized passive recreation such as running, walking, biking trails, gardening, primitive camping areas, and similar low impact outdoor activities. The development of golf courses, club houses, pools, tennis courts, etc. shall not be included in the definition of passive recreation. The location, type, and materials which will be used to construct passive recreation facilities shall be submitted on the preliminary plans and ~~shall~~ must be approved by the planning ~~board~~director or said director's designee. The development of passive recreation areas within the conservation/open space areas shall not exceed five percent of the total acreage of the tract.

v. The conserved area, with the prior written consent of Buncombe County, shall be designated and established of record prior to, or concurrent with, the recording of the first final subdivision plat. Method of conservation of open space shall be stated on the submitted subdivision plans and shall be approved by the Buncombe County Planning Board. Conservation space shall be dedicated to, owned, and maintained in perpetuity by any of the following:

(1) A homeowners' association in which membership is mandatory for all homeowners within the development;

(2) A perpetual conservation easement on the open space held and enforced by an established land trust or conservation organization;

(3) With its express written consent, a governmental body (e.g., Buncombe County Parks and Recreation, State of North Carolina, United States Government); or

(4) Any other structure or entity designed to afford such perpetual maintenance for the conserved area as same may be approved in advance by Buncombe County.

(4) *Density bonuses.* Density bonuses for developments choosing to follow the alternative path within the hillside development standards may be awarded based on certain development criteria set forth below. Bonuses shall be based on the point system shown in Figure 5 below. Bonus points will be cumulative and may be applied for density bonuses based on the alternative path the applicant has chosen. Density bonuses based on points earned are shown in Figure 6 below. Applicant must clearly identify on submitted preliminary plans how many points were earned and clearly identify how points were used.

FIGURE 5. Points Chart

Action	Point Value
Percentage of entire tract disturbed (including infrastructure and lot development) is 20.00% or less, but greater than 18.00%	10
Percentage of entire tract disturbed (including infrastructure and lot development) is 18.00% or less, but greater than 16.00%	15
Percentage of entire tract disturbed (including infrastructure and lot development) is 16.00% or less, but greater than 14.00%	20
Percentage of entire tract disturbed (including infrastructure and lot development) is 14.00% or less	25
Amount of conserved green space is greater than 30% of the tract but less than or equal to 40% of the tract	10
Amount of conserved green space is greater than 40% of the tract but less than or equal to 50% of the tract	15
Amount of conserved green space is greater than 50% of the tract but less than or equal to 60% of the tract	20
Amount of conserved green space is greater than 60% of the tract	25
Development of any kind occurs only on slopes less than 35% as shown on submitted slope analysis and occurs on property consisting of the lowest 35% of the elevation of the tract	25
Development of any kind occurs in areas less than or equal to 25% as shown on submitted slope analysis and occurs on property consisting of the lowest 25% of the elevation of the tract	50

FIGURE 6. Density Bonuses Based on Points

Points Earned	If development is an Alternative Path *Cluster Development* or *Building and Grading Envelope Conservation Development*, the allowed number of lots shall be the % listed below of the calculated density per subsection 70-68(d)(2) based on the number of points earned	If development is an Alternative Path *Building and Grading Envelope Conservation Development*, the following parameters shall be followed in regard to maximum size of building envelope, required size of individual lots, and spacing between lots based on the number of points earned		
		Envelopes shall be no greater than the acreage listed below	The lot size shall equal to at least the % listed below of the size of the	Building envelopes shall be spaced at least the number of

			building and grading envelope	feet apart listed below
20	115%	0.65	280%	150
25	120%	0.66	260%	140
30	125%	0.67	240%	130
35	130%	0.68	220%	120
45	135%	0.69	200%	110
50	140%	0.7	180%	100
55	145%	0.71	160%	90
60	150%	0.72	140%	80
65	155%	0.73	120%	70
70—80	160%	0.75	100%	60
100	No density requirement	No building envelope size requirements	No size requirements for lots	No spacing requirements

(g) *Conservation easement hillside development subdivision.* Average natural slope for submitted subdivision plans that contain a perpetual conservation easement to be held and enforced by an established land trust or conservancy organization shall be calculated excluding the acreage of the conservation easement. Conserved open space shall remain in an undeveloped state. The conservation easement, with the prior written consent of Buncombe County, shall be designated and established of record prior to, or concurrent with, the recording of the first final subdivision plat. The proposed holder of the conservation easement shall be stated on the submitted subdivision plans and shall be approved by the Buncombe County Planning Board.

(h) *Statement on plat.* All subdivisions of land subject to the requirements of section 70-68, effective July 1, 2006, shall state on the original plat for recordation 1) the average natural slope of the entire tract and of each lot, 2) the maximum allowed disturbed acreage for infrastructure installation and the maximum allowed disturbed acreage for each lot and 3) the maximum allowed impervious acreage for infrastructure installation and the maximum allowed impervious acreage for each lot.

(i) *Enforcement.* Any person violating any provision of this section shall be subject to a civil penalty of not less than $100.00 per day and not to exceed $1,000.00 per day. Each day the violation continues shall constitute a separate violation. Violations shall be subject to the provisions of G.S. 14-4.

Any person failing to comply with any provision of this section shall be subject to revocation of the development permit, building permit or other authorization for work activities.

Any land disturbance percentage in amounts that exceed those specified in section 70-68(e)(1)(h) and 70-68(f): shall be replanted according to the revegetation plan shown in section 70-68(e)(5).

Any impervious surface percentage in amounts that exceed those specified in section 70-68(e)(1)(h) and 70-68(f): shall be removed.

No penalty shall be assessed until notification of the violation has been made by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation can be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17; Ord. No. 17-06-10 , § 1, 6-6-17)

———

Sec. 70-69. - Conservation development standards.

Conservation development. Conservation development standards shall provide design flexibility that will allow for preservation of conserved open space and dedicated farmland. Conservation development is intended to limit disturbed areas and preserve ridge tops, woodlands, open spaces, floodplain, moderate and high risk landslide hazard areas, agricultural land and other environmentally sensitive areas. Subdivisions that meet the definition for a hillside development shall not be conservation developments as set forth in this section.

(1) Minimum lot frontage standards required in section 70-66(g) are not applicable to the conservation development. The total number of lots shall not exceed the density limitations provided by Figure 1 below:

Figure 1

Zoning District	Maximum Density Lots Per Acre with Public Sewer Only	Maximum Density Lots Per Acre with Public Water and Sewer	Maximum Density Lots Per Acre No Public Water and Sewer
R-LD	1.00	1.00	1.00
R-1	3.00	5.00	1.4
R-2	3.00	7.00	1.4
R-3	4.00	7.00	1.4
NS	4.00	8.00	1.4
CS	4.00	8.00	1.4
EMP	4.00	8.00	1.4
CR	3.00	5.00	1.4
PS	4.00	8.00	1.4

(2) The development tract shall be at least 15 acres in size and 50 percent of the overall tract shall be conserved. The conserved area shall be contiguous.

(3) Existing agricultural land of ten acres or greater that shall remain in active agricultural production may be counted as double the amount of conserved space. The agricultural land shall be at least ten acres, and shall exclude land in forestry or horticultural production. The applicant shall submit an agricultural management plan indicating how the active farmland will be utilized, managed, and method of conservation. The agricultural plan shall be reviewed and approved by the Buncombe County Planning Department and the Buncombe County Cooperative Extension Office and shall become part of the approved subdivision plan. It shall be at the discretion of the Buncombe County Planning Department, based on the submitted

plan, whether or not the existing agricultural land shall be counted as double the amount of conserved area.

(4) Areas to be conserved will be designated as primary and secondary conservation areas.

a. The following areas shall be included in primary conservation areas:

1. Moderate and high risk landslide hazard areas as shown on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey;

2. Surface waters and surface water buffers including, but not limited to, trout stream buffers and required stormwater setbacks;

3. 100-year floodplain;

4. Wetlands;

5. Areas shown as orange and red (having an average natural slope greater than or equal to 25 percent) on a submitted slope analysis; and

6. Land proposed to be in agricultural production, and shall exclude land in forestry or horticultural production. The applicant shall submit an agricultural management plan indicating how the farmland will be utilized, managed, and method of conservation. The agricultural plan shall be reviewed and approved by the Buncombe County Planning Department and the Buncombe County Cooperative Extension Office and shall become part of the approved subdivision plan.

b. Secondary conservation areas shall consist of:

1. Land in a currently undeveloped or natural state not meeting the definition of primary conservation areas above;

2. Other areas subject to review and approval of the Buncombe County Planning Board and/or Buncombe County Planning Department.

c. Areas to be conserved must be located within identified primary conservation areas; if the percentage to be conserved exceeds the amount of contiguous primary conservation areas on the tract, areas deemed as secondary conservation areas will be allowed to count toward the required percentage. The final plat of the subdivision shall indicate which areas are conserved open space.

d. Conserved open space shall remain in an undeveloped state or active agricultural production except for the provision of non-motorized passive recreation such as running, walking, biking trails, gardening, primitive camping areas, and similar low impact outdoor activities. The development of golf courses, club houses, pools, tennis courts, etc. shall not be included in the definition of passive recreation. The location, type, and materials which will be used to construct passive recreation facilities shall be submitted on the preliminary plat and shall be approved by the ~~planning board or~~ planning department. The development of passive recreation areas within the conservation/open space areas shall not exceed five percent of the total acreage of the tract. Passive recreation shall not be allowed within conserved agricultural land.

e. The conserved open space, with the prior written consent of Buncombe County, shall be designated and established of record prior to, or concurrent with, the recording of the first final subdivision plat. Method of conservation of open space shall be stated on the submitted subdivision plans and on the final plat and shall be approved by the Buncombe County Planning Board or planning department. Conservation space shall be dedicated to, owned, and maintained in perpetuity by any of the following:

1. A homeowners' association in which membership is mandatory for all homeowners within the development;

2. A perpetual conservation easement on the open space held and enforced by an established land trust or conservation organization;

3. With its prior express written consent, a governmental body (e.g. Buncombe County Parks and Recreation, State of North Carolina, United States Government); or

4. Any other structure or entity designed to afford such perpetual maintenance for the conserved area may be approved in advance by Buncombe County.

(5) A 25-foot buffer strip shall be provided where proposed lots border adjoining property lines. A ten-foot buffer strip shall be provided adjacent to deeded public rights-of-way. The buffer strip shall be comprised of existing vegetation or a row of evergreen trees, which at the time of planting shall be at least five feet in height, and shall be spaced no more than eight feet apart. When buffers are required, the buffer strip may count towards the required 50-percent conserved area. The required buffer strips may be modified by the Buncombe County Planning Board.

(Ord. No. 17-01-10 , § 1, 1-17-17)

Secs. 70-70—70-90. - Reserved.

ARTICLE IV. - INSTALLATION OF IMPROVEMENTS

Sec. 70-91. - Permanent reference points.

(a) *Placement according to state law.* Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4.

(b) *Monuments.* With each block of a subdivision at least two monuments designed as control corners shall be installed. The surveyor shall install additional monuments as required. Each monument shall have imbedded in its top, or attached by suitable means, a noncorroding metal plate which is marked plainly with the point, the surveyor's registration number, the month and year it was installed and the word "monument" or "control corner." A monument shall be set at least 24 inches in the ground with at least six inches exposed above the ground, unless this requirement is impractical.

(Ord. No. 10-10-05, § 1, 10-5-10)

Sec. 70-92. - Improvement standards and requirements.

Approval of the final plat shall be subject to the subdivider's having constructed or guaranteed, to the satisfaction of the county, the installation of the improvements. The county reserves the right to inspect, reject, stop, or otherwise cease the construction of any or all service facilities or improvements if the same are not being constructed in accordance with the plans, specification standards, written policies, or other requirements of the county. The following standards and requirements shall apply:

(1) *Preparation.* Before grading is started, the required roadbed width area shall be first cleared of all stumps, roots, brush, and other objectionable materials, as follows:

a. *Cuts.* All tree stumps, boulders, and other obstructions within the proposed roadbed width shall be removed to a depth of one foot below the subgrade.

b. *Fill.* All suitable material from roadbed cuts may be used in the construction of roadbed fills, approaches, or at other places as needed. The fill shall be installed and compacted to DOT standards.

(2) *Installation of utilities.* All public or private water and sewerage systems shall be installed and shall meet the requirements of the county health department or other governmental authorities having jurisdiction thereof. The developer shall provide the county with proof that the water and/or sewerage system has been installed and accepted into said system from the appropriate agency. The planning director or their designee may accept certification from a professional engineer that the water and/or sewerage system has been constructed to the appropriate agency's standards.

(3) *Roadbed base.* After preparation of the subgrade, the roadbed shall be surfaced with material of no lower classification than crushed rock, stone, or gravel. The size of the crushed rock or

stone shall be from 1½ inches down, including dust. Spreading of the stone shall be done uniformly over the area to be covered by means of appropriate spreading devices and shall not be dumped in piles. The stone shall be rolled until thoroughly compacted. The roadbed shall be tested to confirm compaction by a professional engineer.

(4) *Professional engineers certification of road.* Prior to recordation of a final plat or release of a guarantee of improvements, the developer shall provide the planning department with a signed and sealed certification from a professional engineer indicating that the roads meet all standards of this chapter. This includes, but is not limited to: road width, pavement type, road grade, corridor width and height, compaction of roadway, and proper preparation of road base.

(5) *Inspection of road.* Prior to recordation of a final plat or release of a guarantee of improvements, the planning director or their designee shall inspect the roads within the subdivision. The road shall fail inspection if there is pavement cracking, insufficient gravel, or other indications are present that the road may not meet the standards of this chapter. The developer shall correct the issues prior to recordation of the final plat or release of the guarantee of improvements.

(6) *Private road maintenance agreement.* Prior to recordation of a final plat or release of guarantee of improvements, the applicant shall provide a copy of the mechanism of road maintenance within the subdivision.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17)

Sec. 70-93. - Stormwater drainage.

The subdivider shall provide disposal of surface water by natural or artificial means subject to the following standards of the NCDOT, as reflected in the handbook for the NCDOT "Subdivision Road Minimum Construction Standards," subject to review by the director or said director's designee~~planning board~~:

(1) Where an existing storm drainage system cannot feasibly be provided for the subdivision, a surface drainage system shall be provided to protect the development from water drainage.

(2) Anyone constructing a dam or impoundment within the subdivision shall comply with the North Carolina Dam Safety Law of 1967 and the N.C.A.C., title 15, subchapter 2K.

(3) In all areas of special flood hazards, all subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 17-01-10 , § 1, 1-17-17)

Sec. 70-94. - Guarantee of improvements.

Where the required roadbed, utility improvements, or erosion control devices indicated on the construction documents have not been completed prior to submission of the final plat, the incomplete elements are to be itemized in an attachment to the guarantee of improvements. The developer must have completed 25 percent (based on a professional engineer's estimate) of infrastructure improvements for the phase of the subdivision for which the guarantee applies. The approval of the plat shall be subject to the owner/developer guaranteeing the installation of all required improvements within a specified time. The construction elements, cost and anticipated construction schedule for the work must be itemized and certified by a licensed professional consultant and submitted to the planning department for approval. The guarantee of improvements shall be secured in one of the following forms acceptable to the planning department:

(1) A surety bond issued by any company authorized to do business in North Carolina.

(2) A letter of credit issued by any financial institution licensed to do business in North Carolina.

(3) Other form of guarantee that provides equivalent security to a surety bond or letter of credit.

Such guarantee shall be in the amount equal to 125 percent of the remaining identified cost of the planned improvements and the continuing maintenance until completion as estimated by the licensed professional consultant retained by the owner/developer. The guarantee will remain in full force and effect until all obligations have been faithfully performed.

If the cost estimate for improvements, and maintenance or the schedule for installation is deemed inadequate by the planning department, the planning ~~board~~ department reserves the right to require an independent construction appraisal, at the owner/developer's expense, as a condition of final plat approval.

All guarantees of improvements shall contractually stipulate a completion date that is at least 180 days past the stipulated completion date as stated in the approved construction schedule. The owner/developer must submit a signed and sealed statement by a civil engineer licensed in North Carolina certifying that all work has been completed to the standards of this article before the planning department will determine satisfactory completion of all guaranteed work. Work not completed within 90 consecutive days following the stipulated completion date will be considered in default. The planning department will proceed immediately with a claim against the guarantee of improvements for all work in default.

An extension of time required for completion may be granted by the planning department if the developer demonstrates reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension.

(Ord. No. 10-10-05, § 1, 10-5-10; Ord. No. 16-04-10 , § 1, 4-5-16; Ord. No. 17-01-10 , § 1, 1-17-17)

Chapter 72 - TELECOMMUNICATIONS

ARTICLE I. - IN GENERAL

Secs. 72-1—72-25. - Reserved.

ARTICLE II. - WIRELESS COMMUNICATIONS FACILITIES[1]

Footnotes:

--- (**1**) ---

Editor's note— Ordinance No. 97-1-10, adopted January 21, 1997, did not specifically amend the Code. Therefore, such ordinance was treated as deleting §§ 72-26—72-33 and adding new §§ 72-26—72-33, 72-36, 72-37, 72-46, 72-47, 72-56, 72-57. Such sections pertained to similar provisions and derived from Ord. No. 96-4-14, art. I, §§ A—C, art. II—VI, 4-16-96; Ord. Nos. 96-9-7, 9-17-96.

Editor's note— Ord. No. 99-5-3, § 1, adopted May 4, 1999, changed the name of art. II from "telecommunications towers" to "wireless communications facilities."

DIVISION 1. - GENERALLY

Sec. 72-26. - Authority and purpose.

This article is enacted pursuant to the general police powers granted to the county by G.S. 153A-121. The purpose of this article is to protect the health, safety, and property values of citizens of the county from potential adverse effects caused by the proliferation of wireless communications facilities, such as falling of towers or ice from the towers, children being injured by playing on towers, and aesthetic harm to residential communities including historic preservation areas and designated scenic corridors.

(Ord. No. 97-1-10, art. I, § A, 1-21-97; Ord. No. 99-5-3, § 1, 5-4-99)

Sec. 72-27. - Definitions.

The following words, terms and phrases, shall have the specific meaning ascribed to them herein. All other words, terms and phrases shall have their ordinary meaning of common usage in the English language:

Antenna array means one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The antenna array does not include the support structure.

Attached wireless communication facility means an antenna array that is attached to an existing building or structure (attachment structure), which structures shall include but not be limited to utility poles, signs, water towers, rooftops, towers with any accompanying pole or device (attachment device) which attaches the antenna array to the existing building or structure and associated connection cables, and an equipment facility which may be located either inside or outside of the attachment structure.

Board of adjustment means the county board of adjustment appointed by the board of commissioners as provided for by G.S. 160D-302~~153A-345~~ and chapter 78 of this Code.

Co-location/site sharing means use of a common wireless communication facility or common site by more than one wireless communication license holder or by one wireless license holder for more than one type of communications technology and/or placement of a wireless communication facility on a structure owned or operated by a utility or public entity.

Crest means the uppermost line of a mountain or chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations.

Equipment facility means any structure used to contain ancillary equipment for a wireless communication facility which includes cabinets, shelters, a buildout of an existing structure, pedestals, and other similar structures.

Facility means wireless communications facility.

Federal Aviation Administration. FAA.

Federal Communications Commission. FCC.

Federal Telecommunications Act of 1996. FTA.

Height, referring to wireless communication facility, means the distance measured from ground level to the highest point on the wireless communication facility, excluding the antenna array.

Ordinance administrator means the planning director or his designee.

Permit means the permit issued by the ordinance administrator to an individual, corporation, partnership or other entity to erect a wireless communications facility.

~~*Planning board*~~*Board of adjustment* means the county ~~planning board~~board of adjustment established by article ~~I~~V~~I~~I, chapter 7~~5~~8 of this Code.

Protected mountain ridge means a ridge with an elevation higher than 2,500 feet above mean sea level and an elevation 300 feet or more above the elevation of an adjacent valley floor.

Ridge means the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within 200 feet below the elevation of any portion of such line or surface along the crest.

Support structure means a structure designed and constructed specifically to support an antenna array, and may include a monopole, self-supporting (lattice) tower, guy-wire-support tower and other similar structures.

Telecommunications tower means any tower exceeding 20 feet in height erected for the purpose of transmitting or receiving telephonic or radio signals over the airwaves as a commercial service, but shall not include any structures erected solely for a noncommercial individual use such as residential television antennas, satellite dishes, or ham radio antennas; a commercial use that is purely incidental to other business activities of the owner; or AM radio towers.

Temporary wireless communication facility means a wireless communication facility to be placed in use for sixty (60) or fewer days.

Tower site means the real property which an applicant is required to have ownership of, leasehold interest in, or easement over, pursuant to subsection 72-46(2).

Wireless communication facility means any unstaffed facility for the transmission and/or reception of wireless telecommunications services for commercial use, usually consisting of an antenna array, connection cables, an equipment facility, and a support structure to achieve the necessary elevation; but shall not include any facility erected solely for a noncommercial individual use as residential television antennas, satellite dishes, or ham radio antennas; a commercial use that is purely incidental to other business activities of the owner; or AM radio towers.

Wireless communication facility permit (WCFP) means a permit issued by the county specifically for the location, construction and use of a wireless communication facility subject to an approved site plan and any special conditions determined by the ordinance administrator to be appropriate under the provisions of this ordinance.

(Ord. No. 97-1-10, art. I, § B, 1-21-97; Ord. No. 99-5-3, § 1, 5-4-99; Ord. No. 11-06-05, § 1, 6-7-11)

Sec. 72-28. - Jurisdiction of ordinance.

The provisions of this article shall be applicable to all unincorporated areas of the county, but shall not be applicable to and shall not be enforced within the corporate limits or jurisdiction of any municipality in the county.

(Ord. No. 97-1-10, art. I, § C, 1-21-97; Ord. No. 99-5-3, § 1, 5-4-99)

Sec. 72-29. - Permit required to erect wireless communications facility.

It shall be unlawful for any person, corporation, partnership or other entity to erect within the jurisdiction of this article any wireless communications facility or to increase the height of an existing tower without first obtaining a permit from the ordinance administrator. However, a permit shall not be required for the erection of a replacement tower of no greater height, located at the same site, and within 50 feet of the tower being replaced, provided the replacement tower shall not be closer to existing residences within a radius equal to the height of the tower, plus 50 feet. The tower being replaced shall be removed within 90 days of activation of the replacement tower.

(Ord. No. 97-1-10, art. II, 1-21-97; Ord. No. 99-5-3, § 1, 5-4-99)

Sec. 72-30. - Continued compliance required.

All permits for the erection of a wireless communications facility are issued in reliance upon a presumption that the facility will in fact conform to the plans which are submitted as the basis for the permit, and once erected the facility must continue to be at all times maintained in compliance with the provisions of division 2 of this article.

(Ord. No. 97-1-10, art. VI, 1-21-97; Ord. No. 99-5-3, § 1, 5-4-99)

Sec. 72-31. - Removal required at termination of use.

Any tower erected under a permit issued pursuant to this article must be removed within 180 days of the date upon which it ceases to be in active use.

(Ord. No. 97-1-10, art. VII, 1-21-97; Ord. No. 99-5-3, § 1, 5-4-99)

Sec. 72-32. - Violation of ordinance.

A violation of this article shall be a misdemeanor subject to the penalties and enforcement provisions of G.S. 153A-123, specifically including injunctions and abatement orders as provided by said statute.

(Ord. No. 97-1-10, art. VIII, 1-21-97; Ord. No. 99-5-3, § 1, 5-4-99)

Sec. 72-33. - Appeal.

The denial of a permit by the ordinance administrator~~, the denial of a variance by the planning board,~~ or the imposition of any conditions precedent to the issuance of such permit, may be appealed to the board of adjustment by giving written notice within 15 days of notification to the applicant of the ordinance administrator ~~or planning board~~'s decision. Further appeal shall be to the superior court of the county in the nature of certiorari. A petition for writ of certiorari in the superior court must be filed with the clerk of superior court within 30 days after the decision of the board of adjustment is served upon the applicant.

(Ord. No. 97-1-10, art. IX, 1-21-97; Ord. No. 99-5-3, § 1, 5-4-99)

Sec. 72-34. - Temporary wireless communication facility.

Temporary wireless communications facilities may be permitted by administrative approval for a term not to exceed 30 days. Once granted, a temporary wireless communications facility permit may be extended for an additional 30 days upon evidence of need by the applicant. In case of emergency (e.g., storm damage to an existing tower or other circumstances resulting in the interruption of existing service) the administrative review shall be expedited to the extent feasible.

(Ord. No. 99-5-3, § 1, 5-4-99)

Sec. 72-35. - Reserved.

DIVISION 2. - APPLICATION SUBMISSION AND REVIEW PROCESS

Sec. 72-36. - Application specifications.

A completed facility permit application with all supporting documentation identified in division 3 shall be submitted to the ordinance administrator for review. Where applicable, the following information is required on the site plan:

(1) Title block containing the name of the wireless communication facility owner and/or property owner, scale, north arrow and latitude/longitude coordinates.

(2) Existing site conditions, including contours, any unique natural or manmade features such as vegetation, ground cover and existing structures.

(3) Exact boundary lines of the property containing the proposed wireless communications facility construction, any associated guy wires, and height.

(4) A plan showing the base of the tower and the foundations for all 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 prepared and sealed by a professional engineer.

(5) Description of adjacent land use and all property owners name(s), tax parcel number(s), and mailing addresses.

(6) A front and side elevation profile, drawn to scale, of all existing and proposed telecommunication towers, with all proposed lighting and antennas to be located on the property prepared and sealed by a professional engineer.

(7) Permits are to be renewed annually and are dependent upon continued compliance with all sections of this article in effect when the original permit was granted.

(Ord. No. 97-1-10, art. III, § A, 1-21-97; Ord. No. 99-5-3, § 1, 5-4-99)

Sec. 72-37. - Approval and recordation.

The ordinance administrator shall either approve or disapprove based upon the criteria set forth in division 3. The owner or his agent shall record the site development plan in the register of deed's office before issuance of a permit for the subject wireless communications facility. A denial of an application shall be promptly communicated to the applicant in writing by certified mail and shall state specifically the reason for denial with reference to all provisions of this article which are a basis for the denial.

(Ord. No. 97-1-10, art. III, § B, 1-21-97; Ord. No. 99-5-3, § 1, 5-4-99)

Secs. 72-38—72-45. - Reserved.

DIVISION 3. - CRITERIA FOR ISSUANCE OF PERMIT

Sec. 72-46. - Requirements.

In determining whether or not to issue a permit for the erection of a wireless communications facility, the ordinance administrator shall act in accordance with the provisions as follows:

(1) Government owned property must be considered first in siting a wireless communications facility.

(2) The applicant shall be required to provide documentation satisfactory to the ordinance administrator of compliance with all applicable federal and state regulations.

(3) The applicant must present to the ordinance administrator proof of either fee simple ownership, a recorded leasehold interest, or an easement from the record owner of all property within a radius equal to the height of the tower, plus 50 feet. The required area may include department of transportation right-of-way if the applicant provides written consent to that effect by the division engineer. The application shall include a certified title opinion by a licensed attorney.

(4) The lighting on the proposed tower shall be no more than is required by applicable federal and state regulations, or requested by other governmental agency. Strobe lights shall be red at night and may be either red or white during daylight unless otherwise required by federal or state regulations. Towers shall be light gray or another blending color, except when required by applicable federal or state regulations.

(5) Wireless communications facility permit approval is conditional upon the owner providing written authorization that the tower may be shared by other wireless communications facilities at customary and usual charges. The owner shall record in the office of the register of deeds a letter of intent prior to the issuance of a permit. The letter of intent shall bind all subsequent owners of the approved wireless communications facility.

(6) The proposed tower shall be designed and constructed to permit the capability for co-location of at least one other equal antenna array if the tower is taller than 100 feet. All towers with a height over 150 feet shall be designed and constructed to permit the co-location of three or more antenna arrays. A WCFP shall not be issued until the applicant proposing a new wireless telecommunication facility has demonstrated by substantial evidence in a written record that a bona fide need exists for the proposed wireless communication facility and that no reasonable combination of locations, techniques, or technologies will eliminate the need for, or mitigate the height or visual impact of, the proposed facility. The written record will include consideration of existing towers, buildings, and suitable electric transmission structures.

(7) The applicant must be willing to allow the county or other public entities use of the tower under reasonable terms and conditions if a request is made for such use within 30 days of the filing of the permit application, if tower load and frequency issues are met.

(8) The applicant must provide the ordinance administrator with proof of general liability insurance in the minimum amount of $1,000,000.00.

(9) If the tower, or the equipment on the site, is of a type which will emit a continuous or frequent noise, the applicant must prove to the satisfaction of the ordinance administrator that sufficient

actions are being taken to prevent such noise from being audible to surrounding residents and businesses.

(10) The tower shall be surrounded by a commercial grade chain link secured fence at least eight feet in height, which can include no more than two feet of barbed wire. The perimeter will be buffered by landscaping vegetation. Vegetation not less than two feet in height at the time of planting shall be planted within eight feet of the outer side of the fence. Vegetation that serves as screening shall be planted at intervals evenly spaced and in proximity to each other so that a continuous, unbroken hedgerow, without gaps or open spaces, will exist to a height of at least six feet along the length of the fence surrounding the facility. At a minimum, the vegetation shall be maintained in this condition as long as the property is used as a telecommunications facility. However, if the topography and terrain of adjacent lands is such that screening would be ineffective or useless, the ordinance administrator may waive all or parts of the fencing and screening requirements.

(11) Height and distance standards. The following height standards shall apply to all wireless communication facility installations:

a. Attached wireless communications facilities shall not add more than 20 feet to the height of the existing building or structure to which it is attached (attachment structure). However, antenna attachments to existing communication towers shall not increase the height of tower above the maximum permitted height of that attachment tower.

b. Towers shall be less than 200 feet in height.

c. No tower located on any protected mountain ridge shall have its highest point at an elevation greater than 20 feet higher than the vegetation canopy immediately surrounding the base of the tower, or at the nearest point on the crest of the ridge, whichever point is most favorable to the applicant.

d. No two telecommunications towers shall be constructed within 1,320 feet of each other unless documentation is provided to the ordinance administrator showing one or both of the following conditions exist:

1. Co-location on towers within 1,320 feet is not technically feasible.

2. Three or more towers already exist within 20 feet of the proposed site.

(12) A sign identifying the owner(s) and operator(s) of the tower and all equipment located thereon, and an emergency telephone number shall be placed in a clearly visible location near the wireless communications facility.

(13) The applicant must provide documentation that written notice by certified mail of the applicant's intent to apply for a permit to erect the wireless communications facility has been sent to all adjoining landowners of the proposed facility site and all owners of residential dwellings, day care centers, and schools within 500 feet of the proposed tower facility. No permit shall be issued for a period of 30 days after sending of the notice, unless the ordinance administrator receives written statements from all parties required to be noticed indicating that they have no objection to the facility.

(14) The application must be accompanied by payment of a nonrefundable processing fee. A wireless communications facility permit (WCPF) must be renewed annually, and must be accompanied by a nonrefundable processing fee. The county board of commissioners shall establish processing fees, and may amend and update the fees annually during the budget process.

(15) The applicant shall identify any variance(s) to the ordinance, the reason(s) for seeking the variance(s) and any measures that are proposed to mitigate possible adverse affects of the proposed variance(s).

(16) If construction is not begun within six months after the wireless communications facility permit is issued, the permit shall expire. Prior to the expiration of the six-month period, the applicant

may request an extension of the permit for an additional six months from the ordinance administrator, which shall be granted upon proof that the delay was caused primarily by reasons beyond the applicant's control. There shall be no limit to the number of extensions granted so long as the request is timely submitted and supported by adequate proof that the delay was not caused by the applicant.

(Ord. No. 97-1-10, art. IV, § A, 1-21-97; Ord. No. 97-11-1, 11-18-97; Ord. No. 99-5-3, § 1, 5-4-99; Ord. No. 11-06-05, § 1, 6-7-11)

Sec. 72-47. - Co-location mandated.

It is the policy of the county to require the co-location of wireless communication facilities on existing towers and electric transmission towers. In furtherance of this policy, the following will apply:

(1) On or before November 15 of each year, or the following Monday should November 15 fall on a weekend, every person, corporation, partnership or other entity who intends to erect wireless communications facilities within the jurisdiction of this article shall submit to the ordinance administrator a preliminary plan which shall contain information as to the height, size, types, purpose, general location and reason for erection of every wireless communications facility anticipated to be erected during the following year, including an inventory of all wireless communication facilities, as well as verification of continued compliance with FCC and FAA requirements. Additionally, there shall be provided the name, address and telephone number of an individual designated as the point of contact with the ordinance administrator for discussion and resolution of wireless communications facility issues. Changes or additions to this information shall be submitted during the year as appropriate. The ordinance administrator shall send notice of this requirement to all wireless communication companies and tower owners known to operate within the county. No permit shall be issued to a company or owner failing to comply with the provisions of this section.

(2) Upon receipt of such plan, the ordinance administrator shall promptly review them and proceed to communicate with the designated points of contact in an effort to maximize co-location and avoid the placement of towers in highly objectionable areas or near existing facilities. If the ordinance administrator determines it to be appropriate, he is empowered by this article to convene a mandatory conference to which all parties who have submitted plans will be required to send a representative, subject to the requirement that a minimum of five working days notice be given as to the specific time and place of such conference. The purpose of such conference will be to discuss co-location on towers and any other issues pertaining to telecommunications towers which the ordinance administrator determines to be pertinent. The conference shall be open to the public, but the ordinance administrator shall have the authority to limit public comment as he deems necessary to assure an orderly consideration of the agenda. In considering applications for individual wireless communications facility permits, the ordinance administrator shall require any applicant who has failed to include a proposed tower in its preliminary plan or has failed to have a representative present at a mandatory conference to submit in writing a satisfactory explanation for such failure prior to the issuance of a permit. The ordinance administrator shall render a written decision which sets forth with particularity such findings of fact as necessary to show whether the applicant's explanation is or is not satisfactory.

(3) The ordinance administrator shall promptly forward copies of all information received pursuant to divisions 2 and 3 to the county tax assessor, the county emergency management services director, and Mission-St. Joseph's Hospital.

(Ord. No. 97-1-10, art. IV, § B, 1-21-97; Ord. No. 99-5-3, § 1, 5-4-99)

Secs. 72-48—72-55. - Reserved.

DIVISION 4. - VARIANCES

Sec. 72-56. - Procedure.

A request for a variance must be submitted by the applicant in writing to the board of adjustment~~planning board~~ within ten days of receipt of notice of an adverse decision by the ordinance administrator. The board of adjustment~~planning board~~ may grant such variance upon findings that the following conditions exist:

(1) Extraordinary and exceptional conditions pertaining to the particular place or property in question because of its size, shape, topography, or requirement for microwave link that are not applicable to other wireless communications facility sites governed by this article.

(2) The variance will not confer upon the applicant any special privileges that are denied to other operators of wireless communications facilities governed by this article.

(3) A literal application of the provisions of this article would deprive the applicant of rights commonly enjoyed by other operators of wireless communications facilities governed by this article.

(4) The variance will be in harmony with the purpose and intent of this article and will not be injurious to the neighborhood or to the general welfare.

(5) The special circumstances are not the fault of the applicant.

(6) The variance is necessary for the applicant to achieve operational objectives, including co-location of antennas.

The board of adjustment~~planning board~~ shall make written findings to support its decision either granting or denying the variance, and a copy shall be provided to the applicant. The board of adjustment~~planning board~~ may attach to any variance such conditions as it deems necessary and appropriate. A request for a variance under this section shall not constitute an admission by the applicant of any findings of fact made by the ordinance administrator or a waiver of appeal rights provided by section 72-33.

(Ord. No. 97-1-10, art. V, § A, 1-21-97; Ord. No. 99-5-3, § 1, 5-4-99)

Sec. 72-57. - Issuance of permit.

Should the board of adjustment~~planning board~~ grant the requested variance, the ordinance administrator shall issue a wireless communications facility permit. The permit applicant shall acknowledge and agree to permit conditions approved by the ordinance administrator or board of adjustment~~planning board~~. If construction is not begun within six months after the wireless communications facility permit is issued, the wireless communications facility permit shall expire, subject to the renewal options stated in subsection 72-46(17).

(Ord. No. 97-1-10, art. V, § B, 1-21-97; Ord. No. 99-5-3, § 1, 5-4-99)

Chapter 74 - TRAFFIC AND VEHICLES[1]

Footnotes:

--- (**1**) ---

Cross reference— Intentionally striking an animal with a vehicle, § 6-70; ambulance services, § 22-26 et seq.; junked and abandoned vehicles, § 26-276 et seq.; vehicles in parks restricted, § 54-6; streets, sidewalks and other public places, ch. 66.

State Law reference— County's authority regarding vehicular and pedestrian traffic, G.S. 153A-121; authority to operate, acquire, etc., off-street parking facilities, G.S. 153A-275.

ARTICLE I. - IN GENERAL

Secs. 74-1—74-25. - Reserved.

ARTICLE II. - PARKING[2]

Footnotes:
--- (**2**) ---
Cross reference— Off-street parking, § 78-237.

State Law reference— County's authority to regulate certain privately-owned public areas, G.S. 153A-139; authority to regulate parking on county owned property, G.S. 153A-170.

DIVISION 1. - GENERALLY

Sec. 74-26. - Unauthorized parking on county-owned parking lot.

(a) It shall be unlawful for any person who does not possess a valid parking permit or parking authorization issued by the county to park any motor vehicle upon any county-owned parking lot. A violation of this section will subject the offender to a civil penalty of $10.00 for first offense and a civil penalty of $25.00 for a second or each subsequent violation within 12 months of the first offense. In addition, if the offender fails to pay the civil penalty within 30 days of the offense, the offender shall be assessed an additional $25.00 penalty for each 30-day period the civil penalty remains unpaid.

(b) Any motor vehicle parked in violation of this section may be removed from the property by the county or an agent of the county to a storage area or garage. If a vehicle is so removed as provided herein, the owner, as a condition of regaining possession of the vehicle, shall be required to pay to the county or its agent, all reasonable costs incidental to the removal and storage of the vehicle, as well as any civil penalty that may be imposed pursuant to subsection (a) above.

(c) The county manager or her designee shall be responsible for enforcing the provisions of this section.

(Ord. No. 03-05-14, § 1, 5-6-03)

Secs. 74-27—74-35. - Reserved.

DIVISION 2. - HANDICAPPED PARKING[3]

Footnotes:
--- (**3**) ---
State Law reference— Parking privileges for handicapped drivers and passengers, G.S. 20-37.6.

Sec. 74-36. - Penalty for violation of division.

Any person responsible for providing, identifying and maintaining handicapped parking spaces who fails to:

(1) Provide the required size and number of parking spaces;

(2) Designate the spaces with the R7-8 or R7-8(a) sign, subject to the amortization schedule listed in section 74-37; or

(3) Maintain the spaces and signs in a manner which will adequately place persons on notice of its intended and restricted use shall be subject to a per diem civil penalty of at least $50.00 but not more than $100.00 for each space violation.

(Ord. No. 18548, § V, 10-7-86)

State Law reference— Violations of county ordinances regulating the parking of vehicles are infractions, G.S. 14-4(b); penalties for parking in violation of the handicapped parking, G.S. 20-37.6(f).

Sec. 74-37. - Schedule for off-street parking.

(a) Except as provided for in this section, off-street parking requirements of this division shall include handicapped parking spaces in public vehicular areas, as that term is described in G.S. 20-4.01(32), pursuant to the following schedule:

Number of Off-Street Parking Spaces in Lot	Number of Required Handicapped Parking Spaces
1—10	0 (Exempt)
11—49	1
50—99	2
100—149	3
150—199	4
200—249	5
250—299	6
300—349	7
350—399	8
400—449	9
450—499	10

(b) The schedule shall continue to increase at the ratio of one handicapped parking space for each additional 50 parking spaces. The schedule shall not be applicable to the following:

(1) Residential developments and private parking areas.

(2) Off-street parking spaces which are clearly designated as reserved for employee parking or longterm parking.

(c) However, should the state building code require a greater number of handicapped parking spaces than this schedule, or handicapped parking spaces for the exemptions in subsection (a) of this section, the state building code shall control.

(Ord. No. 18548, § I, 10-7-86)

State Law reference— Designation of handicapped parking spaces, G.S. 20-37.6(d).

Sec. 74-38. - Identification and signing of spaces.

Except as provided for in this article, each parking space for the handicapped shall be clearly identified and maintained with the R7-8 sign as shown in the Manual on Uniform Traffic Control Devices.

(Ord. No. 18548, § II, 10-7-86)

Sec. 74-39. - Size and location of spaces.

Each parking space identified for the physically handicapped shall be a minimum of 12 feet, six inches wide, and at least one space shall be located and designed so as to permit easy access to the building entrance via wheelchair without egress into or crossing a public street. Additional parking spaces

shall be located as near as possible to the main public entrance of a single building and centrally located in parking lots that service more than one building.

(Ord. No. 18548, § III, 10-7-86)

Sec. 74-40. - Amortization schedule for areas failing to comply.

Existing off-street parking areas which fail to comply with the handicapped parking requirements of this division shall be allowed until January 1, 1987, to so comply; provided, however, that each existing handicapped parking space which is identified as such by the use of a sign or other marking which does not conform with the R7-8 or R7-8(a) sign shall be subject to the following amortization schedule:

(1) An aboveground sign, including, but not limited to, the D9-6 sign, Manual on Uniform Traffic Control Devices, which is used to identify a parking space for the physically handicapped shall have a useful life not to exceed one year from the effective date of the ordinance from which this division derives; provided, however, that during the one-year period the replacement of any nonconforming sign shall be with a R7-8 or R7-8(a) sign; provided further that during the one-year period, a nonconforming sign which requires restoration to adequately place persons on notice of its intended and restrictive use shall be replaced with a R7-8 or R7-8(a) sign.

(2) A painted curbside or pavement marking which is used to identify a parking space for the physically handicapped shall have a useful life not to exceed six months from the effective date of the ordinance from which this division derives; provided, however, that during the six-month period the replacement of a nonconforming marking shall be with a R7-8 or R7-8(a) sign; provided further that during the six-month period any marking which requires repainting shall be replaced with a R7-8 or R7-8(a) sign.

(Ord. No. 18548, § IV, 10-7-86)

Chapter 78 - ZONING[1]

Footnotes:

--- (**1**) ---

Cross reference— Buildings and building regulations, ch. 10; junkyards, § 26-121 et seq.; floods, ch. 34; historical preservation, ch. 38; manufactured homes and trailers, ch. 46; planning and development, ch. 58; subdivisions, ch. 70.

State Law reference— Zoning in counties, G.S. 160D-702~~153A-340~~ et seq.

ARTICLE I. - IN GENERAL

Sec. 78-1. - Vested right provisions.

(a) *Purpose.* The purpose of this section is to implement the provisions of G.S. § ~~153A-344.1~~160D-108 and 160D-108.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan.

(b) *Definitions.* As used in this section, the following terms shall have the meaning indicated:

Approval authority means the Buncombe County Board of Adjustment, designated by ordinance or this section as being authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan.

Site specific development plan means a plan of land development submitted to the county for purposes of obtaining a zoning or land use permit or approval pursuant to the Beaverdam Community Land Use Ordinance: Section 5, District Regulations.

Notwithstanding the foregoing, neither a variance, a sketch plan nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

Zoning vested right means a right pursuant to G.S. § 160D-108.1~~153A-344.1~~ to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

(c) *Establishment of a zoning vested right.*

(1) A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the county board of commissioners or board of adjustment, as applicable, of a site specific development plan, following notice and public hearing.

(2) The approving authority may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.

(3) Notwithstanding subsections (1) and (2), approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.

(4) A site specific development plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto.

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

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

(d) *Approval procedures and approval authority.*

(1) Except as otherwise provided in this section, an application for site specific development plan approval shall be processed in accordance with the procedures established by ordinance and shall be considered by the designated approval authority for the specific type of zoning or land use permit or approval for which application is made.

(2) Notwithstanding the provisions of subsection (1), if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to a board, committee or administrative official other than the county board of commissioners, board of adjustment or other planning agency designated to perform any or all of the duties of a board of adjustment, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the board of adjustment, following notice and a public hearing as provided in G.S. § 160D-601~~153A-323~~ and chapter 160D~~A, article 19~~.

(3) In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of application, on a form to be provided by the county, that a zoning vested right is being sought.

(4) Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under G.S. § 160D-108.1~~153A-344.1~~. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

(5) Following approval or conditional approval of a site specific development plan, nothing in this chapter shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.

(6) Nothing in this chapter shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.

(e) *Duration.*

(1) A zoning right that has been vested as provided in this chapter shall remain vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to subsection (2). 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.

(2) Notwithstanding the provisions in subsection (1), the approval authority may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the approval authority at the time the site specific development plan is approved.

(3) Upon issuance of a building permit, the expiration provisions of G.S. § 160D-1111~~153A-358~~ and the revocation provisions of G.S. § ~~153A-362~~1115 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

(f) *Termination.* A zoning right that has been vested as provided in this chapter shall terminate:

(1) At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;

(2) With the written consent of the affected landowner;

(3) Upon findings by the county board of commissioners, by ordinance after notice and a public hearing, that natural or manmade 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;

(4) Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the county, 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;

(5) Upon findings by the county board of commissioners, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan; or

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

(g) *Limitations.* Nothing in this chapter is intended or shall be deemed to create any vested right other than those established pursuant to G.S. § ~~154A-344.1~~160D-108 and/or G.S. § 143-755.

(h) *Repealer.* In the event that G.S. § 154A-344.1 is repealed, this section shall be deemed repealed and the provisions hereof no longer effective.

(i) *Effective date.* This chapter shall be effective October 1, 1991, and shall only apply to site specific development plans approved on or after October 1, 1991.

(Ord. No. 19933, §§ 1—9, 10-1-91; Ord. No. 19934, §§ 1—9, 10-1-91; Ord. No. 19935, §§ 1—9, 10-1-91)

Editor's note— This section was not specifically added by the above ordinances, but was included at request of the county.

Secs. 78-2—78-25. - Reserved.

ARTICLE II. - WATERSHED PROTECTION[2]

Footnotes:

--- (**2**) ---

Editor's note— Ord. No. 98-7-3, §§ 101—611, adopted July 7, 1998, amended Art. II in its entirety to read as herein set out.

State Law reference— Water supply watershed protection, G.S. § 143-214.5 et seq.

DIVISION 1. - AUTHORITY AND GENERAL REGULATIONS

Sec. 78-26. - Authority and enactment.

The Legislature of the State of North Carolina has, in Chapter 153A, Article 6, Section 121, General Ordinance Authority; in Chapter ~~153A~~160D, Article ~~8~~18, ~~Part 2~~, Subdivision Regulations; and in Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The county board of commissioners does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of Buncombe County, North Carolina.

(Ord. No. 98-7-3, art. 100, § 101, 7-7-98)

Sec. 78-27. - Jurisdiction.

The provisions of this 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 Buncombe County, 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. This article shall be permanently kept on file in the office of the county clerk. The official watershed map is available for review at the county planning department, 46 Valley Street, Asheville, NC.

(Ord. No. 98-7-3, art. 100, § 102, 7-7-98)

Sec. 78-28. - Exceptions to applicability.

(a) Nothing contained herein shall repeal, modify or amend any federal or state law or regulation, or any ordinance or regulation pertaining thereto, except any ordinance which these regulations specifically replace; nor shall any provision of this article amend, modify, or restrict any provisions of this Code; however, the adoption of this article shall and does amend any and all ordinances, resolutions, and regulations in effect in the county at the time of the adoption of this article that may be construed to impair or reduce the effectiveness of this article or to conflict with any of its provisions.

(b) It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.

(c) Existing development, as defined in this article, is not subject to the requirements of this article. Expansions to structures classified as existing development must meet the requirements of this article, however, the built-upon area of the existing development is not required to be included in the density calculations.

(d) If a nonconforming lot of record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this article if it is developed for single-family residential purposes. Any lot or parcel created as part of a family subdivision after the effective date of these rules shall be exempt from these rules if it is developed for one single-family detached residence and if it is exempt from local subdivision regulation. Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject to the land use requirements (including impervious surface requirements) of these rules, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent practicable.

(e) This article shall in no way regulate, prohibit or otherwise deter any bona fide farm and its related use, except as specified in section 78-77.

(Ord. No. 98-7-3, art. 100, § 103, 7-7-98)

Sec. 78-29. - Repeal of existing watershed ordinance.

This article in part carries forward by re-enactment, some of the Water Supply Watershed Protection Ordinance of Buncombe County, North Carolina (adopted by the county board of commissioners on November 16, 1993 as amended), and it is not the intention to repeal but rather to re-enact and continue in force such existing provisions so that all rights and liabilities that have accrued thereunder are preserved and may be enforced. All provisions of the watershed protection ordinance which are not re-enacted herein are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of any ordinance provisions heretofore in effect, which are now pending in any court of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this article, but shall be prosecuted to their finality the same as if this article had not been adopted; and any and all violations of the existing watershed protection ordinance, prosecutions for which have not yet been instituted, may be hereafter filed and prosecuted; and nothing in this article shall be so construed as to abandon, abate or dismiss any litigation or prosecution now pending and/or which may heretofore have been instituted or prosecuted.

(Ord. No. 98-7-3, art. 100, § 104, 7-7-98)

Sec. 78-30. - Criminal penalties.

Any person violating any provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. § 14-4. The maximum fine for each offense shall not exceed $500.00. Each day that the violation continues shall constitute a separate offense.

(Ord. No. 98-7-3, art. 100, § 105, 7-7-98)

Sec. 78-31. - Remedies.

(a) If any subdivision, development and/or land use is found to be in violation of this article, the county board of commissioners may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of $100.00, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the North Carolina Environmental Management Commission may assess civil penalties in accordance with G.S. § 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

(b) The watershed administrator, upon finding that any of the provisions of this article are being violated, shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The watershed administrator may order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or may take any action authorized by this article to ensure compliance with or to

prevent violation of its provisions. If a ruling of the watershed administrator is questioned, the aggrieved party or parties may appeal such ruling to the watershed review board.

(Ord. No. 98-7-3, art. 100, § 106, 7-7-98)

Sec. 78-32. - Severability.

Should any section or provision of this article be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this article as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

(Ord. No. 98-7-3, art. 100, § 107, 7-7-98)

Sec. 78-33. - Effective date.

This article shall take effect and be in force on July 24, 1998.

Secs. 78-34—78-40. - Reserved.

DIVISION 2. - DEFINITIONS

Sec. 78-41. - General definitions.

Agricultural use means the use of waters for stock watering, irrigation and other farm purposes.

Best management practices (BMP) means a structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

Bona fide farm means all land on which agricultural operations are conducted as the principal use, to include cultivation of crops and husbandry of livestock.

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

Building means any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one building.

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

Cluster development means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single-family residential and multi-family developments. For the purpose of this article, planned unit developments and mixed use development are considered as cluster development.

Critical area means 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-half 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); or one-half 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 area as needed. Major landmarks such as highways or 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.

Customary home occupations means any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over 25 percent of the total floor space of any structure is used for the occupation.

Development means any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

Dwelling means any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of this Chapter, Article 12 of this Chapter, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

Dwelling unit means a building, or portion thereof, providing complete and permanent living facilities for one family.

Existing development means those projects that are built or those projects that at a minimum have established a vested right as of the effective date of this article based on at least one of the following criteria:

(1) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project; or

(2) Having an outstanding valid building permit as authorized by the General Statutes (G.S. § ~~153A-344.1~~160D-1111), or

(3) Having an approved site specific or phased development plan as authorized by the General Statues (G.S. § ~~153A-344.1~~160D-108.1).

Existing lot (lot of record) means a lot, the plat or deed of which has been recorded in the office of the register of deeds prior to the adoption of this article, or a lot described by metes and bounds, the description of which has been so recorded in the office of the register of deeds prior to the adoption of this article.

Family means one or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage or adoption, no such family shall contain over five persons, but further provided that domestic servants employed or living on the premises may be housed on the premises without being counted as a family or families.

Family subdivision means a division of a tract of land: (a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or (b) to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

Industrial development means any nonresidential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

Landfill means a facility for the disposal of solid waste on land in a sanitary manner in accordance with G.S. Ch. 130A, Art. 9. For the purpose of this article this term does not include composting facilities.

Lot means a parcel of land, the plat, deed or description by metes and bounds which has been recorded in the office of the register of deeds, occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

Major variance means a variance from the minimum statewide watershed protection rules that results in any one or more of the following:

(1) The relaxation, by a factor greater than ten percent, of any management requirement under the low density option;

(2) The relaxation, by a factor greater than five percent, of any buffer, density or built-upon area requirement under the high density option;

(3) Any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system.

Minor variance means a variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to five percent of any buffer, density or built-upon area requirement under the high density option; or that results in a relaxation, by a factor of up to ten percent, of any management requirement under the low density option.

Nonconforming lot of record means a lot described by a plat or a deed that was recorded prior to the effective date of local watershed protection regulations (or their amendments) that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.

Nonresidential development means all development other than residential development, agriculture and silviculture.

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

Residential development means buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. and customary home occupations.

Residuals means any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the environmental management commission.

Single family residential means any development where: (1) no building contains more than one dwelling unit, (2) every dwelling unit is on a separate lot, and (3) where no lot contains more than one dwelling unit.

Street (road) means a right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Structure means anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

Subdivider means any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this article:

(1) 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 standards of this article;

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

(3) The public acquisition by purchase of strips of land for the widening or opening of streets;

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

(5) The division of a tract into plots or lots used as a cemetery.

Toxic substance means 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 offspring or other adverse health effects.

Variance means a permission to develop or use property granted by the watershed review board relaxing or waiving a water supply watershed management requirement adopted by the environmental management commission that is incorporated into this article.

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

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

Watershed administrator means an official or designated person of Buncombe County responsible for administration and enforcement of this article.

(Ord. No. 98-7-3, art. 200, § 201, 7-7-98)

Sec. 78-42. - Word interpretation.

Except as specifically defined herein, all words used in this article have their customary dictionary definitions. For the purpose of this article, certain words or terms used herein are defined as follows:

Words in the present tense include the future tense.

Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.

The word "person" or "applicant" includes a firm, association, partnership, corporation, trust, and company as well as an individual.

The word "structure" shall include the word "building."

The word "lot" shall include the words, "plot," "parcel," or "tract."

The word "may" is permissive.

The word "shall" is always mandatory and not merely directory.

The word "will" is always mandatory and not merely directory.

(Ord. No. 98-7-3, art. 200, § 202, 7-7-98)

Secs. 78-43—78-60. - Reserved.

DIVISION 3. - SUBDIVISION REGULATIONS

Sec. 78-61. - General provisions.

(a) No subdivision plat of land within the public water supply watershed shall be filed or recorded by the register of deeds, nor shall it be approved for recordation by a county review officer, until it has been approved in accordance with the provisions of this division. Likewise, the clerk of superior court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with this division.

(b) The approval of a plat does not constitute or effect the acceptance by the county or the public of the dedication of any street or other ground, easement, right-of-way, public utility line, or other public facility shown on the plat and shall not be construed to do so.

(c) All subdivisions shall conform with the mapping requirements contained in G.S. § 47-30.

(d) All subdivisions of land within the jurisdiction of the county after the effective date of this article shall require a plat to be prepared, approved, and recorded pursuant to this article.

(Ord. No. 98-7-3, art. 300, § 301, 7-7-98)

Sec. 78-62. - Subdivision application and review procedures.

(a) All proposed subdivision plats shall be reviewed prior to recording with the register of deeds by submitting a vicinity map to the watershed administrator to determine whether or not the property is located within the designated public water supply watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this article and may be recorded. Subdivisions within the designated watershed area shall comply with the provisions of this article and all other state and local requirements that may apply.

(b) Subdivision applications shall be filed with the watershed administrator. The application shall include a completed application form, one copy of the plat and supporting documentation deemed necessary by the watershed administrator or the watershed review board.

(c) The watershed administrator shall review the completed application and shall either approve, approve conditionally or disapprove each application. The watershed administrator shall take final action within ten working days of submission of the application. The watershed administrator or the board may provide public agencies an opportunity to review and make recommendations. However, failure of the agencies to submit their comments and recommendations shall not delay action within the prescribed time limit. Said public agencies may include, but are not limited to, the following:

(1) The district highway engineer with regard to proposed streets and highways.

(2) The director of the health department with regard to proposed private water system or sewer systems normally approved by the health department.

(3) The state division of environmental management with regard to proposed sewer systems normally approved by the division, engineered stormwater controls or stormwater management in general.

(4) Any other agency or official designated by the watershed administrator or watershed review board.

(d) If the watershed administrator approves the application, such approval shall be indicated on the original plat and on the copy of the plat by the following certificate and signed by the watershed administrator:

Certificate of Approval for Recording

I certify that the plat shown hereon complies with the Watershed Protection Ordinance and is approved for recordation.

_____
Date

_____
Watershed Administrator

Notice: This property is located within a Public Water Supply Watershed—development restrictions may apply.

(e) If the watershed administrator disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant. The subdivider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review.

(f) All subdivision plats shall comply with the requirements for recording of the county register of deeds.

(Ord. No. 98-7-3, art. 300, § 302, 7-7-98)

Sec. 78-63. - Subdivision standards and required improvements.

(a) *Building space.* All lots shall provide adequate building space in accordance with the development standards contained in division 4. Lots which are smaller than the minimum required for single-family residential lots may be developed for non-single-family residential purposes using built-upon criteria in accordance with division 4.

(b) *Calculation.* 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.

(c) *Stormwater drainage facilities.* The application shall be accompanied by a description of the proposed method of providing stormwater drainage. The subdivider shall provide a drainage system that diverts stormwater runoff from surface waters and incorporates best management practices to minimize water quality impacts.

(d) *Erosion and sedimentation control.* The application shall, where required, be accompanied by a written statement that a sedimentation and erosion control plan has been submitted to and approved by the county erosion and sedimentation control office.

(e) *Roads constructed in critical areas and watershed buffer areas.* Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed to minimize their impact on water quality.

(Ord. No. 97-7-3, § 303, 7-7-98)

Sec. 78-64. - Construction procedures.

(a) No construction or installation of improvements shall commence in a proposed subdivision until a subdivision application has been approved by the watershed administrator.

(b) No building or other permits shall be issued for erection of a structure on any lot not of record at the time of adoption of this article until all requirements of this article have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the watershed administrator to provide for adequate inspection.

(Ord. No. 98-7-3, art. 300, § 304, 7-7-98)

Sec. 78-65. - Penalties for transferring lots in unapproved subdivisions.

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the county, thereafter subdivides his land in violation of this article or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this article and recorded in the office of the register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The County of Buncombe may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this article.

(Ord. No. 98-7-3, art. 300, § 305, 7-7-98)

Secs. 78-66—78-75. - Reserved.

DIVISION 4. - DEVELOPMENT REGULATIONS

Sec. 78-76. - Establishment of watershed areas.

The purpose of this division is to list and describe the watershed areas herein adopted. For purposes of this article the county is hereby divided into the following areas as appropriate:

(1) WS-I, WS-II-CA (Critical Area), WS-II-BW (Balance of Watershed).

(1) (a) WS-I water supply watersheds, as recorded on the Watershed Map, are undeveloped.

(2) The Ivy Watershed, as recorded on the watershed map, is classified WS-II. Development within the Ivy is allowed as specified by the allowed uses for WS-II watersheds in section 78-77.

(Ord. No. 98-7-3, art. 400, § 401, 7-7-98)

Sec. 78-77. - Watershed areas described.

(a) *WS-I Watershed Areas.* The intent is to provide maximum protection for water supplies within natural and undeveloped watersheds in public ownership by allowing only low intensity uses. No residential or nonresidential uses are allowed except those listed below. Impacts from nonpoint source pollution shall be minimized.

(1) Allowed uses:

a. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and all rules and regulations of the Soil and Water Conservation Commission. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, 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. Animal operations permitted under 15A NCAC 2H.0217 and deemed permitted are allowed.

b. Silviculture subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 1I.6101-.0209).

c. Water withdrawal, treatment and distribution facilities.

d. Restricted road access.

e. Power transmission lines.

(2) Density and built-upon area limits do not apply.

(b) *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 dwelling unit per two acres. All other residential and nonresidential development shall be allowed at a maximum six percent built-upon area. New residuals application sites and landfills are specifically prohibited.

(1) Allowed Uses:

a. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and all rules and regulations of the Soil and Water Conservation Commission. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, 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. Animal operations permitted under 15A NCAC 2H.0217 and deemed permitted are allowed.

b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 1I.6101-.0209).

c. Residential development.

d. Nonresidential development, excluding: (1) landfills and (2) sites for land application of residuals or petroleum contaminated soils.

(2) Density and built-upon limits:

a. Single family residential. Development shall not exceed one dwelling unit per two acres on a project by project basis. No residential lot shall be less than two acres (80,000 square feet excluding roadway right-of-way), except within an approved cluster development.

b. All other residential and nonresidential. Development shall not exceed six percent built-upon area on a project by project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(c) *WS-II Watershed Areas Balance of Watershed (WS-IV-BW).* In order to maintain predominantly undeveloped land use intensity, single family residential uses shall be allowed at a maximum of one dwelling unit per acre (1 du/ac). All other residential and nonresidential development shall be allowed a maximum of 12 percent built-upon area. In addition, non-single family residential development may occupy ten percent of the watershed area which is outside the critical area, with 70 percent built-upon area when approved as a special intensity allocation (SIA). The watershed administrator is authorized to approve SIAs consistent with the provisions of this article. Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate best management practices to minimize water quality impacts. Nondischarging landfills and residuals application sites are allowed.

(1) Uses allowed:

a. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.

b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 1I.6101-.0209).

c. Residential development

d. Nonresidential development, excluding discharging landfills.

(2) Density and built-upon limits:

a. Single family residential. Development shall not exceed one dwelling unit per acre (1 du/ac), on a project by project basis. No single family residential lot shall be less than one acre (or 40,000 square feet excluding roadway right-of-way), except within an approved cluster development.

b. All other residential and nonresidential. Development shall not exceed 12 percent built-upon area on a project by project basis except that up to ten percent of the balance of the watershed may be developed for non-single family residential uses at up to 70 percent 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.

(Ord. No. 98-7-3, art. 400, § 402, 7-7-98)

Sec. 78-78. - Cluster development.

Cluster development is allowed in all watershed areas [except WS-I] under the following conditions:

(1) Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in section 78-77. Density or built-upon area for the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.

(2) All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.

(3) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowners association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

(Ord. No. 98-7-3, art. 400, § 403, 7-7-98)

Sec. 78-79. - Buffer areas required.

(a) A minimum 100-foot vegetative buffer is required for all new development activities that exceed the low density option; otherwise, a minimum 30-foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.

(b) No new development is allowed in the buffer except for water dependent structures, other structures such as flag poles, signs and security lights which result only in diminutive increases in impervious area 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.

(Ord. No. 98-7-3, art. 400, § 404, 7-7-98)

Sec. 78-80. - Rules governing the interpretation of watershed area boundaries.

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the watershed map, the following rules shall apply:

(1) Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.

(2) Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the watershed administrator as evidence that one or more properties along these boundaries do not lie within the watershed area.

(3) Where other uncertainty exists, the watershed administrator shall interpret the watershed map as to location of such boundaries. This decision may be appealed to the watershed review board.

(Ord. No. 98-7-3, art. 400, § 405, 7-7-98)

Sec. 78-81. - Application of regulations.

(a) No building or land shall hereafter be used and no development shall take place except in conformity with the regulations herein specified for the watershed area in which it is located.

(b) No area required for the purpose of complying with the provisions of this article shall be included in the area required for another building.

(c) If a use or class of use is not specifically indicated as being allowed in a watershed area, such use or class of use is prohibited.

(Ord. No. 98-7-3, art. 400, § 406, 7-7-98)

Sec. 78-82. - Existing development.

Existing development as defined in this article, may be continued and maintained subject to the provisions provided herein. 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 built-upon area calculations.

(1) *Uses of land.* This category consists of uses existing at the time of adoption of this article where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:

a. When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.

b. Such use of land shall be changed only to an allowed use.

c. When such use ceases for a period of at least one year, it shall not be reestablished.

(2) *Reconstruction of buildings or built-upon areas.* Any existing building or built-upon area not in conformance with the restrictions of this article that has been damaged or removed may be repaired and/or reconstructed and there are no restrictions on single family residential development, provided:

a. Repair or reconstruction is initiated within 12 months and completed within two years of such damage.

b. The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

(Ord. No. 98-7-3, art. 400, § 407, 7-7-98)

Sec. 78-83. - Watershed protection permit.

(a) Except where a single family residence is constructed on a lot deeded prior to the effective date of this article, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any 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 watershed administrator. No watershed protection permit shall be issued except in conformity with the provisions of this article.

(b) Watershed protection permit applications shall be filed with the watershed administrator. The application shall include a completed application form and supporting documentation deemed necessary by the watershed administrator.

(c) Prior to issuance of a watershed protection permit, the watershed administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this article.

(d) A watershed protection permit shall expire if a building permit or watershed protection occupancy permit for such use is not obtained by the applicant within 12 months from the date of issuance.

(Ord. No. 98-7-3, art. 400, § 408, 7-7-98)

Sec. 78-84. - Building permit required.

No permit required under the North Carolina State Building Code shall be issued for any activity for which a watershed protection permit is required until that permit has been issued.

(Ord. No. 98-7-3, art. 400, § 409, 7-7-98)

Sec. 78-85. - Watershed protection occupancy permit.

(a) The watershed administrator shall issue a watershed protection occupancy permit certifying that all requirements of this article have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.

(b) A watershed protection occupancy permit, either for the whole or part of a building, shall be applied for coincident with the application for a watershed protection permit and shall be issued or denied within ten days after the erection or structural alterations of the building.

(c) When only a change in use of land or existing building occurs, the watershed administrator shall issue a watershed protection occupancy permit certifying that all requirements of this article have been met coincident with the watershed protection permit.

(d) If the watershed protection occupancy permit is denied, the watershed administrator shall notify the applicant in writing stating the reasons for denial.

(e) No building or structure which has been erected, moved or structurally altered may be occupied until the watershed administrator has approved and issued a watershed protection occupancy permit.

(Ord. No. 98-7-3, art. 400, § 410, 7-7-98)

Secs. 78-86—78-90. - Reserved.

DIVISION 5. - PUBLIC HEALTH REGULATIONS

Sec. 78-91. - Public health, in general.

No activity, situation, structure or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

(Ord. No. 98-7-3, art. 500, § 501, 7-7-98)

Sec. 78-92. - Abatement.

(a) The watershed administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.

(b) The watershed administrator shall report all findings to the watershed review board. The watershed administrator may consult with any public agency or official and request recommendations.

(c) Where the watershed review board finds a threat to water quality and the public health, safety and welfare, the board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

(Ord. No. 98-7-3, art. 500, § 502, 7-7-98)

Secs. 78-93—78-110. - Reserved.

DIVISION 6. - ADMINISTRATION, ENFORCEMENT AND APPEALS

Sec. 78-111. - Watershed administrator and duties thereof.

The county shall appoint a watershed administrator, who shall be duly sworn in. It shall be the duty of the watershed administrator to administer and enforce the provisions of this article as follows:

(1) The watershed administrator shall issue watershed protection permits and watershed protection occupancy permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the administrator.

(2) The watershed administrator shall serve as clerk to the watershed review board.

(3) The watershed administrator shall keep records of all amendments to the local water supply watershed protection ordinance and shall provide copies of all amendments upon adoption to the water quality section of the division of environmental management.

(4) The watershed administrator shall keep records of the jurisdiction's use of the provision that a maximum of ten percent of the noncritical area of WS-II watersheds may be developed with nonsingle family residential development at a maximum of 70 percent built-upon surface area. Records for each watershed shall include the total acres of noncritical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, number of developed acres, type of land use, and stormwater management plan (if applicable).

(5) The watershed administrator is granted the authority to administer and enforce the provisions of this article, exercising in the fulfillment of this responsibility the full police power of the county. The watershed administrator, or a duly authorized representative, may enter any building, structure or premises, as provided by law, to perform any duty imposed by this article.

(6) The watershed administrator shall keep a record of variances to the local water supply watershed protection ordinance. This record shall be submitted for each calendar year to the water quality section of the division of environmental management on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

(Ord. No. 98-7-3, art. 600, § 601, 7-7-98)

Sec. 78-112. - Appeal from the watershed administrator.

(a) Any order, requirement, decision or determination made by the watershed administrator may be appealed to and decided by the watershed review board.

(b) An appeal from a decision of the watershed administrator must be submitted to the watershed review board within 30 days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the watershed administrator shall transmit to the board all papers constituting the record upon which the action appealed from was taken.

(c) An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

(d) The board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

(Ord. No. 98-7-3, art. 600, § 602, 7-7-98)

Sec. 78-113. - Changes and amendments to the watershed protection ordinance.

(a) The county board of commissioners may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.

(b) No action shall be taken until the proposal has been submitted to the watershed review board for review and recommendations. If no recommendation has been received from the watershed review board within 35 days after submission of the proposal to the chairman of the watershed review board, the county board of commissioners may proceed as though a favorable report had been received.

(c) Under no circumstances shall the county board of commissioners adopt such amendments, supplements or changes that would cause this article to violate the watershed protection rules as adopted by the North Carolina Division of Environmental Management Commission. All amendments must be filed with the North Carolina Division of Environmental Management, North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.

(Ord. No. 98-7-3, art. 600, § 603, 7-7-98)

Sec. 78-114. - Public notice and hearing required.

Before adopting or amending this article, the county board of commissioners shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten nor more than 25 days before the date set for the hearing.

(Ord. No. 98-7-3, art. 600, § 604, 7-7-98)

Sec. 78-115. - Establishment of watershed review board.

A watershed review board is hereby established. Said board shall be the county ~~planning board~~board of adjustment~~, shall consist of seven members and shall be appointed by the county board of commissioners. Each member shall be a resident of the county and shall serve a term of three years.~~

(Ord. No. 98-7-3, art. 600, § 605, 7-7-98)

Sec. 78-116. - Rules of conduct for members.

Members of the board may be removed by the county board of commissioners for cause, including violation of the rules stated below:

(1) Faithful attendance at meetings of the board and conscientious performance of the duties required of members of the board shall be considered a prerequisite to continuing membership on the board.

(2) No board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested. A board member shall have a "financial interest" in a case when a decision in the case will: (1) cause him or his spouse to experience a direct financial benefit or loss, or (2) will cause a business in which he or his spouse owns a ten percent or greater interest, or is involved in a decision-making role, to experience a direct financial benefit or loss. A board member shall have a "personal interest" in a case when it involves a member of his immediate family (i.e. parent, spouse, or child).

(3) No board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the watershed administrator or any other member of the board, its secretary or clerk prior to the hearing.

(4) Members of the board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(5) Members of the board shall give notice to the chairman at least 48 hours prior to the hearing of any potential conflict of interest which he has in a particular case before the board.

(6) No board member shall vote on any matter that decides an application or appeal unless he had attended the public hearing on that application or appeal.

(Ord. No. 98-7-3, art. 600, § 606, 7-7-98)

Sec. 78-117. - General proceedings of the watershed review board.

The board shall annually elect a chairman and a vice-chairman from among its members. The chairman in turn shall appoint a secretary, who may be an employee of the county, a county officer or a member of the watershed review board. The chairman, or in his absence the vice-chairman, may administer oaths and request attendance of witnesses. The board shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question or abstention from voting, if any, together with records of its examinations and other official actions.

(Ord. No. 98-7-3, art. 600, § 607, 7-7-98)

Sec. 78-118. - Meetings.

(a) *Board meetings.* The board shall hold regular monthly meetings at a specified time and place. Special meetings of the board may be called at any time by the chairman or by request of a majority of the members of the board. At least 24 hours notice of the time and place of meetings shall be given, by the chairman, to each member of the board. All board meetings are to be held in accordance with G.S. Art. 33B, Ch. 143, commonly referred to as the Open Meetings Law.

(b) *Cancellation of meetings.* Whenever there are no appeals, variances or other business for the board, or whenever so many members so notify the secretary of inability to attend that a quorum will not be available, the chairman may dispense with a meeting by giving written or oral notice to all members.

(c) *Quorum.* A quorum shall consist of four members of the board, but the board shall not pass upon any questions relating to an appeal from a decision or determination of the watershed administrator when there are fewer than 4/5 of the members present.

(d) *Voting.* All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in section 78-116. The required vote to decide applications for appeals and variances shall not be reduced by any disqualification. The concurring vote of 4/5 of the members of the board shall be necessary to reverse any decision or determination of the watershed administrator. In all other matters, the vote of a majority of the members present and voting shall decide issues before the board.

(Ord. No. 98-7-3, art. 600, § 608, 7-7-98)

Sec. 78-119. - Powers and duties of the watershed review board.

(a) *Administrative review.* The watershed review board shall hear and decide appeals from any decision or determination made by the watershed administrator in the enforcement of this article.

(b) *Variances.* The watershed review board shall have the power to authorize, in specific cases, minor variances from the terms of this article as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this article will result in practical difficulties or unnecessary hardship, so that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done. In addition, the county shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

(1) Applications for a variance shall be made on the proper form obtainable from the watershed administrator and shall include the following information:

a. A site plan, drawn at an appropriate scale, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

b. A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the watershed review board in considering the application.

c. The watershed administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the watershed administrator prior to a decision by the board. Such comments shall become a part of the record of proceedings of the watershed review board.

(2) Before the watershed review board may grant a variance, it shall make the following findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:

a. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the board must find that the five following conditions exist:

1. If he complies with the provisions of the ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the board in granting a variance. Moreover, the board shall consider whether the variance is the minimum possible deviation from the terms of the ordinance that will make possible the reasonable use of his property.

2. The hardship results from the application of the ordinance to the property rather than from other factors such as deed restrictions or other hardship.

3. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

4. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the ordinance, or who purchases the property after the effective date of the ordinance, and then comes to the board for relief.

5. The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.

b. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.

c. In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

(3) In granting the variance, the board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this article. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

(4) The watershed review board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

(5) A variance issued in accordance with this section shall be considered a watershed protection permit and shall expire if a building permit or watershed protection occupancy permit for such use is not obtained by the applicant within 12 months from the date of the decision.

(6) If the application calls for the granting of a major variance, and if the watershed review board decides in favor of granting the variance, the board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

a. The variance application;

b. The hearing notices;

c. The evidence presented;

d. Motions, offers of proof, objections to evidence, and rulings on them;

e. Proposed findings and exceptions;

f. The proposed decision, including all conditions proposed to be added to the permit.

The preliminary record shall be sent to the environmental management commission for its review as follows:

If the commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The commission shall prepare a commission decision and send it to the watershed review board. If the commission approves the variance as proposed, the board shall prepare a final decision granting the proposed variance. If the commission approves the variance with conditions and stipulations, the board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

If the commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the commission shall deny approval of the variance as proposed. The commission shall prepare a commission decision and send it to the watershed review board. The board shall prepare a final decision denying the variance as proposed.

(c) *Subdivision approval.* See division 3.

(d) *Public health.* See division 5.

(Ord. No. 98-7-3, art. 600, § 609, 7-7-98)

Sec. 78-120. - Appeals and variances.

(a) *Procedure for filing applications for appeals and variances.* No hearing shall be held by the board unless notice thereof is filed within 30 days after the interested party or parties receive the decision or determination by the watershed administrator or the aggrieved party or parties receive constructive notice of the decision. All applications shall be submitted to the office of the watershed administrator at least 15 days prior to the date the application is to be heard. Applications shall be made upon the form specified for that purpose and all information required on the form shall be complete before an application shall be considered as having been filed. Once applications have

been filed, the watershed administrator shall immediately notify the chairman of the board that such applications have been received.

(b) *Hearings.*

(1) *Time.* After receipt of an application for an appeal or variance, the board chairman shall schedule a time for a hearing which shall be at a regular or special meeting within 45 days from the filing of such notice of the application.

(2) *Notice of hearing.* The watershed administrator shall notify by mail all local governments having jurisdiction in the designated watershed at least 14 days in advance of the board's meeting at which the application is to be heard. For all applications, the watershed administrator shall also give public notice of the meeting in the newspaper having general circulation in the county published at least five days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved and the time and place of the hearing.

(3) *Conduct of hearing.* The hearing shall be a quasi-judicial proceeding. Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows: (a) The chairman, or such person as he shall direct, shall give a preliminary statement of the case; (b) the applicant shall present the argument in support of the application; (c) persons opposed to granting the application shall present their argument against the application; (d) both sides will be permitted to present rebuttals to opposing testimony; (e) the chairman shall summarize the evidence which has been presented, giving the parties opportunity to make objections or corrections. Witnesses may be called and factual evidence may be submitted, but the board shall not be limited to consideration of only such evidence as would be admissible in a court of law. The board may view the premises before arriving at a decision. All witnesses before the board may be placed under oath and the opposing party may cross-examine them.

(c) *Decisions.*

(1) *Time.* A decision by the board shall be made within 35 days from the time of the hearing.

(2) *Form.* Written notice by certified or registered mail of the decision in a case shall be given to the applicant or appellant by the secretary as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property and to persons who have made a written request for such notice. The final decision of the board shall be shown in the record of the case as entered in the approved minutes. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made. Every decision of the board shall be a public record and available for inspection at the office of the watershed administrator.

(3) *Decision.* The decision on an application for an appeal may reverse or affirm, wholly or partly, or modify the decision or determination of the watershed administrator.

(4) *Approval.* With an application for a major variance, the watershed review board shall provide a recommendation to the North Carolina Environmental Management Commission. The North Carolina Environmental Management Commission shall have the authority to approve or deny the issuance of a variance. If the North Carolina Environmental Management Commission approves the variance, the watershed review board may direct the watershed administrator to issue a watershed protection permit.

(5) *Expiration of permits.* Unless otherwise specified, any order or decision of the board in granting a watershed protection permit shall expire if a building permit or watershed protection occupancy permit for such use is not obtained by the applicant within 12 months from the date of the decision.

(Ord. No. 98-7-3, art. 600, § 610, 7-7-98)

Sec. 78-121. - Decisions and appeals from the watershed review board.

Every decision by the watershed review board shall be subject to review by superior court. All appeals must be filed with the superior court within 30 days after the decision of the board is filed in the office of the watershed administrator, or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later. Decisions by the superior court will be in the manner of certiorari.

(Ord. No. 98-7-3, art. 600, § 611, 7-7-98)

Secs. 78-122—78-155. - Reserved.

ARTICLE III. - RESERVED[3]

Footnotes:

--- (**3**) ---

Editor's note— Section 1(a) of Ord. No. 10-05-07, adopted May 18, 2010, repealed art. III, Limestone Township Zoning, divs. 1—9, §§ 78-156—78-165, 78-176—78-184, 78-196—78-203, 78-216—78-222, 78-236—78-246, 78-256—78-258, 78-271—78-273, 78-286—78-293, 78-306—78-314, 78-326—78-330, 78-341—78-346, which pertained to generally; administration and enforcement; board of adjustment; zoning districts and maps; general provisions; ~~conditional~~special uses; off-premises signs; exceptions and modifications; amendments; and derived from Ord. No. 17298, adopted Dec. 29, 1981; Ord. No. 20186, adopted Feb. 16, 1993; Res. No. 20187, adopted March 2, 1993; Ord. No. 95-1-8, adopted Jan. 17, 1995; Res. No. 96-10-11, adopted Oct. 15, 1996; Ord. No. 97-11-2, adopted Nov. 18, 1997; Ord. No. 00-06-02A, adopted June 6, 2000; Ord. No. 00-07-01, adopted July 11, 2000; Ord. No. 00-10-7, adopted Oct. 3, 2000; Ord. No. 01-12-12, adopted Dec. 18, 2001; and Ord. No. 05-12-01, adopted Dec. 6, 2005. See Code Comparative Table for complete derivation.

Secs. 78-156—78-355. - Reserved.

ARTICLE IV. - RESERVED[4]

Footnotes:

--- (**4**) ---

Editor's note— Section 1(b) of Ord. No. 10-05-07, adopted May 18, 2010, repealed art. IV, Beaverdam Community Land Use Ordinance, divs. 1—7, §§ 78-356—78-364, 78-386, 78-387, 78-396—78-402, 78-416—78-421, 78-436—78-441, 78-451—78-458, 78-471, 78-472, which pertained to generally; establishment of districts and zoning maps; district regulations; administration and enforcement; special use permits; board of adjustment; amendments; and derived from an ordinance adopted Dec. 1, 1981; an ordinance adopted Aug. 29, 1995; Ord. No. 95-9-2, adopted Sept. 5, 1995; Res. No. 97-10-19, adopted Oct. 28, 1997; Ord. No. 98-4-7, adopted April 21, 1998; Ord. No. 98-6-8, adopted June 23, 1998; Ord. No. 03-02-08, adopted Feb. 18, 2003; Ord. No. 05-12-02, adopted Dec. 6, 2005; Ord. No. 07-02-01, adopted Feb. 20, 2007. See Code Comparative Table for complete derivation.

Secs. 78-356—78-495. - Reserved.

ARTICLE V. - BUNCOMBE COUNTY OFF-PREMISES SIGN ORDINANCE

DIVISION 1. - GENERALLY

Sec. 78-496. - Purpose and scope.

(a) *Purpose.* The purpose of this article is to provide standards and restrictions for off-premises signs and to regulate the erection and placement of such signs in the county in order to protect and promote the tourist industry and the quality of life of the county's residents and visitors. The ultimate goal of this article is to effect the orderly elimination of outdoor billboard signs in the unincorporated areas of the county, excepting those defined herein as temporary signs. The regulations further seek to ensure the safety of the motorist in the community by reducing the distracting influence of uncontrolled off-premises signage. Further, it is not the intent of this article to regulate any sign which may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not

direct attention to a business operated for profit, or to a commodity or service for sale, provided such sign complies with the size, lighting, spacing, setback and other requirements of this article.

(b) *Scope.* The provisions of this article shall apply to the erection and maintenance of all off-premise signs within the jurisdiction of the ordinance in the county. It shall be unlawful, following March 29, 1994 to erect any off-premise sign, except in conformance with the provisions of this article. Furthermore, it shall be unlawful to move, relocate, or enlarge any off-premise sign erected or constructed prior to the enactment of this article, except to bring the sign into conformance with this article.

(Ord. No. 20408, art. II, 3-29-94; Ord. No. 01-04-11, § 1, 4-3-01)

Sec. 78-497. - Jurisdiction.

The provisions of this article shall apply to the unincorporated areas of the county, exclusive of municipalities. If a municipality is not exercising sign regulation within its extraterritorial jurisdiction this article shall apply. The ordinance shall be on file in the office of the county commissioners.

(Ord. No. 20408, art. III, 3-29-94; Ord. No. 0-04-11, § 1, 4-3-01)

Sec. 78-498. - Definitions.

The following words, terms shall have the meaning as hereinafter defined.

Abandoned sign means a sign or sign structure which was not been utilized for a period of 180 days or more, or a sign, the contents of which pertain to a place, time, event or purpose which no longer exists, applies or which has occurred.

Adjacent means a tract of real property contiguous to another tract of real property, including a tract separated by a road, river, easement or right-of-way.

Animated sign means any sign using flashing or intermittent lights, sound, color changes or other mechanical or electrical means to give motion to the sign or the impression of motion or movement to the sign or any sign with visible moving, revolving or relocating parts.

Area of sign means the area of a sign shall be considered to be that of the smallest rectilinear figure, but which shall have a continuous perimeter of not more than eight straight lines, which encompasses all lettering, wording, frame design or symbols, together with any background on which the sign is located and any illuminated part of the sign, if such background or such illuminated part of the sign is designed as an integral part of and related to the sign. Any cutouts or extensions shall be included in the area of the sign, but supports and bracing which are not intended as part of the sign shall be excluded. In the case of a multifaced sign, the area of the sign shall be considered to include all faces visible from one direction.

Billboard means an off-premise advertising sign of 33 square feet or larger.

Commemorative sign means any sign, marker, tablet or monument erected in remembrance of a historic person, place, event or which denotes, honors, celebrates or acknowledges a historic person, place, or event.

Dangerous sign means any sign which the county building inspector determines to be dangerous or prejudicial to the public health or safety, pursuant to G.S. 160D-1104~~153A-352~~.

Exempt sign means any sign which is specifically listed as exempt from this article. Such listed exempt signs are not regulated by the terms of this article and shall not require a permit.

Flashing sign means a sign illuminated by direct or indirect artificial light that flashes on and off in regular or irregular sequence, including, but not limited to, a strobe light.

Freestanding pole sign means a sign which is permanently affixed to the ground by a pole or other structure and which is not part of a building.

Governmental sign means any sign erected by or on the order of an authorized public official which includes, but is not limited to, traffic control signs, street name and identification signs, warning and directional signs, public notices or signs of a similar nature.

Grade means the lowest point at which a sign is attached to the ground.

Ground sign means a freestanding sign flush to the ground and not elevated upon poles or stanchions and not attached to a building.

Height of signs means the distance as measured from the elevation of the road surface of the nearest roadway to the highest point on the sign. Measurements shall be taken from the center line of the roadway from the sign location. If the sign site is at an intersection of roadways, the roadway with the highest traffic count shall be the site of the measuring point.

Illegal sign means any sign erected or maintained in violation of a preceding ordinance or erected, altered, moved, repaired, maintained or replaced in violation of this article.

Maintenance of signs. For the purpose of this article, maintenance shall include those activities and procedures listed in section 78-535. Work done to restore or repair a sign which is damaged or destroyed shall be considered repairs in accordance with the provisions in subsection 78-537(b).

Noncommercial sign means any sign which is not by definition an off-premise sign, an off-premise advertising sign, an off-premise directional sign, an on-premise sign, an on-premise advertising sign, or an on-premise directional or information sign, and which sign displays a substantive message, statement or expression that is protected by the First Amendment to the U.S. Constitution. Noncommercial signs shall not contain any reference to a business or product.

Nonconforming sign means signs that are erected and in place prior to March 29, 1994, and which do not conform to the provisions of this article are declared nonconforming signs. A sign that is erected and that is in place and which conforms to the provisions of this article at the time it is erected, but which does not conform to an amendment to this article enacted subsequent to the erection of the sign is declared a nonconforming sign. An illegal sign is not a nonconforming sign.

Off-premise sign means any sign used for the purpose of displaying, advertising, identifying or directing attention to a business, service, activity or place, including products, or services sold or offered for sale on premise other than on the premises where such sign is displayed.

Off-premise advertising sign means any sign advertising a product, service, business or activity which is sold, located or conducted elsewhere than on the premises on which the sign is located, or which the product, service, business or activity is sold, located or conducted on such premises only incidentally, if at all.

Off-premise directional sign means any off-premise sign indicating the location of or directions to a church, community event, park, historic property, school or other place of public assembly.

On-premise sign means any sign used for the purpose of displaying, advertising, identifying or directing attention to a business, product, operation, service or activity sold or offered for sale or to other information offered on the premises where the sign is located.

Portable or moveable sign means a sign with a permanent frame and a display area for changeable copy, designed or intended to be relocated and not permanently affixed to the ground or structure. This shall include signs on wheels, trailers or any other device which is intended to be moved from one location to another.

Premises. A tract of real property in single ownership which is not divided by a public street or right-of-way.

Prohibited sign means any sign, or element of a sign, which is specifically listed as prohibited in section 78-532 shall not be permitted.

Setback. For the purpose of this article, setback shall mean the horizontal distance between the leading face of the curb of a street and the closest point of a sign or sign structure on such lot. Where there is no curb, the measurement shall be made from the edge of the pavement.

Sign means any display of letter, words, numbers, figures, devices, emblems, pictures, logos or any other means whereby the same are made visible for the purpose of making anything known, whether such display be made on, or attached to or as a part of a structure, surface or any other object, whether natural or manmade. The term sign shall include sign structure.

Street. (Road) means a right-of-way for vehicular traffic which affords the principal means of access to abutting properties. The word "street" includes the words "road" and "highway."

Street frontage means that portion of a lot abutting a publicly maintained street or alley.

Temporary sign means a sign with or without a structural frame, not permanently attached to a building, structure, or the ground, and intended to advertise an event, not a product or service, for a limited period of display not to exceed 30 days or the duration of the advertised event. Signs advertising a specific event shall be removed within 48 hours of the end of that event. Real estate signs, located at a road intersection where a property is listed for sale, are considered temporary signs. Temporary sign does not include a portable or moveable sign as defined herein.

Warning or danger sign means a sign erected by a public utility or construction company to warn of hazardous conditions.

Yard sale signs which do not exceed six square feet in area per sign are limited to one per lot and must be removed one day after the event. Signs shall be located so as not to impair an individual's ability to safely see other vehicles or pedestrians at intersections or driveways.

(Ord. No. 20408, art. V, § 100.00, 3-29-94; Ord. No. 01-04-11, § 1, 4-3-01; Ord. No. 05-12-06, § 1, 12-6-05)

Cross reference— Definitions generally, § 1-2.

Sec. 78-499. - Administration and enforcement.

The county zoning administrator shall be designated the sign administrator and shall be responsible for the administration and enforcement of this article. The duties of the sign administrator shall include the issuance of permits as required in this section and the enforcement of all sign provisions.

(Ord. No. 20408, art. VI, § 101.00, 3-29-94)

Secs. 78-500—78-510. - Reserved.

DIVISION 2. - PERMIT

Sec. 78-511. - Requirements.

(a) *General requirements.* Except as otherwise provided in this article, it shall be unlawful to erect, move, alter or maintain any sign regulated in this article without first obtaining a sign permit. Application for the permit shall be made in writing on forms furnished by the sign administrator and signed by the applicant or authorized agent. No permit shall be required, however, for the maintenance requirements of section 78-535 hereinafter. Failure to secure a permit shall constitute a violation of this article.

(b) *Plans, specifications and other data required.* The application shall be accompanied by complete information, as required on forms provided by the sign administrator, and shall include, without being limited to, a site plan and elevation drawings of the proposed sign, indicating the proposed location of the sign, setbacks, height, dimensions and square footage of the proposed sign and any other data as the sign administrator may determine is necessary for review of the application. The sign administrator shall not issue a sign permit unless the plans, specifications and intended use of such sign conform in all respects to the applicable provisions of this article.

(Ord. No. 20408, art. VI, § 101.01, 3-29-94)

Sec. 78-512. - Fees.

(a) *Required.* A sign permit fee shall be paid to the county for each sign permit applied for in accordance with this article in an amount to be determined by the county. This permit fee does not include electrical permit fees, which shall be additional. A sign permit fee shall not be charged for replacing a nonconforming sign with a conforming sign or for bringing a nonconforming sign into conformance with this article if such action is undertaken voluntarily within three years of March 29, 1994.

(b) *Payable at time of application.* Sign permit fees shall be paid upon the application for a sign permit and prior to commencement of any sign construction on the lot where the sign will be located.

(Ord. No. 20408, art. VI, § 101.02, 3-29-94)

Sec. 78-513. - Revocation for nonuse.

(a) *Commencement of work.* If actual work for the permitted sign on the site is not commenced within 180 days from the date of issuance of such sign permit or if substantial work for the permitted sign is suspended for a period of 180 days after issuance of the sign permit, the permit shall automatically become null and void. The work on any sign shall be completed within one year of the date of issuance of the sign permit.

(b) *Extensions of time.* The provisions of subsection (a) of this section shall not apply when delays are not a result of willful acts or neglect of the persons obtaining the permit. In that event, the sign administrator may grant an extension of 30 days of time within which operations must be started or resumed. All requests for such extensions and approval thereof shall be in writing.

(Ord. No. 20408, art. VI, § 101.03, 3-29-94)

Sec. 78-514. - Forfeiture of fees.

When any permit has been revoked under the terms of this article, the permit fees shall not be refunded. If a sign permit is denied, however, the permit fee will be refunded.

(Ord. No. 20408, art. VI, § 101.04, 3-29-94)

Sec. 78-515. - Issuance; emblem.

(a) A permit along with a permit emblem shall be issued upon proper application, approval, and the payment of fees for lawful off-premise advertising sign structures.

(b) The erection of new off-premise advertising sign structures shall not commence until a permit and emblem have been issued. The sign structure must be completely constructed and erected with the permit emblem affixed within 180 days from the date of issuance of the permit. During the 180-day period, the new sign structure shall be considered in existence for the purpose of spacing of adjacent signs as set out in the appropriate rules and regulations of this article.

(c) The permit emblem, which will have an identifying number, shall be placed on the off-premise advertising sign in such a position as to be visible from the main traveled roadway of the adjacent highway.

(Ord. No. 20408, art. VI, § 101.05, 3-29-94)

Sec. 78-516. - Registering existing off-premise advertising signs.

(a) The owners of all existing off-premise advertising signs constructed and in place prior to March 29, 1994, shall be required to obtain a permit by the procedures set forth in this article and affix a permit emblem within 30 days after issuance of the permit. The permit shall be obtained within a period of 180 days beginning with the effective date of this article.

(b) All existing signs that require a permit that have not been registered within 180 days shall be in violation of this article and subject to the enforcement provisions of this article.

(Ord. No. 20408, art. VI, § 101.06, 3-29-94)

Sec. 78-517. - Transfer.

The transfer of ownership of an off-premise advertising sign for which a permit has been lawfully issued to the original owner shall not in any way affect the validity of the permit for that specific sign, provided that the sign administrator is given notice in writing of the transfer of ownership within 30 days of the actual transfer.

(Ord. No. 20408, art. VI, § 101.07, 3-29-94)

Sec. 78-518. - Revocation.

Any valid permit issued for a lawful off-premise sign structure shall be revoked by the sign administrator for any one of the following reasons:

(1) Mistake of material facts by the issuing authority for which, had the correct facts been made known, the sign permit in question would not have been issued.

(2) Misrepresentation of material facts by the applicant on the application for permit for sign.

(3) Failure to construct sign structure and affix the permanent emblem within 180 days from the date of issuance of the permit.

(4) Any alteration of a sign structure for which a permit has previously been issued which would cause that sign structure to fail to comply with the provisions of this article.

(5) Any violation of section 78-537.

(6) Failure to maintain a sign such that it reaches a state of dilapidation or disrepair as described in subsection 78-535(a).

(Ord. No. 20408, art. VI, § 101.08, 3-29-94)

Secs. 78-519—78-530. - Reserved.

DIVISION 3. - SIGN REGULATIONS

Sec. 78-531. - Signs exempt from division provisions.

Unless otherwise prohibited in this division, the following signs are exempt from regulation under this division:

(1) On-premise signs.

(2) Governmental signs.

(3) Warning or danger signs.

(4) Commemorative signs.

(5) Signs on vehicles indicating the name of a business, when the vehicle is not intended to be used for a display of signs.

(6) Signs required by law, statute, or ordinance.

(7) Temporary signs.

(Ord. No. 20408, art. VI, § 102.00, 3-29-94)

Sec. 78-532. - Signs prohibited.

The following off-premise signs and/or features shall not be erected or maintained.

(1) Any nongovernmental sign which resembles a public traffic sign or a safety warning sign.

(2) Signs, whether temporary or permanent, within any street or highway right-of-way, with the exception of those signs approved by the government with road maintenance responsibility.

(3) Any sign which obstructs ingress or egress, creates an unsafe distraction for motorists, or obstructs the view of motorists entering a public road or highway.

(4) Animated and flashing signs.

(5) Abandoned signs.

(6) Signs on roadside appurtenances. Off-premise signs on roadside appurtenances including, but not limited to, roadside benches, bus stop shelters, planters, utility poles, trees, parking meter poles and refuse containers, with the exception of commemorative signs or governmental signs.

(7) Portable and moveable signs.

(8) Off-premise billboard signs.

(Ord. No. 20408, art. VI, § 103.00, 3-29-94; Ord. No. 01-04-11, § 1, 4-3-01)

Sec. 78-533. - Regulation of off-premise advertising signs.

The following regulations shall be applicable to off-premise advertising signs as defined in section 78-498. Any sign not specifically allowed is prohibited.

(1) *Size.*

a. No off-premise advertising sign shall exceed 32 square feet in area.

b. A maximum of two faces per sign structure is allowed, positioned either back to back or v-shaped, such that only one face is allowed per side. Both sides of a double-faced or v-shaped sign shall be of equal size. In no case shall there be more than one face per directional flow of traffic.

(2) *Height.* No off-premise advertising sign shall exceed 12 feet in height as defined in section 78-498. feet. The 12 feet height shall be measured from the elevation at the nearest roadway. Measurements shall be taken from the edge of the roadway on a sight line perpendicular to the roadway from the sign location. If the sign site is at an intersection of roadways, the roadway with the highest traffic density shall be the site of the measuring point.

(3) *Spacing.*

a. The minimum distance between any two off-premise advertising sign structures shall be 1,000 linear feet on either side of the same street, road or highway.

b. No off-premise advertising sign shall be located within a 100-foot radius of a school or residential structure.

c. No off-premise advertising sign shall be located within 75 feet of any intersection of two or more streets, roads or highways.

(4) *Setback from right-of-way.* Minimum setback distances shall be as follows:

a. For sign area of zero to 150 square feet per face—Ten feet.

b. For sign area of greater than 150 square feet per face—20 feet.

(5) *Extensions.* No sign shall have any extension or combination of extensions which exceeds 15 percent of the square footage of the sign.

(Ord. No. 20408, art. VII, § 104.00, 3-29-94; Ord. No. 01-04-11, § 1, 4-3-01)

Sec. 78-534. - Noncommercial messages.

Any sign allowed under this article may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale, and that complies with the size, lighting, spacing, setback and other requirements of this article.

(Ord. No. 20408, art. VII, § 105.00, 3-29-94)

Sec. 78-535. - Maintenance.

(a) The following maintenance requirements must be observed for all off-premise signs visible from any public street or highway within the jurisdiction of this division:

(1) No sign shall have more than 20 percent of its surface area covered with disfigured, cracked, ripped or peeling paint or poster paper for a period of more than 30 successive days.

(2) No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts or be allowed to stand more than 15 degrees away from the perpendicular for a period of more than 30 successive days.

(3) No sign shall be allowed to have weeds, vines, landscaping or other vegetation growing upon it and obscuring its view from the street or highway from which it is to be viewed for a period of more than 30 successive days.

(4) No directly or indirectly illuminated sign may be allowed to stand with only partial illumination for a period of more than 30 successive days.

(5) If a sign is damaged such that more than 50 percent of the value is lost, with such determination made by the sign administrator, any repair or replacement must be done in conformance with this division.

(b) The sign administrator may inspect all signs for compliance with these maintenance requirements.

(Ord. No. 20408, art. VIII, § 106.00, 3-29-94)

Sec. 78-536. - Enforcement.

Violation of the provisions of this article shall be enforceable as set forth below.

(1) *Notice of violation for signs of 32 square feet or larger.* The sign administrator shall have the authority to issue a notice of violation for all violations of this article. Where the owner of the sign is indicated on the sign or is otherwise apparent or known to the sign administrator, a copy of the notice of violation shall be delivered to the sign owner by hand delivery or by certified mail. In all other cases, a copy of the notice of violation shall be posted on the sign. A copy of the notice of violation shall also be delivered by hand delivery or certified mail to the property owner as shown on the county tax records. In addition, service under this division may be made in accordance with rule 4 of the state rules of civil procedure.

(2) *Time to remedy violation.* All violations shall be remedied within 30 days. The 30-day period shall commence upon the service of the notice of violation as set forth in subsection (1) above.

(3) *Extension of time for compliance.* The sign administrator shall have the authority to grant a single 30-day extension of time within which to remedy the violation. An extension of time may be issued based upon a written request for extension of time which sets forth valid reasons for not complying within the original time period.

(4) *Remedies for failure to comply.* Pursuant to G.S. 153A-123(f), the sign administrator, in consultation with the county attorney, may choose from the remedies set forth in this subsection

to enforce the requirements of this article when there is a failure to comply with the notice of violation. Those remedies are as follows:

a. In addition to or in lieu of the other remedies set forth in this section, the sign administrator may issue a citation setting forth a civil penalty of $50.00, pursuant to G.S. 153A-123(c). In the case of a continuing violation, each 24-hour period during which the violation continues to exist shall constitute a separate violation. The citation shall be served upon the person(s) described in subsection (1) of this section by the means set forth in this section. In the event the offender does not pay the penalty within 30 days of service of the citation, the civil penalty shall be collected by the county in a civil action in the nature of debt, which shall not subject the offender to the penalty provisions of G.S. 14-4.

b. In addition to or in lieu of the other remedies set forth in this section, the sign administrator shall have the authority to issue a remove order for any sign not brought into compliance with the provisions of this article within the time required by the foregoing provisions. Remove orders shall be issued to and served upon the person(s) described in subsection (1) by the means set forth therein. The sign shall be removed within 30 days after the service of the remove order at the expense of the offender. The remove order shall describe with particularity the location of the sign to be removed and all of the reasons for issuance of the remove order, including specific reference to the provisions of this division which has been violated.

c. In addition to or in lieu of the other remedies set forth in this section, the county attorney may seek injunctive relief in the appropriate court.

(5) *Removal and recovery of expense.* In the event of failure to comply with the requirements of a remove order, the sign administrator may cause such sign to be removed. The sign owner and property owner may be jointly and severally liable for the expense of removal. Notice of the cost of removal shall be served upon the person(s) described in subsection (1) by the means set forth therein. If the sum is not paid within 30 days thereafter, the sum shall be collected by the county in a civil action in the nature of debt, which shall not subject the offender to the penalty provisions of G.S. 14-4.

(6) *Removal of dangerous signs.* Pursuant to G.S. 160D-402~~153A-352~~, the sign administrator shall have the authority to summarily remove, abate or remedy a sign which the county building inspector determines to be dangerous or prejudicial to the public health or safety, in accordance with County Ordinance No. 20371. The expense of the action shall be paid by the sign owner, or if the sign owner cannot be determined, by the property owner, and if not paid, shall be a lien upon the land or premises where the nuisance arose, and shall be collected as unpaid taxes.

(7) *Stay upon appeal.* In the event of a timely appeal of a decision of the sign administrator to the board of adjustment, enforcement of all proceedings and the furtherance of the action appealed from is stayed, unless the sign administrator certifies to the board of adjustment that a stay would cause imminent peril to life or property.

(8) *Signs mounted on utility poles, etc.* Signs mounted on utility poles or located within the state department of transportation right-of-way, as shown on Buncombe County Land Records maps, shall be removed when found. The owner of such sign will be notified, whenever practicable, that such sign has been removed by the sign administrator, and that such sign may be recovered at the office of the sign administrator within 48 hours of such notification. After 48 hours has elapsed, the sign may be disposed of by the sign administrator. Any sign so removed shall not be again located in violation of this article.

(Ord. No. 20408, art. IX, § 107.00, 3-29-94; Ord. No. 05-12-06, §§ 2, 3, 12-6-05)

Sec. 78-537. - Nonconforming signs.

(a) All legal, nonconforming, off-premise signs as herein defined in section 78-498 are permitted to continue, provided that all signs that are nonconforming because of their height and size shall be

required to conform to the size and height requirements of this article within seven years of March 29, 1994, excluding those on Federal Aid Primary (FAP) Highways as defined by G.S. 136-26 et seq.

If a nonconforming sign cannot conform to the maximum height requirements because of the sign's location on a grade above an adjacent roadway, such sign shall be required to meet the maximum height requirement as measured from the grade at the base of the sign structure to the highest point on the sign structure.

(b) All legal, nonconforming, off-premise signs are permitted to continue, provided signs shall conform to the provisions in subsection (a) above and shall not be:

(1) Changed, altered or replaced by another nonconforming sign, except that copy may be changed on an existing sign.

(2) Expanded or modified in any way which increases the sign's nonconformity.

(3) Relocated, except in conformance with the requirements of this article.

(4) Reestablished after it has been removed or has been abandoned for 180 days or more.

(5) Reestablished after damage or destruction if such damage to the sign exceeds 50 percent of the sign's current assessed tax value. The extent of damage shall be determined by the sign administrator.

(Ord. No. 20408, art. IX, § 109.00, 3-29-94)

Sec. 78-538. - Variances.

(a) The county board of adjustment shall have the power to hear and act upon applications for a variance which meet the following requirements:

(1) If the applicant complies strictly with the provisions of this article, the applicant can make no reasonable use of the sign allowed;

(2) If the hardship of which the applicant complains is unique, or nearly so, and is suffered by the applicant rather than by owners of surrounding properties or the general public;

(3) If the hardship relates to the applicant's land, such as the terrain of the site, rather than in personal circumstances;

(4) If the hardship is not a result of the applicant's own actions;

(5) If the variance is in harmony with the general purpose and intent of this article and preserves its spirit and if the variance secures the public safety and welfare and does substantial justice.

(b) In granting a variance, the board of adjustment shall make written findings that all of the above listed requirements have been met. If a variance is granted it shall be the least possible deviation from the requirements of this article. In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this article. Violations of the provisions of the variance granted, including any conditions or safeguards, which are a part of the grant of the variance, shall be deemed a violation of this article.

(Ord. No. 20408, art. IX, § 110.00, 3-29-94)

Secs. 78-539—78-550. - Reserved.

DIVISION 4. - APPEALS

Sec. 78-551. - Types.

The board of adjustment shall hear and decide all appeals from any order, requirement, decision or determination made by the sign administrator. In deciding appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of the article and those based upon alleged hardship resulting from strict interpretation of the article.

(Ord. No. 20408, art. IX, § 108.01, 3-29-94)

Sec. 78-552. - Procedure for filing.

No appeal shall be heard by the board unless notice thereof is filed within 30 days after the interested party or parties receive notice of the order, requirement, decision or determination by the sign administrator. The applicant must file his application for a hearing with the sign administrator, who shall act as clerk for the board in receiving this notice. All applications shall be made upon the form specified for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.

(Ord. No. 20408, art. IX, § 108.02, 3-29-94)

Sec. 78-553. - Hearings.

(a) *Time.* After receipt of notice of appeal, the board chairman shall schedule the time for a hearing which shall be at a regular or special meeting within 31 days from the filing of such notice of appeal.

(b) *Notice of hearing.* The board shall mail notices of the hearing to the affected parties to the action appealed from, and to such other persons as the sign administrator shall direct, at least five days prior to the hearing. Such notice shall state the general nature of the question involved in the appeal, and the time and the place of the hearing.

(c) *Conduct of hearing.* Any party may appear in person or by agent or by attorney at the hearing. The order of business for hearing shall be as follows:

(1) The chairperson, or such person as he shall direct, shall give a preliminary statement of the case.

(2) The applicant shall present the argument in support of his application.

(3) Persons opposed to granting the application shall present the argument against the application.

(4) Both sides will be permitted to present rebuttals to opposing testimony.

(5) The chairperson shall summarize the evidence which has been present, giving the parties opportunity to make objections or corrections.

Witnesses may be called and factual evidence may be submitted, but the board shall not be limited to consideration of only such evidence as would be admissible in a court of law. The board may view the premises before arriving at a decision. All witnesses before the board shall be placed under oath and the opposing party may cross-examine them.

(d) *Rehearings.* An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the board to determine whether there has been a substantial change in the facts, evidence or conditions in the case. The application for rehearing shall be denied by the board if from the record it finds that there has been no substantial change in facts, evidence or conditions. If the board finds that there has been a change, it shall thereupon treat the request in the same manner as any other application.

(Ord. No. 20408, art. IX, § 108.03, 3-29-94)

Sec. 78-554. - Decisions.

(a) *Time.* A decision by the board shall be made within 30 days from time of hearing.

(b) *Form.* Written notice by certified or registered mail of the decision in a case shall be given to the applicant by the secretary as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property, if not the applicant, and to other persons who have made written request for such notice. The final decision of the board shall be shown in the record of the

case as entered in the minutes of the board and signed by the secretary and the chairman upon approval of the minutes of the board. Such record shall show the reasons for the determination, with summary of the evidence introduced and the findings of fact made by the board. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the board finds to exist. The decision may reverse or affirm, wholly or partly or modify the order, requirement, decision or determination appealed from. The record shall state in detail what if any, conditions and safeguards are imposed by the board.

(c) *Voting.* The concurring vote of four-fifths of the members of the board shall be necessary to reverse any order, requirement, decision or determination of the sign administrator.

(d) *Public record or decisions.* The decisions of the board, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

(Ord. No. 20408, art. IX, § 108.04, 3-29-94)

Sec. 78-555. - Appeals from board of adjustment.

Appeals from the board of adjustment may be taken to the courts, within 30 days of the decision.

(Ord. No. 20408, art. IX, § 108.05, 3-29-94)

Secs. 78-556—78-575. - Reserved.

ARTICLE VI. - BUNCOMBE COUNTY ZONING ORDINANCE[5]

Footnotes:

--- (**5**) ---

Editor's note— Ord. No. 09-12-01, § 1, adopted Dec. 1, 2009, amended Art. VI in its entirety to read as herein set out. Former Art. VI, §§ 78-576—78-585, 78-596—78-603, 78-616—78-624, 78-636—78-645, 78-656—78-668, 78-676—78-678, 78-696—78-700, 78-716—78-721, pertained to similar subject matter, and derived from Ord. No. 07-05-01, §§ 1.1—1.10, 2.1—2.8, 3.1—3.9, 4.1—4.10, 5.1—5.12, 6.1—6.3, 7.1—7.5, 8.1—8.6, adopted May 1, 2007; Ord. No. 07-09-03, §§ 1, 2, adopted Sept. 4, 2007; Ord. No. 07-10-05, § 1, adopted Oct. 16, 2007; Ord. No. 07-10-06, § 1, adopted Oct. 16, 2007.

DIVISION 1. - GENERALLY

Sec. 78-576. - Title.

This article shall be known and may be cited as "The Zoning Ordinance of Buncombe County, North Carolina" and may be referred to as the "zoning ordinance".

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-577. - Authority.

In pursuance of the authority conferred by state law, the Buncombe County Board of Commissioners hereby ordain and enact into law this article.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-578. - Purpose.

The purpose of this article is to ensure orderly, attractive, and economically sound development and to protect existing property values within Buncombe County.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-579. - Jurisdiction.

The provisions of this article shall apply to the portion of Buncombe County specifically identified and delineated on the zoning map entitled "The Official Zoning Map of Buncombe County, North Carolina." Such map and all explanatory matter thereon accompany and are hereby made a part of this article by reference. The ordinance shall be on file in the office of the Buncombe County Board of Commissioners.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-580. - Exemptions.

This article shall in no way regulate, prohibit, or otherwise deter any bona fide farm and its related uses, except that any use of such property for non-farm purposes shall be subject to the provisions of this article.

This article shall in no way regulate, prohibit, or otherwise deter any public safety communications tower except that written notice by certified mail of the intent to erect a public safety communications tower shall be sent to all adjoining landowners of the proposed facility and to all owners of property within 500 feet of the proposed facility. No building permit shall be issued for a period of 30 days after sending the notice, unless written statements are received from all parties required to be notified indicating that they have no objection to the facility.

This article shall not deter building modifications or retrofit interventions which are necessary to accommodate the Americans with Disabilities Act (ADA). The zoning administrator shall be granted authority to make necessary exemptions regarding ADA specific retrofits which do not comply with this article; except that if the decision involves mitigating factors, a larger community impact, or the need for the retrofit is unclear, the zoning administrator may defer decisions to the board of adjustment.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 11-04-13, § 1, 4-5-11; Ord. No. 14-01-01A , § 2, 3-4-14)

Sec. 78-581. - Definitions.

The following words, terms, and phrases, when used in this article, including overlay districts, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory use means a use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

Adult entertainment establishment means any establishment which would be considered an adult bookstore, adult motion-picture theater, adult mini-motion-picture theater, or adult live entertainment business as each is defined in G.S. 14-202.10. This definition does not include bona-fide massage parlors.

Airport means property that is maintained for the landing, refueling and takeoff of aircraft and for the receiving and discharge of passengers and cargo traveling by air, to include aviation related facilities, structures, and property.

Alley means a public way which affords only a secondary means of access to abutting property.

Amusement park means establishments of the type known as "amusement parks," "theme parks," and "kiddie parks," which group together and operates in whole or in part a number of attractions, such as mechanical rides, amusement devices, refreshment stands, and picnic grounds and all associated activities. This definition specifically excludes camps, motion picture theaters, museums, art galleries, arboreta and botanical and zoological gardens.

Apartment means a part of a building consisting of rooms intended, designed or used as a residence by an individual or single family.

Apartment, garage means a part of a garage consisting of rooms intended, designed or used as a residence by an individual or a single family.

Applicant means the party applying for permits or other approval required by this article.

Asphalt plant means an establishment, whether portable or nonportable, engaged in petroleum refining, manufacturing asphalt-type roofing materials, asphalt and tar paving mixtures and paving block made of asphalt and various compositions of asphalt or tar with other materials; and the recycling of old asphalt into asphalt-type material.

Aviation-related means any activity, use, facility, structure, service, property used for any operational purpose related to, in support of, or complementary to the flight of aircraft to and from the airport, to include convenience concessions serving the public.

Ballast is a device used with an electric-discharge lamp to obtain the necessary circuit conditions (voltage, current, and waveform) for starting and operating.

Bed and breakfast inn means a private, owner-occupied business with four to 20 guests where overnight accommodations and a morning meal are provided to guests for compensation and where the bed and breakfast inn is operated primarily as a business.

Board of adjustment means a body composed of those appointed members whose duties, powers, and procedures are set forth in division 3 of this article.

Bona fide farm means all land on which agricultural operations are conducted as the principal use, to include cultivation of crops and the husbandry of livestock.

Buffer strip means vegetation consisting of evergreen trees or shrubs located along the side and rear lot lines.

Building means any structure having a roof supported by columns or by walls and intended for shelter, housing, or enclosure of persons, animals or chattels. The connection of two buildings by means of an open passageway, deck, or other such open structure, without a roof, shall not be deemed to make them one building. The word "building" includes the word "structure."

Building, accessory means a detached building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building and located on the same lot.

Building height means the vertical distance of any building or structure, as measured from the highest ground level at the structure foundation to the uppermost point of the roof. For purposes of the Steep Slope/High Elevation and Protected Ridge Overlay Districts only, building height means the average of the vertical distance measured from the highest ground level at the structure foundation to the uppermost point of the roof and the vertical distance measured from the lowest ground level at the structure foundation to the uppermost point of the roof.

Building, principal means a building used for the same purpose as the principal use of the lot.

Building, setback line means a line delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. Front setback lines shall be measured from the highway right-of-way. For purposes of the Beaverdam District only, front setback lines shall be measured from the edge of the road.

Candela is the metric unit for luminous intensity (that is, power emitted by a light source in a particular direction, with wavelengths weighted by the luminosity function, a standardized model of the sensitivity of the human eye).

Cargo/freight terminals, operations and activities means transportation establishments furnishing services incidental to air, motor freight, and rail transportation including but not limited to freight forwarding services; freight terminal facilities; packing, crating, inspection and weighing services; postal/package service bulk mailing distribution centers; transportation arrangement services; and trucking facilities, including transfer and storage.

Chip mill means any nonportable wood-chipping facility that stands alone and apart from a sawmill or a pulpmill, and whose purpose is to provide wood chips to an off-site fabricating facility including, but not limited to, a papermill or oriented strand board (OSB) mill.

Community oriented development means a single and/or multifamily residential development or a mixed-use development which includes single and/or multifamily affordable or workforce housing units. Bonuses in density and/or minimum lot size may be provided in return for sustainable development elements and/or the provision of community amenities.

Concrete plant means an establishment, whether portable or nonportable, primarily engaged in manufacturing hydraulic cement, including Portland, natural, and masonry cements delivered to a purchaser in a plastic and unhardened state. This industry includes production and sale of central-mixed concrete, shrink-mixed concrete, and truck-mixed concrete. Also included are the manufacture of concrete products from a combination of cement and aggregate.

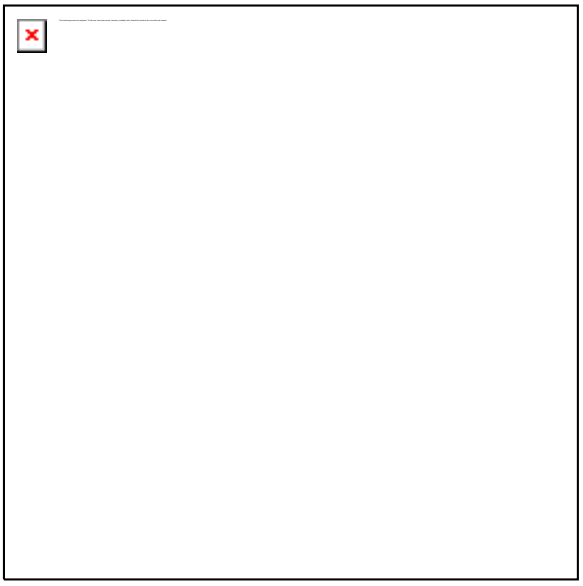
~~*Conditional*~~*Special use* means a use which is permitted in specified zoning districts only after review by the board of adjustment and found to meet specific conditions and procedures as set forth in this article so as to maintain the safety and general welfare of the community.

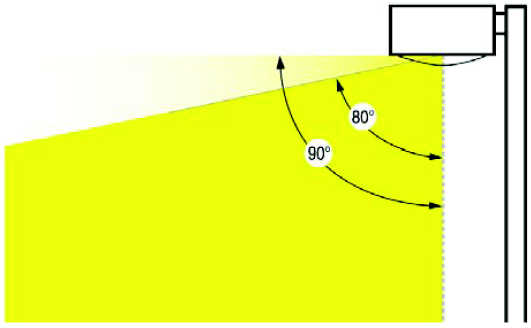
Condominium means ownership of single units in a multiunit structure with common areas and facilities in accordance with G.S. Chapter 47C, North Carolina Condominium Act, and any other applicable state law.

Crematory shall mean any facility designed for the cremation of human or animal remains. A crematory shall be considered the principle use of the property and it shall be treated as the same zoning classification as an incinerator. A crematory may only be considered an accessory use if located on the same property as a funeral home and if the remains are prepared for cremation at the funeral home and not transferred from another operation.

Crest means the uppermost line of a mountain or chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations.

Cutoff means a luminaire light distribution where the candela per 1,000 lamp lumens does not exceed 25 (2.5 percent) at or above an angle of 90 degrees above nadir, and 100 (ten percent) at or above a vertical angle 80 degrees above nadir. This applies to all lateral angles around the luminaire.





DUA means dwelling units per acre.

Day nursery and private kindergarten means a use of land and buildings to provide group care for children.

Diameter at breast height (DBH) means the outside bark diameter measured at 4.0 feet above the ground level on the uphill side of the tree.

Drop-in or *short-term child care center* means a facility that is not located in a home, that provides care to preschool children for no more than four hours a day such as "mother's morning out" church programs and is not licensed by the State of North Carolina.

Dusk-to-dawn utility/security light means a luminaire that is specifically designed to operate continuously from dusk to dawn, by means of a timer or electronic sensor, that is used as a utility, yard or security light, and whose light output equals or exceeds 2,000 lumens.

Dwelling, single-family means a building arranged or designed to be occupied by one family.

Dwelling, two-family means a building arranged or designed to be occupied by two families living independently of each other.

Dwelling, multifamily means any building or buildings which contain more than one residential dwelling unit on a single lot including, but not limited to, apartment houses and condominiums. For purposes of the open use district only, multifamily dwelling means six or more units on a single lot.

Dwelling, single-family attached means townhouses, row houses, condominiums, or group houses for single-family dwellings, having or sharing one or more common walls or other parts of the structure, and whose ownership may be divided into lots for individual sales.

Dwelling unit means a building, or portion thereof, providing complete and permanent living facilities for one family.

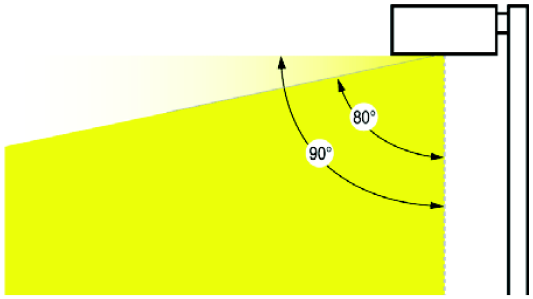
Easement means a grant by a property owner of a strip of land for specified purpose and use by the public, a corporation or persons.

Family means one or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage, no such family shall contain over five persons, but further provided that domestic servants employed on the premises may be housed on the premises without being counted as a family.

Family care home means an adult care home having two to six residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story. A family care home shall be deemed a residential use of property for zoning purposes and shall be a permissible use in all residential districts. Family care homes shall not house residents who are dangerous to others as defined in G.S. 122C-3(11), as may be amended.

Footcandle (FC) is a quantitative unit which measures the amount of light (illumination) falling onto a given point. One footcandle equals one lumen per square foot. For the purposes of this article, footcandles shall be measured or calculated when the luminaires are new.

Full cutoff means a luminaire light distribution where zero candela intensity occurs at or above an angle of 90 degrees above nadir. Additionally the candela per 1,000 lamp lumens does not numerically exceed 100 (ten percent) at or above a vertical angle of 80 degrees above nadir. This applies to all lateral angles around the luminaire.



Glare means the effect produced by a light source within the visual field that is sufficiently brighter than the level to which the eyes are adapted, to cause annoyance, discomfort, or loss of visual performance and ability.

Gross floor area means the total floor area of all buildings in a project including the basements, mezzanines and upper floors, exclusive of stairways and elevator shafts. It excludes separate service facilities outside the main building such as boiler rooms and maintenance shops.

Gross residential density means the number of dwelling units proposed to be built, divided by the area of the tract being developed.

Group home means a residential single or multifamily structure or structures in which the residents are supervised and/or mentored but not provided medical treatment, and where the residents are not considered a danger to others. This definition does not include summer or other seasonal camps operated as private recreation.

Guest house and servant quarters means an attached or separate dwelling unit used for the residence of domestic servants or the temporary lodging of guests, not including dwelling units for which rent or other considerations are paid by the occupants.

Hazardous waste facility means any industrial facility that stores, handles, processes or manufactures any material, substance or product that is considered to be a Class 1 explosive; a Class 2, Division 2.3 gas (gases toxic by inhalation); a Class 6 toxic material or infectious substance; or a Class 7 radioactive substance or material, all as classified by the United States Department of Transportation Hazard Classification System. This term shall also mean any industry or facility that is a large quantity generator of hazardous waste as that term is defined by the North Carolina Department of Environment and Natural Resources.

Health care facility means a residential treatment facility that houses patients on a short or long-term basis and provides medical or psychiatric care on site. These facilities include but are not limited to the following, as defined by the NC Division of Health Services: adult care homes, assisted living residences, chemical dependency facilities, combination homes, health care facilities, freestanding licensed hospice facilities, hospitals, hospital facilities, long-term care facilities, multiunit assisted housing with services, nursing facilities, nursing homes, nursing home facilities, psychiatric facilities, and rehabilitation facilities.

Home occupation means an occupation conducted entirely within a dwelling or accessory structure and carried on by the occupants thereof, provided that: (1) the use of the dwelling unit for the home occupation shall be clearly incidental and secondary to the use of the dwelling for residential purposes, and such occupation shall not occupy more than 25 percent of the total floor space of the dwelling or the entire accessory structure; and (2) there shall be no display, no outside storage, no change in the outside

appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than an unlighted sign located on the premises and not over two square feet in area; and (3) no more than two persons not in residence on the premises shall be employed in connection with the home occupation; and (4) no traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any needed parking must be off the street and other than in a required front yard; and (5) no equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot; and (6) in the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

Illuminance means the amount of light (luminous flux index) at a point on a surface (measured in footcandles).

Impervious surface means any surface that, in whole or in part, restricts or prevents the natural absorption of water into the ground. Such surfaces may include, but are not limited to, gravel, concrete, asphalt or other paving material, and all areas covered by the footprint of buildings or structures.

Incinerator shall mean (a) any enclosed device that burns material other than the classic boiler fossil fuels, such as natural gas, coal, unadulterated wood, or fuel oil, is a principal use on any lot or parcel, and uses controlled flame combustion and neither meets the criteria for classifications as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (b) meets the definition of "infrared incinerator" or "plasma arc incinerator" or any other device meant to burn solid, liquid, or gaseous waste material. This definition does not apply to afterburners, flares, fume incinerators, and other similar devices used to reduce process emissions of air pollutants. Specifically excluded from this definition and any regulation under this chapter are those incinerators that are constructed and/or operated by or on behalf of any federal, state, or local governmental entity; provided, however, that this exclusion from regulation only applies to those incinerators not operating as a hazardous waste facility.

Individual sewer system means any septic tank, privy, or other facility serving a single source with a design capacity of 3,000 gallons per day or less.

Individual water system means any well, spring, stream, or other source used to supply a single connection.

Junk means old or scrapped copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old scrap ferrous or nonferrous material.

Junkyard means a parcel of land on which waste material or inoperative vehicles and other machinery are collected, stored, salvaged, or sold. This definition does not include motor vehicles impoundment lot or tow yard.

Kennel means an establishment licensed to house dogs, cats, or other household pets and where grooming, breeding, training, or selling of animals may be conducted.

Land disturbing activity means any use of, or operation on, the land by any person in residential, industrial, educational, 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.

Landfill means a site within which is deposited solid waste material including trash, construction debris, garbage, or industrial waste. The term "landfill" shall include a disposal facility or part of a disposal facility where solid waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility, or a surface storage facility.

Light source refers to the element of a lighting fixture that is the point of origin of the lumens emitted by the fixture.

Light trespass is unwanted light spilling onto an adjacent property and/or an excessive brightness (i.e., glare) that occurs in the normal field of vision.

Lot means a parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the lot. The word "lot" includes the words "plot" or "parcel."

Lot depth means the mean horizontal distance between front and rear lot lines.

Lot of record means any lot for which a plat has been recorded in the office of the Buncombe County Register of Deeds, or described by metes and bounds, the description of which has been so recorded.

Lumen is the quantitative unit used to identify the amount of light emitted by a light source. A lamp is generally rated in lumens.

Luminaire (light fixture) is a complete lighting unit consisting of a lamp or lamps and ballast(s) (when applicable) together with the parts designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply.

Lux is a unit of illuminance; one lux equals one lumen per square meter. One footcandle equals 10.76 lux (often rounded to ten lux for ease of use).

Manufactured home, HUD-labeled means a manufactured home bearing the manufacturer's label certifying that the home has been inspected in accordance with the requirements of the U.S. Department of Housing and Urban Development and is constructed in conformance with the Federal Manufactured Home Construction and Safety Standards in effect on the date of manufacture. The Certification Label (also known as a "HUD tag") is a metal plate that is affixed to the outside of the manufactured home. Title 24 Code of Federal Regulations § 3280.11(b) states, "The label shall be approximately two inches by four inches in size and shall be permanently attached to the manufactured home by means of four blind rivets, drive screws, or other means that render it difficult to remove without defacing it. It shall be etched on 0.32-inch thick aluminum plate. The label number shall be etched or stamped with a three-letter designation which identifies the production inspection primary inspection agency and which the Secretary shall assign. Each label shall be marked with a six-digit number which the label supplier shall furnish..." All manufactured homes built after June 15, 1976 are required to have one or more label(s) attached to them.

Manufactured/mobile home park means any premises where three or more mobile homes are parked for living and sleeping purposes, or any premises used or set apart for the purpose of supplying to the public parking space for three or more mobile homes for living and sleeping purposes, and which include any buildings, structures, vehicles, or enclosures used or intended for use as part of such mobile home park.

Manufactured/mobile home, residential means a structure which is transportable in one or more sections; designed to be used as a year-round, single-family residential unit; which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities; and which does not meet the standards established by the North Carolina Residential Building Code.

Materials recovery facility means an establishment primarily engaged in (1) operating facilities for separating and sorting recyclable materials from nonhazardous waste streams (i.e., garbage); and/or (2) operating facilities where commingled recyclable materials such as paper, plastics, used beverage cans, and metals are sorted into distinct categories.

Medical clinic means a facility for examining, consulting with, and treating patients with medical, dental, or optical problems on an out-patient basis with no overnight admission.

Mining and extraction operation means any establishment or business primarily engaged in dressing and beneficiating of ores; the breaking, washing and grading of coal; the crushing and breaking of stone; and the crushing, grinding, or otherwise preparing of sand, gravel, and nonmetallic chemical and fertilizer minerals.

Modular home means 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 or more sections transported to the site in

a manner similar to a manufactured home (except that the modular home meets state building codes) or may consist of a series of panels or room sections transported on a truck and erected or joined together on the site.

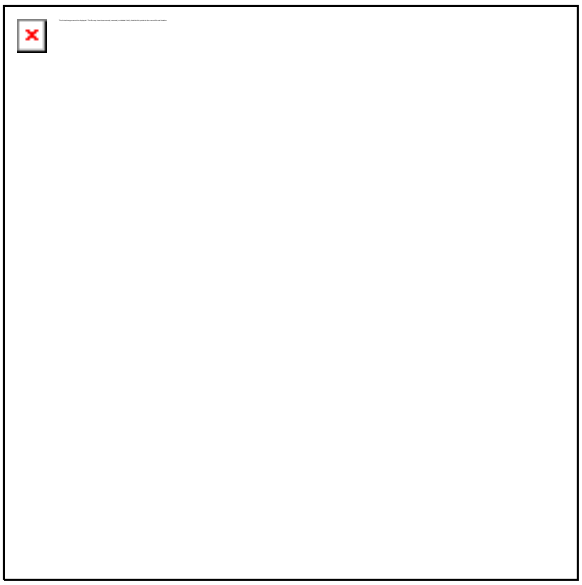
Motor sports facility means any facility, track, or course upon which racing or motor sporting events are conducted including, but not limited to vehicles, motorcycles, all-terrain vehicles, motor scooters, go-carts, etc.

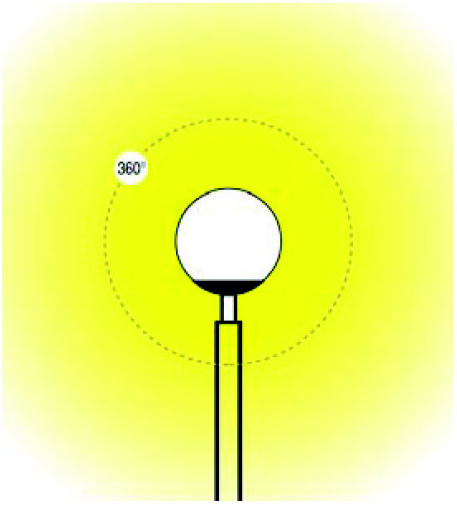
Motor vehicles impoundment lot or *tow yard* means a storage place for towed motor vehicles until they are placed back in the control of the owner or the impounding agency. This definition does not include junkyard.

Nadir is the point directly below the luminaire.

Nonconforming use means any parcel of land, use of land, building, or structure existing at the time of adoption of this article, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located.

Noncutoff means a luminaire light distribution where there is no candela limitation in the zone above the light source.





Open space means a part or portion of the project area unoccupied and unobstructed from the ground upward.

Parking space means an area for parking a vehicle plus the necessary access space.

Parks means any public or private land managed primarily as vegetated open space for recreational, aesthetic, or educational use.

Permitted use means a use which is allowed in specific zoning districts and which such use might be further regulated or restricted in applicable overlay districts.

Personal landing strip means a landing strip or heliport for personal use of the tenant or owner of the site, not available for public use, and with no commercial operations.

Planned unit development, commercial (CPUD) means more than four principal buildings or uses on a single lot or any principal building with a gross floor area of 50,000 square feet or more. CPUDs must include only commercial and/or industrial uses. Relatively small and low-impact additions to a building already greater than 50,000 square feet and located greater than 50 feet from any adjoining property may not trigger the definition of a CPUD at the discretion of the zoning administrator.

Planned unit development, level II (PUDII) means more than four (4) principal buildings or uses on a single lot or any principal building with a gross floor area of 50,000 square feet or more. PUDIIs must include only commercial and/or industrial uses such as retail trade; professional and business offices; storage and warehousing; and manufacturing uses and shall not include places of worship. Relatively small and low-impact additions to a building already greater than 50,000 square feet and located greater than fifty feet from any adjoining property may not trigger the definition of a PUDII at the discretion of the zoning administrator.

Planned unit development, level I (PUDI) means more than four (4) principal buildings or uses on a single lot; any principal building with a gross floor area of 25,000 square feet or more; any residential complex of more than eight (8) units; or a subdivision of more than ten (10) lots where building envelopes are defined, areas are set aside for open space and/or amenities, and a decrease in minimum lot size and/or interior setbacks is desired. A PUDI may be comprised of residential uses; a mix of residential and nonresidential uses; or the following nonresidential uses: health care facilities; private or public utility stations and substations, pumping stations, water and sewer plants, water storage tanks; recreation uses; schools; and vacation rental complexes and shall not include places of worship.

Planning board means a body composed of those members organized and appointed by the board of commissioners under the authority granted in G.S. 160D-301~~153A-321 and G.S. 153A-322~~. The power of the planning board to perform its duties is granted in chapter 58, article II, of this Code.

Postal and parcel delivery services means a post office or other packing and shipping facility which does not include warehousing or bulk sorting of shipments.

Private utilities and related facilities means utility structures including, but not limited to, pumping stations, electricity generation facilities, transformers, utility poles, transmission lines, and pipelines that require a specific location to provide service. These facilities are considered to be private facilities if they are accessories to the facility or development upon which they are located and do not provide service to exterior properties or customers. This definition does not include telecommunications towers or public safety communications towers as defined by this section or their related infrastructure. Private utilities intended to serve up to two, single-family residential units are considered a permitted accessory use to the residential structure provided that the footprint does not exceed 10,000 square feet.

Property line means any boundary line of a lot or parcel of real property.

Pub means an eating and drinking establishment catering primarily to the surrounding neighborhood and having a seating capacity of not greater than 75 persons.

Public or private utilities and related facilities footprint means the cumulative area occupied by a utility operated by a single entity. For the purposes of this article, the footprint shall include any areas disturbed, altered from natural conditions, or made impervious during the installation of the utility, any area occupied by equipment pertaining to the facility, and any area fenced or secured against access to the facility, or any buffer or easement area required to surround the facility. The footprint calculation does not apply to utilities which are contained entirely underground and which do not include any structures as defined by this ordinance or any energy collection devices. For the purposes of footprint calculation, any facilities owned or operated by the applicant shall be included if said facilities lie within 1,320 feet of the proposed facility.

Public safety communications tower means any tower exceeding 20 feet in height erected for the purpose of transmitting and relaying critical voice and data communications for public safety personnel including but not limited to emergency services, law enforcement and fire protection services.

Public sewer system means any sewer system owned and operated by the county, the Metropolitan Sewerage District, Avery's Creek Sanitary District, or other sewer treatment facility serving two or more connections, or the development of a community-type sewer system having a design capacity of greater than 3,000 gallons per day, or any wastewater treatment system having a discharge to surface waters when approved by the N.C. Department of Environment and Natural Resources, Division of Water Quality.

Public utilities and related facilities means utility structures including, but not limited to, pumping stations, electricity generation facilities, transformers, utility poles, transmission lines, and pipelines that

require a specific location to provide service. This definition does not include telecommunications towers or public safety communications towers as defined by this section or their related infrastructure.

Public water system means water systems serving 15 or more residential connections or serving 25 or more year-round residents which are classified as public water supplies by state law, and which plans and specifications must be approved by the N.C. Department of Environment and Natural Resources, Public Water Supply Section. Also, water supply systems serving from two to 14 connections shall be regulated by the Buncombe County Board of Health, and plans shall be approved by the Buncombe County Health Center, Environmental Health Services.

Recreation use, nonprofit means an indoor or outdoor recreation facility operated on a nonprofit basis, according to the laws of the state.

Recreation use, profit means an indoor or outdoor recreation facility operated on a profit basis.

Recreational facilities are those facilities, not otherwise categorized on the permitted use table, utilized for one or more sports or recreation activities such as, but not limited to, bowling, skating, water sports, baseball, basketball, tennis, golf, riding, hiking, fishing or similar sports or recreational uses.

Residence means any building, structure or portion thereof which is designed, arranged, or used for a residential occupancy, but shall not include a motel, hotel, rooming house, or vacation rental.

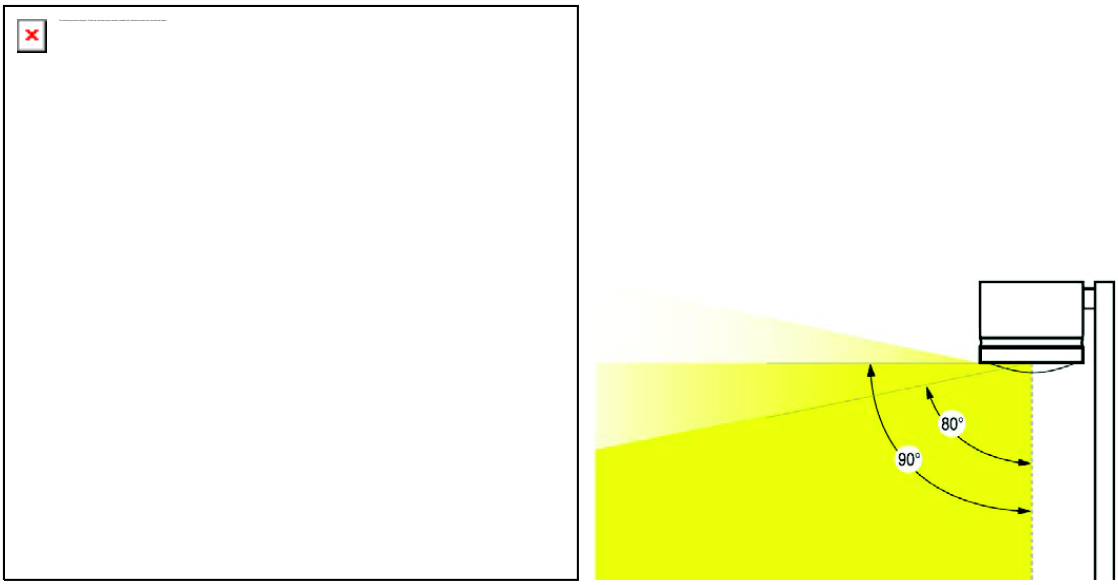
Retail business means an establishment selling commodities and/or providing services directly to the consumer.

Retaining wall means a wall or a cumulative system of walls or manmade soil retention systems designed to resist lateral soil pressure and hold back, or "retain," higher level ground behind it. Retaining walls and retaining wall systems providing a cumulative vertical relief greater than ten feet are subject to the requirements set forth in this article and in chapter 26, article VIII of the Buncombe County Code of Ordinances. For the purposes of this article, methods of soil retention regulated shall include, but not be limited to: cast-in-place walls, soil nailing, modular systems, h-beam systems, boulder walls, and gabions.

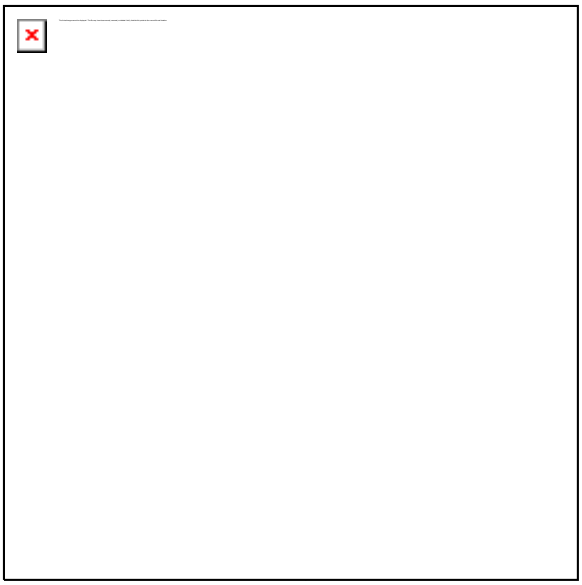
Ridge means the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain.

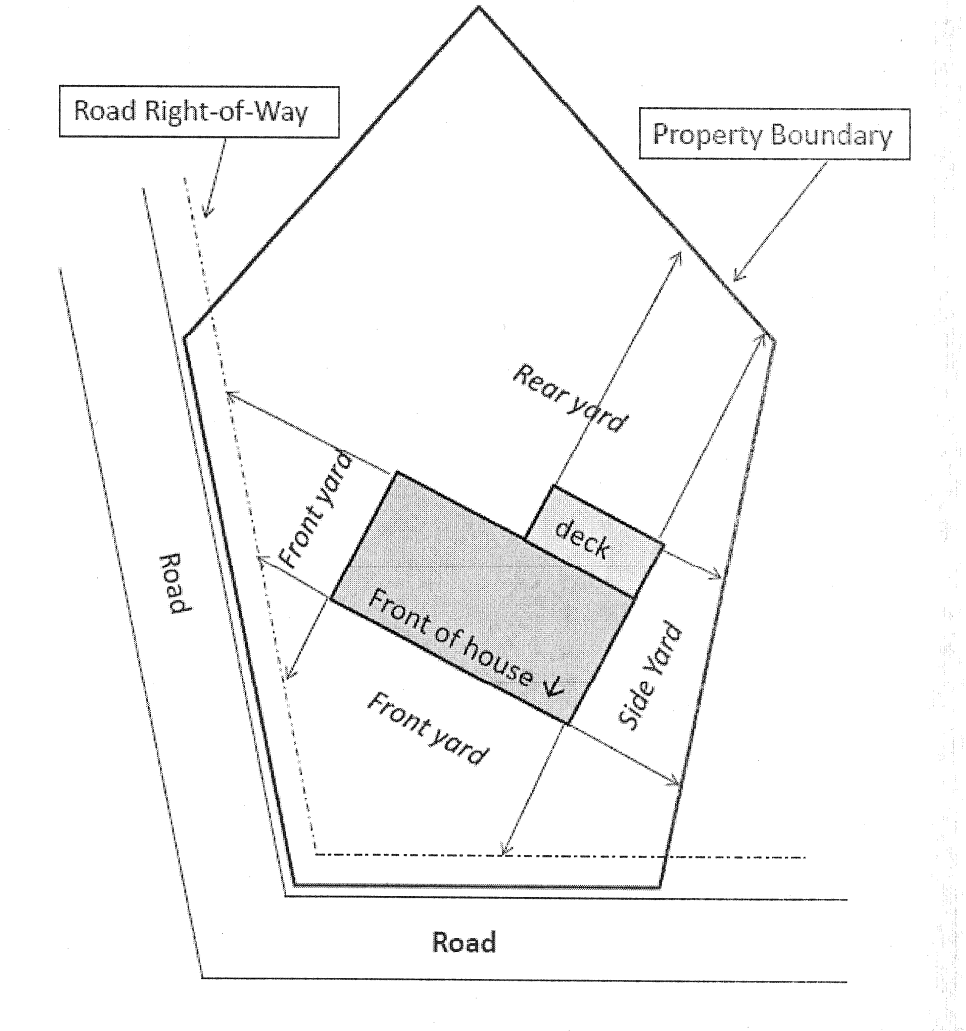
Rooming house means accommodations in which, for compensation, lodging is provided and the owner and/or operator of the establishment maintains their residence at the site. A rooming house shall be limited to no more than ten rental units. A rooming house with more than ten rental units shall be deemed a hotel or motel for the purposes of this ordinance.

Semi-cutoff means a luminaire light distribution where the candela per 1,000 lamp lumens does not exceed 50 (five percent) at or above an angle of 90 degrees above nadir, and 200 (20 percent) at or above a vertical angle 80 degrees above nadir. This applies to all lateral angles around the luminaire.



Setback means a continuous strip of land, measured perpendicular from the plane of the building or structure out to the closest property line or road right-of-way, except as otherwise provided in the Beaverdam Zoning District.





Shield is a device that is attached onto or inserted into a luminaire to alter the direction of light being emitted. A luminaire that has a shield attached or inserted is considered to be "shielded."

Shooting range, outdoor commercial means an improved area that is commercially operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, air guns, archery, or any other similar sport shooting in an outdoor environment.

Site specific development plan means a plan of land development submitted to the county for purposes of obtaining a zoning or land use permit or approval pursuant to division 6 of this article. Notwithstanding the foregoing, neither a variance, a sketch plan, nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

Skirting, manufactured home means a solid, opaque, continuous and unbroken, non-structural enclosure of a foundation crawl space, attached to the structure and extending from the bottom of the structure to the ground. The term "skirting" is synonymous with the term "underpinning."

Slaughtering plant means an establishment primarily engaged in slaughtering animals or poultry/small game. For purposes of the open use district, this definition includes slaughtering plants that conduct processing of animals or poultry/small game, including dressing, packing, freezing, canning, cooking, and/or curing of animals or poultry/small game or their carcasses. This definition specifically excludes slaughtering and processing activities performed for personal use only.

Solid waste management facility means (1) land, personnel, and equipment in the management of solid waste including a transfer station, landfill, or materials recovery facility. Specifically excluded from this definition are incinerators and drop-off recycling centers; and those solid waste management facilities that are constructed and/or operated by or on behalf of any federal, state, or local governmental entity; provided, however, that this exclusion from regulation only applies to those solid waste management facilities not operating as a hazardous waste facility.

Street, road, or highway means a right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Structure means that which is built or constructed. For the purposes of the dimensional requirements set forth in this article, the following structures are exempt from the setback requirements of this section: detached structures less than 12 feet in length on any given side and less than ten feet in height, incidental to a residential use; utility poles; fences ten feet in height or less; and on-premises signage.

Subdivision means all divisions 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 are created for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing street. This definition does not include a subdivision of land considered to be an alternative path hillside development subdivision.

Subdivision, alternative path hillside development is a subdivision of land as defined by and approved under the standards of The Land Development and Subdivision Ordinance of Buncombe County, section 70-68(f).

Subdivision, conservation development is a subdivision of land as defined by and approved under the standards of the Land Development and Subdivision Ordinance of Buncombe County, section 70-69.

Telecommunications tower means any tower exceeding 20 feet in height erected for the purpose of transmitting or receiving telephonic or radio signals over the airwaves as a commercial service, but shall not include any structures erected solely for a noncommercial individual use such as residential television antennas, satellite dishes, or ham radio antennas; a commercial use that is purely incidental to other business activities of the owner; or AM radio towers.

Townhome means a single-family attached dwelling unit in which each unit has its own access to the outside, no unit is located over another unit, each unit is separated from any other unit by one or more vertical common fire-resistant walls, and where each individual unit is located on an individual lot of record.

Transfer station means a permanent structure with mechanical equipment used for the collection or compaction of solid waste prior to the transportation of solid waste for final disposal.

Travel trailer means a vehicle primarily designed as a temporary or seasonal dwelling for travel, recreation, or vacation uses, including park model homes, travel trailers, and similar transportable structures.

Travel trailer park means a parcel of land designed and equipped to accommodate three or more travel trailers.

Utility pole means a structure owned by a public utility that is designed for and used primarily to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

Vacation rental means no more than two single-family homes with a combined total no more than 9,000 square feet gross floor area which are rented for two days or more to tourists, vacationers, or similar transients.

Vacation rental complex means two single-family homes or one single-family home with a combined total of more 9,000 square feet of gross floor area or a group of more than two separate vacation rental units adjacent to each other and held in common ownership which are rented out for two days or more to tourists, vacationers, or similar transients. A vacation rental complex shall include no more than ten separate vacation rental units. A development consisting of more than ten vacation rental units shall be considered a hotel or motel for purposes of this ordinance except within the Open Use District (OU) where it shall be considered a vacation rental complex and shall be required to obtain a ~~conditional use permit~~special use permit.

Vehicular canopy is a roofed, open, drive-through structure designed to provide temporary shelter for vehicles and their occupants while making use of a business' services.

Yard means a space on the same lot with a principal building open, unoccupied, and unobstructed by buildings or structures from ground to sky except where encroachments and accessory buildings are expressly permitted.

Yard, front means an open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the street or property line and the front line of the building, projected to the side lines of the lot.

Yard, rear means an open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the sidelines of the lot.

Yard sale means a retail sale on residential property not to be conducted for more than two weeks per year.

Yard, side, means an open, unoccupied space on the same lot with a principal building, situated between the building and the side lot line and extending from the rear line of the front yard to the front line of the rear yard.

Zoning administrator means an official of the county charged with enforcing and administering this article.

Zoning map means the official zoning map of Buncombe County.

Zoning vested right means a right pursuant to G.S. ~~153A-344.1~~160D-108.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 10-05-09, § 1, 5-18-10; Ord. No. 10-10-07, § 1(a), 10-5-10; Ord. No. 11-04-13, § 1, 4-5-11; Ord. No. 11-04-14, § 1, 4-19-11; Ord. No. 11-04-15, § 1, 4-19-11; Ord. No. 11-10-01, § 1, 10-4-11; Ord. No. 11-10-06 , § 1, 10-18-11; Ord. No. 12-01-13, § 1, 1-17-12; Ord. No. 14-01-01 , § 2, 1-7-14; Ord. No. 14-02-02 , § 2, 2-4-14; Ord. No. 14-05-02 , § 2, 5-13-14; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16; Ord. No. 17-06-09 , §§ 1, 2, 6-6-17; Ord. No. 19-04-07 , § 2(Exh. A), 4-2-19)

Sec. 78-582. - Violations.

Whenever, by the provisions of this article, the performance of any act is prohibited, or whenever any regulation, dimension, or limitation is imposed on the use of any land, or on the erection or alterations or the use or change of use of a structure, or the uses within such structure, a failure to comply with such provisions of this article shall constitute a separate violation and a separate offense.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-583. - Penalties for violations.

(a) No penalty under this section shall be issued prior to issuing a notice of violation except for civil penalties issued in accordance with section 78-583(d). The notice of violation shall be served by certified or registered mail to the person's last known address, or by personal service or by posting the violation conspicuously on the property.

(b) Any owner or occupant who has received a notice of violation may appeal the decision of the zoning administrator in accordance with section 78-623.

(c) Any person violating this article of this chapter shall be subject to the remedies as set forth in Code section 1-7.

(d) The county may assess a $100.00 per day civil penalty for each day that the property is in violation of this article. The civil penalty shall be effective upon receipt of the notice of violation but shall be waived if the zoning administrator determines the person remedied the violation within 30 days of receipt of the notice of violation.

(e) If the person issued the civil penalty fails to pay the penalty, the county may seek to recover the civil penalty by filing a civil action in the nature of a debt and/or refer the debt to the state debt setoff program for collection.

(f) The zoning administrator may reduce the civil penalty upon a determination that the person responsible for the violation acted in good faith and cooperated with the planning department to remedy the violation.

(g) The county may enforce this article by using one or any combination of the foregoing remedies. Nothing in this section shall limit any other remedy provided by law or this chapter.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 11-04-15, § 1, 4-19-11)

Sec. 78-584. - Remedies for violations of article.

(a) If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained, or any building, structure, or land is used in violation of this article, the zoning administrator, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use; to restrain, correct or abate the violation; to prevent occupancy of the building, structure or land; or to prevent any illegal act, conduct of business or use in or about the premises.

(b) The only activities that may take place outside the areas of disturbance documented on an approved site plan are:

(1) Fire fuel reduction (fire fuel reduction may include the installation of firebreaks in the area immediately adjacent to structures and the removal of underbrush);

(2) Control of invasive species listed in the invasive species table in this section. Other species may be approved by the planning department when demonstrated to be non-native invasive species;

(3) Removal of dead or diseased specimens;

(4) Maintenance of the area to ensure adequate screening and buffering (i.e., selective thinning of saplings);

(5) Maintenance of the area to ensure public health and safety; and

(6) Nonmotorized passive recreation (such as running, walking, biking trails, gardening, primitive camping areas, and similar low impact outdoor activities). The location, type, and materials which will be used to construct passive recreation facilities shall be submitted on the preliminary plans and shall be approved by the planning department. The development of passive recreation areas within the natural state area shall not exceed five percent of the total acreage of the tract.

When removing vegetation for the purposes of exceptions (1) through (5) above, vegetation can only be removed through the use of hand-held devices (i.e., chainsaws, pole pruners, hedge trimmers, weed eaters, etc.). Bulk application of chemical herbicides is prohibited. The removal of vegetation shall be conducted in such a manner as to preserve ground cover (through a vegetated cover or through the use of a substrate that will prevent sediment run-off from the site). Removal of healthy tree specimens greater than three-inch diameter at breast height (DBH) is prohibited except when installing passive recreation facilities.

Invasive Species

Scientific name	**Common name**
Ailanthus altissima (Mill.) Swingle	Tree of Heaven
Albizia julibrissin Durz.	Mimosa
Alliaria petiolata (Bieb.) Cavara & Grande	Garlic-mustard
Alternanthera philoxeroides (Mart.) Griseb.	Alligatorweed
Celastrus orbiculatus Thunb.	Asian bittersweet
Elaeagnus anqustifolia L.	Russian olive
Elaeagnus umbellata Thunb.	Autumn olive
Hedera helix L.	English ivy
Hydrilla verticillata (L.f.) Royle	Hydrilla
Lespedeza bicolor	Bicolor lespedeza
Lespedeza cuneata (Dum.-Cours.) G. Don	Sericea lespedeza
Liqustrum sinense Lour.	Chinese privet
Lonicera fragrantissima Lindl. & Paxton	Fragrant honeysuckle
Lonicera japonica Thunb.	Japanese honeysuckle
Microstegium vimineum (Trin.) A. Camus	Japanese stilt-grass
Murdannia keisak (Hassk.) Hand.-Mazz.	Asian spiderwort
Myriophyllum aquaticum (Vell.) Verdc.	Parrotfeather
Paulownia tomentosa (Thunb.) Sieb.& Zucc. ex Steud.	Princess tree
Phragmites australis (Cav.) Trin. ssp. Australis	Common reed
Polygonum cuspidatum Seib. & Zucc.	Japanese knotweed

Pueraria montana (Lour.) Merr.	Kudzu
Rosa multiflora Thunb.	Multiflora rose
Salvinia molesta Mitchell	Aquarium water-moss
Vitex rotundifolia L.f.	Beach vitex
Wisteria sinensis (Sims) DC	Chinese wisteria

(c) Any land disturbance percentage in amounts that exceed those specified in this article shall be replanted according to the following re-vegetation plan.

Re-vegetation Plan

ELEVATION UNDER 4,000 FEET	
East/North Facing	South/West Facing
Overstory Species	
Eastern White Pine	Black Locust
Yellow Poplar	Virginia Pine
Chestnut Oak	Shortleaf Pine
Northern Red Oak	Southern Red Oak
Black Walnut	White Oak
Native Ash	Chestnut Oak
Sycamore	Hickory
Beech	Red Maple
Yellow Buckeye	Sycamore
Red Maple	
Sugar Maple	
Understory Species	
Sourwood	Native Blueberry
Dogwood	Eastern Redbud
Mountain Laurel	American Holly
Native Rhododendron	Box Elder
Sumac	Sassafras
American Hornbeam	Dog Hobble
	Persimmon
ELEVATION 4,000 FEET AND OVER	

East/North Facing	South/West Facing
Overstory Species	
Sugar Maple	Pitch Pine
Black Birch	Chestnut Oak
Yellow Birch	Northern Red Oak
Beech	Black Cherry
Red Spruce	Eastern White Pine
Black Cherry	
Eastern White Pine	
Northern Red Oak	
Understory Species	
Native Rhododendron	Hawthorn
Mountain Maple	Striped Maple
Native Blueberry	Serviceberry
Native Crabapple	
American Mountain Ash	

All planted species shall be on a ten-foot by ten-foot spacing. A mix of one overstory and one understory species from the table above, appropriate for site elevation and aspect, shall be planted on each 100 square feet.

Pines shall be three to four feet in height, with a minimum stem diameter at the ground of one inch. The root ball shall be 14—18 inches.

Hardwoods shall be 14—18 inches in height, with a minimum stem diameter at the ground of one-half to three-fourths inches. These trees can be bare-rooted at planting.

All overstory and understory plants shall be limed and slow-release fertilizer stakes shall be inserted around each plant.

All plants shall be mulched with organic mulch to control weeds. Mulch shall extend two feet around each plant.

(d) Any impervious surface percentage in amounts that exceed those specified in this article shall be removed.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 10-10-07, § 1(b), 10-5-10)

Sec. 78-585. - Abrogation or greater restrictions.

When provisions of this article require a greater width or size of yards or courts, or require a lower height of a building or fewer number stories, or require a greater percentage of lot to be left unoccupied,

or impose other higher standards than are required in any other statute or local ordinance or regulation, provisions of this article shall govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the provisions made by this article, the provisions of that statute or local ordinance or regulation shall govern.

(Ord. No. 09-12-01, § 1, 12-1-09)

Secs. 78-586—78-595. - Reserved.

DIVISION 2. - ADMINISTRATION AND ENFORCEMENT

Sec. 78-596. - Enforcement generally; duties of enforcing officers and agencies.

All questions arising in connection with the enforcement of this article shall be presented first to the zoning administrator who shall be responsible for the day-to-day administration of this article. The board of adjustment shall have the authority to rule on matters of interpretation of this article, consider appeals from decisions of the zoning administrator, issue ~~conditional use permit~~special use permits, and grant variances. Any appeal from a decision of the board of adjustment shall be to the courts as provided by law. The duties of the board of commissioners in connection with this article shall not include the hearing and passing upon of disputed questions that may arise in connection with the enforcement thereof, but the procedure for determining such questions shall be as set forth in this article. The duties of the board of commissioners in connection with this article shall be the duty of considering and passing upon the initial ordinance from which this article is derived and any proposed amendments or repeal of this article as provided by law, after receiving recommendations from the planning board.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-597. - Zoning administrator; duties.

The board of commissioners shall appoint a zoning administrator. It shall be the duty of the duly appointed zoning administrator to administer and enforce the provisions of this article.

If the zoning administrator finds that any of the provisions of this article are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this article to ensure compliance with or to prevent violation of its provisions. If a ruling of the zoning administrator is questioned, the aggrieved party may appeal such ruling to the board of adjustment.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-598. - Certificate of zoning compliance.

(a) *Required.* No building or other structures shall be erected, moved, added to or structurally altered, nor shall any building permit be issued, nor shall any change in the use of any building or land be made until a certificate of zoning compliance shall have been issued by the zoning administrator. All buildings, structures, and accessory uses shall meet the dimensional requirements, use requirements, and any other requirements, that are noted in this article. No certification of zoning compliance shall be issued except in conformity with the provisions of this article.

(b) *Applications; contents.* Applications for certificates of zoning compliance may be accompanied by plans showing the actual dimensions of the plot to be built upon, and the location on the lot of the building or structure proposed to be erected or altered, and such other information as may be necessary to provide for the enforcement of the provisions of this article.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-599. - Building permit required.

Upon receiving a certificate of zoning compliance, a building permit shall be obtained from the Buncombe County Permits and Inspections Department for the construction or alteration of any building, structure or mobile home, pursuant to the section 10-66 et seq. herein.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-600. - Certificate of occupancy required.

In conjunction with the final building inspection, the zoning administrator shall certify that all requirements of this article have been met. The applicant shall call the zoning administrator and apply for such certification coincident with the final building inspection or within ten days following completion. A certificate of occupancy, either for the whole or part of the building, shall be issued within 30 days after the erection or structural alterations of such building, or part, shall have been completed in conformity with the provisions of this article. A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this article. If the certificate of occupancy is denied, the zoning administrator shall state in writing the reasons for refusal, and the applicant shall be notified of the refusal. A record of all certificates shall be kept on file in the office of the zoning administrator, and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or land involved.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-601. - Construction progress.

If no building permit or certificate of occupancy is obtained within two years of the date of the issuance of the zoning compliance certificate, the permit becomes invalid.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16)

Sec. 78-602. - Prevention of violation by legal procedure.

In case any building is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building or land is used in violation of this article, the zoning administrator or any other appropriate county authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-603. - Appeal from decision of the zoning administrator.

All questions arising in connection with the enforcement of this article shall be presented first to the zoning administrator, and such questions shall be presented to the board of adjustment only on appeal from a ruling of the zoning administrator. Any order, requirement, decision, or determination made by the zoning administrator may be appealed to the board of adjustment pursuant to the procedure found in section 78-623.

(Ord. No. 09-12-01, § 1, 12-1-09)

Secs. 78-604—78-615. - Reserved.

DIVISION 3. - BOARD OF ADJUSTMENT

Sec. 78-616. - Establishment; composition; appointment of members.

(a) *Establishment and composition.* A board of adjustment is hereby established. Such board of adjustment shall consist of seven members and shall be appointed by the board of commissioners.

(b) *Term of office.* Each member shall serve a term of three years. Vacancies shall be appointed by the board of commissioners to fulfill an unexpired term.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-617. - Selection of alternate members.

The board of commissioners shall also appoint alternate members who may be called in by the chairperson of the board of adjustment to serve in the absence of a regular board of adjustment member. Such alternate members shall also serve a three-year term. Such alternate members while attending any regular or special meeting of the board of adjustment and serving in the absence of any regular member shall have and exercise all powers and duties of such regular member so absent.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-618. - Rules of conduct.

(a) Members of the board of adjustment may be removed by the board of commissioners for cause, including violation of the rules stated in this section.

(b) Faithful attendance at meetings of the board of adjustment and conscientious performance of the duties required of members of the board of adjustment shall be considered a prerequisite of continuing membership on the board of adjustment.

(c) A member of the board of adjustment 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, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed ex parte communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome of the matter. 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) No board of adjustment member shall discuss any case with any parties thereto prior to the public hearing on that case; provided however, that a member may receive and/or seek information pertaining to the case from the zoning administrator or any other member of the board of adjustment or its clerk prior to the hearing.

(e) Members of the board of adjustment shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(f) No board of adjustment member shall accept any gift, whether in the form of a service, a loan, a thing of value, or a promise, from any person, firm, or corporation that, in the member's knowledge, is interested directly or indirectly in any manner whatsoever in business dealings with the county.

(g) No board of adjustment member shall accept any gift, favor, or thing of value that may tend to influence that board member in the discharge of duties.

(h) No board of adjustment member shall grant any improper favor, service, or thing of value in the discharge of duties.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-619. - General proceedings.

The board of adjustment shall annually elect a chairperson and a vice-chairperson from among its members. The chairperson, or in his absence the vice-chairperson, may administer oaths and request the

attendance of witnesses in accordance with G.S. ~~153A-345~~160D-406. The board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and also keep records of its examinations and other official actions. The board of adjustment shall make reference to the comprehensive land use plan, specifically the section titled "Directing Growth and Development/Topographic Constraints" in their formal decisions.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 14-01-01A , § 2, 3-4-14)

Sec. 78-620. - Meetings.

(a) *Monthly; special; notice of meetings; according to state law.* The board of adjustment shall hold regular monthly meetings at a specified time and place. Special meetings of the board of adjustment may be called at any time by the chairperson or by request of three or more members of the board of adjustment. At least 48 hours' written notice of the time and place of meeting shall be given, by the chairperson, to each member of the board of adjustment. All board of adjustment meetings are to be held in accordance with G.S. 143-318.9 et seq., commonly referred to as the Open Meeting Law.

(b) *Cancellation of meetings.* Whenever there are no appeals, applications for ~~conditional~~special uses or variances, or other business for the board of adjustment, or whenever so many regular and alternate members notify the zoning administrator of their inability to attend that a quorum will not be available, the chairperson may dispense with a meeting by giving written or oral notice to all members.

(c) *Quorum.* A quorum shall consist of four members of the board of adjustment, but the board of adjustment shall not pass upon an application for a variance when there are less than six members present.

(d) *Voting.* All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in section 78-618. The required vote to decide appeals and applications shall be as provided in subsection 78-623(d). In all other matters, the vote of a majority of the members present and voting shall decide issues before the board of adjustment. For purposes of this article, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(e) *Subpoenas.* The board of adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this article, the board of adjustment may apply to the general court of justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this article may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person, while under oath during a proceeding before the board of adjustment, who willfully swears falsely is guilty of a Class 1 misdemeanor.

(f) *Application.* The applicant must file their application for a hearing with the zoning administrator, who shall act as clerk to the board of adjustment in receiving this notice. All applications shall be submitted at least 30 days prior to the date the application is to be heard. All applications shall be made on the form specified for that purpose, and all information required on the form shall be complete before an application shall be considered as having been filed.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16)

Sec. 78-621. - Powers and duties.

The powers and duties of the board of adjustment shall be as follows:

(1) *Interpretation.* The board of adjustment shall interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and any other questions of interpretation that may arise in the administration of this article.

(2) *Administrative review.* The board of adjustment shall hear and decide appeals from any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article, as provided in section 78-603 as well as appeals and requests for variances pursuant to any chapter or article of the Code of Ordinances for Buncombe County indicating that such appeals or requests for variances shall be heard by the board of adjustment. Such appeals and requests for variances shall be conducted in accordance with section 78-623, Appeals and applications, below. Further, in all cases in which requests for variances are heard by the board of adjustment references to this article or chapter shall be deemed to be references to such chapter or article from which the appeal or request for variance is made, as appropriate, and references to appeals under this article or chapter shall be deemed to be references to requests for variances, as appropriate. The concurring vote of four-fifths of the members of the board of adjustment shall be necessary to grant any variance. A majority vote of the members of the board of adjustment is necessary to reverse any order, requirement, decision, or determination of the zoning administrator, or to decide in favor of the applicant any matter which it is required to pass under this article or to effect any variation in this article.

(3) ~~*Conditional*~~*Special uses.* The board of adjustment shall grant in particular cases and subject to appropriate conditions and safeguards, permits for ~~conditional~~special uses as authorized in division 6 of this article set forth as ~~conditional~~special uses under the various use districts. The board of adjustment shall follow the requirements and procedures outlined in division 6 prior to issuance of a ~~conditional use permit~~special use permit.

(4) *Variances.* When unnecessary hardships would result from carrying out the strict letter of the zoning ordinance, the board of adjustment shall vary any of the provisions of the zoning ordinance upon a showing of all of the following:

a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. 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.

c. The hardship did not result from actions taken by the applicant or the property owner. 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.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. In granting a variance, the board of adjustment shall make findings that the requirements of this article have been met. The board of adjustment shall make a finding, and written notice of the decision shall be prepared as prescribed in subsection 78-623(d). In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this article. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article and punishable as described under section 78-583.

Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

A nonconforming use of neighboring land, structures or buildings in the same district, or permitted uses of land, structures or buildings in other districts will not be considered grounds for the issuance of a variance.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 10-05-09, § 1, 5-18-10; Ord. No. 14-02-01 , § 2, 2-4-14)

Sec. 78-622. - Statutory vested rights provisions.

(a) *Purpose.* The purpose of this section is to implement the provisions of G.S. ~~153A-344.1~~160D-108.1 pursuant to which a statutory zoning vested right is established upon the approval of a site-specific development plan.

(b) *Establishment of a zoning vested right.*

(1) A zoning vested right shall be deemed established upon the valid approval, or ~~conditional~~special approval, by the board of adjustment of a site specific development plan, following notice and public hearing.

(2) The board of adjustment may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.

(3) Notwithstanding subsections (1) and (2) of this section, approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.

(4) A site specific development plan shall be deemed approved upon the effective date of the board of adjustment's action relating thereto.

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

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

(c) *Approval procedures and approval authority.*

(1) Except as otherwise provided in this section, an application for site specific development plan approval shall be processed in accordance with the procedures established by ordinance and shall be considered by the board of adjustment for the specific type of zoning or land use permit or approval for which application is made.

(2) Notwithstanding the provisions of subsection (c)(1) above, if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to a board, committee or administrative official other than the board of commissioners, board of adjustment or other planning agency designated to perform any or all of the duties of a board of adjustment, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the approval authority, following notice and a public hearing as provided in G.S. 160D~~153A-323 and chapter 160A, article 19~~.

(3) In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of application on a form to be provided by the county, that a zoning vested right is being sought.

(4) Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under

G.S. ~~153A-344~~160D-108.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

(5) Following approval or ~~conditional~~special approval of a site specific development plan, nothing in this article shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.

(6) Nothing in this article shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this article.

(d) *Duration.*

(1) A zoning vested right that has been vested as provided in this section shall remain vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to subsection (2) below. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the board of adjustment at the time the amendment or modification is approved.

(2) Notwithstanding the provisions in subsection (1) above, the board of adjustment may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the board of adjustment at the time the site specific development plan is approved.

(3) Upon issuance of a building permit, the expiration provisions of G.S. 160D-1111~~153A-358~~ and the revocation provisions of G.S. 160D-1115~~153A-362~~ shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

(e) *Termination.* A zoning right that has been vested as provided in this article shall terminate:

(1) At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;

(2) With the written consent of the affected landowner;

(3) Upon findings by the county board of commissioners, by ordinance after notice and a public hearing, that natural or manmade 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;

(4) Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the county, 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;

(5) Upon findings by the county board of commissioners, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the board of adjustment of the site specific development plan; or

(6) Upon the 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 board of adjustment may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

(f) *Limitations.* Nothing in this article is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 106D-108~~153A-344~~.1.

(g) *Repealer.* In the event that G.S. ~~153A-344~~160D-108.1 is repealed, this section shall be deemed repealed and the provisions hereof no longer effective.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 14-02-01 , § 2, 2-4-14; Ord. No. 17-06-09 , §§ 1, 2, 6-6-17)

Sec. 78-623. - Appeals and applications.

(a) *Appeals and hearings.* The board of adjustment shall hear and decide all appeals from any order, requirement, decision, or determination made by the zoning administrator as well as appeals and requests for variances pursuant to any chapter or article of the Code of Ordinances for Buncombe County indicating that such appeals or requests for variances shall be heard by the board of adjustment, in which cases the requests for variances shall be treated as and may be referred to as appeals as set forth herein. In deciding appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of this article and those based upon alleged hardship resulting from strict interpretation of this article.

(b) *Procedure for filing appeals.* All statute of limitations and procedures for filing an appeal to the board of adjustment are set forth in G.S. ~~153A-345.1~~160D-406 or as amended.

(c) *Hearings.* All board of adjustment hearings shall be conducted in accordance with G.S. 160D-406~~153A-345.1~~ or as amended.

(d) *Decisions.* All board of adjustment decisions shall be made in accordance with G.S. 160D-406~~153A-345.1~~ or as amended.

(e) *Filing of decisions.* Decisions of the board of adjustment are effective upon filing the written decision with the zoning administrator or his/her designee following delivery of such decision 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. The person required to provide notice of the decision shall certify that proper notice has been made.

(f) *Expiration of approval.* Unless otherwise specified, an order or decision of the board of adjustment granting a ~~conditional use permit~~special use permit or variance shall expire if a building permit or certificate of occupancy for such use is not obtained within two years from the date of the signed order.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 10-05-09, § 1, 5-18-10; Ord. No. 11-04-15, § 1, 4-19-11; Ord. No. 14-02-01 , § 2, 2-4-14; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16; Ord. No. 16-11-03 , § 2, 11-1-16)

Sec. 78-624. - Appeals from decision of board of adjustment.

Appeals from the board of adjustment may be taken to the courts pursuant to G.S. 160D-406~~153A-345.1~~.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 18-05-06 , § 2, 5-1-18)

Secs. 78-625—78-635. - Reserved.

DIVISION 4. - ZONING DISTRICTS AND MAPS

Sec. 78-636. - Use districts; enumeration.

For the purpose of this article, the zoning districts of Buncombe County as delineated on the official zoning map of Buncombe County, adopted by the board of commissioners, shall be divided into the following designated use districts:

R-LD	Low-Density Residential District

R-1	Residential District
R-2	Residential District
R-3	Residential District
CS	Commercial Service District
EMP	Employment District
PS	Public Service District
CR	Conference Center/Resort District
NS	Neighborhood Service District
BDM	Beaverdam Low-Density Residential District
OU	Open Use District
AI	Airport Industry District

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 14-02-02 , § 2, 2-4-14; Ord. No. 14-05-02 , § 2, 5-13-14; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16)

Sec. 78-637. - Establishment of district boundaries.

The boundaries of these districts are hereby established as shown on the Official Zoning Map of Buncombe County, North Carolina.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-638. - Establishment of zoning map.

A zoning map entitled the "Official Zoning Map of Buncombe County, North Carolina," clearly setting forth all approved use districts and their respective boundaries, is hereby made a part of this article and shall be maintained in the office of the zoning administrator of the county. This map shall be available for inspection by interested persons during normal business hours of the zoning administrator. It shall be the duty of the zoning administrator to maintain the map and post any changes thereto as they may be made.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-639. - Rules governing district boundaries.

Where uncertainty exists with respect to the boundaries of any of the districts, as shown on the zoning map, the following shall apply:

(1) Boundaries indicated as approximately following the centerlines of streets, highways, alleys, streams, rivers, other bodies of water, and/or other topographic features, shall be construed to follow such lines.

(2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

(3) Where district boundaries are so indicated that they are approximately parallel to the centerlines of streets, highways or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance there from as indicated on the

zoning map. If no distance is given, such dimension shall be determined by the use of the scale shown on the zoning map.

(4) Where a district boundary line divides a lot of single ownership, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such lot more than 35 feet beyond the district boundary line.

(5) Where physical features existing on the ground are at variance with those shown on the zoning map or in other circumstances not covered by subsections (1) through (4) of this section, the board of adjustment shall interpret the district boundaries.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-640. - Statement of district intent.

(a) *Low-Density Residential District (R-LD).* The R-LD Low-Density Residential District is primarily intended to provide locations for low-density residential and related-type development in areas where topographic or other constraints preclude intense urban development. These areas are not likely to have public water and sewer services available, and the minimum required lot area will be one acre unless additional land area is required for adequate sewage disposal. These are environmentally sensitive areas that are characterized by one or more of the following conditions: Steep slopes, fragile soils, or flooding.

(b) *Residential District (R-1).* The R-1 Residential District is primarily intended to provide locations for single-family and two-family residential development and supporting recreational, community service, and educational uses in areas where public water and sewer services are available or will likely be provided in the future. This district is further intended to protect existing subdivisions from encroachment of incompatible land uses, and this district does not allow manufactured home parks.

(c) *Residential District (R-2).* The R-2 Residential District is primarily intended to provide locations for residential development and supporting recreational, community service and educational uses in areas where public water and sewer services are available or will likely be provided in the future. These areas will usually be adjacent to R-1 Residential Districts, will provide suitable areas for residential subdivisions requiring public water and sewer services, and in order to help maintain the present character of R-1 districts, will not allow manufactured home parks.

(d) *Residential District (R-3).* The R-3 Residential District is primarily intended to provide locations for a variety of residential development depending upon the availability of public water and sewer services. Some areas within the R-3 Residential District will have no public water and sewer services available and will thus be suitable primarily for single-family residential units on individual lots and mobile homes on individual lots. Other areas within the district will have public water and/or sewer service available and will thus be suitable for higher density uses such as multifamily residential units, planned unit developments, and mobile home parks. The R-3 district also provides for various recreational, community service and educational uses that will complement the residential development.

(e) *Neighborhood Service District (NS).* The NS Neighborhood Service District is primarily intended to provide suitable locations for limited, neighborhood-oriented, commercial, business, and service activities in close proximity to major residential neighborhoods. The NS Neighborhood Service District is designed to allow for a mix of residential, commercial, business and service uses in limited areas along major traffic arteries and at key intersections leading to residential neighborhoods in order to provide such service to the residents of that particular neighborhood. As such, the type of uses allowed and the standards established for development in this NS Neighborhood Service District should be compatible with the residential character of the area and should neither add to traffic congestion; nor cause obnoxious noise, dust, odors, fire hazards, or lighting objectionable to surrounding residences; nor should they visually detract from the overall appearance of the neighborhood. The NS Neighborhood Service District should currently have water and sewer services or be expected to have such services in the foreseeable future.

(f) *Commercial Service District (CS).* The CS Commercial Service District is primarily intended to provide suitable locations for clustered commercial development to encourage the concentration of commercial activity in those specified areas with access to major traffic arteries, to discourage strip commercial development, and to allow for suitable noncommercial land uses. Such locations should currently have water and sewer services or be expected to have such services available in the future. This CS Commercial Service District may be applied to suitable areas adjacent to existing commercial concentration to allow for their expansion.

(g) *Employment District (EMP).* The EMP Employment District is primarily intended to provide appropriately located sites for employment concentrations primarily for office uses, industrial uses, storage and warehousing, and wholesale trade. Such locations should currently have public water and sewer services available or be expected to have these services in the future. Only those manufacturing uses will be allowed which meet all local, state and federal environmental standards, and do not involve obnoxious noise, vibrations, smoke, gas, fumes, odor, dust, fire hazards, or other objectionable conditions which would be detrimental to the health, safety, and general welfare of the community. These areas will also include sites suitable for supportive activities such as community service, commercial service, and residential uses.

(h) *Public service district (PS).* The PS Public Service District is intended to be a district that includes, but is not limited to, governmentally owned properties; schools and large college properties; recreation parks and facilities; emergency services; and community clubs. Such uses should currently have public water and sewer services available or have a provision for internal supply of appropriate utilities.

(i) *Conference Center/Resort District (CR).* The CR Conference Center/Resort District is intended to be a district that includes, but is not limited to large tourist-related facilities, summer/day camp properties, and conference centers held in single ownership or held collectively by related entities. Facilities within this district may include housing, hotels, retail shops, religious or secular retreats, and associated accessory uses. Such uses should currently have public water and sewer services available or have a provision for internal supply of appropriate utilities.

(j) *Beaverdam Low-Density Residential District (BDM).* It is the purpose and intent of the Beaverdam Low-Density Residential District to protect existing development in Beaverdam Valley from incompatible use; to provide for low-density residential and agricultural uses; and, to set certain standards for such uses based upon an analysis of existing and future conditions of topography, access, public water and sewer utilities, and community facilities, as well as health, safety and general welfare considerations.

(k) *Open Use District (OU).* The OU Open Use District is established as a district in which all uses are allowed by right, except for certain uses that are regulated as ~~conditional~~special uses so as to ensure that neighborhood impact is mitigated. Additionally, those uses which are specific to the Airport Industry District (AI) are excluded from the OU Open Use District. The neighborhood impact from ~~conditional~~special uses will be mitigated through the use of minimum specific site standards combined with general standards which provide the flexibility to impose a higher level of specific site standards dependent upon the degree of neighborhood impact. No zoning permit shall be required for permitted uses in the OU Open Use District.

(l) *Airport Industry District (AI).* The AI Airport Industry District is established as a district that includes but is not limited to airport facilities, aviation related uses, and related aerospace uses. The AI Airport Industry District will also support office uses, industrial uses, storage and warehousing, and wholesale trade either directly related to or dependent upon the aviation industry. Such locations should currently have public water and sewer services available or be expected to have these services in the future. The AI Airport Industry District shall exist only in areas below 2,500 feet in elevation.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 14-02-02 , § 2, 2-4-14; Ord. No. 14-05-02 , § 2, 5-13-14; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16)

Sec. 78-641. - Permitted uses.

(a) *Permitted use table.* Uses are permitted in the various zoning districts pursuant to Table 1.

Table 1—Permitted Use Table

Uses	**P = Permitted** **C = Allowed as ~~Conditional~~Special Use** **SR = Permitted with Special Requirements** **Blank Space = Not Permitted**											
	Districts											
	R-LD	**R-1**	**R-2**	**R-3**	**NS**	**CS**	**EMP**	**PS**	**CR**	**AI**	**BDM**	**OU**
Single-family residential dwelling, including modular	P	P	P	P	P	P	P	P	P		P	P
Two residential dwelling units (attached or detached)	P	P	P	P	P	P	P	P	P			P
Community oriented developments		P	P	P	P	P	P	P	P			
Multifamily residential dwelling units (no more than eight units in no more than four buildings)			P	P	P	P	P	P	P			P
HUD-labeled manufactured homes—Residential	P	SR	SR	P			P				SR	P
Manufactured home parks (8 units or fewer)				P								P
Manufactured home parks (more than 8 units)				C								P
Planned unit developments, level I ~~residential or mixed use~~		C	C	C	C	C	C	C	C			C
Planned unit developments, level II ~~commercial~~						C	C	C	C	C		C
Subdivisions	P	P	P	P	P	P	P	P	P	P	P	P
Subdivisions, alternative path hillside development	P	P	P	P	P	P	P	P	P			P
Subdivisions, conservation development	P	P	P	P	P	P	P	P	P			P
Accessory buildings	P	P	P	P	P	P	P	P	P	P	P	P
Adult entertainment establishments						C	C					C
Airports										C		
Amusement parks						C	C	C	C			C
Animal hospitals and veterinarian clinics					P	P	P			P		P
Asphalt plants							C					C
Aviation-related services and facilities										P		
Banks and other financial institutions					P	P	P	P	P	P		P
Bed and breakfast inns (10 occupants or less)	SR		SR	P	P	P	P	P	P			P
Bed and breakfast inns (more than 10 occupants)	C		C	P	P	P	P	P	P			P
Cargo/freight terminals, operations and activities						P	P			P		P
Cemetery	P		P	P		P		P	P			P
Chip mills												C
Clubs or lodges				P	P	P	P	P	P	P		P

Concrete plants							C					C
Day nursery and private kindergarten (up to 8 students)	SR	SR	SR	SR	P	P	P	P	P	P		P
Day nursery and private kindergarten (more than 8 students)			C	C	P	P	P	P	P	P		P
Family care home	P	P	P	P				P	P		P	P
Funeral homes						P	P	P	P			P
Government protective services			P	P	P	P	P	P	P	P		P
Greenhouses, commercial (nursery, lawn and garden products)					P	P	P	P	P	P		P
Group homes			C	P	P	P	P	P	P			P
Hazardous waste facilities												C
Health care facilities			C	C		P	P	P	P			P
Home occupations	P	P	P	P	P	P	P	P	P		P	P
Hotels and motels						P	P	P	P	P		P
Incinerators												C
Junkyards							C					C
Kennels				C	P	P	P			P		P
Laundry and dry cleaning services					P	P	P	P	P	P		P
Libraries			P	P	P	P	P	P	P			P
Manufacturing and processing operations						P	P			P		P
Medical clinics				C	P	P	P	P	P	P		P
Mining and extraction operations							C					C
Motor sport facilities												C
Motor vehicles impoundment lot or tow yard						SR	SR	SR				SR
Motor vehicles maintenance and repair					C	P	P	P	P	P		P
Motor vehicles sales and rental						P	P			P		P
Motor vehicles service stations (fueling stations)					P	P	P	P	P	P		P
National guard and reserve armories						P	P	P		P		P
Nightclubs, bars and pubs					P	P	P		P	P		P
Personal landing strips				C		C	C	C	C	C		C
Physical fitness centers				C	P	P	P	P	P	P		P
Places of worship	P	P	P	P	P	P	P	P	P		P	P
Postal and parcel delivery services					P	P	P	P	P	P		P
Printing and lithography						P	P			P		P
Professional and business offices and services					P	P	P	P	P	P		P
Private utility stations and substations, pumping stations, water and sewer plants, water storage tanks (less than 2 acres in total footprint)	P	P	P	P	P	P	P	P	P	P	P	P
Private utility stations and substations, pumping stations, water and sewer plants, water storage tanks (2 acres or greater in total footprint)	C	C	C	C	C	C	C	C	C	C	C	C

Public utility stations and substations, pumping stations, water and sewer plants, water storage tanks (less than 2 acres in total footprint)	C	C	C	C	P	P	P	P	P	P	C	P
Public utility stations and substations, pumping stations, water and sewer plants, water storage tanks (2 acres or greater in total footprint)	C	C	C	C	C	C	C	C	C	C	C	C
Radio, TV and telecommunications towers	C			C		C	C	C	C	P		P
Recreation use, governmental	P	P	P	P	P	P	P	P	P	P	P	P
Recreation use, non-governmental	C	C	C	C	C	P	P	P	P	P	C	P
Repair services (electrical and appliances)					P	P	P			P		P
Restaurants, eating establishments and cafés					P	P	P	P	P	P		P
Retail trade, commercial services, sales and rental of merchandise and equipment (inside building with no outside sales storage)					P	P	P	C	P	P		P
Retail trade, commercial services, sales and rental of merchandise and equipment						P	P		P	P		P
Rooming house			C	P	P	P	P	P	P			P
Schools, public and private			C	C	C	P		P	P			P
Schools—Vocational, business and special schools						P	P	P	P	P		P
Shooting ranges—Outdoor Commercial									C			C
Slaughtering plants												C
Solid waste facilities—Landfills, transfer stations, materials recovery							C	C		C		C
Storage and warehousing						P	P	P	P	P		P
Theaters						P		P	P			P
Travel trailers (no more than 180 days per calendar year)				P				P	P			P
Travel trailer parks				C				SR	SR			SR
Vacation rentals	P	P	P	P	P	P	P	P	P		P	P
Vacation rental complex				C	C	C	C	C	C		C	C
Wholesale sales						P	P		C	P		P

(b) *Uses governed by other ordinances.* The following uses may be allowed but also will be governed by the specified ordinances adopted by the board of commissioners:

(1) *Adult entertainment establishments:* Subject to compliance with section 14-121 et seq. of this Code, as may be amended;

(2) *Communication towers:* Subject to compliance with chapter 72 of this Code, as may be amended;

(3) *Junkyards:* Subject to compliance with chapter 26, article III of this Code, as may be amended;

(4) *Manufactured home parks:* Subject to compliance with chapter 46, article III, of this Code, as may be amended;

(5) *Off-premise signs:* Subject to compliance with chapter 78, article V, of this Code, as may be amended.

(6) *Subdivisions:* Subject to compliance with chapter 70 of this Code, as may be amended.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 11-04-13, § 1, 4-5-11; Ord. No. 11-04-14, § 1, 4-19-11; Ord. No. 11-10-01, § 1, 10-4-11; Ord. No. 14-01-01 , § 2, 1-7-14; Ord. No. 14-02-02 , § 2, 2-4-14; Ord. No. 14-05-02 , § 2, 5-13-14; Ord. No. 14-08-04 , § 2, 8-5-14; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16; Ord. No. 17-06-09 , §§ 1, 2, 6-6-17; Ord. No. 17-09-07 , §§ 1, 2, 9-5-17; Ord. No. 19-04-07 , § 2(Exh. A), 4-2-19)

Sec. 78-642. - Dimensional requirements.

The dimensional requirements for structures and land in the various zoning districts shall be in accordance with Table 2.

Table 2. Dimensional Requirements

Districts	Minimum Lot Size 1, 2, 4, 5 (Square Feet)	Density2, 4		Minimum Yard Setback Requirements in Feet3, 4						Maximum Height (Feet)
		Minimum Land Area Per Dwelling Unit (multiple units on a single lot) (square feet)	Maximum Number Dwelling Units Per Acre	Front Yard Public Sewer	Side Yard Public Sewer	Rear Yard Public Sewer	Front Yard	Side Yard	Rear Yard	
R-LD Residential	43,560	No more than 2 units per lot	2 (no more than 2 units per lot)	10	10	20	10	10	20	35
R-1 Residential	30,000 (no public sewer) 12,000 (public sewer no public water) 8,000 (public water and sewer)	No more than 2 units per lot	10 (no more than 2 units per lot)	10	7	15	20	10	20	35
R-2 Residential	30,000 (no public sewer) 10,000 (public sewer no public water) 6,000 (public water and sewer)	Minimum lot size shown in column two plus 0 for first additional unit Plus: 3,600 for each additional unit	12	10	7	15	20	10	20	35
R-3 Residential	Same as R-2	Same as R-2	12	10	7	15	20	10	20	35
NS Neighborhood Service	30,000 (no public sewer) 10,000 (public sewer no public water) 5,000 (public water and sewer)	Minimum lot size shown in column two plus 0 for first additional unit Plus: 3,600 for each additional unit	12	10	7	15	20	10	20	35

CS Commercial Service	Same as NS	Same as NS	12	10	10	10	10	10	10	50
EMP Employment	Same as NS	Same as NS	12	20	10	20	20	10	20	90
PS Public Service	Same as NS	Same as NS	12	20	10	20	20	10	20	50
CR Conference Center/Resort	30,000 (no public sewer) 12,000 (public sewer no public water) 8,000 (public water and sewer)	Minimum lot size shown in column two plus 0 for first additional unit Plus: 3,500 for each additional unit	12	20	10	20	20	10	20	50 (plus 1 ft. additional for each additional 5 feet of setback from all property lines up to 100 ft. total)
AI Airport Industry	Same as NS	NA	NA	20	10	20	20	10	20	50
BDM Beaverdam	See Footnote 6 and 8	See Footnote 6 and 8 No more than 1 unit per lot	See Footnote 6 and 8 No more than 1 unit per lot	See Footnote 7 and 8	15	25	See Footnote 7 and 8	15	25	35
OU Open Use			No dimensional requirements except as applied to ~~conditional~~special uses.							

Footnote 1—The minimum land area for lots not served by public water and/or sewer shall be subject to approval by the county health department to ensure the proper operation of septic tanks and wells. In no case shall minimum lot areas be less than those specified in this table.

Footnote 2—The minimum land area shall be calculated based on that portion of the lot which is under control of and deeded to the property owner, exclusive of road rights-of-way.

Footnote 3—All above-ground portions of the structure, including but not limited to decks, stairs, overhangs which extend 24 inches or greater outside of the footprint of the structure, and other attached heated or unheated spaces must meet the dimensional requirements as set forth in this chapter. Any structure abutting two or more highways, roads, or streets shall maintain minimum "front yard" setbacks on any side of the structure which abuts a street, road, or highway in accordance with the provisions of the district in which the property is situated. The location of the primary entrance of the structure, as determined by the zoning administrator, shall be considered the front, and shall also maintain minimum "front yard" setbacks.

Footnote 4—The minimum yard setback requirements for interior lots and minimum lot size requirements for all lots may be reduced and density may be increased from that listed in table 2 above through the approval of an alternative path hillside development subdivision, a conservation development subdivision, or a community oriented development.

Footnote 5—The dimensional requirements for HUD-labeled manufactured homes (not including manufactured homes in manufactured home parks) are further described in section 78-678(b)(5).

Footnote 6—The minimum lot size requirements listed in table 2 above shall not apply to lots created for the provision of infrastructure and/or utilities only; cemetery lots or burial plots; or lots to be permanently dedicated as open space or common area.

Footnotes 7—9: Applicable to Beaverdam Low-Density Residential District (BDM) only.

Footnote 7—Beaverdam Only Development standards:

% Natural Slope	Lot Frontage	Minimum Lot Size	Maximum Disturbed	Maximum Impervious

	(Feet)*	(Acres)		Cover (Acres)
			If lot is < 0.75 Acres: 80% of lot	tab>
0—9.99 with public water and sewer	100	0.5	If lot is < 0.75 Acres: 80% of lot	0.375
			If lot is 0.75—1 Acres: 75% of lot	
			If lot is > 1 Acre: 0.75 acres	
0—9.99 no public water and sewer	100	1.1	0.75 Acres	0.375
10—14.99 with or without public utilities	100	1.1	0.75 Acres	0.375
15—19.99 with or without public utilities	100	1.5	0.75 Acres	0.375
20—24.99 with or without public utilities	150	2	0.75 Acres	0.375
25—29.99 with or without public utilities	150	2	0.75 Acres	0.375
30—34.99 with or without public utilities	175	2.5	0.75 Acres	0.375
35—39.99 with or without public utilities	175	3	0.75 Acres	0.375
40+ with or without public utilities	200	5	0.75 Acres	0.375
**Minimum lot frontage shall be 75 feet where adjoining a cul-de-sac.*				

Footnote 8—Beaverdam Only

% Natural Slope	Minimum Yard Setback Requirements		
	Front Yard From Edge of Road (Feet)	Side Yard (Feet)	Rear Yard (Feet)
0—39.99	35	15	25
40+	15	15	25

Footnote 9—Beaverdam Only

a. The natural slope is calculated using the following formula:

$$S\% = \frac{0.0023 \times I \times L}{A}$$

Where:

S = Average natural slope of parcel in percent

I = Contour interval of map in feet, with said intervals to be five feet or less

L = Total length of the contour lines within the parcel in feet

A = Area of the parcel in acres

0.0023 = Constant which converts square feet into acres

b. In addition, applicants may submit an alternate method of slope calculation for consideration. These methods may include, but are not limited to, the following methods: weighted average, slope mapping, other field based techniques, etc.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 10-05-09, § 1, 5-18-10; Ord. No. 11-04-15, § 1, 4-19-11; Ord. No. 11-10-06 , § 1, 10-18-11; Ord. No. 14-02-02 , § 2, 2-4-14; Ord. No. 14-02-14 , § 2, 2-18-14; Ord. No. 14-05-02 , § 2, 5-13-14; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16; Ord. No. 17-06-09 , §§ 1, 2, 6-6-17; Ord. No. 19-04-07 , § 2(Exh. A), 4-2-19)

———

Sec. 78-643. - Blue Ridge Parkway Overlay District.

(a) *Purpose.* Realizing the importance of the Blue Ridge Parkway to the economy of Asheville, Buncombe County, and western North Carolina, the Blue Ridge Parkway Overlay District is created to protect and preserve the unique features of this asset to the city, the county, and the region. The standards established in this district will protect the scenic quality of the Blue Ridge Parkway and reduce encroachment on its rural setting.

(b) *Applicability.* The provisions set forth in this section for the Blue Ridge Parkway Overlay District shall apply to all properties within 1,320 feet of the centerline of the Blue Ridge Parkway located within Buncombe County's zoning jurisdiction. Both privately and publicly owned property shall be subject to the requirements set forth herein.

(c) *Development standards.*

(1) *Setback requirements.*

a. *Principal buildings.* Principal buildings and structures to be located adjacent to the Blue Ridge Parkway shall have a minimum setback of 50 feet from the boundary of property owned by the United States government and designated as the Blue Ridge Parkway if the buildings and structures are visible from the Blue Ridge Parkway roadway.

b. *Accessory buildings.* Accessory buildings and structures to be located adjacent to the Blue Ridge Parkway shall have a minimum setback of 30 feet from the boundary of property owned by the United States Government and designated as the Blue Ridge Parkway if the buildings and structures are visible from the Blue Ridge Parkway roadway.

(2) *Building heights.* No building or structure shall be constructed with a height in excess of 40 feet within 1,000 feet of the centerline of the Blue Ridge Parkway, if visible from the centerline of the Blue Ridge Parkway roadway.

(3) *Screening standards.* The following screening regulations shall be required within the Blue Ridge Parkway Overlay District for all new structures and any modification to an existing structure exceeding 50 percent of the appraised value of the structure, if the buildings and structures are visible from the Blue Ridge Parkway roadway, as viewed from the closest point on the roadway perpendicular to the proposed structure.

The surfaces of the structure which are visible and oriented to the Blue Ridge Parkway must be screened by one overstory species for each 15 linear feet and one understory species for each ten linear feet of the structure. See section 78-584(c) for allowed overstory and understory species and required size at planting. No single species shall comprise more than 50 percent of the overstory or understory species planted. Overstory species shall be planted no less than 20 feet apart and no more than 40 feet apart. Understory species shall be planted no less than ten feet apart and no more than 25 feet apart. Overstory and understory species shall not be planted in a row, shall not be evenly spaced, and shall be positioned no more than 100 feet from the structure to be screened.

Existing trees within 100 feet of the structure to be screened which are left intact and that appear in good health can be credited toward the screening requirement. Existing overstory species may only receive credit for the overstory requirement and existing understory species may only receive credit for the understory requirement. The following credit system will be observed:

Tree Dimensions	Credits
2.5″ to 4″ DBH (minimum 8′ tall)	1 tree
4″ to 8″ DBH (minimum 15′ tall)	1.5 trees
8″ or greater DBH (minimum 20′ tall)	2 trees

Trees to be credited shall be marked using flagging tape prior to site disturbance in order to ensure their health throughout site development.

(d) *Notice of proposed development.* The planning department shall assure that the National Park Service is notified and given an opportunity to make recommendations concerning major subdivisions, rezonings, ~~conditional~~special uses, and variances proposed within the Blue Ridge Parkway Overlay District.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 15-09-02 , § 2, 9-1-15)

Sec. 78-644. - Steep Slope/High Elevation Overlay District.

(a) *Purpose.* The Steep Slope/High Elevation Overlay District is established in recognition that the development of land in steep, mountainous areas involves special considerations and requires unique development standards. This section is intended to limit the intensity of development, preserve the viewshed and protect the natural resources of Buncombe County's mountains and hillsides at elevations of 2,500 feet above sea level and higher, consistent with the recommendations of the 1998 Buncombe County Land Use Plan.

(b) *Applicability.* This section shall apply to the portion of Buncombe County at elevations of 2,500 feet above sea level and higher and having a natural slope of 35 percent or greater as specifically

identified and delineated on the zoning map entitled "The Official Zoning Map of Buncombe County, North Carolina."

(c) *Permitted uses.* Uses are permitted in the High Elevation/Steep Slope Overlay District pursuant to the following table. All uses not listed are not allowed.

(d) *~~Conditional~~Special uses.* All ~~conditional~~special uses shall be administered in accordance with division VI of this chapter.

(e) *Special requirements.* Uses are permitted in the High Elevation/Steep Slope Overlay District pursuant to section 78-678. All uses not listed are not allowed.

Steep Slope/High Elevation Overlay Permitted Use Table											
Uses		**P = Permitted** **C = Allowed as ~~Conditional~~Special Use** **SR = Permitted with Special Requirements** **Blank Space = Not Permitted**									
		Districts									
	R-LD	**R-1**	**R-2**	**R-3**	**NS**	**CS**	**EMP**	**PS**	**CR**	**BDM**	**OU**
Single-family residential dwelling, including modular	P	P	P	P	P	P	P	P	P	P	P
Two residential dwelling units (attached or detached)	P	P	P	P	P	P	P	P	P		P
HUD-labeled manufactured homes—Residential	P	SR	SR	P			P			SR	P
Subdivisions	P	P	P	P	P	P	P	P	P	P	P
Subdivisions, alternative path hillside development	P	P	P	P	P	P	P	P	P		P
Subdivisions, conservation development	P	P	P	P	P	P	P	P	P		P
Accessory buildings	P	P	P	P	P	P	P	P	P	P	P
Bed and breakfast inns (10 occupants or less)	C		C	P	P	P	P	P	P		P
Bed and breakfast inns (more than 10 occupants)	C		C	C	C	C	C	C	C		C
Cemetery	P		P	P		P		P	P		P
Places of worship	P	P	P	P	P	P	P	P	P	P	P
Clubs or lodges, gross floor area less than 5,000 sq. ft.				C	C	C	C	C	C		C
Day nursery and private kindergarten (up to 8 students)	C	C	C	C	C	C	C	C	C		C
Family care home	P	P	P	P				P	P	P	P
Government protective services			P	P	P	P	P	P	P		P
Group homes			C	P	P	P	P	P	P		P
Home occupations	P	P	P	P	P	P	P	P	P	P	P
Health care facilities			C	C		C	C	C	C		C
Libraries								C	C		C
Medical Clinics				C	C	C	C	C	C		C
Mining and Extraction Operations							C				C
National Guard and Reserve Armories						P	P	P			P

Professional and business offices and services, gross floor area less than 5,000 sq. ft.					P	P	P	P	P		P
Private utility stations and substations, pumping stations, water and sewer plants, water storage tanks	C	C	C	C	C	C	C	C	C	C	C
Public utility stations and substations, pumping stations, water and sewer plants, water storage tanks	C	C	C	C	C	C	C	C	C	C	C
Radio, TV and telecommunication s towers	C			C		C	C	C	C		C
Recreation facilities, governmental, indoor, gross floor area less than 5,000 sq. ft.	C	C	C	C	P	P	P	P	P	C	P
Recreation facilities, governmental, indoor, gross floor area 5,000 sq. ft. or more					C	C	C	C	C		C
Recreation facilities, governmental, outdoor	P	P	P	P	P	P	P	P	P	P	P
Recreation facilities, non-governmental, outdoor	C	C	C	C	C	C	C	C	C	C	C
Recreation facilities, non-governmental, indoor, gross floor area less than 5,000 sq. ft.			C	C	C	C	C	C	C		C
Repair services, gross floor area less than 5,000 sq. ft. (electrical and appliances)					P	P	P				P
Restaurants, eating establishments and cafés, gross floor area less than 5,000 sq. ft.					P	P	P	P	P		P
Retail trade, commercial services, sales and rental of merchandise and equipment, gross floor area less than 5,000 sq. ft. (inside building with no outside sales storage)					P	P	P	C	P		P
Schools, public and private		C	C	C	C	C		C	C		C
Schools—Vocational, business and special schools						C	C	C	C		C
Travel trailers (no more than 180 days per calendar year)				P					P		P
Travel trailer parks				C					C		C
Vacation rentals	P	P	P	P	P	P	P	P	P	P	P
Vacation rental complex; less than 11 units				C	C	C	C	C	C	C	C

(f) *Development standards.*

(1) *Lot size standards.* Any new lot created with greater than ten percent of the area in the Steep Slope/High Elevation Overlay District after the effective date of this section shall be a minimum of 1.5 acres. This minimum lot size may be reduced through the approval of an alternative path hillside development subdivision, or a conservation development subdivision.

(2) *Density standards.* No more than two dwelling units or two principal buildings or structures per lot of record shall be allowed in the Steep Slope/High Elevation Overlay District.

(3) *Height standards.* The maximum building height in the Steep Slope/High Elevation Overlay District shall be 35 feet.

(4) *Disturbed and impervious standards.*

a. The maximum gross site area disturbance allowed in the Steep Slope/High Elevation Overlay District for any single lot, excluding disturbance for installation of individual septic systems, shall be:

- For lots less than 2.0 acres shall be 0.3 acres.

- For lots 2.0 acres and larger shall be 15 percent.

b. The maximum gross site area impervious surface allowed in the Steep Slope/High Elevation Overlay District for any single lot shall be:

- For lots less than 2.0 acres shall be 0.16 acres.

- For lots 2.0 acres and larger shall be eight percent.

These limits shall apply to individual lot improvements, including drives, utilities, and stormwater controls but shall not apply to installation of individual septic systems. When communal infrastructure including, but not limited to, roadways, shared drives, public utilities, public facilities and stormwater controls, is installed in accordance with an approved minor or major subdivision plan, the disturbed and impervious area shall be regulated by the land development and subdivision ordinance and not by this article. When communal infrastructure is installed to serve lots in a division of land which is exempt from the definition of a subdivision pursuant to section 70-5 of the land development and subdivision ordinance and results in more than three lots, the maximum area of the total tract to be developed for the purposes of communal infrastructure installation shall be 15 percent disturbed area and ten percent impervious area.

Expansions to structures existing at the time this article was adopted must meet the gross site area disturbed and impervious limitations, however the disturbed and impervious area of the existing development is not required to be included in the disturbed and impervious area calculations.

(5) *Screening standards.* The following screening regulations shall be required within the Steep Slope/High Elevation Overlay District for all new structures and any modification to an existing structure exceeding 50 percent of the appraised value of the structure.

The surfaces of the structure which are oriented to the downhill sections of the lot or the downhill sections of the adjacent topography (downhill sections are defined as areas of the property which drop 25 feet or more in elevation within 100 feet of the structure) must be screened at a ratio of one tree of 1.5-inch diameter measured six inches above the root ball for every 200 square feet of planar surface. Planar surface is defined as the combined exterior surface area of all vertical surfaces within a single face of the structure. Trees planted to achieve the required ratio must be planted no greater than 50 feet from the furthest extending portion of the structure (measured perpendicularly). Trees must be of varying, native species, as defined by the Natural Resource Conservation Service of the United States Department of Agriculture, and no single species shall comprise more than 50 percent of the trees planted. Trees shall be spaced no less than ten feet but no greater than 30 feet apart.

Existing trees within the area of allowed disturbance which are left intact and that appear in good health can be credited toward the required ratio. The following credit system will be observed:

Tree Dimensions	**Credits**
2.5″ to 4″ DBH (minimum 8′ tall)	1 tree
4″ to 6″ DBH (minimum 15′ tall)	1.5 trees
6″ to 10″ DBH (minimum 20′ tall)	2 trees
10″ to 16″ DBH (minimum 25′ tall)	2.5 trees
16″ or greater (minimum 30′ tall)	3 trees

Trees to be credited shall be marked using flagging tape prior to site disturbance in order to ensure their health throughout site development.

(g) *Engineering standards for certain slopes.* Consultation with a geotechnical engineer shall be required for development in areas of a tract within the Steep Slope/High Elevation Overlay District in excess of 35 percent natural slope and for all areas designated as high hazard or moderate hazard on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey, and an investigation for colluvial deposits shall be made. Recommendations of the geotechnical engineer shall be submitted with the application for review. Prior to final approval, a report by the geotechnical engineer shall be required certifying that recommendations were followed during construction.

Global stability analysis shall be performed for building sites on a 35 percent or greater slope or in an area designated as high hazard or moderate hazard on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey.

(Ord. No. 10-10-07, § 1(d), 10-5-10; Ord. No. 11-04-13, § 1, 4-5-11; Ord. No. 11-10-01, § 1, 10-4-11; Ord. No. 14-01-01 , § 2, 1-7-14; Ord. No. 14-02-02 , § 2, 2-4-14; Ord. No. 14-05-02 , § 2, 5-13-14; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16; Ord. No. 17-06-09 , §§ 1, 2, 6-6-17; Ord. No. 19-04-07 , § 2(Exh. A), 4-2-19)

Editor's note— Section 1(d) of Ord. No. 10-10-07, adopted Oct. 5, 2010, repealed the former § 78-645, and enacted a new § 78-645 as set out herein. The former § 78-645 pertained to multifamily dwelling overlay district, and derived from Ord. No. 09-12-01, adopted Dec. 1, 2009.

Subsequently, Ord. No. 14-02-02 , § 2, adopted Feb. 4, 2014, repealed the former § 78-644 which pertained to Biltmore Estate Property Overlay District, and derived from Ord. No. 09-12-01, § 1, adopted Dec. 1, 2009. Said Ord. No. 14-02-02 , amended and renumbered former § 78-645 as § 78-644.

Sec. 78-645. - Protected Ridge Overlay District.

(a) *Purpose.* The Protected Ridge Overlay District is established in recognition that the development of land in steep, mountainous areas involves special considerations and requires unique development standards. This section is intended to limit the density of development, preserve the viewshed and protect the natural resources of Buncombe County's protected mountain ridges, consistent with the recommendations of the 1998 Buncombe County Land Use Plan and supplemental to the provisions of the Mountain Ridge Protection Act of 1983. Further, in accordance with G.S. ~~153A-342~~160D-703, this Protected Ridge Overlay District provides for additional requirements on properties within one or more underlying general districts related to the erection, construction, reconstruction, alteration, repair, or use of buildings, or structures within the Protected Ridge Overlay District in addition to the general underlying zoning regulations including, but not limited to, height, number of stories and size of buildings and other structures.

(b) *Applicability.* This section shall apply to all Buncombe County mountain "ridges" whose elevation is at least 3,000 feet and whose elevation is 500 or more feet above the elevation of an adjacent valley floor and including 500 foot buffers, measured horizontally from the center line of the ridge as specifically identified and delineated on the zoning map entitled "The Official Zoning Map of Buncombe County, North Carolina."

(c) *Permitted uses.* Uses are permitted in the Protected Ridge Overlay District pursuant to the following table. All uses not listed are not allowed.

(d) *~~Conditional~~Special uses.* All ~~conditional~~special uses shall be administered in accordance with article VI of this chapter.

(e) *Special requirements.* Uses are permitted in the Protected Ridge Overlay District pursuant to section 78-678. All uses not listed are not allowed.

Protected Ridge Overlay Permitted Use Table											
Uses		**P = Permitted** **C = Allowed as ~~Conditional~~Special Use** **SR = Permitted with Special Requirements** **Blank Space = Not Permitted**									
		Districts									
	R-LD	**R-1**	**R-2**	**R-3**	**NS**	**CS**	**EMP**	**PS**	**CR**	**BDM**	**OU**
Single-family residential dwelling, including modular	P	P	P	P	P	P	P	P	P	P	P
Two residential dwelling units (attached or detached)	P	P	P	P	P	P	P	P	P		P
HUD-labeled manufactured homes—Residential	P	SR	SR	P			P			SR	P
Subdivisions	P	P	P	P	P	P	P	P	P	P	P
Accessory buildings	P	P	P	P	P	P	P	P	P	P	P
Cemetery	P		P	P		P		P	P		P
Places of worship	P	P	P	P	P	P	P	P	P	P	P
Family care home	P	P	P	P				P	P	P	P
Government protective services			P	P	P	P	P	P	P		P
Home occupations	P	P	P	P	P	P	P	P	P	P	P
Private utility stations and substations, pumping stations, water and sewer plants, water storage tanks	C	C	C	C	C	C	C	C	C	C	C
Public utility stations and substations, pumping stations, water and sewer plants, water storage tanks	C	C	C	C	C	C	C	C	C	C	C
Recreational facilities, governmental, outdoor	P	P	P	P	P	P	P	P	P	P	P
Vacation rentals	P	P	P	P	P	P	P	P	P	P	P

(f) *Development standards.*

(1) *Lot size standards.* Any new lot created with greater than ten percent of the area in the Protected Ridge Overlay District after the effective date of this section shall be a minimum of two acres.

(2) *Density standards.* No more than two dwelling units or two principal buildings or structures shall be allowed on a single lot of record in the Protected Ridge Overlay District.

(3) *Height standards.* The maximum building height in the Protected Ridge Overlay District shall be 25 feet when the structure is 50 or fewer vertical feet from the crest of the ridge. The maximum building height in the Protected Ridge Overlay District shall be 35 feet when the structure is more than 50 vertical feet from the crest of the ridge. The vertical distance between the structure and the crest shall be the difference between the elevation (above sea level) of the

highest ground level at the structure foundation and the lowest elevation of the crest of the ridge.

(4) *Building width standards.* Building width in the Protected Ridge Overlay District shall not exceed 30 percent of the lot width as measured at the face(s) of the building oriented to the downhill section of the lot or adjacent topography.

(5) *Lot width standards.* Minimum lot width in the Protected Ridge Overlay District, as measured parallel to the crest of the ridge, shall be 200 feet.

(6) *Disturbed and impervious standards.*

a. The maximum gross site area disturbance allowed in the Protected Ridge Overlay District for any single lot, excluding disturbance for installation of individual septic systems, shall be:

- For lots less than 2.0 acres shall be 0.3 acres.
- For lots 2.0 acres and larger shall be 15 percent.

b. The maximum gross site area impervious surface allowed in the Protected Ridge Overlay District for any single lot shall be:

- For lots less than 2.0 acres shall be 0.16 acres.
- For lots 2.0 acres and larger shall be eight percent.

These limits shall apply to individual lot improvements, including drives, utilities, and stormwater controls but shall not apply to installation of individual septic systems. When communal infrastructure including, but not limited to, roadways, shared drives, public utilities, public facilities and stormwater controls, is installed in accordance with an approved minor or major subdivision plan, the disturbed and impervious area shall be regulated by the land development and subdivision ordinance and not by this article. When communal infrastructure is installed to serve lots in a division of land which is exempt from the definition of a subdivision pursuant to section 70-5 of the land development and subdivision ordinance and results in more than three lots, the maximum area of the total tract to be developed for the purposes of communal infrastructure installation shall be 15 percent disturbed area and ten percent impervious area.

Expansions to structures existing at the time this article was adopted must meet the gross site area disturbed and impervious limitations, however the disturbed and impervious area of the existing development is not required to be included in the disturbed and impervious area calculations.

(7) *Screening standards.* The following screening regulations shall be required within the Protected Ridge Overlay District for all new structures and any modification to an existing structure exceeding 50 percent of the appraised value of the structure.

The surfaces of the structure which are oriented to the downhill sections of the lot or the downhill sections of the adjacent topography (downhill sections are defined as areas of the property which drop 25 feet or more in elevation within 100 feet of the structure) must be screened at a ratio of one tree of 1.5-inch diameter measured six inches above the root ball for every 200 square feet of planar surface. Planar surface is defined as the combined exterior surface area of all vertical surfaces within a single face of the structure. Trees planted to achieve the required ratio must be planted no greater than 50 feet from the furthest extending portion of the structure (measured perpendicularly). Trees must be of varying, native species, as defined by the Natural Resource Conservation Service of the United States Department of

Agriculture, and no single species shall comprise more than 50 percent of the trees planted. Trees shall be spaced no less than ten feet but no greater than 30 feet apart.

Existing trees within the area of allowed disturbance which are left intact and that appear in good health can be credited toward the required ratio. The following credit system will be observed:

Tree Dimensions	Credits
2.5″ to 4″ DBH (minimum 8′ tall)	1 tree
4″ to 6″ DBH (minimum 15′ tall)	1.5 trees
6″ to 10″ DBH (minimum 20′ tall)	2 trees
10″ to 16″ DBH (minimum 25′ tall)	2.5 trees
16″ or greater (minimum 30′ tall)	3 trees

Trees to be credited shall be marked using flagging tape prior to site disturbance in order to ensure their health throughout site development.

(g) *Engineering standards for certain slopes.* Consultation with a geotechnical engineer shall be required for development in areas of a tract within the Protected Ridge Overlay District in excess of 35 percent natural slope and for all areas designated as high hazard or moderate hazard on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey, and an investigation for colluvial deposits shall be made. Recommendations of the geotechnical engineer shall be submitted with the application for review. Prior to final approval, a report by the geotechnical engineer shall be required certifying that recommendations were followed during construction.

Global stability analysis shall be performed for building sites on a 35-percent or greater slope or in an area designated as high hazard or moderate hazard on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey.

(Ord. No. 10-10-07, § 1(e), 10-5-10; Ord. No. 11-04-13, § 1, 4-5-11; Ord. No. 11-10-01, § 1, 10-4-11; Ord. No. 14-01-01 , § 2, 1-7-14; Ord. No. 14-02-02 , § 2, 2-4-14; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16; Ord. No. 17-10-12 , § 2, 10-17-17; Ord. No. 19-04-07 , § 2(Exh. A), 4-2-19)

Editor's note— Ord. No. 14-02-02 , § 2, adopted Feb. 4, 2014, amended and renumbered former § 78-646 as § 78-645.

Secs. 78-646—78-649. - Reserved.

Sec. 78-650. - Community oriented development.

(a) *Purpose.* The purpose of this section is to facilitate the creation of affordable and workforce housing and to afford substantial advantages for greater flexibility and improved marketability through the benefits of efficiency which permit flexibility in building siting and mixtures of housing types.

Residential densities are calculated on a project basis, thus allowing the clustering of buildings in order to create useful open spaces and preserve natural site features.

(b) *Applicability.* Developments considered under this section must:

(1) Successfully demonstrate that a minimum of ten percent of the proposed units will be made available at affordable rates or that a minimum of 20 percent of the proposed units will be made available at workforce rates. No variance(s) from this requirement may be requested or obtained under section 78-621(4) or section 78-623;

(2) Be served by public water and sewerage systems;

(3) Contain a development entrance which intersects a paved road, and the site of said intersection is located no more than 2,640 drivable feet, as measured along the road centerline, from an intersection with a transportation corridor. A transportation corridor, for the purposes of this section, is a publicly-maintained road which is designated as an interstate, arterial, or collector by NCDOT. The length of interstate on-ramps does not count towards the maximum drivable distance. The Blue Ridge Parkway shall not be considered a transportation corridor.

(c) *Development standards.*

(1) *Density requirements.* There are no density requirements for nonresidential uses as long as the proposed project does not violate the intent of the district in which it is located. Density may exceed that permitted in the district in which the development is located (as shown in section 78-642) by the provision of sustainable development elements and/or the provision of community amenities. If the community oriented development lies in more than one district, the number of allowable dwelling units must be separately calculated for each portion of the community oriented development that is in a separate district, and must then be combined to determine the number of dwelling units allowable in the entire community oriented development. Density may be increased up to 250 percent of that allowed in section 78-642, according to the following table in section 78-650(c)(1)a. No variance(s) may be requested or obtained under section 78-621(4) or section 78-623 in order to increase density within a community oriented development other than through strict adherence to the requirements set forth in this subsection and the community oriented development density table.

a. *Community oriented development density table.* Density may be increased up to 250 percent of that allowed in section 78-642, according to the following table. In order to obtain any bonus in density, points must be obtained from at least two of the three principal categories within the table (Community, Environment/Transit, Economy); additional points may be obtained through providing added amenities. Project density will be calculated as follows: the number of points earned will be converted to a percentage which will be the density bonus multiplier. For example, an application that earns 159 points will result in a density bonus multiplier of 159 percent and the density earned will be 159 percent of that allowed in section 78-642. In the case of a fractional unit, a fraction of one-half or more will be considered a whole unit and a fraction of less than one-half will be disregarded.

Community Oriented Development Density Table			
	Points	**Performance Metric**	**Maximum Possible Points**
Community			
Affordable housing (15 years minimum)	2 points for each % affordable (10% minimum)	Under guidelines of the Affordable Housing Services Program (AHSP) (sold/rented to family up to 80% of Area Median Income (AMI) adjusted for family size, cost/rent of the home meets criteria, sold/rented as primary residence, minimum of 15 years affordability, conditions recorded in document accompanying the Deed of Trust)	140
Workforce housing (15	1.5 points for each % workforce (20%	Under guidelines of the Workforce Housing Services	105

years minimum)	minimum)	Program (sold/rented to family from greater than 80% to 120% of AMI adjusted for family size, cost/rent of the home meets criteria, sold/rented as primary residence, minimum of 15 years affordability, conditions recorded in document accompanying the Deed of Trust)	
Period of affordability	2 points for each year beyond 15	Secured under guidelines of the AHSP	30
Accessibility	Multifamily: 20 points for elevator, 1 point for each % dwelling units with listed accessibility features Single-family: 1 point for each % dwelling units with at least three accessibility features	Multifamily required accessibility features: accessible showers and toilets, grab bars, and lowered counter tops Single-family accessibility features: 1) accessible showers, toilets, and grab bars, 2) lowered counter tops, 3) accessible switches, outlets, and environmental controls, 4) ramp, 5) doorways at least 32" wide and passageways 36" wide	30
Safe routes to schools (SRTS)	25 for a funded SRTS program through NCDOT, 15 points for a program that receives a letter from the regional SRTS coordinator documenting that the application meets the SRTS criteria	For the regional coordinator, email activekidswnc@gmail.com	25
Environment/Transit			
Conserve riparian buffers and wetlands	15 points for permanent preservation of at least 50% of riparian buffers and at least 50 linear feet of stream and identified/mapped wetlands present on the site; 20 points for permanent preservation of at least 75% of riparian buffers and at least 75 linear feet of stream and identified/mapped wetlands present on the site; 25 points for permanent preservation of all riparian buffers and at least 100 linear feet of stream and identified/mapped wetlands present on the site	Development incorporates the retention of intact or restored riparian buffers (30 feet in width as measured from top of bank), delineated wetlands (inclusive of a 50-foot buffer surrounding the wetland area). These areas are to be preserved in perpetuity. In all cases, wetlands must be preserved to obtain points. Stormwater devices and pervious, at grade, passive recreation permitted within the buffer areas.	25
Conserve open space	5 points per acre of preserved open space	Preservation of open space to be dedicated in perpetuity. For the purpose of this table, open space does not include acreage otherwise preserved to obtain points in other categories, such as riparian buffers, wetlands, steep slope areas, special flood hazard areas, community gardens, or passive recreation areas.	25
Low impact development (LID) - utilizing best management practices (BMPs)	5 points for each BMP device utilized after base stormwater requirements are met	Must meet minimum criteria as described in NCDENR BMP manual http://portal.ncdenr.org/web/lr/bmp-manual, other BMP's employing proprietary technology (not described within manual) must be approved by county stormwater management engineer	25
Exclusion of development inside special flood hazard areas (SFHAs) and steep slopes - greater than 25% (if those conditions exist on property)	50 points for fully clustering outside of SFHA and steep slope areas.	All development, except stormwater devices and pervious, at grade, passive recreation, to be clustered on least environmentally sensitive areas of site (i.e., outside of SFHA's and steep slopes) and SFHAs and steep slope areas are to be protected in perpetuity.	50
Participation in Energystar program	25 points for certification of all proposed units	Dwelling units must receive Energystar certification	25
Alternative energy sources	10 points for 10% energy production from alternative sources	Development incorporates non-commercial solar, geothermal, or wind energy	10
Rainwater/greywater	5 points for water collection systems	Development incorporates the installation of either	5

collection		rainwater or greywater collection systems through the use of cistern reservoirs subject to review and approval of the county stormwater management engineer	
Proximity to public transit routes	50 points for projects that are within 2,640 feet of a public transit route.	Access to public transit is defined as a project that is located within 2,640 feet of a designated ART or mountain mobility (trailblazer) route. The 2,640 feet is measured from the entrance of the development and the entirety of the measured distance must be on greenways, sidewalks, or along roadways.	50
Construction of public road(s) built to NCDOT standards and to be dedicated to NCDOT.	25 points for NCDOT maintenance of roads	Roads must be designed to NCDOT standards pursuant to the NCDOT Subdivision Roads - Minimum Construction Standards Manual. Subdivision plat must include dedication language. A coordinating letter from NCDOT is required.	25
Economy			
Mixed use (mix in housing sizes and types)	10 points where 15% of the homes are smaller in size/scope; 10 points where a mix of multifamily and single-family structures are provided	Smaller in size and scope: 2 BDR single family, 1 or 2 BDR apartments; mix of multifamily and single-family: at least 30% of the units comprise each type	20
Mixed use (non-residential and residential)	30 points	Mixed use inclusive of commercial structures, to be developed at a neighborhood scale. Commercial structures must be less than 50,000 square feet per building, and may comprise no less than 10% and no more than 35% of the total heated square footage of the development.	30
Preserve active farmland	10 points for active community garden plots, 5 points for every two acres placed in farming use, with a maximum of 15 points for preservation of active farmland through farming of property	Community garden plots must be no less than 100 square feet per unit and must be in production. Preservation of active farmland must consist of a minimum of 2 acres set aside for horticultural/agricultural practices. For the purposes of these points, "farming use" can include only horticulture, agriculture, and poultry or small mammals for dairy production (slaughtering operations are not allowed). Areas must be dedicated in perpetuity.	25
Community building	10 points if available only to members of the community; 25 points if available to members of the public	Recorded site plan must indicate the building(s) and buildings must be financially guaranteed and completed in 5 years of approval of the site plan or special use permit~~CUP~~. Deed restrictions indicating use (public or private) must be recorded. Structures must provide community meeting space (not a pool building, etc).	25
Added Amenities			
Provision of community facilities (playgrounds, clubhouses, pools, etc)	5 points for every 1,000 square feet of additional community facilities.	Site specific development plan submitted showing location, square footage, and design of the amenities.	25
Non-motorized passive recreation (such as running, walking, biking trails, primitive camping areas, and similar low impact outdoor activities).	2 points for ever 1,320 linear feet of trail or 2 points for every 1,000 square feet of a passive recreation area	Site specific development plan submitted showing location, square footage, and design of the amenities.	10
Street trees	1 point per 8 trees	1 tree per every 50 linear feet of road at least 2-inch in caliper. Areas to receive trees first are the main entrance and commercial corridors.	10
Sidewalks	1 point for every 500 linear feet of sidewalk internal to the development;	5-foot wide sidewalk with a 5-foot wide utility strip/setback from the street or curb edge	10

	2 points for every 500 linear feet external to the development		
Connects with greenways	10 points for new greenway construction, 5 points for connection to existing system	Project incorporates continuous greenway throughout development and/or a connection/dedicated easement to an existing greenway system. Greenways and connections to greenways must be dedicated as such in perpetuity.	10

(2) *Affordability of units.* Applicants must demonstrate that the proposed units will be maintained at a rate which aligns economically with affordable or workforce housing. In order to qualify as a community oriented development at least ten percent of the units provided must be considered affordable housing or at least 20 percent of the units provided must be considered workforce housing. For the purposes of this section, affordable housing will be targeted to individuals at 0 percent to ≤ 80 percent of area median income and workforce housing will be targeted to individuals at >80 percent to 120 percent of area median income. The mechanisms used to guarantee affordability and/or workforce housing rates must remain in place for a minimum of 15 years following the issuance of a building certificate of occupancy and must be approved under guidelines of the affordable housing services program and the Buncombe County Legal Department. No variance(s) from this requirement may be requested or obtained under section 78-621(4) or section 78-623.

(3) *Continuity of units.* Applicants must demonstrate that the proposed affordable/workforce units will be distributed throughout the development and similar in design characteristics including façade and building materials to any proposed market rate units. Architectural renderings shall be submitted as part of the application.

(4) *Development schedule.* A development schedule is required indicating approximate beginning and completion dates of the project, including the schedule for the market rate and affordable/workforce units and any proposed phases. When work within an approved community oriented development is not begun within two years following the date of approval, the approval shall be deemed expired.

(5) *Connectivity.* Community oriented developments should encourage connectivity with the surrounding area. These developments may not be gated or enclosed in a manner which physically restricts access to non-residents. This provision is to be clearly stipulated in perpetuity in the recorded covenants or deed restrictions; these restrictions must be recorded prior to any subdivision of land associated with the development and/or the issuance of permits for the construction of residential units.

(6) *Recordation of approved plan and restrictive covenants.* Prior to the subdivision of land associated with the development or the issuance of permits for the construction of residential units, a comprehensive site plan and deed restrictions must be approved by the planning department and subsequently placed on file with the Buncombe County Register of Deeds.

a. The comprehensive site plan shall indicate the following items, and any other items deemed necessary to provide for items utilized to obtain bonuses in density in section 78-650(c)(1) above:

1. Building and grading envelopes to include but not be limited to all structures, location of the affordable/workforce units, disturbed and impervious areas, planned community infrastructure, and recreational buildings and areas, etc.

2. Any easement areas to be conserved, connected with greenways, or used as provision for safe routes to schools.

3. Any easement areas required to indicate the preservation of active farmland through active farming or community garden space.

4. Any areas to be permanently dedicated as community facilities (playgrounds, clubhouses, pools, etc.).
5. The approved buffering/landscaping plan.
6. Delineation of floodplain areas to remain undeveloped.
7. Delineation of steep slope areas (areas of 25 percent slope or greater) through a slope analysis generated using field-verified topographic data.
8. A table listing the point totals for each element of the plan as approved, and where applicable, providing a legend or key to those items on the plan as labeled or identified.

b. The deed restrictions shall include provisions for the following items, in perpetuity or in the approved duration:

1. The mechanisms used to guarantee affordability and/or workforce housing rates as per section 78-650(c)(2).
2. Prohibition of gates or other exclusionary devices or structures.
3. Language dedicating areas in perpetuity for community space, greenways, preservation, conservation, or protection, referencing the recorded site plan.
4. Language providing for maintenance of all items provided for in order to obtain points within [section] 78-650(c)(1) community oriented development density table including, but not limited to, communal infrastructure, designated community space, stormwater management devices, rainwater collection/greywater harvesting, alternative energy sources, and buffering or landscaping.

(7) *Financial guarantee of improvements.* Where the following items are to be provided and are utilized to gain bonuses in density pursuant to section 78-650(c)(1), prior to the subdivision of land associated with the development or the issuance of permits for the construction of residential units, a financial guarantee shall be placed on file with the county guaranteeing:

a. The complete construction of the affordable or workforce housing units;
b. The provision of community building(s) or facilities;
c. The provision of sidewalks, greenways, or other forms of passive recreation;
d. The provision of street trees;
e. The installation and completion of water, sewerage and roads, when not guaranteed separately under the land development and subdivision ordinance, to serve said units.

Acceptance of the guarantee is subject to the owner/developer certifying that the installation of all required improvements will occur within a specified time as set forth in the development schedule. The construction elements, cost, and anticipated construction schedule for the work must be itemized and certified by a licensed professional and submitted to the planning department for approval, with a signed and notarized statement from the owner/developer indicating their intention to adhere to the schedule provided. The guarantee of improvements shall be secured in one of the following forms acceptable to the planning department:

a. A surety performance bond made by a surety bonding company licensed and authorized to do business in North Carolina.
b. A bond of the owner/developer with an assignment to the county of a certificate of deposit with an institution licensed and authorized to do business in North Carolina as security for the bond.
c. A bond of the owner/developer by an official bank check drawn in favor of the county and deposited with the county.

d. Cash or an irrevocable letter of credit from an institution licensed and authorized to do business in North Carolina deposited with the county.

Such guarantee shall be in the amount equal to 150 percent of the identified cost of the planned improvements and the continuing maintenance of those improvements until the completion date as stipulated within the development schedule as estimated by the licensed professional retained by the owner/developer. The guarantee shall remain in full force and effect until all obligations have been faithfully performed.

If the cost estimate for improvements and maintenance or the schedule for installation is deemed inadequate by the planning department, the planning department reserves the right to require an independent construction appraisal, at the owner/developer's expense, as a condition of final plat approval or prior to the issuance of permits for the residential units.

All guarantees of improvements shall contractually stipulate an expiration date that is at least 180 days past the stipulated completion date as stated in the approved development schedule. The owner/developer must submit a signed and sealed statement by a registered land surveyor or civil engineer licensed in North Carolina certifying that all work has been completed to the standards of this article before the planning department will determine satisfactory completion of all guaranteed work. Work not completed within 90 consecutive days following the stipulated completion date as stated in the development schedule will be considered in default. The planning department will proceed immediately with a claim against the guarantee of improvements for all work in default.

If a request to extend the completion date stipulated within the approved development schedule is made, the zoning administrator may grant such a request provided that a revised development schedule is provided concurrently with the request and deemed acceptable by the department. Such a request must be made at least 90 days prior to the expiration of the financial guarantee. If the request for an extension is granted, the financial guarantee must be immediately amended to incorporate the revised development schedule and expiration date (if applicable).

(Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16; Ord. No. 17-10-12 , § 2, 10-17-17)

Secs. 78-651—78-655. - Reserved.

DIVISION 5. - GENERAL PROVISIONS

Sec. 78-656. - Applicability.

The provisions set forth in this division are not applicable to permitted uses in the Open Use District with the exception of section 78-657, nonconforming uses; section 78-664, travel trailers and recreational vehicles; and section 78-668, lighting standards, which shall be applicable in the Open Use District.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16)

Sec. 78-657. - Nonconforming uses.

Any parcel of land, use of land, building or structure existing at the time of the adoption of the ordinance from which this article is derived, or any amendment thereto, that does not conform to the use or dimension requirements of the district in which it is located may be continued and maintained subject to the provisions in this section.

(1) *Nonconforming vacant lots.* This category of nonconformance consists of vacant lots for which plats or deeds have been recorded in the Buncombe County Register of Deeds Office, which at the time of the adoption of this article fails to comply with the minimum area requirements of the districts, including overlay districts, in which they are located. Any use allowed in the affected district may be erected, improved, or expanded on any single lot of record existing at the time of the adoption of the ordinance from which this article is derived. All current dimensional

requirements as set forth in division 4 of this article or as amended must be met to build any new use. This provision shall apply even though such lot fails to meet the requirements for lot area that are generally applicable in the district, provided that all dimensional requirements other than those applying to the area of the lot shall conform to the regulations for the district in which such lot is located. Variance of dimensional requirements shall be obtained only through action of the board of adjustment.

(2) *Nonconforming lots of record.* If two or more lots or combinations of lots, or portions of lots, contiguous and in single ownership, are of record at the time of the adoption of the ordinance from which this article is derived, no portion of such parcel shall be subdivided, re-subdivided, used, or sold in a manner which diminishes compliance with lot area requirements established by this article.

(3) *Nonconforming occupied lots.* This category of nonconformance consists of lots occupied by buildings or structures at the time of the adoption of the ordinance from which this article is derived that fail to comply with the minimum requirements for area, yard, and setbacks for the district in which they are located. These lots may continue to be used.

(4) *Nonconforming open uses of land.* This category of nonconformance consists of lots used for storage yards, used car lots, auto wrecking, junkyards, and similar open spaces where the only buildings on the lot are incidental and accessory to the open use of the lot and where such use of the land is not permitted to be established hereafter, under this article, in the district in which it is located. A legally established nonconforming open use of land may be continued except as follows:

a. When a nonconforming open use of land has been changed to a conforming use, it shall not thereafter revert to any nonconforming use.

b. Nonconforming open use of land shall be changed only to conforming uses.

c. A nonconforming open use of land shall not be enlarged to cover more land than was occupied by that use when it became nonconforming.

d. When any nonconforming open use of land is discontinued for a period in excess of 180 days, any future use of the land shall be limited to those uses permitted in the district in which the land is located. Vacancy and/or nonuse of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this section.

(5) *Nonconforming uses or structures.* This category of nonconformance consists of buildings or structures used at the time of adoption of the ordinance from which this article is derived for purposes of use not permitted in the district in which they are located. Such uses may be continued as follows:

a. An existing nonconforming use may be changed to another nonconforming use of the same or higher classification, provided that the other conditions in this section are complied with. For the purpose of this article, the rank order of uses from higher to lower shall be:

1. Residential;

2. Public;

3. Commercial; and

4. Industrial.

b. When a nonconforming use has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.

c. A nonconforming use may not be extended or enlarged, nor shall a nonconforming structure be altered except as follows:

1. Structural alterations as required by law or ordinance to secure the safety of the structure are permissible.

2. Maintenance and repair necessary to keep a nonconforming structure in sound condition are permissible.

3. Expansion of a nonconforming use of a building or structure into portions of the structure which, at the time the use became nonconforming, were already erected and arranged or designed for such nonconforming use is permissible.

4. Alterations or expansions of an existing structure designed to improve the safety, function, or the appearance of the structure are permissible. The square footage of any expansion shall be no greater than the square footage of the existing structure.

d. When any nonconforming use of a building or structure is discontinued for a period in excess of one year, and there are no substantial good faith efforts to re-establish the use during this period, the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located. Obtaining permits to maintain the existing use or significant continuous efforts to market the property for sale or lease for the existing use (e.g., MLS listing, realtor contract, etc.) shall be regarded as substantial good faith efforts. A nonconforming use shall be deemed discontinued after a period of two years regardless of any substantial good faith efforts to re-establish the use and thereafter, the building or structure shall be used only for a conforming use.

(6) *Reconstruction of damaged buildings or structures.* Any nonconforming use, which has been damaged by fire, wind, flood, or other causes, may be repaired and used as before, provided:

a. Repairs are initiated within 12 months and completed within two years of such damage.

b. The total amount of space devoted to a nonconforming use may not be increased.

c. Reconstructed buildings may not be more nonconforming with respect to dimensional restrictions.

d. The use to which the building is put after repair does not result in a change from one nonconforming use to another nonconforming use.

(7) *Continuation of mobile home parks.* Mobile home parks that become nonconforming uses shall be permitted to continue operation, and existing spaces within the mobile home park may continue to be occupied by mobile homes even after a space has been vacated. However, these mobile home parks shall not be expanded or increased in size, and no additional spaces designed for occupancy by a mobile home shall be added to the site after the adoption of the ordinance from which this article is derived. A mobile home park that is discontinued for 180 days shall not be reestablished.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 10-10-07, § 1(c), 10-5-10; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16)

Sec. 78-658. - Off-street parking.

(a) *Purpose.* Off-street automobile storage or parking space shall be provided on every lot on which any of the following uses are hereafter established. The number of parking spaces provided shall be at least as great as the number specified in this section for various uses. When application of such provision results in a fractional space requirement, the next larger requirement shall prevail. Each lot abutting a major thoroughfare, as determined by the zoning administrator, shall be provided with vehicular access thereto and shall be provided with adequate space for turning so that no vehicle shall be required to back into the street. A parking space shall consist of an improved hard-surfaced or crushed stone area not less than nine feet by 18 feet plus the necessary access space, unless otherwise authorized by the board of adjustment or zoning administrator. Such parking shall be provided within the setback lines set forth in this article. The zoning administrator may, however, reduce such setbacks for parking purposes, provided that natural vegetation, landscaping, or a buffer strip is provided as a buffer to surrounding uses.

(b) *Minimum parking requirements.* The required number of off-street parking spaces for each use shall be provided as specified in table 3. For uses not covered in this table, the Zoning Administrator shall select the appropriate number of minimum parking spaces based on the American Planning Association Planning Advisory Service Report Number 432 (Off-Street Parking Requirements).

Table 3: Required Parking	
Land Use	**Required Parking**
Residential Uses	
Residential dwellings, single-family and two-family	2 spaces per dwelling unit
Residential dwellings, multifamily	1.75 spaces per dwelling unit
Other Uses	
Animal hospitals and veterinarian clinics	1 space per 500 square feet of gross floor area
Banks and other financial institutions	1 space per 300 square feet of gross floor area, plus 4 stacking spaces per drive-up window or station
Bed and breakfast inn	1 space per guest room, plus 1 additional space per employee
Clubs and lodges	1 space per 300 square feet of gross floor area
Colleges and universities	1 space per 5 classroom seats, plus 1 space per 3 auditorium seats
Day nursery and private kindergartens	1 space per staff member, plus 1 space per 8 students
Funeral homes	1 space per 4 seats in a chapel or parlor
Health care facilities	1 space per 2 beds, plus 1 space per staff or visiting doctor, plus 1 space per 2 employees on shift of maximum employment
Hotels and motels	1 space per room, plus 1 additional space per 5 employees, plus specified requirements for restaurants, meeting rooms, and related facilities
Kennels	1 space per employee, plus 1 space per 1,000 square feet of gross floor area
Manufacturing and processing, storage and warehousing, wholesale sales	2 spaces per 3 employees at maximum employment on a single shift, plus 1 space per company vehicle operating from the premises
Medical clinics	1 space per 250 square feet of gross floor area
Motor vehicles maintenance and repair	1 space per service bay, plus 1 space per 2 employees on shift of maximum employment (spaces at pumps are not considered parking spaces)
Motor vehicle sales, house and truck	1 space per 2 employees, plus 1 space per 600 square

trailer sales, outdoor equipment and machinery sales	feet of enclosed floor area, plus 1 space per 2,000 square feet of outside display area
Motor vehicle service stations	1 space per 350 square feet of gross floor area, plus 1 space per gas pump
Physical fitness centers	1 space per 200 square feet of gross floor area
Places of worship, religious institutions, and places of public assembly	1 space per 4 seats in the principal assembly room
Postal and parcel delivery services	1 space per employee on the shift of maximum employment, plus 1 space per 800 square feet of gross floor area
Professional and business offices	1 space per 300 square feet of gross floor area
Recreation, governmental and non-governmental	• Tennis, squash, or racquet ball, 2 spaces per court • Skating rink, 1 space per 200 square feet • Swimming pool, 1 space per 140 square feet of pool surface area, plus 1 space per employee on shift of maximum employment • Golf and miniature golf courses, 2 spaces per hole • Athletic fields, 10 spaces per field • Bowling establishment, 3 spaces per lane • Billiard or pool hall, 2 spaces per table • Shooting ranges, 1 space per target area
Repair services	1 space per 300 square feet of gross floor area
Restaurants, nightclubs, bars	1 space per 3 seats or stools, plus 1 space per 2 employees on the shift of the maximum employment, plus 4 stacking spaces per drive-through lane
Retail trade, commercial services	1 space per 300 square feet of gross floor area
Group homes	1 space per 6 patient beds, plus 1 space per 2 employees on shift of maximum employment
Schools, elementary and middle schools	1 space per employee, plus 1 space per 2 classrooms
Schools, high	1 space per employee, plus 1 space per 8 students
Schools, vocational	1 space per 2 students
Storage facility, self-service	1 space per 100 units, plus 1 space per 2 employees
Theaters	1 space per 4 seats
Vacation rental complex or rooming house	1 space per 2 guest rooms

(c) *Location of other property.* If the required automobile parking spaces cannot reasonably be provided on the same lot on which the principal use is conducted, such spaces may be provided on other off-street property, provided that such property lies within 400 feet of an entrance to such principal use. Such automobile parking shall be associated with the principal use and shall not thereafter be reduced or encroached upon in any manner.

(d) *Shared parking.* The zoning administrator may approve the joint use of up to 100 percent of the required parking spaces for two or more uses located on the same parcel or adjacent parcels, provided that the developer can demonstrate that the uses will not overlap in hours of operation or in demand for the shared spaces.

Any sharing of required parking spaces by uses located on different parcels shall be guaranteed by a written agreement between the owner of the parking area and the owner of any use located on a different parcel and served by the parking area.

Should the uses change such that the new uses overlap in hours of operation or in demand for the shared spaces, the shared parking approval shall become void. Parking meeting the requirements of this section shall then be provided for each use.

(e) *Extension of parking lot into a residential district.* Required parking may extend up to 120 feet into a residential zoning district, provided that:

(1) The parking area adjoins a NS, CS, or EMP district;

(2) It has its only access to or fronts upon the same street as the property in a NS, CS, or EMP district for which it provides the required parking; and

(3) Is separated from abutting properties in the residential district by a buffer strip.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 18-05-06 , § 2, 5-1-18)

Sec. 78-659. - Off-street loading and unloading space.

Every lot on which a business, trade or industry use is hereafter established shall provide space as indicated in this section for the loading and unloading of vehicles off the street. Such space shall have access to a street or alley. For the purpose of this section, an off-street loading space shall have minimum dimensions of 12 feet by 40 feet and an overhead clearance of 14 feet in height above the alley or street grade. Spaces shall be provided as follows:

(1) Retail business: One space for each 10,000 square feet of gross floor area.

(2) Wholesale and industry: One space for each 25,000 square feet of gross floor area.

(3) Truck terminals: Sufficient space to accommodate the maximum number of trucks to be stored or to be loading or unloading at the terminal at any one time.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-660. - Required yards and other spaces.

No part of a yard or open space, or loading space required in this section or required in connection with any building for the purpose of complying with this article, shall be included as part of a yard, open space or loading space similarly required for any other building.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-661. - Driveways and visibility at intersections.

Driveway standards shall be met when designing vehicular access points from public streets to individual properties, excluding single and two-family residential. All sight distances at intersections and

all vehicular entrances on to state-maintained roads from nonresidential uses must meet the standards for secondary roads established by the N.C. Department of Transportation and must be approved by such department prior to receiving a zoning permit. On corner lots, no planting, structure, sign, fence, wall or other obstruction shall be erected so as to interfere with the sight distance. Unless the access point will be shared between two or more adjoining properties, all access points shall be located at least five feet from all property lines perpendicular to the street.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-662. - Relationship of building to lot.

In no case, shall there be more than four principal buildings, in addition to any customary accessory buildings on a single lot, except in the case of a designated ~~commercial or residential or mixed use~~ planned unit development, manufactured home park, place of worship, or community oriented development.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 10-05-09, § 1, 5-18-10; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16)

Sec. 78-663. - Accessory structures and buildings.

(a) Accessory uses or structures shall not involve any use or structure otherwise prohibited by this division or requiring a ~~conditional use permit~~special use permit. Accessory uses or structures with a building footprint of no more than 320 square feet and a height of no more than 15 feet shall meet the following standards:

(1) *Front yard:* Set forth per relevant zoning district under section 78-642;

(2) *Side yard setback:* Seven feet; and

(3) *Rear yard setback:* Seven feet.

(b) Accessory uses or structures with a building footprint of greater than 320 square feet or a height of more than 15 feet shall meet the following standards:

(1) *Front yard,* set forth per relevant zoning district under section 78-642;

(2) *Side yard setback, no public sewer:* Ten feet;

(3) *Side yard setback, public sewer:* Seven feet; and

(4) *Rear yard setback:* Ten feet.

The front yard setback requirements of this section shall not apply to accessory structures on lots where the existing primary structure is a legal nonconformance with respect to the front setbacks set forth under section 78-642. In such cases, the setback shall be that of the aforementioned existing buildings.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 10-05-09, § 1, 5-18-10; Ord. No. 14-02-15 , § 2, 2-18-14)

Sec. 78-664. - Travel trailers and recreational vehicles.

Travel trailers and/or recreational vehicles may be used as a temporary single-family dwelling for no more than 180 days out of the calendar year only in those districts that permit travel trailers or travel trailer parks. In no case shall a travel trailer or recreational vehicle be permanently set up or affixed to the ground or site, nor shall it be used as a permanent single-family dwelling. When utilized as a temporary single-family dwelling, a travel trailer may not be located within a single travel trailer park for more than 180 days out of the calendar year. If a travel trailer is disconnected from all utilities, is tagged and road-ready, and is not utilized as a temporary dwelling unit on site, it will be considered a parked vehicle for the purposes of this ordinance [from which this section derives].

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16)

Sec. 78-665. - Home occupations.

Standards pertaining to home occupations are contained within the definition of a home occupation as found in section 78-581.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-666. - Vacant lots.

Vacant lots and open spaces located adjacent to major thoroughfares shall be maintained. Vegetation shall be neatly trimmed, and the accumulation of unsightly debris shall be prohibited.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-667. - Buffering and parking lot landscaping.

(a) *Buffer strip.* A buffer strip shall be established along the side and rear lot lines of any nonresidential use adjoining a residential use. Said buffer shall not extend beyond the established setback line along any street. Said buffer strip shall not be less than 20 feet in width for uses where the lot with the nonresidential use is one acre or greater. In cases where the nonresidential lot requiring the buffering is less than one acre, the buffer strip shall be at least 15 feet wide.

(b) *Methods of buffering.* The required buffers shall be placed according to one or a combination of the following methods, as approved by the board of adjustment or zoning administrator as fitting for the use and surrounding areas:

(1) At least two rows of evergreen trees, which shall be approved as to type by the board of adjustment, which at the time of planting shall be at least five feet in height, and which at maturity shall be at least ten feet in height. In each row the trees shall be spaced no more than eight feet apart (from base of tree to base of tree) at time of planting, with trees in adjacent rows offset (staggered) four feet. The rows shall be no more than eight feet apart in a 20-foot buffer strip and seven feet apart in a 15-foot buffer strip and centered within the buffer strip.

(2) A solid visual barrier fence eight feet in height may be accepted as an alternative buffer by the board of adjustment or zoning administrator.

(3) Earth mounding may be used in conjunction with planting or fencing to satisfy height requirements, but slopes shall not exceed one foot in height to two feet horizontal.

In the event that the height requirements provided herein do not provide a visual screen from the adjoining property, the board of adjustment or zoning administrator may require additional earth mounding, or other type of buffering, to attain the desired screening effect.

This buffering requirement may be modified by the zoning administrator where adequate buffering exists in the form of natural vegetation and/or terrain.

(c) *Maintenance of buffering.* The owner of the property on which the buffer is located shall be responsible for the maintenance of said buffering. Trees shall be carefully planted and maintained and evergreen trees shall be maintained so that dense branching begins at ground level and continues to the top of the plant. Unhealthy or dead plants shall be promptly removed and replaced within one planting season. Each fence required by this section or by the board of adjustment shall be maintained in good repair, including periodic painting or refinishing where required. Failure to maintain any required vegetation, earth mounding, and fences in good condition shall constitute a violation of this section.

(d) *Parking lot landscaping.* Parking lots of 5,000 or more square feet in area shall have landscaped areas. The landscape area(s) shall be at least ten percent of the area of the parking lot. No individual

landscaped area planted with a tree shall contain less than 100 square feet. All trees planted to conform to these landscape requirements shall be appropriately spaced to permit normal growth.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-668. - Lighting standards.

(a) *Purpose.* Lighting standards are established in order to permit, reasonable uses of outdoor lighting for night-time safety, utility, security, productivity, enjoyment and commerce. These standards will minimize light pollution, light trespass and glare and will work to promote energy efficient lighting practices and systems.

(b) *Applicability.* Lighting standards shall apply to all new uses including commercial, industrial, public and residential development, all new dusk-to-dawn utility/security lights, and all new street lighting. To the extent regulated by this section, all existing outdoor lights or lighting systems, installed prior to the adoption of this section, shall be treated as nonconforming uses pursuant to section 78-657 with the following exceptions:

(1) When a vehicular canopy is renovated at a cost which exceed 50 percent of the value of the structure or is replaced in its entirety, all lighting attached to the new or renovated canopy must comply with subsection (e).

(2) When all the light fixtures of an assembly or group (such as, all the fixtures lighting a loading area or all the fixtures lighting one facade of a building) are replaced, the new lighting must comply with subsection (e).

(3) All existing dusk-to-dawn utility/security lights shall conform to the provisions of subsection (e) within five years from the date this section was adopted.

(c) *Exemptions.* The following are not regulated by the lighting standards set forth in this section:

(1) Lighting for single-family residential use, with the exception of dusk-to-dawn utility/security lights which shall be regulated pursuant to subsection (e)(5).

(2) Lighting required by federal, state, or local laws or regulations;

(3) Seasonal displays using multiple low-wattage bulbs;

(4) Lighting used during an emergency or by emergency services personnel or at their direction;

(5) Temporary lighting which does not utilize the lighting types described in subsection (d)(1);

(6) Temporary lighting used for public purposes including but not limited to highway construction and public utility repairs.

(d) *Prohibitions.* The following lighting types are specifically prohibited:

(1) Search lights, laser source lights, or any other similar high intensity lights except for those permitted in advance as required in subsection (f)(5) to be used on a temporary basis;

(2) Lighting that is oriented upward, except as otherwise provided for in this section:

(3) Lighting that could be confused for a traffic control device;

(4) A suspended string of lights, consisting of individual lamps larger than 45 lumens, unless used only for seasonal decorations.

(e) *Lighting specifications.*

(1) *Intensity.*

a. Unless otherwise specified, the maximum light level at any point shall be 0.75 footcandles at any property line, or 3.0 footcandles at any public street right-of-way.

b. The maximum average light level for the developed area of the project to be permitted shall be 4.5 footcandles.

c. The maximum rating for LED lights shall be 4.300 degrees Kelvin.

(2) *Luminaire type.* All lighting luminaires to be installed on a permanent basis shall consist of full cutoff and cutoff fixtures, unless otherwise stipulated by this section. Full cutoff fixtures shall be utilized where the luminaire has more than a 1,250 lumen output, unless as otherwise stipulated by this section. Lighting fixtures to be utilized on a temporary basis and as permitted through subsection (f)(5) shall be exempt from this requirement.

(3) *Accent and facade lighting.* Accent or facade lighting shall be directed toward the face of the building or structure.

a. Lighting fixtures shall be directed downward rather than upward. The zoning administrator or the board of adjustment may waive this requirement in cases where it is impractical.

b. Placement of low wattage fixtures with shields (as needed) close to the building to graze the facade is required to minimize reflected light from windows and other surfaces.

(4) *Vehicular canopies.* Areas under a vehicular canopy shall have a maximum average horizontal illuminance of 30 footcandles. All lighting under the canopy, including but not limited to, luminaires mounted on the lower surface of the canopy and auxiliary lighting within signage or panels over the pumps, is to be included in the calculation. Lighting under vehicular canopies shall be designed so as not to create glare off-site. Acceptable methods include one or more of the following:

a. Recessed fixture incorporating a lens cover that is either recessed or flush with the bottom surface (ceiling) of the vehicular canopy that provides a full cutoff or fully shielded light distribution.

b. Surface mounted fixture incorporating a flat glass that provides a full cutoff or fully shielded light distribution.

(5) *Dusk-to-dawn utility/security lights.* Dusk-to-dawn utility/security lights shall have a maximum rating of 9,500 lumens, shall be mounted at a maximum height of 25 feet above the lowest adjacent grade, and must be full cutoff fixtures.

(6) *Street lighting.*

a. *Alignment.* Street lighting on newly constructed streets shall be alternately staggered on each side of the street. The zoning administrator or the board of adjustment may waive this requirement in cases where it is impractical.

b. *Intensity.* Newly installed street lighting luminaires shall meet the following standards:

1. Individual luminaires erected in residential areas shall have a rating which does not exceed 9,500 lumens.

2. Individual luminaires erected in commercial and industrial areas shall have a rating which does not exceed 50,000 lumens.

c. *Luminaire type.* All street lighting must consist of full cutoff fixtures. If the luminaire is a post mounted decorative fixture mounted at a height of no more than 18 feet above the lowest adjacent grade, the luminare may consist of a cutoff fixture if the zoning administrator or board of adjustment determines that appropriate glare reduction measures are taken.

(7) *Outdoor parking, loading and storage areas.* The mounting height of all outdoor parking, loading and storage area lighting shall not exceed 37 feet above the lowest adjacent grade. The lighting of outdoor parking areas shall have a maximum average horizontal illuminance of 6.0 footcandles.

(8) *Outdoor sales/display areas.* The mounting height of all outdoor sales/display area lighting shall not exceed 37 feet above the lowest adjacent grade. The lighting of outdoor sales/display areas shall have a maximum average horizontal illuminance of 25 footcandles.

(9) *Outdoor sports fields and outdoor performance areas.*

a. The mounting height of outdoor sports field and outdoor performance area lighting fixtures shall not exceed 80 feet from the lowest adjacent grade.

b. All outdoor sports field and outdoor performance area lighting fixtures shall be equipped with a glare control package (louvers, shields, or similar devices). The fixtures must be aimed so that their beams are directed and fall within the primary playing or performance area.

c. The hours of operation for the lighting system shall coincide with active use of the field or performance area and any necessary maintenance thereof. Lighting the field or performance area during periods of vacancy shall be prohibited.

(f) *Administration and enforcement.*

(1) Lighting plan required. A lighting plan designed and sealed by a licensed engineer shall be submitted with the application for a zoning certificate of compliance. The plan shall indicate the following:

a. Location and mounted height of all exterior lighting on the property.

b. A point-by-point footcandle array in a printout format indicating the location and aiming of illuminating devices.

c. The printout shall indicate compliance with the lighting specifications required by this section.

d. The plan shall be accompanied by a description of the illuminating devices, fixtures, lamps, supports, reflectors, poles, raised foundations and other devices including, but not limited to, manufacturers or electric utility catalog specification sheets and/or drawings, and photometric report indicating fixture classification (cutoff fixture, full cutoff fixture, etc.) must be furnished.

e. The zoning administrator may waive the requirements for a lighting plan set forth above, provided the applicant has provided all other required information and can sufficiently demonstrate compliance with this section. If the lighting plan requirements are waived, the requirements set forth in subsection (f)(2) and (f)(3) shall also not apply.

(2) A written statement signed and sealed by a licensed engineer, which indicates that the lighting plan complies with the standards set forth herein, shall be submitted with any application for a zoning certificate of compliance that proposes permanent outdoor lighting.

(3) A signed and sealed as-built drawing which demonstrates that the lighting plan described in subsection (f)(l) and submitted with the zoning certificate of compliance application was followed shall be submitted for review prior to the issuance of a zoning certificate of occupancy for the project.

(4) Light measurement technique. Light level measurements of light trespass shall be made at the property line of the property upon which light to be measured is being generated. Measurements shall be made at finished grade (ground level) with the light registering portion of the meter held parallel to the ground pointing up. Measurements shall be taken with a light meter that has been calibrated within the previous two years.

(5) Permit for temporary lighting required. Applicants who wish to utilize lighting on a temporary basis or lighting described in subsection (d)(1) must submit a written request to the zoning administrator. The zoning administrator shall have ten business days to approve or deny the permit application. The application shall include:

a. The purpose of the lighting;

b. The hours of lighting operation;

c. Where applicable, a plan showing the extent and intensity of light trespass upon adjacent properties;

d. Signed certification that in no case shall such lighting be directed at roadways where such lighting could pose a public safety threat to vehicular traffic; and

e. An application fee for the zoning certificate of compliance which shall be issued by the zoning administrator.

A permit for temporary lighting, in the form of a zoning certificate of compliance, shall be issued for an operation period of no more than 30 days. Once the permit has been issued, it may be renewed in 30-day periods for up to a total of 90 days unless the permit is for lighting as described in subsection (d)(1). If operation is to continue past the close of the 90-day period, a new permit must be applied for and obtained. Temporary lighting of the type described in subsection (d)(1) shall be event-specific and shall not be permitted for a duration of more than five days. In no case shall temporary lighting be permitted on a single property, in one or in multiple locations, for more than 180 days per calendar year.

(Ord. No. 12-01-13, § 1, 1-17-12)

Secs. 78-669—78-675. - Reserved.

DIVISION 6. - ~~CONDITIONAL~~SPECIAL USES

Sec. 78-676. - Purpose.

The following ~~conditional~~special uses would not be appropriate without restriction throughout the zoning districts, but could be acceptable if controlled as to number, area, location or relation to the neighborhood. Such uses may be permitted in a zoning district as ~~conditional~~special uses if the provisions of this and all other divisions of this article have been met.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-677. - Procedure for obtaining a ~~conditional use permit~~special use permit.

(a) *Application.* A written application for a ~~conditional use permit~~special use permit is submitted to the zoning administrator.

(b) *Conference with applicant.* Prior to submission of an application for a ~~conditional use permit~~special use permit, the applicant shall arrange a conference with the zoning administrator. At the conference the applicant shall submit a sketch development plan and a brief description of the proposed development strategy. The conference is designed to inform the applicant of the county's regulations and policies concerning development alternatives, as well as to inform the county of the applicant's intentions, so as to give the applicant some informal, nonbinding feedback on the acceptability of the applicant's plan. The greater the level of common understanding between the applicant and the county that can be achieved at the conference stage, the smoother the remaining steps of the review process will be.

(c) *Notice of hearings.* All board of adjustment public notice shall be conducted in accordance with G.S. ~~153A-345.1~~160D-406 or as amended.

(d) *Development plan; submission; contents.* At least 30 days prior to the date set for the public hearing, the applicant shall submit the application, one full sized copy of the development plan to a known scale, 11 copies of the development plan reduced to either 11 inches by 17 inches or 8.5 inches by 11 inches, and a digital version of the development plan in pdf or other acceptable format to the zoning administrator. The development plan shall contain a map drawn to scale, with the date of preparation, and shall contain, where applicable, the following information:

(1) Existing site conditions, including contours, watercourses identified flood hazard areas, and any unique natural or manmade features.

(2) Boundary lines of the proposed development, proposed lot lines, and plot designs.

(3) Proposed location and use of all existing and proposed structures, including the location of any proposed retaining walls. The maximum height of any retaining wall shall be shown on the proposed site plan.

(4) Location and size of all areas to be conveyed, dedicated, or reserved as common open space, parks, recreational areas, school sites, and similar public and semipublic uses.

(5) The existing and proposed street system, including the location and number of off-street parking spaces, service areas, loading areas, and major points of access to the public right-of-way. Notations shall be made of the proposed ownership of a street system, public or private. Documentation from the fire marshal shall be provided of the adequacy of the development's facilities for emergency medical and fire services.

(6) Approximate location of proposed utility systems, including documentation of water and sewer availability from the appropriate local and state agencies. Documentation of pre-development conferences with the sedimentation and erosion control and stormwater management offices shall also be submitted, where required.

(7) Location and/or notation of existing and proposed easements and rights-of-way.

(8) The proposed treatment of the perimeter of the development including materials and/or techniques such as screens, fences, and walls.

(9) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features.

(10) Where applicable, the following written documentation shall be submitted:

a. A statement of present and proposed ownership.

b. The zoning district in which the project is located.

c. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages.

d. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development.

e. Quantitative data for the following: proposed total number and type of residential dwelling units, parcel size, gross residential densities, and the total amount of open space.

f. Plan for maintenance of common areas, recreation areas, open spaces, streets and utilities.

(11) For commercial structures in ~~CPUDs and R~~PUDs, architectural renderings of all principal buildings, drawn to a known scale, shall be provided. Elevation renderings of the site, drawn to a known scale, shall be required for any retaining wall system proposed to provide a cumulative vertical relief in excess of ten feet in height showing landscaping, vegetative screening, and the top and bottom of the wall at grade.

(12) For developments of more than 75 residential units, a traffic impact study meeting the guidelines for traffic impact studies provided in the North Carolina Department of Transportation's "Policy on Street and Driveway Access to North Carolina Highways."

(13) Any additional information required by the board of adjustment in order to evaluate the impact of the proposed development. The zoning administrator or the board of adjustment may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision of the project.

(e) *Conduct of hearing.* Any party may appear in person or by agent or by attorney at the hearing held by the board of adjustment. The order of business for such hearing shall be as follows:

(1) The chairperson, or such person as he shall direct, shall give preliminary statement of the case.

(2) The applicant shall present the argument in support of the application.

(3) Persons opposed to granting the application shall present the argument against the application.

(4) Both sides will be permitted to present rebuttals to opposing testimony.

(5) The chairperson shall summarize the evidence, which has been presented, giving the parties opportunity to make objections and corrections.

Witnesses may be called and factual evidence may be submitted, but the board of adjustment shall not be limited to only such evidence as would be admissible in a court of law. The board of adjustment may view the premises before arriving at a decision. All witnesses before the board of adjustment shall be placed under oath and the opposing party may cross-examine them.

(f) *Rehearings.* An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the board of adjustment to determine whether there has been a substantial change in the facts, evidence or conditions in the case. The application for rehearing shall be denied by the board of adjustment if from the record it finds that there has been no substantial change in facts, evidence, or conditions. If the board of adjustment finds that there has been a change, it shall thereupon treat the request in the same manner as any other application.

(g) *Conditions for granting approval.* In granting a ~~conditional use permit~~special use permit, the board of adjustment may designate such conditions in connection therewith as will, in its opinion, ensure that the proposed use will conform to the requirements and spirit of this article. If at any time after a ~~conditional use permit~~special use permit has been issued the board of adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a ~~conditional use permit~~special use permit, the permit shall be terminated and the operation of such use discontinued. If a ~~conditional use permit~~special use permit is terminated for any reason, it may be reinstated only after a public hearing is held. Before any ~~conditional use permit~~special use permit is issued, the board of adjustment shall make written findings certifying compliance with the specific rules governing the individual conditional use and that satisfactory provision and arrangement has been made for at least the following, where applicable:

(1) The proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use.

(2) The proposed use will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.

(3) The proposed use will not cause or have adverse effects on surrounding properties due to noise, vibration, odor, or glare effects.

(4) Satisfactory ingress and egress for the proposed use of the property and proposed structures has been provided. Particular attention has been paid to automotive and pedestrian safety and convenience, traffic flow and control.

(5) Provision of off-street parking and loading areas where required, with particular attention to the items in section 78-658.

(6) Provision of adequate and proper utilities, with reference to locations, availability, and compatibility.

(7) Provision of buffering, if deemed necessary, with reference to type, location, and dimensions. The board of adjustment shall exercise ultimate discretion as to whether adequate buffering has been provided.

(8) Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.

(9) Playgrounds, open spaces, yards, landscaping, access ways, and pedestrian ways, with reference to location, size, and suitability.

(10) Buildings and structures, with reference to location, size, and use.

(11) Hours of operation, with particular reference to protecting and maintaining the character of the neighborhood.

(h) *Decisions.* All board of adjustment decisions shall be made in accordance with G.S. ~~153A-345.1~~160D-406 or as amended.

(i) *Inspections.* The zoning administrator shall make periodic inspections during construction as well as a final inspection after construction is complete to determine whether the conditions imposed and agreements made in the issuance of the permit have been met as well as whether all other requirements of this article have been met.

(j) *Changes; limitations.* Minor changes in the location, siting or character of buildings and structures may be authorized by the zoning administrator, if required by engineering or other circumstances not foreseen at the time the final development program was approved; provided, however, that no change authorized by the zoning administrator under this section may increase the size of any building or structure by more than ten percent, nor change the location of any building or structure by more than ten feet in any direction, nor make any changes beyond the minimum or maximum requirements set forth in this article. All other changes, including changes in the site plan and in the development schedule, must be submitted to the board of adjustment. In no case shall the following changes be made without resubmission of the development plan according to the procedures in this section:

(1) A change in the use or character of the development.

(2) An increase in overall density.

(3) An increase in intensity of use.

(4) Alteration of the traffic circulation system.

(5) A reduction in approved open space.

(6) A reduction of off-street parking and loading space.

(k) *Lack of development; effect on permit.* ~~Conditional use permit~~Special use permits shall retain vesting in accordance with G.S. 160D-108~~153A-344~~.1 or as amended.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 10-05-09, § 1, 5-18-10; Ord. No. 11-04-15, § 1, 4-19-11; Ord. No. 11-10-06 , § 1, 10-18-11; Ord. No. 14-02-01 , § 2, 2-4-14; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16; Ord. No. 18-05-06 , § 2, 5-1-18)

Sec. 78-678. - Uses by right subject to special requirements and ~~conditional~~special use standards.

(a) *Uses by right, subject to special requirements (SR).* Uses by right, subject to special requirements are uses permitted by right, provided that the specific standards set forth in this section are met. The specified standards are intended to ensure these uses fit the intent of the districts within which they are permitted, and that these uses are compatible with other development permitted within the specified zoning districts.

(1) *Bed and breakfast inns.* Standards for bed and breakfast inns shall be as follows:

a. *Signage.* Signage is limited to a single sign, not to exceed eight square feet, with a maximum height of four feet.

b. *Parking.* Parking shall only be located in side and rear yards and is subject to the off-street parking requirements located in table 3 of section 78-658.

c. *Buffering.* Property line buffering must meet the requirements described in section 78-667 and parking areas must be screened from adjacent properties through the use of vegetation or solid fencing.

d. *Occupancy.* Bed and breakfast inns are limited to no more than ten occupants.

(2) *Day nursery and private kindergarten.* Standards for day nursery and private kindergarten shall be as follows:

a. *Signage.* Signage is limited to a single non-lighted sign, not to exceed eight square feet, with a maximum height of four feet.

b. *Enrollment.* Maximum enrollment is limited to eight children.

c. *Drop-off areas.* Drop-off and pick-up areas shall not obstruct traffic flow on adjacent streets.

d. *Parking.* Parking shall only be located in side and rear yards and is subject to the off-street parking requirements located in table 3 of section 78-658.

e. *Buffering.* Property line buffering must meet the requirements described in section 78-667 and parking areas and outdoor play areas must be screened from adjacent properties through the use of vegetation or solid fencing.

(3) *Travel trailer parks.* Standards for travel trailer parks shall be as follows:

a. *Travel trailers.* No travel trailer may be permanently affixed or utilized as a permanent single-family residence. No single trailer may be located within the park for more than 180 days out of any given calendar year.

b. *Spacing.* Travel trailer spaces must be clearly identified on the site plan and delineated within the park through the provision of a physical boundary marker or designated pad. In no case shall a travel trailer be placed within 20 feet of another travel trailer.

c. *Buffering.* A buffer consisting of evergreen trees or shrubs shall be provided against all adjacent properties, but shall not extend beyond the established setback line along any street. Such buffer strip shall be no less than four feet in width and shall be composed of trees or shrubs of a type, which at maturity shall be not less than six feet in height. This planting requirement may be modified by the zoning administrator where adequate buffering exists in the form of vegetation and/or terrain.

d. *Waste management/dump station(s).*

1. The park owner/operator shall provide capacity for a weekly accumulation of solid waste and recycling on site through the provision of dumpsters or acceptable containers. These dumpsters or other acceptable containers must be serviced at least once a week, unless the park has been vacant for the entirety of the week. These dumpsters shall not be located within any required setbacks.

2. The park owner/operator shall provide for adequate waste disposal through the provision of dump stations. Dump stations shall be inset at least 20 feet from all property lines and must be permitted by NCDENR prior to installation.

e. Any lighting to be provided within the park must be indicated on the site plan and adhere to the lighting standards as set forth within section 78-668.

f. At least one bathroom and shower shall be provided within a permanent structure. If the park does not provide full water and sewer hookups at each site, one additional bathroom and shower shall be provided for every ten travel trailer spaces in the park without water and sewer connections.

g. Documentation from the fire marshal shall be provided of the adequacy of the development's facilities for emergency medical and fire services.

(4) *Motor vehicles impoundment lots and tow yards.* Standards for motor vehicles impoundment lots and tow yards shall be as follows:

a. *Motor vehicle storage area.* The motor vehicle storage area shall be enclosed within a security fence of at least six feet in height. The vehicle storage area and fence shall not be located within any required setback.

b. *Buffering.* The perimeter of the fence required in subsection a. above shall be buffered by a row of evergreen trees. The trees shall be at least four feet in height at the time of planting and shall be planted within eight feet of the outer side of the fence. The trees shall be planted at intervals evenly spaced and in proximity to each other so that a continuous, unbroken hedgerow, without gaps or open spaces, will exist to a height of at least eight feet along the length of the fence surrounding the storage area when the trees reach maturity. This planting requirement may be modified by the zoning administrator where adequate buffering exists in the form of vegetation and/or terrain.

(5) *HUD-labeled manufactured homes—Residential.* Standards for HUD-labeled manufactured homes in the R-1, R-2 and BDM zoning districts (not including manufactured homes in manufactured home parks) shall be as follows:

a. The standards set forth herein shall apply to manufactured homes which meet the following criteria:

1. Manufactured homes which are renovated at a cost which exceeds 50 percent of the market value of the structure; and

2. Manufactured homes which are replaced in their entirety on pre-existing manufactured home lots or spaces; and

3. Manufactured homes which are placed upon existing and newly created vacant lots or spaces.

4. "Market value" shall be determined by the administrator based upon the most recent tax assessment, appraisal, or actual sale value.

b. Standards:

1. Skirting:

(a) Manufactured housing shall include skirting.

(b) Permissible skirting materials shall be limited to stone, brick, or architectural or rusticated block. Other materials may be permitted by the administrator on a case-by-case basis.

(c) Wood, vinyl, metal, and foam skirting is prohibited, except that such materials may be permitted on a case-by-case basis in order to comply with Buncombe County Code, chapter 34, article II, flood damage prevention ordinance.

(d) Skirting may include openings for dryer vents and combustion air inlets, and openings for the purposes of access and ventilation. Such openings shall be covered for their full height and width with a perforated corrosion and weather-resistant covering that is designed to prevent the entry of rodents.

(e) Skirting and vents shall comply with all applicable requirements of North Carolina Building Code and Buncombe County Code, chapter 34, article II, flood damage prevention ordinance.

2. Foundations:

(a) Manufactured homes shall be placed upon permanent foundations.

(b) Wheels, tongues, and motor vehicular signals shall be removed.

3. Dimensional requirements:

(a) Except as otherwise provided below, manufactured homes and manufactured home spaces shall conform to the dimensional requirements of the district in which the development is located as shown in section 78-642, table 2, dimensional requirements, and the subsequent footnotes thereof.

(b) Manufactured homes in the aforementioned zoning districts shall be multi-sectional ("double-wide," "triple-wide," et seq.). Single sectional ("single-wide") manufactured homes are prohibited.

(b) *~~Conditional~~Special use standards.* Before issuing a ~~conditional use permit~~special use permit the board of adjustment shall find that all standards for specific uses listed in this section, as well as all procedures listed in section 78-677, have been met. The following standards are applied to specific ~~conditional~~special uses:

(1) *Public or private utility stations; radio, TV, and telecommunications towers; water and sewer plants; water storage tanks.* Standards for public or private utility stations, radio, TV, and telecommunications towers, water and sewer plants, and water storage tanks shall be as follows:

a. Structures shall be enclosed by a woven wire fence at least eight feet high. This does not apply to photovoltaic cells which are incorporated as structural elements of other facilities.

b. The perimeter of the fence required in subsection a. above shall be buffered by landscaping vegetation. Vegetation not less than two feet in height at the time of planting shall be planted within eight feet of the outer side of the fence. Vegetation that serves as screening shall be planted at intervals evenly spaced and in proximity to each other so that a continuous, unbroken hedgerow, without gaps or open spaces, will exist to a height of at least six feet along the length of the fence surrounding the facility. This planting requirement may be modified by the board of adjustment where adequate buffering exists in the form of vegetation and/or terrain.

c. Emergency contact information for the owner/manager of the facility shall be prominently posted at the site.

d. A plan for decommissioning of the facility should the facility become non-operational for a period of more than 365 consecutive days shall be presented to the board of adjustment. The plan shall describe how the site will be returned to its pre-development condition and shall present a mechanism for funding the decommissioning.

e. Facilities using wind as a means of electricity generation must be appropriately separated from existing residential communities and structures. The applicant must present an area map which depicts the proposed facility and the closest residential structures. The map shall be to scale and shall also show publicly maintained roads within the area.

f. At locations where the facility will exist alongside other uses, the applicant must include a description of the other uses which will occur on the site and how public safety will be guaranteed.

g. For facilities located within five linear miles of any aviation facility, the applicant must provide a solar glare analysis (such as the solar glare hazard analysis tool available through Sandia National Laboratories) that demonstrates that the installation does not pose an imminent threat to flight operations. Additionally, the applicant must demonstrate that the proposed structures do not interfere with flight operations. The applicant must also provide proof that a copy of their analysis has been submitted to the aviation facility operator.

h. For facilities located within 1,320 feet of a N.C. or U.S. highway (inclusive of Interstates) or within the Blue Ridge Parkway Overlay, the applicant must provide proof from a qualified professional, which may include the highway operator, that the facility does not pose an imminent threat to users of the highway.

i. For facilities located within the Steep Slope/High Elevation or Protected Ridge Overlay Districts, the applicant must quantify and provide documentation of the tree coverage and species removed. When development is to occur within either overlay district listed above, the limitations on disturbed and impervious area shall be applied to the parcel as a whole.

j. All facilities must provide certification from an engineer or the manufacturer of the equipment that equipment to be utilized will not create electromagnetic interference (or other signal interference) with any radio communication or telecommunication system, aircraft navigation system, or radar system. Facilities utilizing wind as a means of electricity generation must submit a microwave path analysis performed by a Federal Communications Commission recognized frequency coordinator.

k. All facilities must register with other state and federal agencies as required; proof of this registration (including applicable submissions for analysis by the Federal Communications Commission or Federal Aviation Administration) must be provided to the board of adjustment.

(2) *Kennels.* Standards for kennels are as follows:

a. The animal kennel, including all structures and fencing, shall be set back at least 50 feet from all external property lines of the facility.

b. The kennel facility shall be enclosed within a security fence of at least six feet in height. The fence and facility may require a vegetation buffer along any part of the fenced areas where sufficient visual buffering does not exist. The board of adjustment shall determine the buffer requirements.

c. Provisions for daily removal and/or disposal of all animal waste shall be incorporated within the operation and maintenance of the animal kennel.

d. The design and operation of the facility shall be reviewed and approved by the state department of agriculture.

(3) *Junkyards.* Standards for junkyards shall be as follows:

a. Junkyards shall be surrounded by a fence at least eight feet in height. Vegetation shall be planted on at least one side of the fence and contiguous to the fence. The vegetation shall be of a type that will reach a minimum height of six feet at maturity and shall be planted at intervals evenly spaced and in close proximity to each other so that a continuous, unbroken hedgerow will exist to a height of at least six feet along the length of the fence surrounding the junkyard when the vegetation reaches maturity. Each owner, operator, or maintainer of a junkyard shall maintain the vegetation and fencing. Dead or diseased vegetation shall be replaced at the next appropriate planting time.

b. The fence shall have at least one and not more than two gates for purposes of ingress and egress. The gates shall be closed and securely locked at all times, except during business hours.

c. Junkyards shall also be subject to compliance with chapter 26, article III, of this Code, as may be amended.

(4) *Solid waste management facilities.* All solid waste management facilities used for the disposal of solid waste shall meet the requirements and specifications of the N.C. Department of Environment and Natural Resources. A set of approved plans shall be submitted along with the application for the ~~conditional use permit~~special use permit.

(5) *Travel trailer parks.* Travel trailer park standards shall be as follows:

a. *Travel trailers.* No travel trailer may be permanently affixed or utilized as a permanent single-family residence. No single trailer may be located within the park for more than 180 days out of any given calendar year.

b. *Spacing.* Travel trailer spaces must be clearly identified on the site plan and delineated within the park through the provision of a physical boundary marker or designated pad. In no case shall a travel trailer be placed within 20 feet of another travel trailer.

c. *Buffering.* A buffer consisting of evergreen trees or shrubs shall be provided against all adjacent properties, but shall not extend beyond the established setback line along any

street. Such buffer strip shall be no less than four feet in width and shall be composed of trees or shrubs of a type, which at maturity shall be not less than six feet in height. This planting requirement may be modified by the zoning administrator or board of adjustment where adequate buffering exists in the form of vegetation and/or terrain.

d. *Waste management/dump station(s).*

1. The park owner/operator shall provide capacity for a weekly accumulation of solid waste and recycling on site through the provision of dumpsters or acceptable containers. These dumpsters or other acceptable containers must be serviced at least once a week, unless the park has been vacant for the entirety of the week. These dumpsters shall not be located within any required setbacks.

2. The park owner/operator shall provide for adequate waste disposal through the provision of dump stations. Dump stations shall be inset at least 20 feet from all property lines and must be permitted by NCDENR prior to installation.

e. Any lighting to be provided within the park must be indicated on the site plan and adhere to the lighting standards as set forth within section 78-668.

f. At least one bathroom and shower shall be provided within a permanent structure. If the park does not provide full water and sewer hookups at each site, one additional bathroom and shower shall be provided for every ten travel trailer spaces in the park without water and sewer connections.

(6) ~~*Residential or mixed use*~~ *planned unit developments, level I (~~R~~PUDI).* ~~Residential or mixed use~~ ~~p~~Planned unit development, level I standards shall be as follows:

a. *Purpose.* The purpose of this section is to afford substantial advantages for greater flexibility and improved marketability through the benefits of efficiency which permit flexibility in building siting, mixtures of housing types, and land use. Residential densities are calculated on a project basis, thus allowing the clustering of buildings in order to create useful open spaces and preserve natural site features.

b. *Land development standards.* The following land development standards shall apply for all ~~R~~PUDIs. ~~R~~PUDIs may be located in the relevant districts as ~~conditional~~special uses, subject to a finding by the board of adjustment that the following conditions are met:

1. *Ownership control.* The land in a ~~R~~PUDI shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.

2. *Density requirements.* There are no density requirements for nonresidential uses as long as the proposed project does not violate the intent of the district in which it is located. The proposed residential density of the ~~RPUD~~PUDI (dwelling units per acre as shown in section 78-642) shall conform to that permitted in the district in which the development is located. If the ~~RPUD~~PUDI lies in more than one district, the number of allowable dwelling units must be separately calculated for each portion of the ~~RPUD~~PUDI that is in a separate district, and must then be combined to determine the number of dwelling units allowable in the entire ~~RPUD~~PUDI. When the ~~RPUD~~PUDI is a community oriented development, the allowed density shall be in accordance with section 78-650.

3. *Land uses.* A mixture of land uses shall be allowed in any ~~RPUD~~PUDI. However, within residential districts, ~~nonresidential uses shall not constitute the primary use in the RPUD, and~~ nonresidential uses shall be carefully designed to complement the residential uses within the ~~RPUD~~PUDI. All ~~RPUD~~PUDIs must be compatible with and not violate the intent of the zoning district; however, said uses may include uses not permitted under section 78-641 within the zoning district(s) within which the project is

located, provided that the board of adjustment finds that the nonresidential uses do not disrupt the character of the community.

4. *Minimum requirements.* Minimum requirements for land development are as follows:

   a. The normal minimum lot size and requirements for interior setbacks are hereby waived for the ~~RPUD~~PUDI, provided that the spirit and intent of this section are complied with in a total development plan, as determined by the board of adjustment. The board of adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.

   b. Height limitations. The normal maximum structure height may be waived for the ~~RPUD~~PUDI, provided that unique elements of the development impose requirements for additional height that are not universal throughout the zoning district. Additionally, ~~RPUD~~PUDIs in excess of the normal maximum height require that the spirit and intent of this section are complied with in a total development plan, as determined by the board of adjustment. The board of adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section. ~~RPUD~~PUDIs within the Blue Ridge Parkway Overlay District may not contain structures which exceed the maximum height allowed within the overlay district.

   c. Required distance between buildings. The minimum distance between buildings shall be 20 feet or as otherwise specified by the board of adjustment to ensure adequate air, light, privacy, and space for emergency vehicles.

5. *Privacy.* Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walks, barriers, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants, screening of objectionable views or uses, and reduction of noise. Multilevel buildings shall be located within a ~~RPUD~~PUDI in such a way as to dissipate any adverse impact on adjoining low-rise buildings and shall not invade the privacy of the occupants of such low-rise buildings.

6. *Perimeter requirements.* Perimeter requirements are as follows:

   a. Structures located on the perimeter of the development must be set back from property lines and rights-of-way of abutting streets in accordance with the provisions of the zoning ordinance controlling the district within which the property is situated.

7. *Parking.* Parking requirements may be waived for the ~~RPUD~~PUDI, provided that the spirit and intent of this section are complied with in a total development plan, as determined by the board of adjustment. The board of adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.

8. *Conveyance and maintenance mechanisms.* Conveyance and maintenance of open space, recreational areas and communally owned facilities shall be in accordance with G.S. 47-1 et seq. the Unit Ownership Act and/or any other appropriate mechanisms acceptable to the board of adjustment.

9. *Building envelopes.* Building envelopes shall be shown on the submitted site plan. Where flexibility in design of residential units is desired, the building envelope shall indicate the maximum expanse of the proposed footprint of the structure.

(7) *~~Commercial p~~Planned unit developments, level II (~~C~~PUDII).* ~~Commercial p~~Planned unit development, level II standards shall be as follows:

a. *Land development standards.* The following land development standards shall apply for all ~~CPUD~~PUDIIs. ~~CPUD~~PUDIIs may be located in the relevant districts as ~~conditional~~special uses, subject to a finding by the board of adjustment that the following conditions are met:

1. *Ownership control.* The land in a ~~CPUD~~PUDII shall be under single ownership or management by the applicant before final approval and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.

2. *Land uses.* ~~CPUD~~PUDIIs must include only non-residential uses.

3. *Dimensional requirements.* Dimensional requirements for land development are as follows:

a. *Height limitations.* The normal maximum structure height may be waived for the ~~CPUD~~PUDII, provided that unique elements of the development impose requirements for additional height that are not universal throughout the zoning district. Additionally, ~~CPUD~~PUDIIs in excess of the normal maximum height require that the spirit and intent of this section are complied with in a total development plan, as determined by the board of adjustment. The board of adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section. ~~CPUD~~PUDIIs within the Blue Ridge Parkway Overlay District may not contain structures which exceed the maximum height allowed within the overlay district.

b. *Required distance between buildings.* The minimum distance between buildings shall be 20 feet or as otherwise specified by the board of adjustment to ensure adequate space for emergency vehicles.

4. *Parking.* Parking requirements may be waived for the ~~CPUD~~PUDII, provided that the spirit and intent of this section are complied with in a total development plan, as determined by the board of adjustment. The board of adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.

(8) *Asphalt plants.* Standards for asphalt plants shall be as follows:

a. The parcel on which the facility is located shall be set back at least 2,640 feet from any parcel where a hospital; hospice facility; licensed nursing home; licensed adult care home; licensed family care home; drop-in or short term child care center providing care to at least ten preschool children; licensed child care center; private or public elementary, middle or high school; or municipal or county park or recreation facility is located.

b. The facility must comply with the Buncombe County Flood Damage and Prevention Ordinance. But in no case shall production facilities or storage of hazardous materials be located in the special flood hazard area.

c. The area of operations shall be set back from all perennial waters, as shown on the most recent version of the quadrangle topographic maps prepared by the United States Geological Service, and from all wetlands, as defined by G.S. 143-212(6) for a distance sufficient to protect surface and groundwater from spills and leaks. Said setback shall be a vegetative buffer no less than 100 feet in width, with no less than the first 50 feet from the stream or wetland being undisturbed and the remaining area consisting of managed vegetation.

d. The facility shall be served by a public water system or situated a sufficient distance from any water supply well to ensure public health and safety. In all cases, the facility shall be located no closer to a water supply well than the minimum separation distance specified by N.C. Department of Environment and Natural Resources.

e. There shall be sufficient access to a major highway so as to minimize truck travel through residential neighborhoods.

f. A buffer strip along all property lines shall be required that is sufficient in height, density, and foliage at all times of the year to minimize the visual impact to persons and motorists not on the property and to maximize the buffering of noise and particulate matter. Said buffer strip shall not extend into the established setback along any street. The required buffer shall be placed according to one or a combination of the following methods, as approved by the board of adjustment as fitting for the use and surrounding areas:

1. A continuous, natural and undisturbed 100-foot buffer strip of trees, shrubbery, and other natural vegetation.

2. A 100-foot planted buffer strip consisting of at least three rows of evergreen trees, whose species shall be approved by the board of adjustment, which at the time of planting shall be at least six feet in height, and which at maturity, shall be at least 15 feet in height. In each row the trees shall be spaced no more than ten feet apart (from base of tree to base of tree) at time of planting, with trees in adjacent rows offset (staggered) five feet. The rows shall be no more than 30 feet apart and centered within the buffer strip. The buffer strip shall also contain at least two evergreen shrubs for every one tree and the shrubs shall be intermixed between the trees.

3. An earthen berm landscaped with evergreen shrubs and topped with a row of evergreen trees. The berm shall be a minimum of eight feet in height and shall have slopes that do not exceed one foot in height to three feet horizontal. The row of evergreen trees shall be at least five feet in height at the time of planting and which at maturity shall be at least ten feet in height. The trees shall be spaced no more than eight feet apart (from base of tree to base of tree) at the time of planting. No less than two evergreen shrubs for every tree shall be planted in two rows; the first row shall be planted at the base of the berm. The second row shall be planted at the midpoint of the berm and shall be offset (staggered) from the first row.

The owner of the property on which the buffer is located shall be responsible for the maintenance of said buffering. Unhealthy or dead plants shall be promptly removed and replaced within one planting season.

g. A security fence shall surround the entire production area, shall be a minimum of six feet in height, and shall be located between the production area and the required buffer strip. Driveways or entranceways shall be gated during the hours when the plant is not open and operating.

h. The facility shall employ the most current, state-of-the-art methods, systems, techniques, and production processes available in order to achieve the greatest feasible air and odor emissions reductions, including fugitive emissions and fugitive dust.

(9) *Vacation rental complex or rooming house.* Vacation rental complex and rooming house standards shall be as follows:

a. *Minimum distance between buildings.* The minimum distance between buildings shall be 20 feet or as otherwise specified by the board of adjustment to ensure adequate air, light, privacy, and space for emergency vehicle access.

b. *Parking.* Preliminary plans shall include parking provisions adequate for the maximum number of guests proposed. Parking requirements shall be at least one space for each two proposed guest rooms. Such parking areas shall be visually screened with a vegetative buffer or fencing adjacent to any single family residential development.

c. *Signage.* Freestanding signage shall be shown on the submitted plan and shall not exceed ten square feet in surface area. Only one freestanding sign is allowed.

d. *Bathrooms.* One bathroom must be provided for every four guest rooms.

(10) *Bed and breakfast inns.* Standards for bed and breakfast inns shall be as follows:

a. *Signage.* Signage is limited to a single sign, not to exceed eight square feet, with a maximum height of four feet.

b. *Parking.* Parking shall only be located in side and rear yards and is subject to the off-street parking requirements located in table 3 of section 78-658.

c. *Buffering.* Property line buffering must meet the requirements described in section 78-667 and parking areas must be screened from adjacent properties through the use of vegetation or solid fencing.

d. *Occupancy.* Bed and breakfast inns are limited to no more than 20 guests.

(11) *Day nursery and private kindergarten.* Standards for day nursery and private kindergarten shall be as follows:

a. *Signage.* Signage is limited to a single non-lighted sign, not to exceed eight square feet, with a maximum height of four feet.

b. *Drop-off areas.* Drop-off and pick-up areas shall not obstruct traffic flow on adjacent streets.

c. *Parking.* Parking shall only be located in side and rear yards and is subject to the off-street parking requirements located in table 3 of section 78-658.

d. *Buffering.* Property line buffering must meet the requirements described in section 78-667 and parking areas and outdoor play areas must be screened from adjacent properties through the use of vegetation or solid fencing.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 11-04-14, § 1, 4-19-11; Ord. No. 11-10-01, § 1, 10-4-11; Ord. No. 14-01-01 , § 2, 1-7-14; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16; Ord. No. 17-06-09 , §§ 1, 2, 6-6-17; Ord. No. 19-04-07 , § 2(Exh. A), 4-2-19)

Editor's note— Ord. No. 16-04-13 , § 2(Exh. A), adopted April 5, 2016, changed the title of § 78-678 from "~~Conditional~~Special use standards" to read as herein set out.

Secs. 78-679—78-695. - Reserved.

DIVISION 7. - EXCEPTIONS AND MODIFICATIONS

Sec. 78-696. - Compliance with article mandatory; generally.

Compliance with the requirements of this article is mandatory; however, under specific conditions enumerated in the following sections, the requirements may be waived or modified as so stated.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-697. - Front yard setback for dwellings.

The front yard setback requirements of this article for dwellings shall not apply on any lot where the average setback of existing buildings located wholly or in part within 100 feet on each side of such lot within the same block and zoning district and fronting on the same side of the street is less than the minimum required setback. In such cases, the setback may be less than the required setback, but not less than the average of the setback of the aforementioned existing buildings.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-698. - Completion of building under construction.

Nothing in this article shall require any change in the plans, construction or designated use of a building under construction at the date of the passage of the ordinance from which this article is derived. A building shall be deemed to be under construction upon the effective date of the ordinance from which

this article is derived if a building permit has been issued or if the zoning administrator determines that significant construction was completed prior to the effective date of the ordinance from which this article is derived.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-699. - Height limitations.

The height limitations of this article shall not apply to church spires except as otherwise provided in the vicinity of airports. Maximum height limitations as defined in section 78-642 shall be reduced in those areas affected by the Asheville Regional Airport in compliance with the Federal Aviation Administration regulations.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-700. - Temporary uses.

Temporary uses such as real estate sales field offices or shelter for materials and equipment being used in the construction of a permanent structure, may be permitted by the zoning administrator, provided they do not create health, safety or nuisance hazards.

(Ord. No. 09-12-01, § 1, 12-1-09)

Secs. 78-701—78-715. - Reserved.

DIVISION 8. - AMENDMENTS

Sec. 78-716. - Board of commissioners to amend article.

This article, including the zoning map, may be amended by action of the Buncombe County Board of Commissioners in accordance with the provisions of this division.

(Ord. No. 09-12-01, § 1, 12-1-09)

Sec. 78-717. - Initiation of amendments.

Proposed changes or amendments to this article may be initiated by the Buncombe County Board of Commissioners, Buncombe County Planning Board, board of adjustment, zoning administrator or other applicant. The board of commissioners, the planning board, board of adjustment, and the zoning administrator shall not be required to make application to the zoning administrator in order to initiate a change or amendment to this article. All proposed amendments to this article or zoning map shall be submitted to the planning board for review and comment; however, neither the planning board nor the board of commissioners will consider a proposed change or amendment that was denied within the preceding 12 months by the board of commissioners.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 14-02-01 , § 2, 2-4-14; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16)

Sec. 78-718. - Application and planning board notice and hearing.

(a) Before any action on a proposed change or amendment, an application shall be submitted to the office of the zoning administrator at least 30 days prior to the planning board's meeting at which the application is to be considered. The application shall contain the name(s) and address(es) of the owner (s) of the property in question, the location of the property, and a description and/or statement of the present and proposed zoning regulation or district. All applications requesting a change in the zoning map shall include a description of the property in question.

(b) Before taking any action to recommend a change or amend this article, the planning board shall hold a public hearing on the proposed change or amendment. The county shall cause notice of the

hearing to be published once not less than ten days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(c) Whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least ten but not more than 25 days prior to the date of the public hearing. Except for a county-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the planning board that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons mailing such notices shall certify to the planning board that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(d) The first class mail notice required under the preceding paragraph of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, the county may elect to either make the mailed notice provided for in the preceding paragraph or may as an alternative elect to publish notice of the hearing as required by subsection 78-718(b), but provided that such advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection 78-718(c) above.

(e) When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16)

Sec. 78-719. - Purposes in view.

Prior to consideration by the board of commissioners of a proposed zoning amendment, the planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan. The planning board shall provide a written recommendation to the board of county commissioners that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the board of commissioners.

If no written report is received from the planning board within 30 days of referral of the amendment to that board, the board of county commissioners may proceed in its consideration of the amendment without the planning board report at a public hearing as provided below. The board of commissioners is not bound by the recommendations, if any, of the planning board.

Prior to adopting or rejecting any zoning amendment, the board of commissioners shall adopt one of the following statements which shall not be subject to judicial review:

(1) A statement approving the zoning amendment and describing its consistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.

(2) A statement rejecting the zoning amendment and describing its inconsistency with an adopted comprehensive plan and explaining why the action taken is reasonable and in the public interest.

(3) A statement approving the zoning amendment and containing at least all of the following:

a. A declaration that the approval is also deemed an amendment to the comprehensive plan. The board of commissioners shall not require any additional request or application for amendment to the comprehensive plan.

b. An explanation of the change in conditions the board of commissioners took into account in amending the zoning ordinance to meet the development needs of the community.

c. Why the action was reasonable and in the public interest.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 17-10-12 , § 2, 10-17-17)

Sec. 78-720. - Public hearing before the board of commissioners.

(a) Before taking any action to adopt, amend, or repeal any part or portion of this article, the board of commissioners shall hold a public hearing on the proposed adoption, amendment or repeal of any part or portion of this article. The board of commissioners shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than ten days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Further, before taking any action on a proposed adoption, amendment, or repeal of this article, the board of commissioners shall consider the planning board's recommendations, if any, on each such proposed action.

(b) Whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least ten but not more than 25 days prior to the date of the public hearing. Except for a county-initiated zoning map amendment, when an application is filed to request a zoning map amendment and that application is not made by the owner of the parcel of land to which the amendment would apply, the applicant shall certify to the board of commissioners that the owner of the parcel of land as shown on the county tax listing has received actual notice of the proposed amendment and a copy of the notice of public hearing. The person or persons mailing such notices shall certify to the board of commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(c) The first class mail notice required under the preceding paragraph shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, the county may elect to either make the mailed notice provided for in the preceding paragraph of this section or may as an alternative elect to publish notice of the hearing required by subsection 78-720(a), but provided that each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection 78-720(b) above.

(d) When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons.

(Ord. No. 09-12-01, § 1, 12-1-09; Ord. No. 16-04-13 , § 2(Exh. A), 4-5-16)

BUNCOMBE COUNTY
PLANNING & DEVELOPMENT
(828) 250-4830 - PlanningInfo@BuncombeCounty.org
www.buncombecounty.org/planning

ZPH2020-00031 - 160D Text Amendment

DATE: March 15, 2021

TO: Buncombe County Planning Board

FROM: Nathan L. Pennington, CFM
Planning Director

CC: Brandon Freeman
Senior Attorney I
Buncombe County Legal Department

REGARDING: ZPH2020-00031 - 160D Mandatory Amendments ("Musts")

Chapter 160D ("160D") is the culmination of years of work to significantly recodify and modernize city and county development regulations (enabling legislation). Work on this effort began back in 2013. 160D was established under Session Law 2019-111, enacted by the General Assembly in June, 2019 and signed by the Governor in July, 2019. Session Law 2019-111 included two parts with different effective dates.

Part I, which took effect on July 11, 2019, put into effect a number of mandatory changes to the State of North Carolina's planning/land-use and development related General Statutes ("NCGS"). These changes are already in effect, and are reflected in the Draft Ordinance (attached).

Part II will take effect in July 2021, and associated changes **must be adopted by Buncombe County by July 1, 2021**. Part II requires numerous mandatory changes, and also provides for a number of optional changes. The Draft Ordinance, with a few exceptions, contains only those changes that are mandatory. Optional ("Mays") changes will be evaluated at later dates and in concert with the comprehensive planning process. It is important to note that many of the identified "musts" are already adhered to either because they are already in effect or because they were part of standards that were already codified in the County's development ordinances.

160D was drafted with the explicit intent to not make significant substantive changes in land use law, but to modernize and standardize land use law across the State. Part II also consolidates local regulation statutes for counties and municipalities (previously, statutes were divided into two chapters for different types of jurisdictions).

Resources from the UNC School of Government provide an introduction to 160D and the major topics

addressed therein. Further information is available through their checklist of changes which are attached.

General information from the UNC School of Government concerning N.C. Gen. Stat. § 160D can be found here.

The School of Government outlines the following major topic areas, and for the purpose of this text amendment, only the "musts" that are applicable specifically to unincorporated Buncombe County are summarized:

- **Terminology and Definitions** – *update references, align ordinance terminology, and assure definition consistency with state law.*
- **Rules for Boards and Commissions** – *adopt conflict-of-interest standards, keep minutes, and administer oaths of office.*
- **Land Use Administration** – *incorporate staff conflict-of-interest standards into ordinance, maintain paper or digital maps, issue notices of violation in conformance with statutory procedures, must enter premises during reasonable hours, must have consent or administrative search warrant, permit revocation must follow same process as approval, must perform inspections for building permits, must require certificate of occupancy for work requiring a building permit.*
- **Substance of Zoning Ordinance** – *must maintain current and prior zoning maps for public inspection, maintain other effective state and federal maps for inspection (i.e. FIRM's), must define "minor modifications" by ordinance, must not include modification of use or density, and major modifications must follow standard approval process (CUP's).*
- **Substance of Other Development Ordinances** – *conform subdivision performance guarantee requirements with statutory standards, allow expedited review of certain subdivision types, exempt farm use on bona fide farms, must not exclude manufactured homes based on age, follow standardized process for housing-code enforcement – repairs and demolition, must frame preservation district provisions as standards rather than guidelines, must process a development agreement as a legislative decision, and local government must be a part to a development agreement.*
- **Comprehensive Plan** – *adopt a comprehensive plan by July 1, 2022 to maintain zoning, plans and updates following legislation decision procedures, reasonably maintain a plan.*
- **Legislative Decisions** – *adhere to applicable procedures for legislative decisions under any development regulation, not just zoning, and adopt any regulation by ordinance and not resolution, provide notice to adjacent owners separated by streets, railroads and other corridors for zoning map amendments, provide notice 25 days prior to hearing and 10 days prior to hearing, refer zoning amendments to the PB, and not have governing board function as PB review board, have PB consider any plan adopted that requires comment and plan consistency, adopt a brief consistency statement – consistent/inconsistent with approved plans, must note on the applicable future land use map when a zoning-map amendment is approved that is not consistent with the map, adopt a statement of reasonableness for zoning map amendments, permit adoption of a legislative decision on first reading by simple majority, prohibit third-party down-zonings, do not combine legislative and quasi-judicial processes*
- **Quasi-Judicial Decisions** – *follow statutory procedures for quasi-judicial development decisions, hold evidentiary hearings to gather competent, material, and substantial evidence to establish facts of case, testimony must be taken under oath and findings of fact and conclusions of law must be written, allow parties with standing to fully participate in hearing, distribute same materials to*

applicant and landowner at the same time, present all materials at hearing and make them part of the record, must not impose conditions that there is no statutory authority to impose, obtain applicant's/landowner's written consent to conditions related to special use permits, and rename conditional use permits or CUP's to special use permits or SUP's, set a 30 day period to file an appeal of any administrative determination under a development regulation, presume that if the notice of determination is sent by mail it is received on the third business day after it is sent, and as mentioned in previous sections – do not combine legislative and quasi-judicial processes and assure minor modifications are defined by ordinance.

- **Administrative Decisions** – *provide development approvals in writing and if provided electronically do so in a way that it is protected from editing, assure that applications for development are made by a person with a property interest in the property or a contract to purchase said property, provide that development approvals run with the land, permit revocations must follow the same process as was used for their approval, administrative decisions of any development regulations must be appealed to the board of adjustment unless otherwise provided in the controlling ordinance, set a 30 day appeal period, require the official who made the decision to appear as a witness in the appeal, pause enforcement actions and fines during the appeal.*
- **Vested Rights and Permit Choice** – *recognize that building permits are valid for six months, recognize the default rule that development approvals are valid for 12 months unless otherwise noted, identify site-specific plans with vesting for 2-5 years and recognize multi-phase developments – long-term projects of at least 25 acres are vested up to seven years, except for specified exceptions, must allow for permit choice if development regulations are changed.*
- **Judicial Review** – *update ordinance to address appeals of certificates of appropriateness for historic landmarks and historic districts and provide that appeals are filed within 30 days, must not assert the defense of estoppel to enforce conditions to which an applicant did not consent in writing.*

Staff is recommending the following changes be considered and incorporated into this specific text amendment:

1. Correct the references to specific departments that administer ordinances (i.e. General Services, Planning, Permits and Inspections, etc.) throughout our development ordinances.
2. Make the Board of Adjustment the Board that hears all variances and appeals, including subdivision variances formally heard by the Planning Board, as recommended by the UNC School of Government (from page 80 of Owens and Lovelady's Quasi-Judicial Handbook):

> "To avoid confusion by applicants, board members, and the public regarding the type of process that must be observed, an increasing number of jurisdictions have taken the step of assigning all quasi-judicial decisions for development regulations to the board of adjustment, with all advisory decisions going to the planning board and all legislative decisions to the governing board. This is not required by law but is a judicious step that should be seriously considered."

RESOLUTION OF PLANNING BOARD RECOMMENDING THAT THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS AMEND THE TEXT OF VARIOUS CHAPTERS OF THE BUNCOMBE COUNTY CODE OF ORDINANCES IN COMPLIANCE WITH SECTION 51.(b) OF NC SESSION LAW 2020-25

WHEREAS, Buncombe County maintains several ordinances concerning numerous development regulations (hereinafter the "Development Regulations"); and

WHEREAS, on April 11, 2019, the North Carolina General Assembly enacted Part II of NC Session Law 2019-111, which was intended to collect and organize existing statutes regarding local planning and development into a single Chapter of the General Statutes and to consolidate the statutes affecting cities and counties; and

WHEREAS, on June 19, 2020, the North Carolina General Assembly enacted NC Session Law 2020-25, which mandated that governments shall amend their development regulations to conform to the provisions of Part II of NC Session Law 2019-111 on or before July 1, 2021; and

WHEREAS, the modifications contained in Exhibit A attached hereto (hereinafter the "Proposed Amendments") are intended to, among other things,[1] amend the County's Development Regulations to conform to the provisions of Part II of NC Session Law 2019-111; and

WHEREAS, pursuant to N.C. Gen. Stat. § 160D-604 and Buncombe County Code of Ordinances Sec. 78-719, the Planning Board is charged with making a recommendation to the Board of Commissioners and commenting on whether the Proposed Amendments are consistent or inconsistent with the Comprehensive Land Use Plan; and

WHEREAS, the Buncombe County Planning Board has reviewed the Proposed Amendments at a properly noticed public hearing that was opened during the March 22, 2021, regular meeting of the Planning Board and, in order to comply with N.C. Gen. Stat. § 166A-19.24(e) by allowing for written comments on the proposed amendments to be submitted 24 hours after the public hearing, continued to the April 5, 2021, regular meeting of the Planning Board; and

WHEREAS, the Buncombe County Zoning Administrator has certified that notices of the meetings of the Buncombe County Planning Board at which the Proposed Amendments were considered were properly mailed to members of the Planning Board at least ten (10) days

---

[1] Other changes included correcting county department identities and responsibilities to align with current County practices and adjusting variance, appeal, and review authority to align with best practices as recommended by the UNC School of Government.

prior to the meeting and that public notice of said meetings were properly published in a newspaper having general circulation in the County as required by law; and

WHEREAS, after reviewing the Proposed Amendments, hearing public comment, consulting with planning staff, and careful review, the Planning Board has determined that:

1. the Proposed Amendments are consistent with the Buncombe County Comprehensive Land Use Plan because said amendments would adjust the County's land use policies to account for changes within the regulatory environment;[2] Clarify existing ambiguities in land use policies and regulations;[3] and Implement new policies that address land use in an integrated and comprehensive manner.[4]

2. the Proposed Amendments are reasonable and in the public interest because said amendments are required by Part II of NC Session Law 2019-111, correct county department identities and responsibilities to align with current County practices, and/or adjust variance, appeal, and review authority to align with best practices as recommended by the UNC School of Government.

NOW THEREFORE, BE IT RESOLVED by the Buncombe County Planning Board as follows:

1. That the recitals above are incorporated herein as if set forth in their entirety.

2. That this Planning Board hereby recommends that the Board of Commissioners amend the various chapters of the Buncombe County Code of Ordinances as indicated in the attached document referenced as Exhibit A.

3. This resolution is approved by a vote of _**5**_ to _**0**_ and shall be effective upon its adoption.

---

[2] Buncombe County Comprehensive Land Use Plan, 2013 Update, Sec.2 at p. 4.

[3] Id.

[4] Id.

This the 19th day of April, 2021.

ATTEST

C. Savannah Gibson

Savannah Gibson, Clerk

PLANNING BOARD FOR THE
COUNTY OF BUNCOMBE

BY Nancy Waldrop

Nancy Waldrop, Acting Chair

APPROVED AS TO FORM:

J. Brandon Freeman

Brandon Freeman, Staff Attorney

Consented to (**YES/NO**):

Planning Board Members:

Nancy Waldrop, Acting Chair - YES
Dusty Pless - ABSENT
David Rittenberg - YES
Cindy Weeks - YES
Thad B. Lewis - ABSENT
Tim Collins - YES
Robert J. Martin - ABSENT
Ken Kahn - YES
Billy Taylor – ABSENT

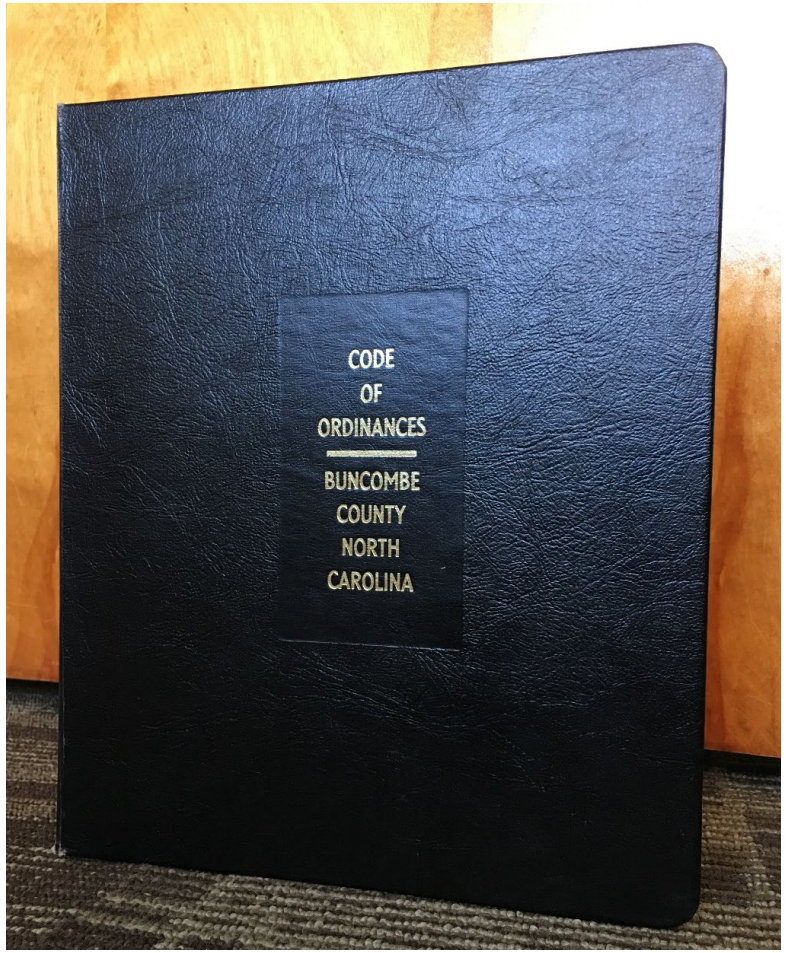
160D – Code of Ordinances Integration

Presented by

Nathan L. Pennington, CFM, Planning Director

Chapters Most Affected

- Chp. 1 General Provisions
- Chp. 10 Buildings and Building Regulations
- Chp. 26 Environment
- Chp. 58 Planning and Development
- Chp. 70 Subdivisions
- Chp. 78 Zoning



What 160D Does and Does Not Do

Does

- Unifies enabling legislation for cities and counties into one chapter.
- Reorganizes development regulation statutes into a more logical, coherent organization.
- Remove archaic and confusing language, makes a number of clarifications (i.e. Conditional Use Permits become Special Use Permits).

Does Not

- The intent was not to make major policy changes
- Shift the scope of authority granted to local governments.

Sample Actions

(3) ~~Conditional~~Special uses. The board of adjustment shall grant in particular cases and subject to appropriate conditions and safeguards, permits for ~~conditional~~special uses as authorized in division 6 of this article set forth as ~~conditional~~special uses under the various use districts. The board of adjustment shall follow the requirements and procedures outlined in division 6 prior to issuance of a ~~conditional use permit~~special use permit.

Special Replaces Conditional

Numerous Statutory Updates

(b) *Procedure for filing appeals.* All statute of limitations and procedures for filing an appeal to the board of adjustment are set forth in G.S. ~~153A-345.1~~160D-406 or as amended.

(c) *Hearings.* All board of adjustment hearings shall be conducted in accordance with G.S. 160D-406~~153A-345.1~~ or as amended.

(a) Board of County Commissioners. – A member of the Buncombe County Board of Commissioners shall not vote on any legislative decision where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(b) Appointed Boards. – Members of appointed boards shall not vote on any advisory or legislative decision where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(c) Administrative Staff. – No staff member shall make a final decision on an administrative decision if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest, the decision shall be assigned to the supervisor of the staff person. No staff member shall be financially interested or employed by a business that is financially interested in an undertaking subject to regulation under this Code of Ordinances, unless the staff member is the owner property involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(d) Quasi-Judicial Decisions. – A member of any board exercising quasi-judicial functions pursuant to this Code of ordinance 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 violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

Significant Addition of Ethics Standards in Chp. 1/160D

Additional Text Amendment Items

- ✓ Transfer duties for variance review and administrative appeals and any other quasi-judicial functions to the Board of Adjustment – legislative/quasi-judicial separation.

- ✓ Clean up references to departments that do not currently function in ordinance administration capacities (i.e. Multiple General Services references should be Permits and Inspections and Planning).

- ✓ Correct references to administration of junk vehicles 26-278 and coordination of receptacle placement in manufactured home parks 46-66.

Action By the Planning Board

- Reviewed on March 22nd, and voted to forward a recommendation to the BOC to approve the changes on April 5, 2021

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/04/2021

Public Hearings

Department: Planning and Development **Presenter(s):** Nathan L. Pennington, CFM, Planning Director

Contact(s): Nathan L. Pennington, CFM

Subject: ZPH2021-00011 Brown Map Amendment (Rezoning Request)

Brief Summary: Applicant requests rezoning of one (1) parcel of land totaling approximately 4.59 acres, from R-1 to R-LD.

A detailed report of the request is included in the attached staff analysis.

Recommended Motion & Requested Action: Planning Department Staff recommends the Board of Commissioners APPROVE the rezoning request.

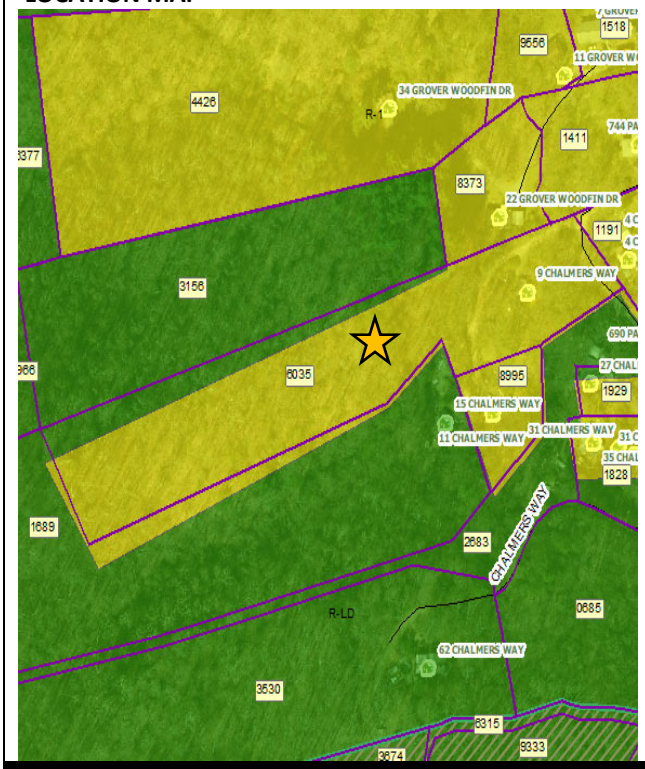
The Buncombe County Planning Board considered the proposed rezoning on April 5, 2021 and April 19, 2021 and unanimously recommended APPROVAL as presented.

County Manager's Comments and Recommendation: See staff recommendation in staff analysis.

BUNCOMBE COUNTY
PLANNING & DEVELOPMENT
(828) 250-4830 - PlanningInfo@BuncombeCounty.org
www.buncombecounty.org/planning

ZONING MAP AMENDMENT
STAFF ANALYSIS
Legislative Hearing

LOCATION MAP



CASE NUMBER: ZPH2021-00011

A. PROPERTY INFORMATION

PIN(s): 9688.66.6035
Addresses: 9 Chalmers Way
Owner(s): Gregory Brown

B. REZONING REQUEST

Applicant / Agent: Angela Kent
Existing Zoning: R-1 (Residential District)
Proposed Zoning: RL-D (Low-Density Residential)
Total Parcels & Acreage: One (1), +/- 4.59 acres

C. PUBLIC NOTICE

Planning Board Notice in AVL Citizen Times legal ad: 3/24/2021
Planning Board Notice mailed to owners within 1,000 ft: 3/24/2021
Planning Board Physical posting: 3/24/2021
Planning Board Notice on BC Website: 3/24/2021
Planning Board Hearing # 1: 4/05/2021
Planning Board Hearing # 2: 4/19/2021
BOC Notice in AVL Citizen Times legal ad: 4/21 and 4/28/2021
BOC Notice mailed to owners within 1,000 ft: 4/21/2021
BOC Physical posting: 4/21/2021
BOC Notice on BC Website: 4/21/2021
BOC Hearing: 5/04/2021

D. SUMMARY OF REQUEST

Angela Kent, on behalf of Gregory Brown has requested to rezone one (1) parcel of land from R-1 to R-LD.

E. RECOMMENDATION

APPROVAL (see Section J, below)

F. COMPARISON OF ZONING ORDINANCE DISTRICT STATEMENT OF INTENT

EXISTING ZONING DISTRICT(S):

Residential District (R-1)

The R-1 Residential *District* is primarily intended to provide locations for single-family and two-family residential development and supporting recreational, community service, and educational uses in areas where public water and sewer services are available or will likely be provided in the future. This *district* is further intended to protect existing subdivisions from encroachment *of* incompatible land uses, and this *district* does not allow manufactured home parks.

PROPOSED ZONING DISTRICT:

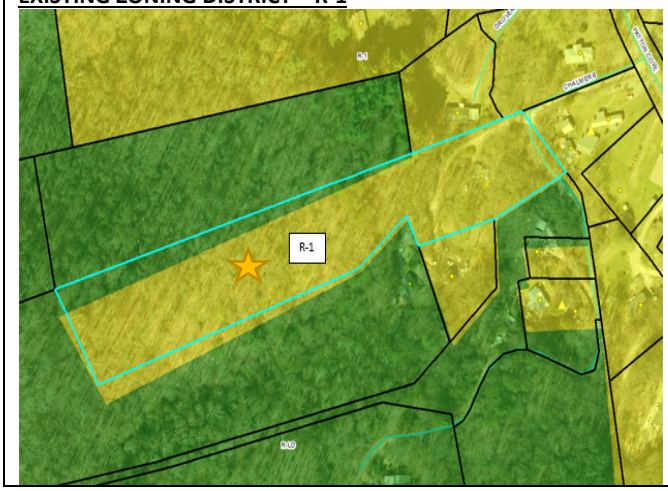
Low-Density Residential District (R-LD)

The R-LD Low-Density Residential *District* is primarily intended to provide locations for low-density residential and related-type development in areas where topographic or other constraints preclude intense urban development. These areas are not likely to have public water and sewer services available, and the minimum required lot area will be one acre unless additional land area is required for adequate sewage disposal. These are environmentally sensitive areas that are characterized by one or more *of* the following conditions: Steep slopes, fragile soils, or flooding.

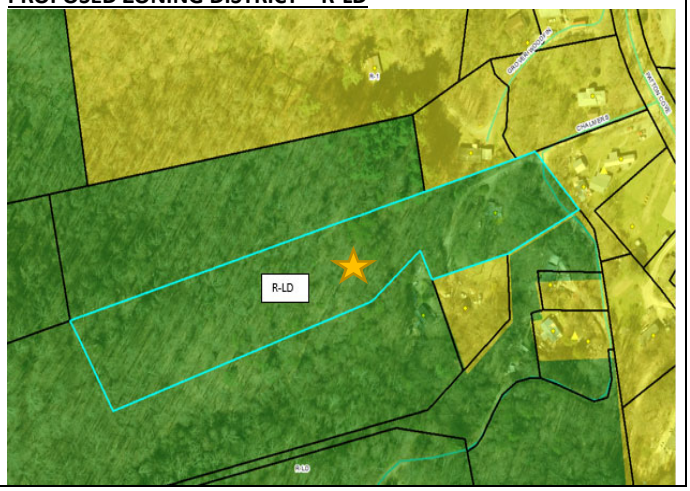
G. SPOT ZONING ANALYSIS

This map amendment application requests that one (1) parcel of approximately 4.59 acres be rezoned from R-1 to R-LD. Staff has no concern as it relates to the potential for a spot zoning challenge due to adjacency of other parcels zoned R-LD. Given the size and topography of the existing parcel, the requested zoning district is more compatible given the attributes of the surrounding neighborhood.

EXISTING ZONING DISTRICT – R-1



PROPOSED ZONING DISTRICT – R-LD



(The remainder of this page intentionally left blank)

H. COMPREHENSIVE LAND USE PLAN CONSISTENCY *(See Figure 20 on page 4)*

1. LAND USE PLAN RECOMMENDATIONS: The following is an analysis of the rezoning proposal in context of Figure 20. *Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013*:

BUNCOMBE COUNTY COMPREHENSIVE LAND USE PLAN 2013 — SECTION 6: ISSUES AND RECOMMENDATIONS

— Not Required Suggested ★ Highly Suggested	Reasonable proximity to major transportation corridors	Reasonable proximity to infrastructure (combined water/ sewer service area)	Outside of steep slope areas (25% +)	Outside of high elevations (2500' +)	Outside of moderate and high slope stability hazards	Outside of flood hazard areas	Separation from low-density residential uses
RESIDENTIAL							
Low-Density Residential	—	—	—	—	—	★	N/A
Single-Family/Duplex	👍	👍	👍	👍	★	★	N/A
Multi-Family	★	★	👍	👍	★	★	👍
PLANNED COMMUNITY OR DEVELOPMENT							
Mixed Use Development	★	★	★	★	★	👍	👍
Infill/ Higher Density	👍	★	★	★	★	★	—
Large Lot/Lower Density	👍	👍	👍	👍	★	★	N/A
Commercial/Industrial	★	★	★	★	★	★	★
RECREATIONAL							
Resort	👍	👍	👍	👍	👍	★	—
Conference Centers	👍	👍	👍	👍	👍	★	—
Outdoor Recreation	—	—	—	—	—	👍	★
OTHER							
Institutional	★	★	★	★	★	👍	👍
Public Service	★	★	★	★	★	👍	👍
COMMERCIAL							
Neighborhood-Scale Commercial	👍	👍	★	★	★	👍	👍
Moderate Commercial	★	★	★	★	★	👍	★
Intense Commercial	★	★	★	★	★	👍	★
INDUSTRIAL							
Manufacturing	★	★	★	★	★	👍	👍
Mining/Extracting/Refining	★	★	★	★	★	👍	★
Other Intense Uses	👍	👍	★	★	★	👍	★

Figure 20. Appropriate Development Types 55

- **Further alignment with the Comprehensive Plan related to the need to accommodate HUD labeled manufacture homes is discussed on page 67 of the plan. Expanding existing land use policies and regulations to adjust for changes in land use patterns and demands is another important objective which is discussed at length throughout the plan.**
- **Under the foundational focus area of Equity in the Buncombe County Strategic Plan 2020-2025, the goal of ensuring that policies and practices to eliminate barriers to allow for equitable opportunity is discussed on page 31 of the plan.**

Resources:
https://www.buncombecounty.org/common/planning/land-use-plan-update-2013.pdf

https://www.buncombecounty.org/governing/commissioners/strategic-plan.aspx

2. CONSISTENT: The change is consistent with the following recommendations of the Comprehensive Land Use Plan 2013 Update as outlined below:	"Reasonable proximity to major transportation corridors" [highly suggested] – **The subject property is located near Patton Cove Road (an NCDOT maintained road) in close proximity to I-40. This is not required to be evaluated due to the fact that the application is a down zoning request.** "Reasonable proximity to infrastructure (combined water / sewer service area)" [highly suggested] – **Due to the low density residential nature of the request, this is not required to be evaluated. However, an existing (now demolished) manufactured home was previously served by well and septic systems. New construction will be similarly served.**

	"Outside of steep slope areas (25%+)" [highly suggested] **Not required to be evaluated – future development is proposed to take place on the same footprint as the demolished structure.** "Outside of high elevations (2500'+)" [highly suggested] **See above.** "Outside of moderate and high slope stability hazards" [highly suggested] **See above.** "Outside of flood hazard areas" [suggested] **In compliance.** "Separation from low-density residential uses" [suggested] **Not applicable.**
3. INCONSISTENT: The change is inconsistent with the following recommendations of the Comprehensive Land Use Plan 2013 Update as outlined below:	None noted.

(The remainder of this page intentionally left blank)

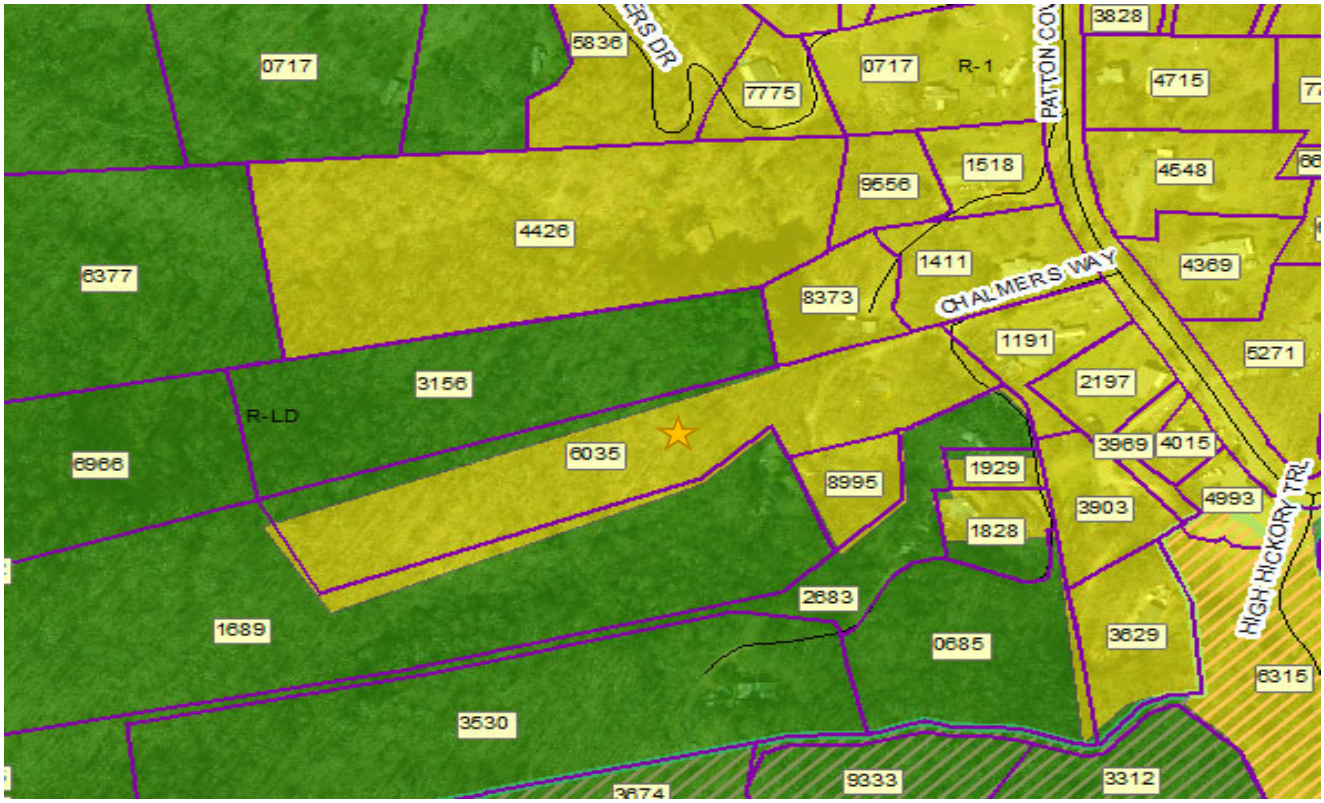
I. NEIGHBORHOOD CONSISTENCY

1. CURRENT DEVELOPMENT TYPES:

The subject property consists of one (1) individual parcel (aproximately 4.59 acres) currently zoned R-1.

The subject parcel is located in a cove with a surrounding development pattern of manufactured homes and low-density single-family homes largely clustered along the Patton Cove Road corridor. The surrounding topography rises steeply on each side of the road corridor.

Surrounding Land Uses and Zoning



2. ALLOWED DEVELOPMENT TYPES AFTER CHANGE:

The proposed rezoning is a down zoning request and is typically more restrictive than the current R-1 zoning district. While specific development plans cannot be evaluated as part of a standard rezoning request, the owner has stated that they would like to place a manufactured home in the same footprint where the former manufactured home was demolished.

3. ALLOWABLE DENSITY / DIMENSIONAL STANDARDS AFTER CHANGE:

	Existing District:	Existing/Proposed District:
	R-1 Residential	R-LD Residential
Minimum Lot Size	30,000 SF (No Public Water and Sewer)	43,560 SF
Max dwelling units per acre	10 (no more than 2 per lot)	2 (no more than 2 per lot)
Setbacks (Front/Side/Rear)	20/10/20 (Septic)	20/10/20 (Septic or Sewer)
Max height	35 feet	35 feet

4. PREVIOUS ZONING ACTIONS/INFRASTRUCTURE/FUTURE LAND USE:

Site History – A single-section manufactured home was previoulsy demolished onsite. The remainder of the site is wooded and contains steep slope.

Access – Access to the site is provided via Chalmers Way – a private shared driveway from the public way (Patton Cove Road).

Utilities – As discussed above in the comprehensive plan consistency section, the property will be served by a private well and septic systems.

Future Development – As discussed above, development potential is limited as this is a down zoning request.

J. STAFF RECOMMENDATION COMMENTS:

Staff recommends **approval** of the rezoning request as submitted.

K. PLANNING BOARD RECOMMENDATION

1. BOARD BASIS FOR DECISION MAKING

The Board must determine if there is a reasonable basis for the requested change in light of its effect on all involved including the following considerations:

- The requested change does not directly or indirectly result in the creation of spot zoning
- Size of the tract in question
- Compatibility of the change with existing Comprehensive Land Use Plan
- Benefits and detriments resulting from the change for the owner of the newly zoned property, their neighbors, and the surrounding community
- Relationship between the uses envisioned under the new zoning and the uses currently present in adjacent tracts

References: Good Neighbors of South Davidson v. Town of Denton, 355 N.C. 254, 559 S.E.2d 768 (2002)
Chrismon v. Guilford County, 322 N.C. 611, 370 S.E.2d 579 (1988)

1. BOARD OPTIONS

The following options are available to the Board:

a. Recommend approval of the proposed rezoning, as presented.
b. Recommend denial of the proposed rezoning, as presented.

2. ATTACHMENTS

- Application
- Maps
- Power Point Presentation

BUNCOMBE COUNTY
NORTH CAROLINA
PLANNING & DEVELOPMENT
(828) 250-4830 - PlanningInfo@BuncombeCounty.org
www.buncombecounty.org/planning

Application for a Zoning MAP AMENDMENT *(Rezoning)*

PLEASE NOTE:
A PRE-SUBMITTAL CONFERENCE WITH THE ZONING ADMINISTRATOR IS REQUIRED PRIOR TO SUBMITTING THIS APPLICATION FOR A CONDITIONAL USE PERMIT

Please complete all sections of the application.

A. Property Information

Application is hereby made to the Board of Commissioners of Buncombe County to amend the Official Zoning Map of Buncombe County as pertains to the following properties:

PIN(s): 968866603500000

Address(es): 9 CHALMERS WAY SWANNANOA NC

Acreage: 4.59

B. Zoning Classification

Current zoning district(s): R1 Requested zoning district(s)*: R-LD

**If only a portion of the property is requested to be rezoned, or a rezoning to include more than one zoning district is proposed, please enclose a map indicating the area(s) of the property to be considered for rezoning.*

C. Applicant Contact Information	Property Owner Contact Information (*If different*)
Company/Corporate Name (*if applicable*)	
ANGELA KENT **Applicant's Name**	GREGORY BROWN **Owner's Name**
44 CAME SHARPE RD **Mailing Address**	14 MONK CT **Mailing Address**
LEICESTER NC 28748 **City, State, and Zip Code**	SWANNANOA NC 28778 **City, State, and Zip Code**
(828) 450-3609 **Telephone**	(828) 776-4861 **Telephone**
WNCPALD@GMAIL.COM **Email**	**Email**

OFFICE USE ONLY:

Case Number: ZPH2021-00011 - BROWN REZONING **Date Received: 3/2/2021**

Scheduled Planning Board Hearing Date: : 4/5/2021

D. MAP AMENDMENT CONSISTENCY & APPROPRIATENESS

Please answer the following questions (if necessary attach a separate sheet of paper):

1. Describe how the size of the tract proposed for rezoning in reference to surrounding properties makes it suitable for the proposed zoning classification:

Adjacent properties zoned R-LD are comparable in size, elevation, and terrain.

2. Describe how the proposed rezoning is consistent with Buncombe County's Comprehensive Land Use Plan *(The plan is available on the Planning Department website.)* Please reference recommendations outlined on page 5 of the Land Use Plan when answering this question:

The Comprehensive land use plan priorities that are relevant to this property are 1) re-evaluating zoning that effectively excludes affordable housing 2) emphasize energy efficient designs 3) encourage, plan for and promote the construction of affordable housing 4) protect steep slope areas from over development 5) promote healthy/safe homes.

3. Describe how the proposed rezoning would be reasonable and in the public interest, with specific attention to the zoning and existing land uses of surrounding properties, and the potential effects of the proposed rezoning on property owners, adjacent neighbors, and the surrounding community.

Rezoning this parcel will allow the property owner to build an affordable, safe, energy efficient home that will have the quality and aesthetics equal to or much higher than the surrounding homes on adjacent parcels of land. This home will be replacing an old hud home that was infested with mold, had additions that were built using very sub-par building standards and sided with asbestos siding. The new home will be a huge improvement to this neighborhood, which consists mostly of single and double section manufactured homes, and very very old homes that have not been maintained. Rezoning this property will protect the steep slope region of this property. The landowner is trying to place the home at the very lowest elevation on the property, and avoid disturbing the higher steep slope areas of this parcel. The single section hud home is the only sized affordable home that will fit on the lowest portion of this parcel. This neighborhood is very secluded and this parcel is not visible from the road, so there will be no impact on the surrounding community. The adjacent parcels are all mostly zoned R-LD, so zoning this parcel the same will have no impact on the surrounding properties.

4. Is/are the applicant(s) listed below the owner(s) of the property? ☐**Yes** ☑**No**

If the applicant(s) listed herein are not the owner(s) as listed within the Buncombe County Tax Records, North Carolina General Statutes require the applicant to certify that the owner(s) received notice for each public hearing. An owner's affidavit must be submitted with this application, and certification of notice must be provided by the applicant once notice has been made for each public hearing 5 days prior to the hearing date; sample documents for both items can be obtained from the Planning Department.

E. CERTIFICATION

- I hereby certify that I am the owner, authorized agent of the owner, or have provided legal notification to the owner, and the above information is correct to the best of my knowledge and hereby make application for a Zoning Map Amendment. Any information given that is incorrect will cause this application to become null and void.
- I acknowledge that withdrawal of this application after notice has been made will result in forfeiture of any application fees associated with said application.

Angela Kent	Gregory Brown
Signature of Applicant	**Signature of Owner**
Signature of Applicant	**Signature of Owner**
Signature of Applicant	**Signature of Owner**
Signature of Applicant	**Signature of Owner**
Signature of Applicant	**Signature of Owner**
Signature of Applicant	**Signature of Owner**

From: Savannah Gibson
To: Shannon T. Capezzali
Cc: Joshua Freeman
Subject: FW: Rezoning application
Date: Thursday, March 4, 2021 3:37:28 PM
Attachments: amend-bunc-zoning-ord-maps-application.pdf
image001.png

Good afternoon Angela,

I have forwarded this onto to Shannon and Josh for processing and also so that they can set up a pre-application meeting with you.

Best,

Savannah Gibson
She/Her
Planner II
Planning and Development
(828) 250-4828
46 Valley Street, Asheville, NC 28801
Respect. Integrity. Collaboration. Honesty. Equity.
Facebook • Twitter • Instagram • YouTube • Linkedin

From: ANGELA <wncpald@gmail.com>
Sent: Wednesday, March 3, 2021 9:42 PM
To: Savannah Gibson <Savannah.Gibson@buncombecounty.org>
Subject: Rezoning application

Please let me know if you need any further information.
Thank you,
Angela

PLANNING BOARD'S WRITTEN RECOMMENDATION TO THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS TO APPROVE APPLICATION ZPH2021-00011 REQUESTING AN AMENDMENT TO THE OFFICIAL ZONING MAP

WHEREAS, the Zoning Administrator for Buncombe County has received an application (ZPH2021-00011 BROWN MAP AMENDMENT) requesting an amendment to The Official Zoning Map of Buncombe County on the parcel(s) depicted in the map attached hereto as "Exhibit A" and identified as follows:

PIN(s): 9688.66.6035
Addresses: 9 Chalmers Way
Owner(s): Gregory Brown

WHEREAS, the applicant is requesting that the zoning designation for the subject properties be changed from the R-1 Residential District to the R-LD Residential District; and

WHEREAS, the Zoning Administrator certified that notices of the meeting of the Buncombe County Planning Board at which this application was considered have been properly mailed to members of the Planning board, the applicant(s), owner(s), and all adjoining property owners at least ten (10) days prior to the meeting; public notice of the meeting has been properly published in a newspaper having general circulation in the County; and notices of the public hearing concerning this zoning map amendment have been prominently posted as required; and

WHEREAS, in accordance with North Carolina General Statutes and with the provisions set forth in Division 8 of Chapter 78, Article VI of the Buncombe County Code of Ordinances, the Planning Board duly advertised and held a public hearing to consider the proposed amendment; and

WHEREAS, pursuant to Buncombe County Code of Ordinances Sec. 78-717, the Planning Board has advised and commented on "whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable" and has provided "a written recommendation to the board of county commissioners" concerning the same (said written recommendation is attached hereto as "Exhibit B"); and

WHEREAS, pursuant to N.C. Gen. Stat. § 153A-344(a) the Planning Board "shall make a written recommendation regarding adoption of the ordinance to the board of commissioners." and

WHEREAS, the Planning Board recommends that the Buncombe County Board of Commissioners approve the proposed map amendment by a vote of 8 to 0.

NOW, THEREFORE, THE BUNCOMBE COUNTY PLANNING BOARD HEREBY RECOMMENDS AS FOLLOWS:

1. The Planning Board recommends that the Buncombe County Board of Commissioners approve the proposed Zoning Map amendment as presented in Exhibit A.

Read, approved and adopted this the 19th day of April, 2021.

ATTEST

C. Savannah Gibson

Savannah Gibson, Clerk

APPROVED AS TO FORM

County Attorney

PLANNING BOARD FOR THE
COUNTY OF BUNCOMBE

BY Nancy Waldrop

Nancy Waldrop, Acting Chair

Consented to (**YES/NO**):

Planning Board Members:

Nancy Waldrop, Acting Chair- YES
Robert Martin- YES
Cindy Weeks- YES
Dusty Pless- ABSENT
David Rittenberg- YES
Tim Collins- YES
Thad Lewis- YES
Billy Taylor – YES
Ken Kahn- YES

Exhibit A

OFFICIAL ZONING MAP
-EXCERPT-
PROPOSED AMENDMENT

PIN(s): 9688.66.6035
Addresses: 9 Chalmers Way
Owner(s): Gregory Brown

PROPOSED ZONING DISTRICT – R-LD

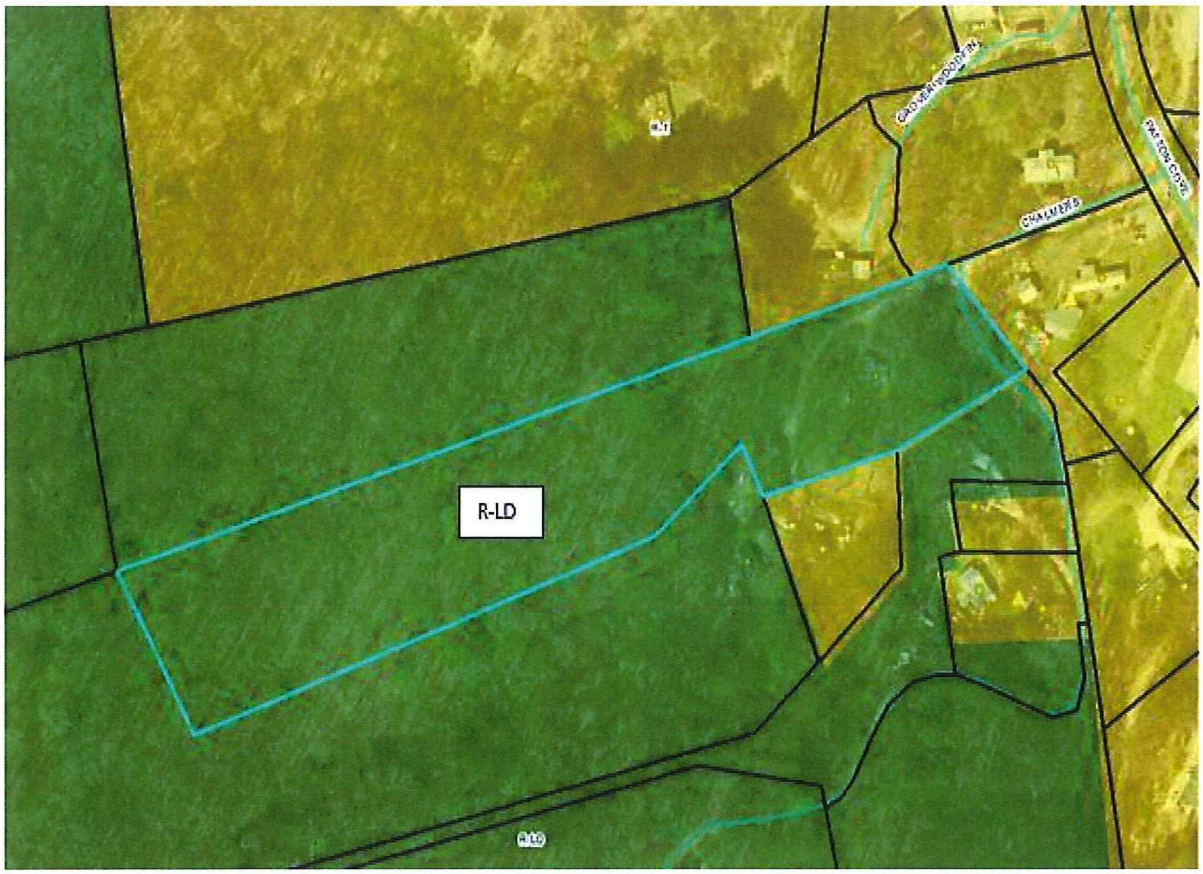


Exhibit B

PLAN CONSISTENCY STATEMENT

ZONING MAP AMENDMENT
CONSISTENT WITH PLAN

Pursuant to N.C. Gen. Stat. §153A-340(b)(1) the Buncombe County Planning Board hereby approves and adopts the following Plan Consistency Statement for the rezoning of tax lot PIN(s) **9688.66.6035** and **9 Chalmers Way** from the R-1 Residential District to the R-LD Residential District. The Board finds the following:

1. The subject property and proposed rezoning is:
   A. Within "[reasonable] proximity to major transportation corridors – N/A*."
   B. Within "[reasonable] proximity to infrastructure (combined water / sewer service area) – N/A*."
   C. "Outside of steep slope areas (25%+) – N/A*."
   D. "Outside of high elevations (2500'+) – N/A*."
   E. "Outside of moderate and high slope stability hazards – N/A*."
   F. "Outside of flood hazard areas."
   G. "Separated from low-density residential uses – N/A*."

2. The proposed map amendment would not be detrimental to the owners, adjacent neighbors, and surrounding community as it **does** meet a number of goals as identified in the Buncombe County Comprehensive Land Use Plan Update.

***Not required to be evaluated – this is an owner initiated down zoning request**

Therefore, the requested zoning would be **reasonable and in the public interest**.

PIN(s): **9688.66.6035**
Addresses: **9 Chalmers Way**
Owner(s): **Gregory Brown**

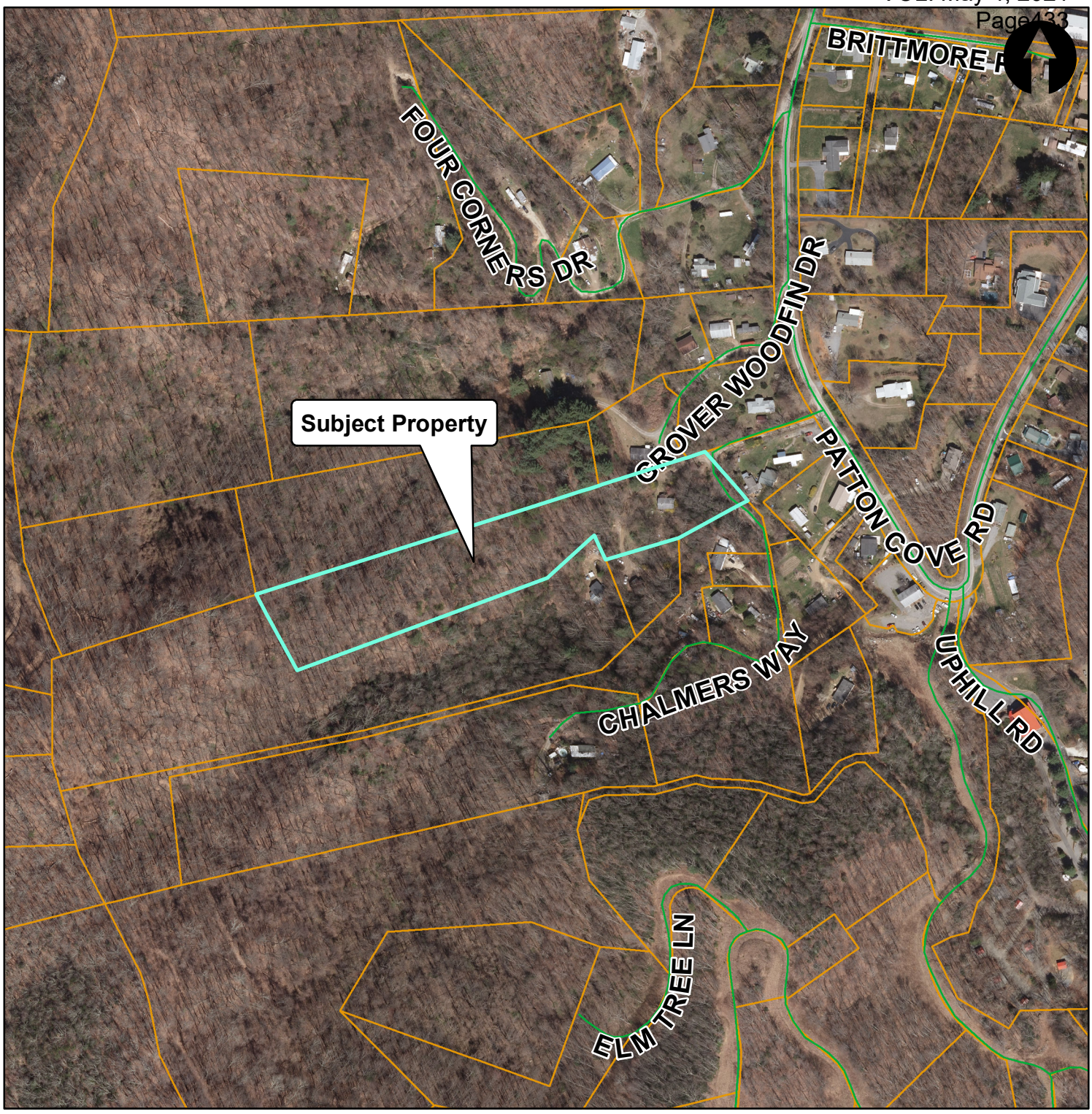
Approved and adopted this the 19th day of April, 2021.

ATTEST

C. Savannah Gibson
Savannah Gibson, Clerk

PLANNING BOARD FOR THE
COUNTY OF BUNCOMBE

BY Nancy Waldrop
Nancy Waldrop, Acting Chair



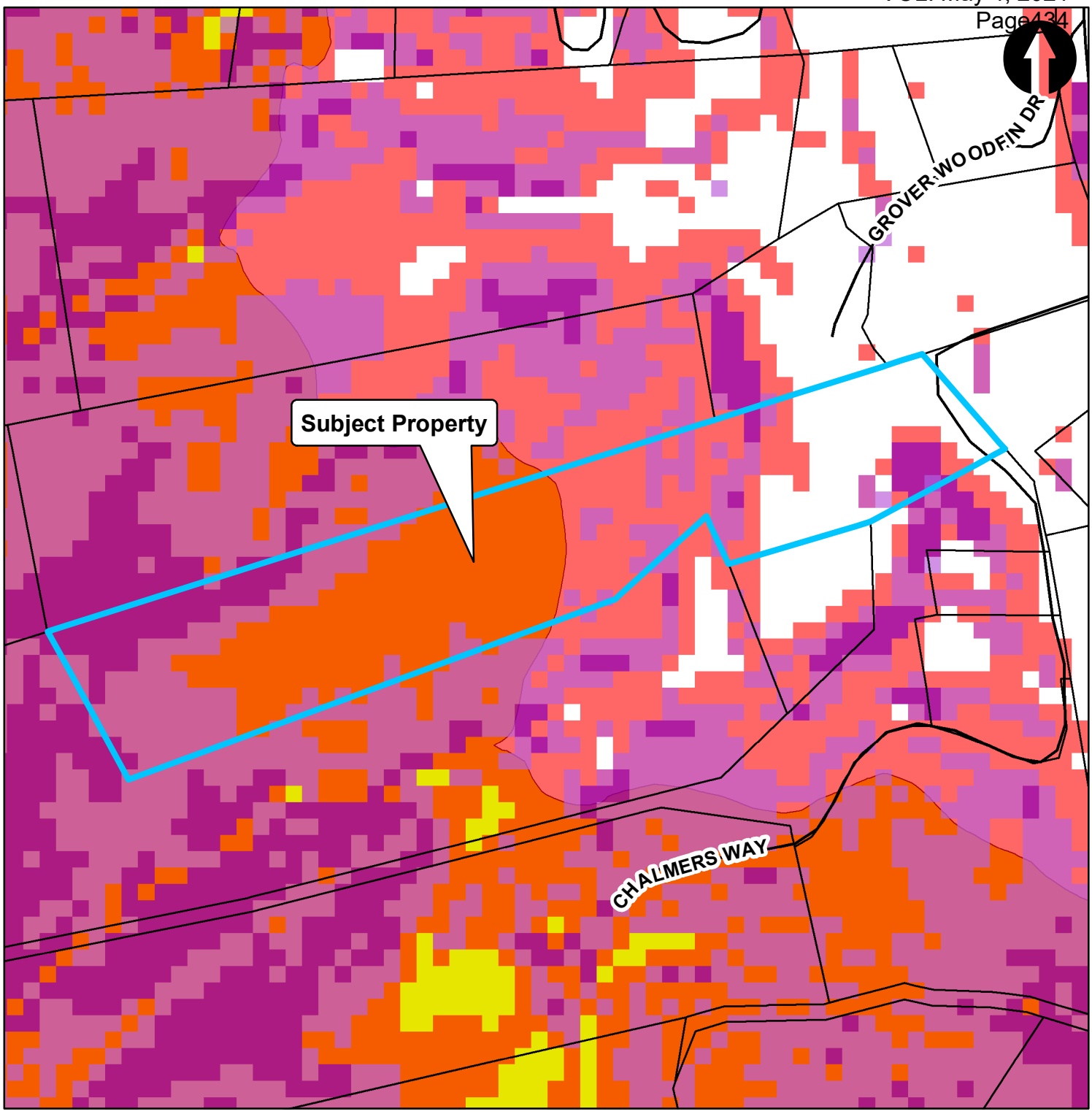
Miles
0 0.05 0.1 0.2

Roads
Property Boundaries

ZPH2021-00011
Brown
Map Amendment/Rezoning

Aerial Map

Created By: Buncombe Co. Planning
Date: 3/19/2021



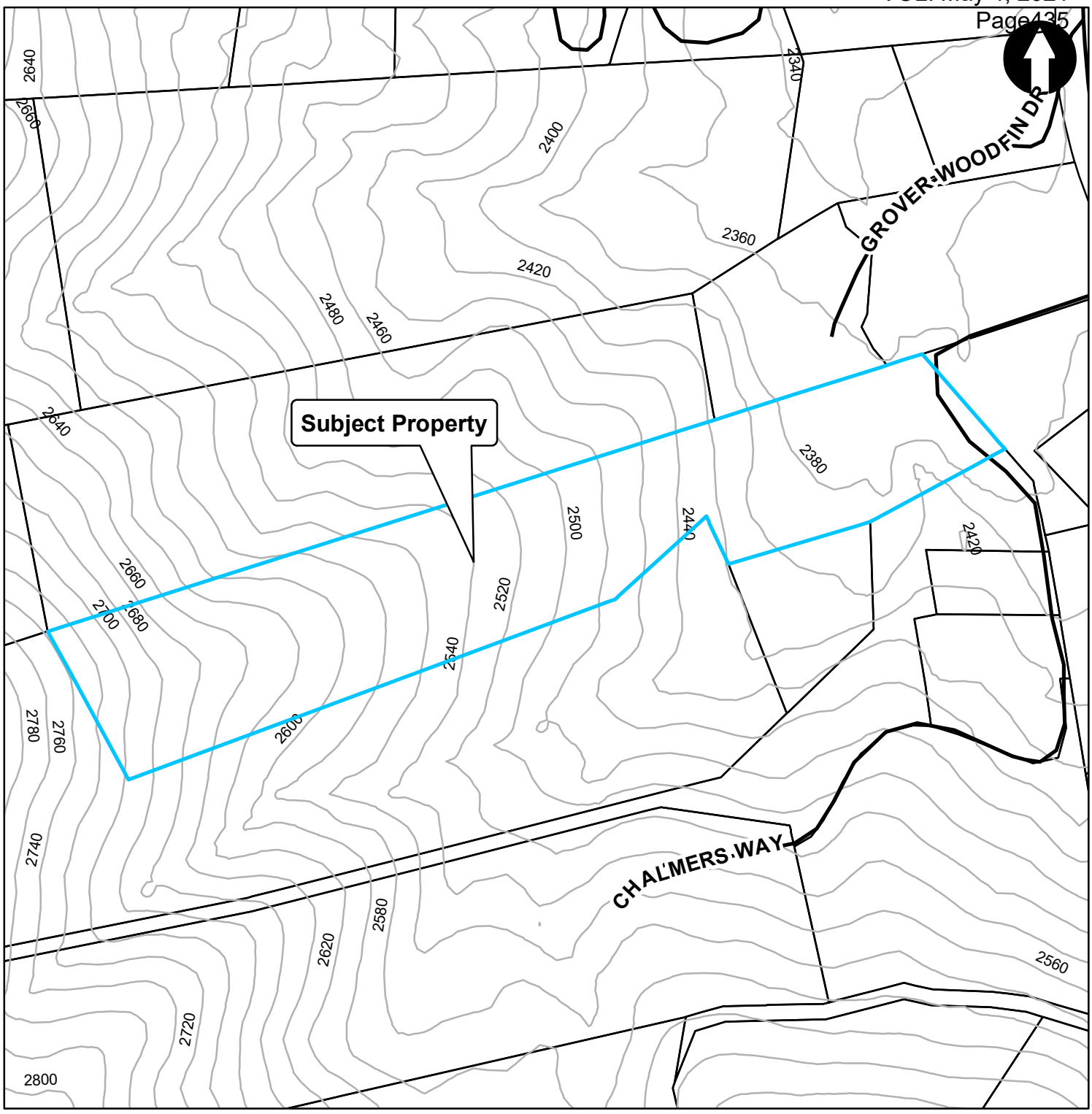
Miles
0 0.025 0.05 0.1

ZPH2021-00011
Brown
Map Amendment/Rezoning

Land Use Map

Created By: Buncombe Co. Planning
Date: 3/19/2021

- High Hazard
- Moderate Hazard
- Low Hazard
- 0 - 25 % Slope
- Greater than 25% Slope
- Greater than 2500'
- Proximity to Public Utilities
- Transportation Corridors



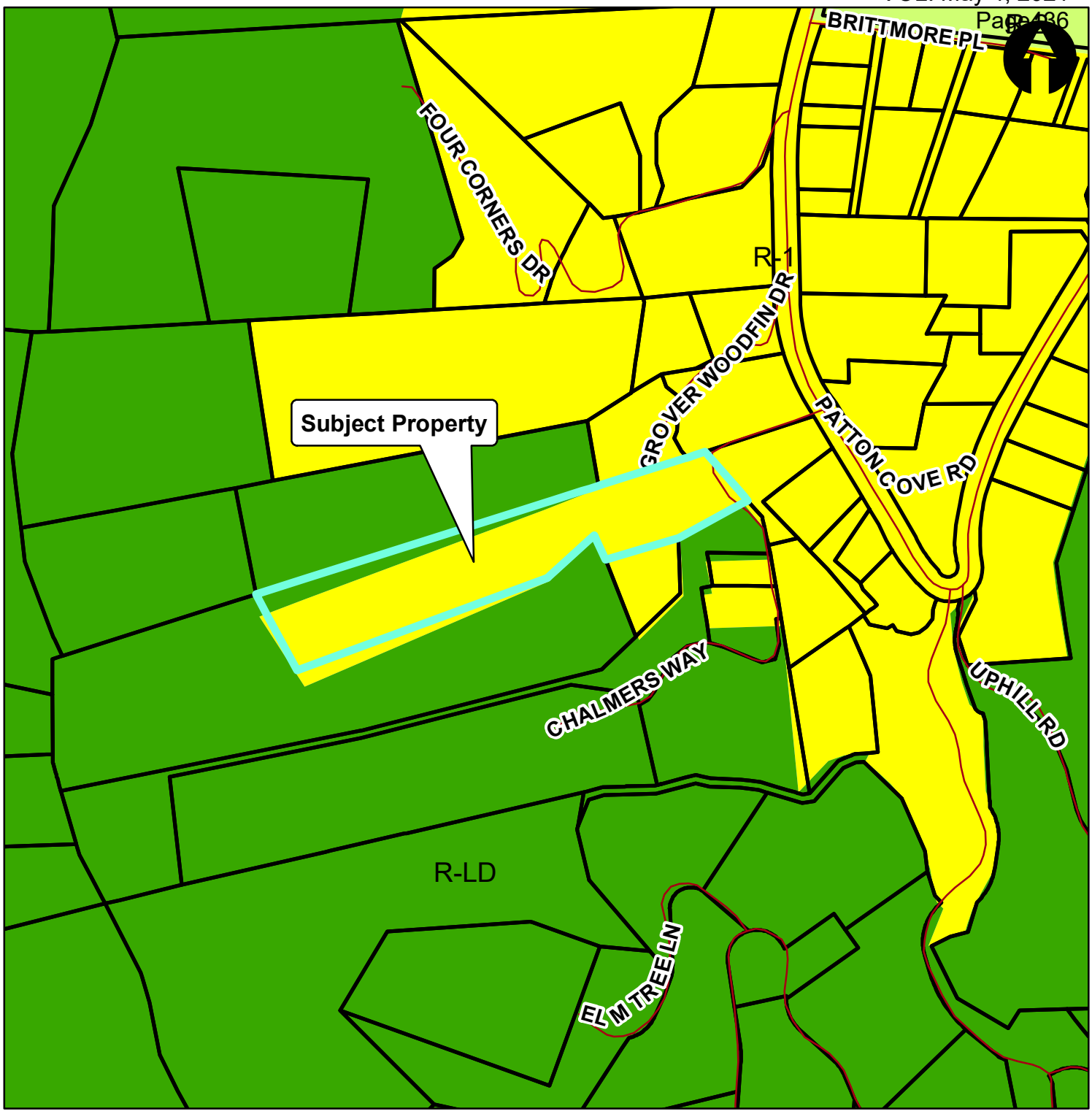
0 0.025 0.05 0.1 Miles

Roads
20 Foot Contours
Property Boundaries

ZPH2021-00011
Brown
Map Amendment/Rezoning

Topo Map

Created By: Buncombe Co. Planning
Date: 3/19/2021



0 0.05 0.1 0.2 Miles

ZPH2021-00011
Brown
Map Amendment/Rezoning

Zoning Map

AI EMP R-1
BDM NS R-2
CR OU R-3
CS PS R-LD

Created By: Buncombe Co. Planning
Date: 3/19/2021

ORDINANCE NO. 21-05-07

ORDINANCE AMENDING THE OFFICIAL ZONING MAP OF BUNCOMBE COUNTY, CHAPTER 78, ARTICLE VI OF THE BUNCOMBE COUNTY CODE OF ORDINANCES, THE ZONING ORDINANCE OF BUNCOMBE COUNTY
ZPH2021-00011

WHEREAS, pursuant to N.C. Gen. Stat. §153A-340, the County may adopt a zoning ordinance to regulate development within its territorial jurisdiction;

WHEREAS, on December 1, 2009, the Buncombe County Commissioners enacted Buncombe County Ordinance No. 09-12-01 which established a comprehensive zoning plan for the properties located in Buncombe County outside of the boundaries of incorporated municipalities and their zoning jurisdictions;

WHEREAS, pursuant to N.C. Gen. Stat. §153A-323, the County may amend its zoning ordinance after giving proper public notice and holding a public hearing;

WHEREAS, the Planning Board has received an application for an amendment to the Official Zoning Map of Buncombe County, North Carolina ("Official Zoning Map") to rezone the below listed parcels, and shown herein as Exhibit A:

Case:	ZPH2021-00011
PIN(s):	9688.66.6035
Addresses:	9 Chalmers Way
Owner(s):	Gregory Brown
Applicant(s):	Angela Kent

WHEREAS, the applicant is requesting that the zoning designation for the subject property be changed from the R-1 Residential District to R-LD Residential District as shown and depicted in Exhibit A, which is attached hereto and incorporated herein by reference; and,

WHEREAS, in accordance with the procedures set forth in the Buncombe County Zoning Ordinance, the Planning Board met to consider the proposed amendment on April 19, 2021, at which meeting a motion to **approve** the proposed map amendment passed by a vote of **6 to 0**; and,

WHEREAS, this Board has reviewed these written recommendations of the Buncombe County Planning Board; and

WHEREAS, in accordance with North Carolina General Statutes and with the provisions set forth in Division 8 of Chapter 78, Article VI of the Buncombe County Code of

Ordinances, the Board of Commissioners duly advertised and held a public hearing to consider the proposed amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE BUNCOMBE COUNTY BOARD OF COMMISSIONERS THAT:

Section 1. This Board has considered whether this proposed amendment is consistent with the Buncombe County Land Use Plan and the associated Land Use Constraint Maps contained within the Buncombe County Comprehensive Land Use Plan 2013 Update, and hereby finds the following:

1.1 Said zoning change is **consistent** with Figure 20. Appropriate Development Types, of the Buncombe County Comprehensive Land Use Plan and Updates because the proposed rezoning is:

1.1.1 Within "[reasonable] proximity to major transportation corridors – N/A*."

1.1.2 Within "[reasonable] proximity to infrastructure (combined water / sewer service area) – N/A*."

1.1.3 "Outside of steep slope areas (25%+) – N/A*."

1.1.4 "Outside of high elevations (2500'+) – N/A*."

1.1.5 "Outside of moderate and high slope stability hazards – N/A*."

1.1.6 "Outside of flood hazard areas."

1.1.7 "[Separated] from low-density residential uses – N/A*."

***Not required to be evaluated – this is an owner initiated down zoning request**

1.2 The proposed map amendment would **not be detrimental** to the owners, adjacent neighbors, and surrounding community as it **does** meet a number of goals as identified in the Buncombe County Comprehensive Land Use Plan Update.

1.3 Therefore, the requested zoning would be **reasonable** and **in the public interest**.

Section 2. This Board does hereby **approve** the request to rezone PIN(s) 9688.66.6035, 9 Chalmers Way, Buncombe County, NC from R-1 Residential District to R-LD

Residential District, as shown and depicted in Exhibit A, which is attached hereto and incorporated herein by reference;

Section 3. If any section, subsection, clause or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance;

Section 4. All ordinances and clauses of ordinances in conflict herewith be and are hereby repealed to the extent of such conflict; and

Section 5. This ordinance is effective upon adoption.

Read, approved and adopted this the 4th day of May, 2021.

ATTEST

Lamar Joyner, Clerk

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE

BY _____
Brownie Newman, Chairman

APPROVED AS TO FORM

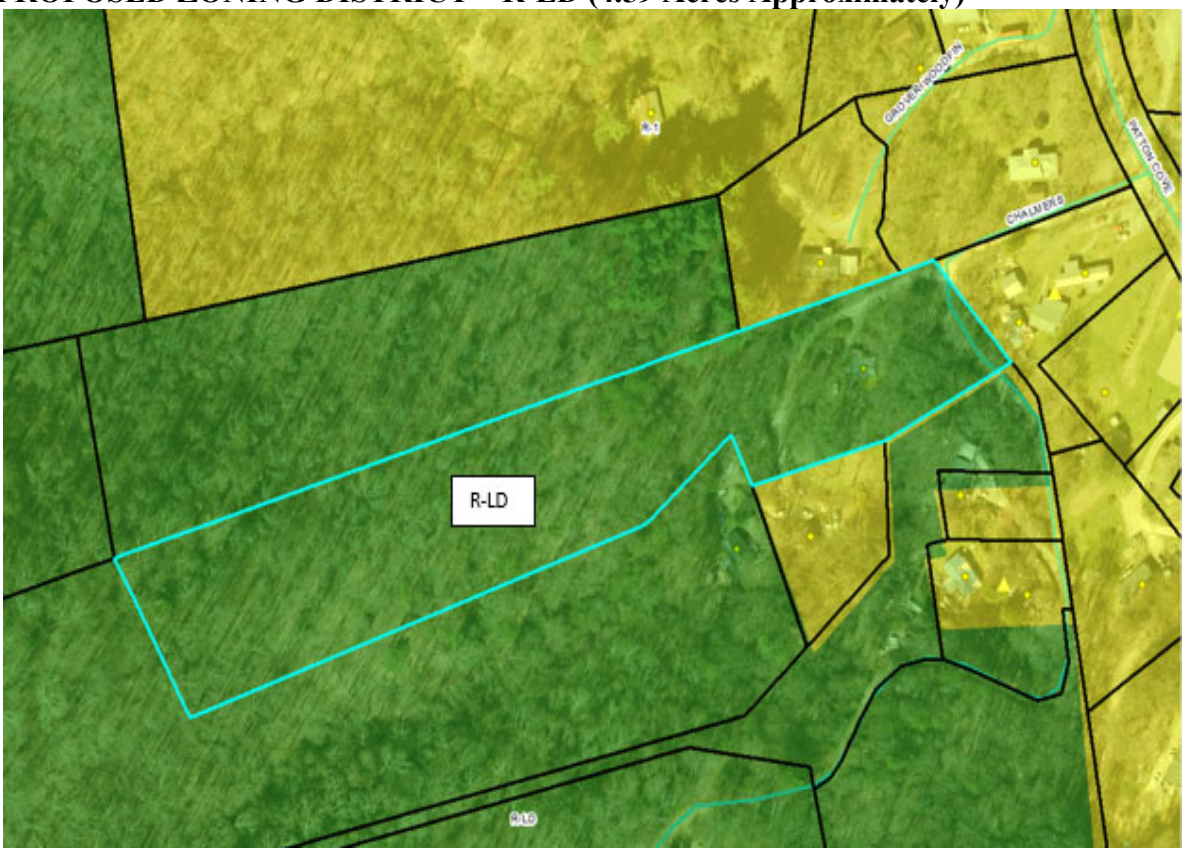
_____
County Attorney

Exhibit A

OFFICIAL ZONING MAP
-EXCERPT-
PROPOSED AMENDMENT

Case#: **ZPH2021-00011**
PIN(s): **9688.66.6035**
Addresses: **9 Chalmers Way**
Owner(s): **Gregory Brown**

PROPOSED ZONING DISTRICT – R-LD (4.59 Acres Approximately)



COMBINED PLAN CONSISTENCY STATEMENT
ZONING MAP AMENDMENT
CONSISTENT WITH PLAN

Pursuant to N.C. Gen. Stat. §153A-340(b)(1) the Buncombe County Board of Commissioners hereby approves and adopts the following Plan Consistency Statement for the rezoning of tax lot PIN(s) 9688.66.6035, 9 Chalmers Way, Buncombe County, NC from the R-1 Residential District to the R-LD Residential District. The Board finds the following:

1) Said zoning change is **consistent** with Figure 20. Appropriate Development Types, of the Buncombe County Comprehensive Land Use Plan and Updates because the proposed rezoning **is**:

   A. Within "[reasonable] proximity to major transportation corridors – N/A*."
   F. "Outside of flood hazard areas."
   ***Not required to be evaluated – this is an owner initiated down zoning request**

2) The proposed map amendment **is not detrimental** to the owners, adjacent neighbors, and surrounding community as it **does** meet a number of goals as identified in the Buncombe County Comprehensive Land Use Plan Update.

Therefore, the requested zoning would be **reasonable** and **in the public interest**.

Upon a motion that the application is **consistent** with the Comprehensive Land Use Plan, the motion was seconded and passed on a vote of 7 to 0.

Read, approved and adopted this the 4th day of May, 2021.

ATTEST

Lamar Joyner

Lamar Joyner, Clerk

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE

BY Brownie Newman

Brownie Newman, Chairman

APPROVED AS TO FORM

County Attorney

ZPH2021-00011 Brown Zoning Map Amendment

Presented by

Nathan Pennington, CFM

Planning & Development Department

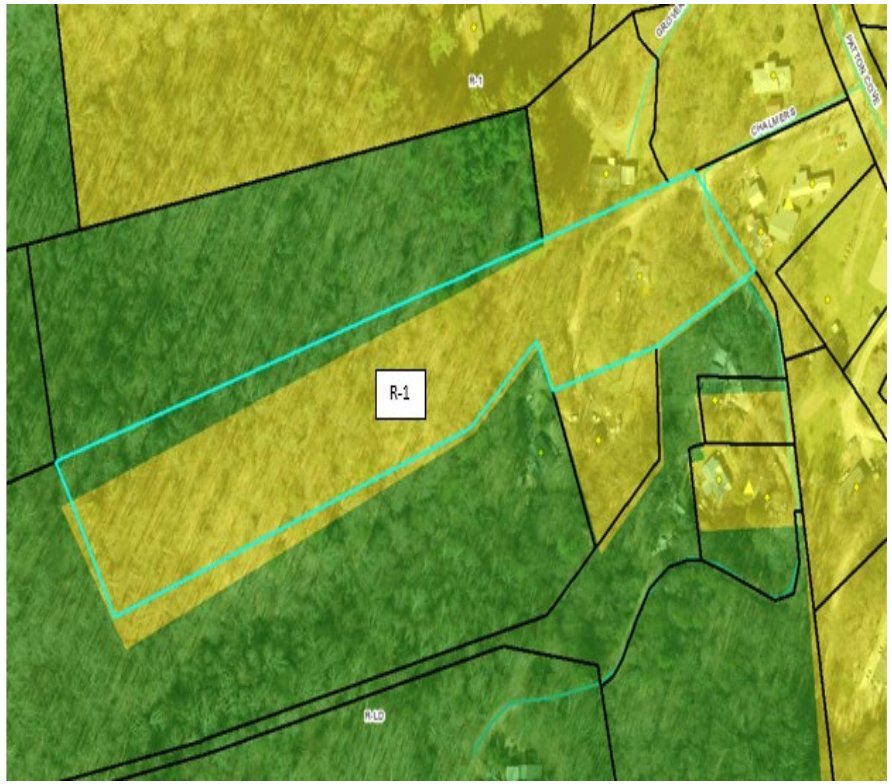
Hearing Notification

- ✓ CASE NUMBER: ZPH2021-00011
- ✓ Notice in Asheville Citizen Times legal ad: 03/24/2021
- ✓ Notice mailed to owners within 1,000 ft: 03/24/2021
- ✓ Physical posting: 03/24/2021
- ✓ Notice on BC Website: 3/24/2021
- ✓ Public Hearing: 04/05/2021 (review) 04/19/2021 (vote)

Applicant Information

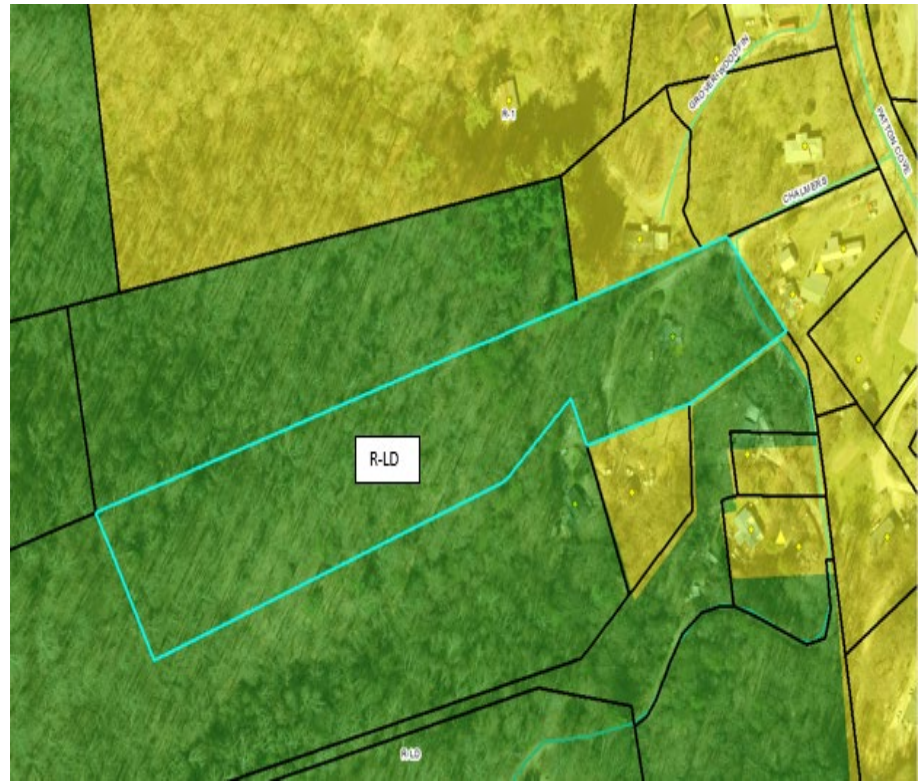
- ✓ Applicant: Angela Kent
- ✓ Owner(s): Gregory Brown
- ✓ Address(es): 9 Chalmers Way - Swannanoa

Rezoning Information



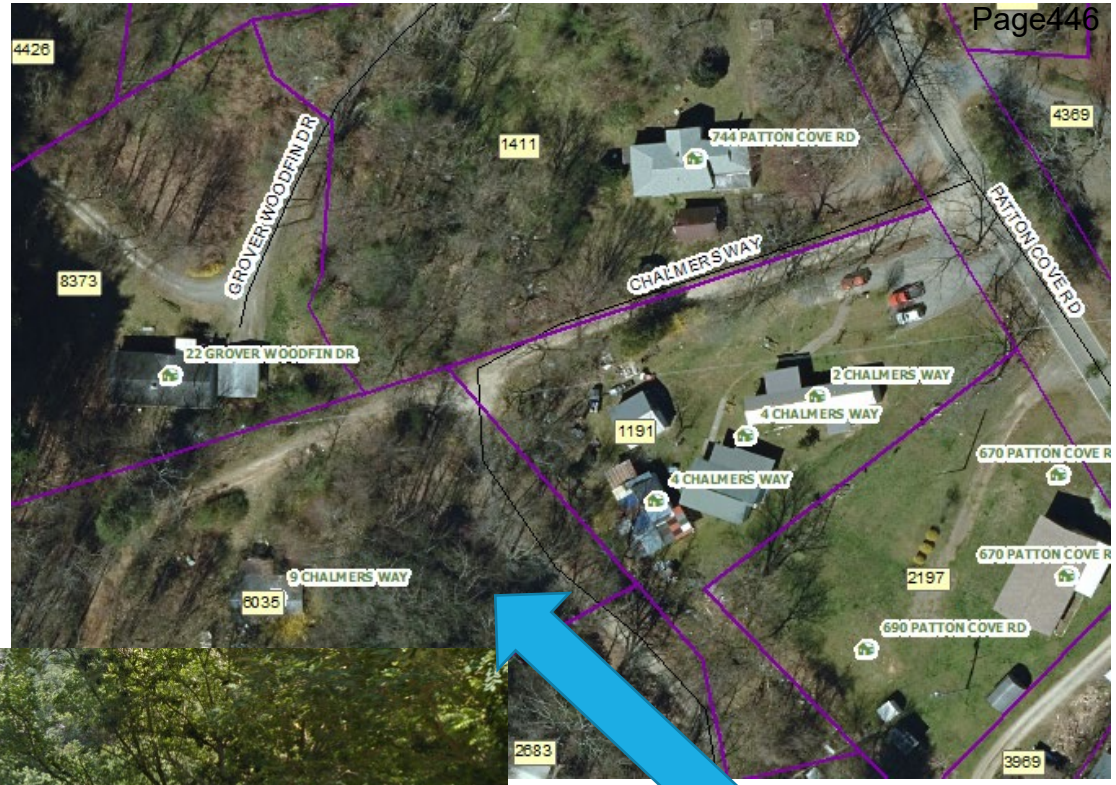
Current Zoning:
R-1

Proposed Zoning:
R-LD



Property Information

- ✓ 4.59 acres
- ✓ Current Use: vacant, previous manufactured home demolished
- ✓ **Served by well and septic**



Surrounding Development Pattern in the Immediate Area

Subject Property

High Hickory

Mama Gertie's

Compliance With Adopted Plans

- Further alignment with the Comprehensive Plan related to the need to accommodate HUD labeled manufacture homes is discussed on page 67 of the plan. Expanding existing land use policies and regulations to adjust for changes in land use patterns and demands is another important objective which is discussed at length throughout the plan.
- Under the foundational focus area of Equity in the Buncombe County Strategic Plan 2020-2025, the goal of ensuring that policies and practices to eliminate barriers to allow for equitable opportunity is discussed on page 31 of the plan.

Staff Recommendation

Approve

Action by the Planning Board

- PB found the map request to be consistent with the comprehensive plan and the strategic plan.
- PB unanimously recommended approval of the rezoning request and instructed the Planning Director to forward the recommendation to the BOC.

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

New Business

Department: Planning

Presenter(s): Matthew Cable **Contact(s):** Matthew Cable, Andrew Mayronne

Subject: Letters of Commitment for Public Financing of Mountain Housing Opportunities Low-Income Housing Tax Credit Program Project Applications

Brief Summary:

The Affordable Housing Committee (AHC) is currently reviewing project proposals and funding requests for the FY 22 Affordable Housing Services Program (AHSP). Mountain Housing Opportunities (MHO) submitted two project proposals for which they are also submitting Low Income Housing Tax Credit (LIHTC) Program applications in mid-May. These project proposals include: Lakeshore Villas (a 120 unit multifamily affordable housing project) and Pentland Place (a 110 unit multifamily affordable housing project).

Given the timing of the LIHTC application deadline in May, the Committee, at its April 20, 2021 meeting, recommended the Board of Commissioners allocate $800,000 to support MHO's LIHTC Program project applications. This allocation would be supported by the Current Draft FY 22 Buncombe County Budget which proposes $2,311,845 be made available for the FY 22 AHSP.

Recommended Motion & Requested Action:

Authorize staff and the Chairman to negotiate project loan terms and send Letters of Commitment for $800,000 in funding to support the two Mountain Housing Opportunities LIHTC Program applications to the North Carolina Housing Finance Agency.

County Manager's Comments and Recommendation:

County Manager recommends as presented.

Buncombe County Board of Commissioners

Request for Board Action

Meeting Date: 5/4/2021

New Business

Department:
Budget

Presenter(s):
Jennifer Barnette, Budget

Contact(s): Jennifer Barnette, Budget

Subject: Occupancy Tax Fund Adjustment for Growth

Brief Summary:
For FY2021, occupancy tax was expected to take an enormous hit and the Board of Commissioners approved $18,000,000 for the Occupancy Tax Fund. However, current year growth has exceeded those expectations. This amendment will increase the available expense budget by an additional $8,500,000 to cover the payment of occupancy tax revenues to the Tourism Development Authority and the county's administrative/collection fee, per S.L. 2001-162.

Recommended Motion & Requested Action:
Approve budget amendment

County Manager's Comments & Recommendation:
County Manager recommends as presented

ORDINANCE #21-05-08

BUNCOMBE COUNTY, NORTH CAROLINA
Occupancy Tax Special Revenue Fund

BOARD MEETING DATE: May 4, 2021

WHEREAS, the Budget Director recommends and the Board now desires to amend the FY2020-2021 Occupancy Tax Fund as outlined below in Exhibit "A" to the budget,
NOW THEREFORE,

BE IT ORDAINED by the Board of Commissioners for the County of Buncombe as follows:

1. That the FY 2020-2021 amendments listed in Exhibit A below be hereby adopted.
2. That this ordinance shall be effective upon adoption.

ADOPTED this 4th day of May, 2021.

Requesting Department: Budget
Budget Amendment Item: Occupancy Tax Fund Adjustment for Growth

Description:
For FY2021, occupancy tax was expected to take an enormous hit and the Board of Commissioners approved $18,000,000 for the Occupancy Tax Fund. However, current year growth has exceeded those expectations. This amendment will increase the available expense budget by an additional $8,500,000 to cover the payment of occupancy tax revenues to the Tourism Development Authority and the county's administrative/collection fee, per S.L. 2001-162.

Funding Source:
The fund is self-contained, so occupancy tax revenues along with expenditures.

Exhibit A:	**Increase (Decrease)**	
Account Description	**Revenues**	**Expenditures**
Other Taxes & Licenses	$ 8,500,000	
Economic & Physical Development		$ 8,500,000
TOTAL	$ 8,500,000.00	$ 8,500,000.00

ATTEST:

Tamara Laynes
Clerk to the Board

BOARD OF COMMISSIONERS FOR THE COUNTY OF BUNCOMBE:

By: Brownie Newman
Chairman of the Board