

**BUNCOMBE COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT
ZONING ANALYSIS**

CASE NUMBER: ZPH2018-00035
APPLICANT: ROBERT W. OAST, JR.

DEPARTMENT RECOMMENDATION: **DENIAL**

ZONING ANALYSIS: The applicant is requesting the following amendments to the text of the Zoning Ordinance of Buncombe County:

- Revise Sec. 78-581, Definitions, to add definitions for Planned Unit Development - Conservation and Scenic Resource Area;
- Revise Sec. 78-641(a), Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts;
- Revise Sec. 78-644, Steep Slope/High Elevation Overlay Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts;
- Revise Sec. 78-645, Protected Ridge Overlay Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts; and
- Revise Sec. 78-678(b), Conditional Use Standards, to add a new section containing the standards required for a Conservation Planned Unit Development.

Staff's main concerns with the proposed text amendments are that the amendments conflict with the stated purposes of the Overlay Districts and with the Comprehensive Land Use Plan and Updates. The proposed CPUD could be located on a tract at least 100 acres and at least 50% in the Overlay District. The Overlay Districts' intent was to cluster development in those areas of a tract that are **outside** the overlay area. The amendments have the potential to erode sound planning practices in our most environmentally fragile and sensitive areas and set a precedent for preference over reasonable accommodation.

Inconsistent with the purpose of the Steep Slope/High Elevation Overlay District:

- 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."
 - The proposed amendment, Sec. 78-678(b)(6.1)(e), states that "no part of any structure... may be constructed on land (i) within the SRA (Steep Slope/High Elevation and Protected Ridge Overlays) and in excess of 35 percent natural slope." By definition, the Steep Slope/High Elevation Overlay applies only to areas 35% slope and above. Even though no structure could be built in the Steep Slope/High Elevation area under the proposed standard, access roads, parking,

utilities, etc. could be located in those most environmentally sensitive areas potentially causing large areas of disturbance and impervious surfaces, increasing stormwater runoff, and impacting the viewshed.

Inconsistent with the purpose of the Protected Ridge Overlay District:

- 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 North Carolina General Statutes §153A-342, 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.”
 - The proposed amendments would permit all uses, except manufacturing and industrial, that are allowed in the underlying zoning districts. The current standards allow only low-density residential uses at a maximum of two dwelling units per two (2) acre lot, reducing the intensity of development.
 - The proposed amendments would permit the same residential density that is allowed in the overlay but would allow the development in our most environmentally sensitive areas which runs counter to the principle of clustering. This principle was developed to protect the most environmentally sensitive areas by concentrating development in the least environmentally sensitive areas of a tract. For example, a 100 acre tract (the minimum acreage required for a CPUD) would allow the concentration of a multi-family complex of 100 units rather than the current standard which intentionally allows only scattered site, low-density residential development.
 - The proposed amendments suggest waiving height limitations through a Conditional Use review “provided that existing site conditions, together with conditions imposed by the Board of Adjustment, provide visual screening and limit visibility of the structure from below” and the structure cannot be “less than 10 feet lower than the average height of the perimeter existing trees screening the structure”. This standard is subjective and would be difficult to enforce as it calls for limiting, not eliminating, visibility from below. Even with mature trees on the perimeter of the site, if they are not evergreen, the structure will be visible part of the year and if perimeter trees are diseased/damaged and removed, the structure would be visible year round. Additionally, the most likely reason to build on the ridgeline is for views and if there are views from the development, then the development will be at least partially visible from below. The current standards limit structure height to an average of 25 feet (35 feet if at least 50 vertical feet

below the ridge) in order to preserve the viewshed. This height was established to minimize the visual impact of structures in the most exposed ridgetop areas.

Inconsistent with the Buncombe County Comprehensive Land Use Plan and Updates:

Figure 20. Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013 Update **identifies only low-density residential development as appropriate in steep slope areas (greater than 25%) and high elevations (greater than 2,500 feet)**. The Update “suggests” multi-family residential, large lot/lower density planned communities, resorts, and conference centers be located outside steep slope areas and high elevations. Further, the Update “highly suggests” mixed use and higher density planned developments, institutional, public service, and commercial uses be located outside steep slope areas and high elevations.

The proposed text amendments would be detrimental to the community as they **do not** meet a number of goals as identified in the Buncombe County Comprehensive Land Use Plan Update and would conflict with the stated purposes of the Steep Slope/High Elevation and Protected Ridge Overlay Districts. Therefore, the Buncombe County Department of Planning and Development recommends **denial** of the text amendment request as it is incompatible with the purposes of the Overlay Districts and would permit mixed use and higher density planned developments, institutional, public service, and commercial uses to be located in steep slope and high elevations areas which are our most environmentally fragile and sensitive areas.

LAND USE PLAN CONSISTENCY STATEMENTS

The following consistency statements are provided to support the Board's findings to approve or deny an application.

Inconsistent:

The proposed text amendments are inconsistent with the Buncombe County Land Use Plan and Updates. Figure 20. Appropriate Development Types of the Buncombe County Comprehensive Land Use Plan 2013 Update **identifies only low-density residential development as appropriate in steep slope areas (greater than 25%) and high elevations (greater than 2,500 feet)**. The Update “suggests” multi-family residential, large lot/lower density planned communities, resorts, and conference centers be located outside steep slope areas and high elevations. Further, the Update “highly suggests” mixed use and higher density planned developments, institutional, public service, and commercial uses be located outside steep slope areas and high elevations. The proposed text amendments would be detrimental to the community as they **do not** meet a number of goals as identified in the Buncombe County Comprehensive Land Use Plan Update and would conflict with the stated purposes of the Steep Slope/High Elevation and Protected Ridge Overlay Districts. Therefore, the amendment request would **not be reasonable nor in the public interest** as it is incompatible with the purposes of the Overlay Districts and would permit mixed use and higher density planned developments, institutional, public service, and commercial uses to be located in steep slope and high elevations areas which are our most environmentally fragile and sensitive areas.

Consistent:

It should be noted that staff could not identify more tangible goals due to the fact that the amendments represent a number of changes that are deeply divergent from the stated goals and objectives of the Land Use Plan and Zoning Ordinance.

The proposed text amendments are consistent with the Buncombe County Land Use Plan and Updates. Section 2. Plan Framework of the Buncombe County Comprehensive Land Use Plan 2013 Update identifies the objective to establish land use regulations which allow for a flexible range of development options while still accounting for the needs of Buncombe County. The proposed text amendments meet an objective as identified in the Buncombe County Comprehensive Land Use Plan Update. Therefore, the amendment request would **be reasonable and in the public interest**.



Buncombe County Government
Application to Amend the Buncombe County Zoning Ordinance

Planning and Development
www.buncombecounty.org

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OFFICE USE ONLY:

Case Number: ZPH 2018 - 00035

Date Received: 7/20/18

Scheduled Planning Board Hearing Date: 8/20/18

Application is hereby made to the Board of Commissioners of Buncombe County to amend the text of the Zoning Ordinance of Buncombe County, Section(s) 78-678, 78-644, and 78-648, as follows (describe requested change, including any specific proposed language):

1. 78-581 - Add two definitions, "Planned Unit Development - Conservation" and "Scenic Resource Area."
2. 78-641(a), 78-644, and 78-645: Add this use, "Planned Unit Development - Conservation" to Table 1 - Permitted Use Table, and to the permitted use tables for the Steep Slope/High Elevation Overlay and Protected Ridge Overlay Zones.
3. 78-678: Create a new type of conservation-focused planned unit development - Conservation PUD - that will allow some flexibility in the uses that can occur in Environmentally Sensitive Areas pursuant to a site-specific conditional use permit process.

*See Exhibit A for text of proposed amendments.

1. Describe how the proposed amendment(s) is/are consistent with Buncombe County's Comprehensive Land Use Plan (available at www.buncombecounty.org/planning):

See Exhibit B.

2. Describe how the proposed amendment(s) is/are reasonable and in the public interest:

See Exhibit C.

Contact information:

Robert W. Oast, Jr.

Applicant Name(s)

McGuire Wood & Bissette, 48 Patton Avenue, Asheville, NC 28801

Mailing Address (including town/city, state, and zip)

828-254-8800

Telephone

rwoast@mwblawyers.com

Email Address



Signature of Applicant

Signature of Applicant

Withdrawal of an application after notice has been made will result in forfeiture of any application fees associated with said application.

EXHIBIT A

Proposed Text of Amendments to Buncombe County Zoning Ordinance for Planned Unit Development – Conservation

1. **Revise Section 78-581 “Definitions”** to include the following:

- a. *Planned Unit Development – Conservation (Conservation PUD)* means a development that is all or partially located within a Scenic Resource Area, as defined herein. A Conservation PUD may include residential and non-residential uses (but not industrial or manufacturing uses) in any combination, must be a minimum of 100 acres, and at least 90% of the gross land area in the PUD must be subject to legally-enforceable restrictions that protect the area from further development.
- b. *Scenic Resource Area (SRA)* – Any area within the County’s zoning jurisdiction in which, because of elevation, topographic or other natural conditions, as designated by this code or other applicable law, development is subject to limitations (e.g., minimum lot size, building size, impervious area), in addition to those regulations that apply within the underlying general zoning classification. Examples of such designations include the Steep Slope/High Elevation and Protected Ridge Overlay zones. It is not the intent of this definition to allow development in areas where it is otherwise prohibited.

2. **Revise Section 78-678(b)**, “Uses by right subject to special requirements and conditional use standards,” by adding a new section (6.1) to read:

“(6.1) *Conservation Planned Unit Development (Conservation PUD)*: Conservation Planned Unit Development Standards shall be as follows:

- a. *Purpose*. The purpose of this section is to promote conservation of scenic resources and efficient use of land in environmentally sensitive districts (e.g., steep slope, protected ridge) allowing flexibility in permissible land uses, building sites and dimensions, and site design. Densities (for residential components) and square footage allowances (for non-residential components) are calculated on a project basis, allowing the clustering of buildings in order to create and preserve useful open spaces and natural site features.
- b. *Land Uses*. Land uses allowed in a Conservation PUD may include a mixture of uses, similar to a commercial or mixed use planned unit development, and may include more than one primary use, but shall be consistent with the purpose and intent of the SRA in which it is located.
- c. *Land Development Standards*. The following minimum standards shall apply to all Conservation PUDs, and the board of adjustment may impose such other conditions as may be necessary to ensure that the purposes of this Section are met:
 - i. *Location in Scenic Resource Area (SRA)*. At least 50% of the area of the site proposed for inclusion in a Conservation PUD must include areas designated as SRA within the meaning of this code.

- ii. *Ownership Control.* The land in a Conservation PUD 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.
- iii. *Minimum Size.* The minimum size for a Conservation PUD shall be 100 acres, which may consist of more than one lot, but all lots must be contiguous, unless divided by a public right of way.
- iv. *Density; Lot Coverage.* Structural improvements within Conservation PUDs must comply with each of the following standards:
 - a. Residential Density – When residential uses are included in the Conservation PUD, the density may not exceed the density allowed for residential uses in the SRA in which it is located, regardless of the underlying zoning classification;
 - b. Disturbed Area and Impervious Surface – Site work within Conservation PUDs must comply with each of the following standards:
 - i. Disturbed area--The maximum gross site development area disturbance allowed in a Conservation PUD shall be 10% of gross land area for the PUD;
 - ii. Impervious surface--The maximum gross site area impervious surface shall be 6% of gross land area for the PUD;

These limits shall apply to all site improvements, including drives, utilities, and storm water controls but shall not apply to installation of individual septic systems, or to portions of access roads that lie outside of the Conservation PUD 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.

- v. *Screening Standards.* The following screening regulations shall be required within the Conservation PUD.:
 - a. Location and density of screening –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 6 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 shall be spaced no less than 10 feet but no greater than 30 feet apart.

- b. Tree species – 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.
- c. Tree credit – Credit for existing trees may be applied as allowed in Sec. 78-645(e)(7) (Protected Ridge Overlay).
- d. Siting of structures—structures within the proposed development must be situated within an existing perimeter of standing mature trees located within the flatter areas of the slopes and ridgeline areas to maximize full screening of the development from the valley floor below. Ridgelines without a stand of trees sufficient to accomplish this screening requirement are not suitable applicants for this PUD.

It is the intent of this requirement that Conservation PUDs will be screened from view from below, and will utilize existing site conditions (e.g., trees, topography) to achieve this standard.

d. *Requirements for structures.* The following building development standards shall apply to all Conservation PUDs, and the board of adjustment may impose such other requirements as may be necessary to ensure that the purposes of this Section are met:

- i. Internal setbacks. The normal requirements for internal setbacks specified for underlying general zoning classifications are hereby waived for the Conservation PUD, provided that the spirit and intent of this Section are complied with in a total development plan, as determined by the board of adjustment, and further provided that interior setbacks must comply with applicable building safety and fire regulations. 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.
- ii. 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.

- iii. Height limitations. The normal maximum structure height standards for structures in the SRA may be waived for the Conservation PUD, provided that existing site conditions, together with conditions imposed by the board of adjustment, provide visual screening that limit visibility of the structure from below. Conservation PUDs that allow structures in excess of the normal permitted 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 have ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section. Conservation PUDs within the Blue Ridge Parkway Overlay District may not contain structures which exceed the maximum height allowed within the overlay district. In no event may the maximum height of a structure within a Conservation PUD exceed the limits established in the Mountain Ridge Protection Act (NCGS Chapter 113A, Article 14) or be less than 10 feet lower than the average height of the perimeter existing trees screening the structure.
- iv. Perimeter setbacks. 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 underlying general zoning classification.
- v. Privacy. Each Conservation PUD development shall provide reasonable visual and acoustical privacy for all dwelling units, where residential uses are included. 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 Conservation PUD 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.
- vi. Building envelopes. Building envelopes shall be shown on the submitted site plan. Where flexibility in design is desired, the building envelope shall indicate the maximum expanse of the proposed footprint of the structure.
- vii. Parking. Parking requirements may be waived for the Conservation PUD, 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.

- viii. Conveyance and maintenance mechanisms. Conveyance and maintenance of open space, recreational areas and communally owned facilities shall be in accordance with N.C.G.S. 47-1 et seq. the Unit Ownership Act and/or any other appropriate mechanisms acceptable to the board of adjustment.

e. *No building within certain areas.* No part of any structure within a Conservation PUD may be constructed on land (i) within the SRA and in excess of 35 percent natural slope, or (ii) within any area designated as High Hazard or Moderate Hazard on the Buncombe County Slope Stability Index Map prepared by the North Carolina Geological Survey.

f. *Required Conservation Area.*

i. Definitions.

- a. As used herein, *Conservation Area* means an area of land or water that has been preserved in a predominantly natural, open or scenic condition, on which the following activities are prohibited:

- (i) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground,

- (ii) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or other unsightly or offensive materials, (iii) removal or destruction of trees, shrubs or other vegetation,

- (iv) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface,

- (v) surface use except for forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural conditions,

- (vi) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or

- (vii) other acts or uses detrimental to such retention of land or water areas.

Nothing herein shall prohibit the use of such areas for non-motorized passive recreation, including camping, hiking, horseback riding, nature education, and similar activities, or from establishing and maintaining trails or areas with pervious, non-permanent amenities made of natural materials (e.g., mulch trail surfaces,

wooden benches, steps, handrails) appropriate for such purposes in a manner similar to the trails at the NC Arboretum and Mount Mitchell State Park.

- b. *Conservation Easement* means an easement, restrictive covenant, or other legal instrument that establishes and preserves a designated conservation area in the condition required to meet the purposes of this ordinance. Said conservation easement shall be in recordable form, and shall provide for enforcement by third parties, including Buncombe County, and shall include a provision for the award of reasonable attorney fees in the event of a successful legal action to enforce the terms of said conservation easement. A conservation easement within the meaning of NCGS 113A-235, or a conservation agreement within the meaning of NCGS 121-35(i) is deemed to satisfy this definition. Instruments satisfying the requirements of Section 70-68(e) are also deemed to satisfy this definition. All other instruments shall be subject to approval of the County attorney. Said conservation easement shall run with the law and shall remain in effect for as long as the Conservation PUD to which it applies remains in effect.

ii. Characteristics of conservation area:

- a. at least 90% of the land area within a Conservation PUD that is located within an SRA shall be designated as a “conservation area.”
- b. there may be more than one designated conservation area within a Conservation PUD, so long as no designated conservation area is less than 10 acres in size, and is not irregularly shaped, so as to turn in on itself or be unusually elongated or narrow, as determined by the Board of Adjustment.
- c. the size and location of the conservation area shall be shown on an as-built survey of the Conservation PUD, prepared in recordable form, and approved by the County. The developer or owner shall cause the survey to be recorded in the Buncombe County Register of Deeds prior to receiving a certificate of occupancy for the project.
- d. the developer or owner shall provide for the perpetual care and maintenance of any designated conservation area in a conservation easement and shall cause the easement or other instrument to be recorded in the Buncombe County Register of Deeds prior to receiving a certificate of occupancy for the project.”

- 3. **Revise Section 78-641(a) (Table 1 – Permitted Use Table), Section 78-644 (Steep Slope/High Elevation Permitted Use Table), and Section 78-645 (Protected Ridge Overlay Permitted Use Table) to list “Planned Unit Development—Conservation” as a conditional use in the NS, CS, CR, and OU zoning classifications.**

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EXHIBIT B—Consistency with Buncombe County Land Use Plan

The preservation and conservation of the environment and natural scenery of Buncombe County, especially areas characterized by steep slopes and high elevations, has consistently been noted as an important issue in the County's land use plans dating back at least to the 1998 Land Use Plan (Phase 4, pp. 5-6). This plan predates Buncombe County's county-wide zoning ordinance by about 10 years. The 2006 Plan Update identified increased, unregulated development in these sensitive areas, and the preservation of open space as issues of concern (p. IV-4), and recommended the adoption of ordinances regulating development in these areas (p. VII-3). The 2006 Update also described attributes for potential "conservation lands" as being "large parcels over 100 acres," and "ridgetops and highlands." The 2013 Update identifies conservation and preservation of as an important issue for the County, and states that those sensitive areas and resources warrant protection. Of particular note is that the 2006 Update recommended the adoption of regulations that allow for "a cluster development option as a means to promote compact development while preserving open space, particularly in areas where the physical conditions of the site (i.e. steep slopes) warrant concentration of development in a portion of the site." (p. VII-8). Unless otherwise indicated, references to the Buncombe County Land Use Plan will be to the 2013 Update, and will be denoted by "Plan."

In 1983, the State of North Carolina enacted the Mountain Ridge Protection Act, N.C.G.S. Chapter 113A, Article 14, which identified certain ridges by elevation, and imposed limits on the heights of structures that could be built on those ridges. Consistent with this statute, and following its own plan recommendations, Buncombe County, through its plans and ordinances, has identified certain areas in its mountains, defined by slope and elevation, where development should be carefully controlled in order to preserve these sensitive areas. These

ordinances include the Steep Slope/High Elevation Overlay, *County Code* Sec. 78-644, and the Protected Ridge Overlay, *County Code* Sec. 78-645, in addition to subdivision and environmental ordinances that limit the form that development in these areas may take.

In these protected areas, the ordinances allow only certain land uses that are thought to minimize impacts on the ridgeline and steep slopes, while prohibiting or severely limiting other land uses allowed in the underlying zoning classification, apparently out of concern they would be too intrusive on steep slopes or protected ridges. This creates a scenario where a pattern of development is allowed as a matter of right that seems inconsistent with the County's goals for these areas, while development or uses that could actually better achieve those protective goals cannot be implemented because they are not allowed (even as a conditional use) in these areas. For example, in the Protected Ridge Overlay, it is possible to have a development consisting of single family homes on large lots, all served by roads and infrastructure, but it is not possible to cluster uses in one portion of a property, while preserving the rest. The zoning techniques that the County has chosen to allow for clustering elsewhere in the County, Residential or Mixed Use Planned Unit Developments, or PUDs, and Commercial PUDs, are not allowed in either overlay, yet property within these areas may be subdivided and developed for homesites, with only administrative oversight by the County. Several examples of such subdivisions exist in Buncombe County.

The Plan "suggests" that certain uses, such as mixed use developments, conference centers, and outdoor recreation, should be located outside of steep slope and high elevation areas (p. 55), but it does not say that such uses must be prohibited. The Plan also says that "applicants should be offered an opportunity to present the specific merits of each project or rezoning request known to influence the suitability of a site for particular uses." (p. 54)

The proposed ordinance would establish a minimum lot size of 100 acres, most which is required to be in a Scenic Resource Area (Steep Slope or Protected Ridge), provide for flexibility in the range of uses permitted, and allow for clustering of uses in one part of a large lot. The distinguishing feature of this proposed ordinance is that it requires that most of the property – 85 percent of it¹ – be left undeveloped; the proposed ordinance also requires that the undeveloped property be legally restricted from further development. Perhaps most importantly, any development in these areas would be required to be screened from view from below by existing vegetation. All of these features are consistent with the recommendations in the County's land use plans. Due to the high thresholds of size and percentage of area that must be conserved, this amendment will affect very few properties in Buncombe County.

Providing this flexibility will encourage preservation and conservation of sensitive areas, through site specific development plans approved by the Board of Adjustment as conditional uses, and provide an alternative to the large lot, single family development as a use by right that cannot be denied or conditioned. PUDs and conditional uses are land use tools that are familiar to the County Planning staff and the Board of Adjustment. It is a rigorous review process, but no special training for staff or board members would be required

This proposal is consistent with the Buncombe County Comprehensive Plan in several specific respects –

1. It prioritizes conservation of land, especially in environmentally sensitive areas and viewsheds, as recommended in Section 5 of the Plan (pp. 46-47).

¹ This should be closer to 90%, not counting access roads, water and sewer facilities, and other infrastructure.

2. It makes another tool available to the various decision making boards for making “sound decisions based on the qualitative characteristics of the site,” which addresses the first issue identified in Section 6 of the Plan (pp. 53-54).
3. It provides applicants with a platform to “present the specific merits of each project – based on factors known to influence the suitability of a site for particular uses,” as recommended in Section 6 of the Plan (p. 54), and it implements a specific recommendation from the 2006 Update to provide for an option for cluster development.
4. It enables the establishment of a form of Conservation District, applicable to privately held land, as recommended in Section 6 of the Plan (p. 76).
5. It requires that development be screened from view from below, preserving the County’s scenic and environmental resources.

Considered on a broader perspective, the proposed amendment is consistent with the County’s overarching emphasis on conservation and protection of sensitive areas. Whereas existing zoning applicable to steep slopes and protected ridge overlay areas allows residential development on the ridgeline and steep slopes--including grading and removal of existing trees for building pad area and driveway, septic tank and leach field--the proposed amendment produces far less impact in terms of acres of destroyed trees and existing natural foliage than a residential subdivision. This proposed amendment directly matches the County’s desires to reduce land disturbance, tree removal, and scarring of forested hillsides. In fact this ordinance amendment eliminates scarring of steep slopes by focusing its 15 percent or less development area within the existing trees of the ridgeline protection overlay that screen the development with mature full height trees taller than the structure.

EXHIBIT C—Reasonable and in the public interest

The proposed amendment is reasonable and in the public interest for the reasons stated in Exhibit B; chiefly, it achieves multiple objectives in the Comprehensive Plan, and promotes the public's longstanding interest in preserving and conserving scenic and environmentally sensitive areas.

The ability to employ a variety of zoning and land use techniques is critically important in areas that are sensitive because of their scenic or environmental features. This has been recognized in the County's Plans, which contain several specific recommendations that the proposed ordinance implements. The current zoning, which allows large lot subdivision but not much else, forces a certain pattern of inefficient development that requires a degree of site disturbance that is not desirable in these areas, and does not provide much flexibility for "customizing" a development to fit its surroundings. The proposed amendment provides for a greater degree of flexibility than is currently possible in these areas, and substantially limits the area that can be developed. The public interest is achieved by promoting conservation in these areas. The proposed amendment is reasonable in that it expands the uses that may occur in these areas while limiting their impact.

RESOLUTION OF PLANNING BOARD RECOMMENDATION TO THE BUNCOMBE COUNTY BOARD
OF COMMISSIONERS ON APPLICATION TO AMEND THE TEXT OF CHAPTER 78 OF THE
BUNCOMBE COUNTY CODE OF ORDINANCES, ARTICLE VI, THE ZONING ORDINANCE OF
BUNCOMBE COUNTY

WHEREAS, the Zoning Administrator for Buncombe County has received an application to amend the Zoning Ordinance of Buncombe County to establish standards and procedures for Conservation Planned Unit Developments as follows:

revise Sec. 78-581, Definitions, to add definitions for Planned Unit Development - Conservation and Scenic Resource Area; revise Sec. 78-641(a), Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts; revise Sec. 78-644, Steep Slope/High Elevation Overlay Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts; revise Sec. 78-645, Protected Ridge Overlay Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts; and revise Sec. 78-678(b), Conditional Use Standards, to add a new section containing the standards required for a Conservation Planned Unit Development;

WHEREAS, the Zoning Administrator certified that notices of the meeting of the Buncombe County Planning Board at which the requested amendments were considered have been properly mailed to members of the Planning Board at least ten (10) days prior to the meeting and public notice of the meeting has been properly published in a newspaper having general circulation in the County as required; and

WHEREAS, pursuant N.C. Gen. Stat. §153A-344 and §78-719 of the Buncombe County Code of Ordinances, the Planning Board is charged with making a recommendation to the Board of Commissioners and to comment on whether the requested amendments are consistent or inconsistent with the Comprehensive Land Use Plan;

WHEREAS, the Planning Board has reviewed the requested amendments, has heard public comment, and consulted with planning staff, and, after careful review, has determined that it is not in order to approve the requested amendments and recommends to the Board of Commissioners for Buncombe County that the proposed amendments not be approved.

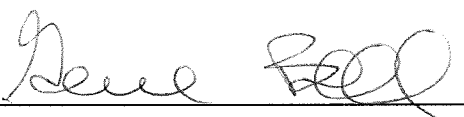
NOW THEREFORE, BE IT RESOLVED, Based on the facts as set forth above the Buncombe County Planning Board hereby finds and concludes as follows pertaining to the requested amendments to the Zoning Ordinance of Buncombe County:

1. The requested amendments to revise Sec. 78-581, Definitions, to add definitions for Planned Unit Development - Conservation and Scenic Resource Area; revise Sec. 78-641(a), Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts; revise Sec. 78-644, Steep Slope/High Elevation Overlay Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts; revise Sec. 78-645, Protected Ridge Overlay Permitted Use Table, to add Planned Unit Development - Conservation as a conditional use in the NS, CS, CR, and OU Zoning Districts; and revise Sec. 78-678(b), Conditional Use Standards, to add a new section containing the standards required for a Conservation Planned Unit Development; are not consistent with the Buncombe County Comprehensive Land Use Plan and updates, as:
 - The 2013 Update (Figure 20. Appropriate Development Types) identifies only low-density residential development as appropriate in steep slope areas (greater than 25%) and high elevations (greater than 2,500 feet). The Update “suggests” multi-family residential, large lot/lower density planned communities, resorts, and conference centers be located outside steep slope areas and high elevations. Further, the Update “highly suggests” mixed use and higher density planned developments, institutional, public service, and commercial uses be located outside steep slope areas and high elevations.
2. The requested amendments to the text are not reasonable and are not in the public interest as they would not meet a number of objectives as identified in the Buncombe County Comprehensive Land Use Plan Update and would conflict with the stated purposes of the Steep Slope/High Elevation and Protected Ridge Overlay Districts.
3. This Planning Board hereby recommends that the Board of Commissioners deny the request to amend Chapter 78 of the Buncombe County Code of Ordinances as the amendment request is incompatible with the purposes of the Overlay Districts and would permit mixed use and higher density planned developments, institutional, public service, and commercial uses to be located in steep slope and high elevations areas which are Buncombe County’s most environmentally fragile and sensitive areas.

Adopted by a vote of 9 to 0.

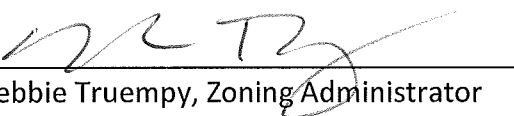
This the 20th day of August, 2018.

BUNCOMBE COUNTY PLANNING BOARD

By: 
Chair

Consented to:
Planning Board Members:

Nancy Waldrop
David Rittenberg
Thad B. Lewis
Dusty Pless
Joan M. Walker
Robert J. Martin
Gene Bell
Parker Sloan
Billy Taylor


Debbie Truempy, Zoning Administrator

Approved as to form:


Brandon Freeman, Staff Attorney