

Chapter 78, Code of Ordinances, Buncombe County

# The Zoning Ordinance of Buncombe County, North Carolina



*Initially Adopted December 1, 2009*

*As Amended April 2, 2019*

# ARTICLE VI. BUNCOMBE COUNTY ZONING ORDINANCE

## 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".

### **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.

### **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.

### **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.

### **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.

## **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 4 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.

*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.

*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.

*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.

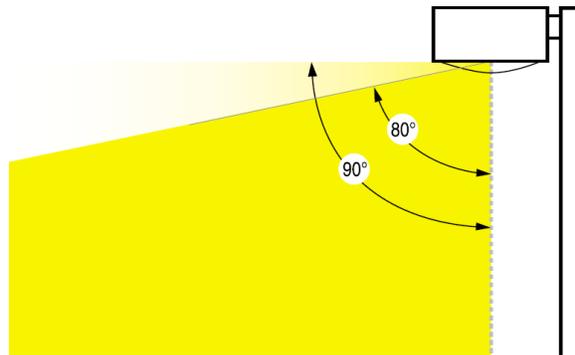
*Concrete plant* means an establishment, whether portable or nonportable, primarily engaged in manufacturing hydraulic cement, including portland, natural, and masonry cements delivered to a purchaser in a plastic and unhardened state. This industry includes production and sale of central-mixed concrete, shrink-mixed concrete, and truck-mixed concrete. Also included are the manufacture of concrete products from a combination of cement and aggregate.

*Conditional 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.

*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° above nadir, and 100 (ten percent) at or above a vertical angle 80° 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

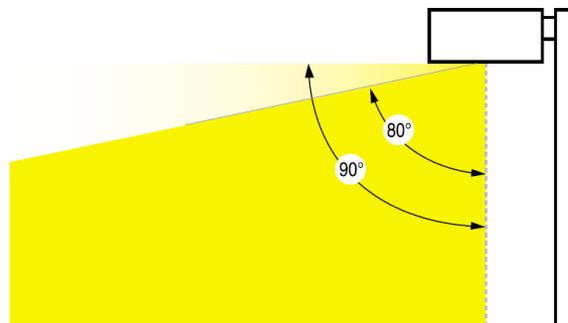
facilities for one family.

*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.

*Full Cutoff* means a luminaire light distribution where zero candela intensity occurs at or above an angle of 90° above nadir. Additionally the candela per 1,000 lamp lumens does not numerically exceed 100 (10 percent) at or above a vertical angle of 80° above nadir. This applies to all lateral angles around the luminaire.



*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.

*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.

*Kenel* 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 10 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 2 in. by 4 in. in size and shall be permanently attached to the manufactured home by means of 4 blind rivets, drive screws, or other means that render it difficult to remove without defacing it. It shall be etched on 0.32 in. thick aluminum plate. The label number shall be etched or stamped with a 3 letter designation which identifies the production inspection primary inspection agency and which the Secretary shall assign. Each label shall be marked with a 6 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. <sup>1</sup>

*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.

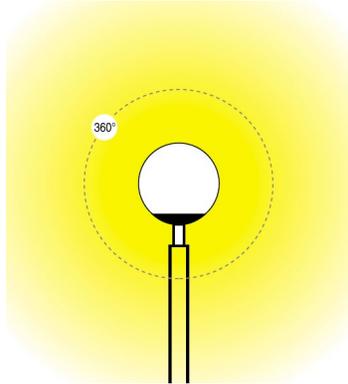
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<sup>1</sup> Definition added April 2, 2019 via Ordinance No. 19-04-07; ZPH2018-00048

*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, 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. 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 Ordinance 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 Ordinance 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.

*Recreational facilities* are those facilities, not otherwise categorized on the permitted use table, utilized for one (1) 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.

*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.

*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.

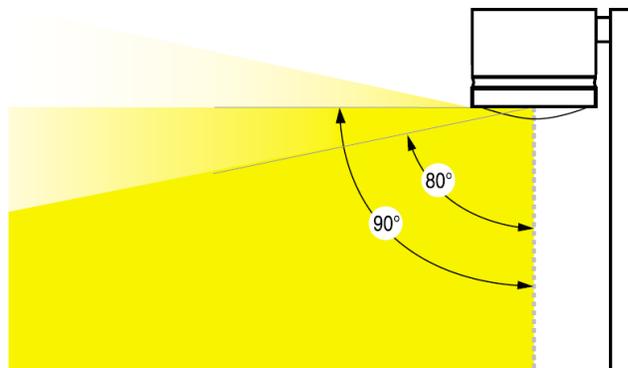
*Retail business* means an establishment selling commodities and/or providing services directly to the consumer.

*Retaining wall* means a wall or a cumulative system of walls or man-made 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 10 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.

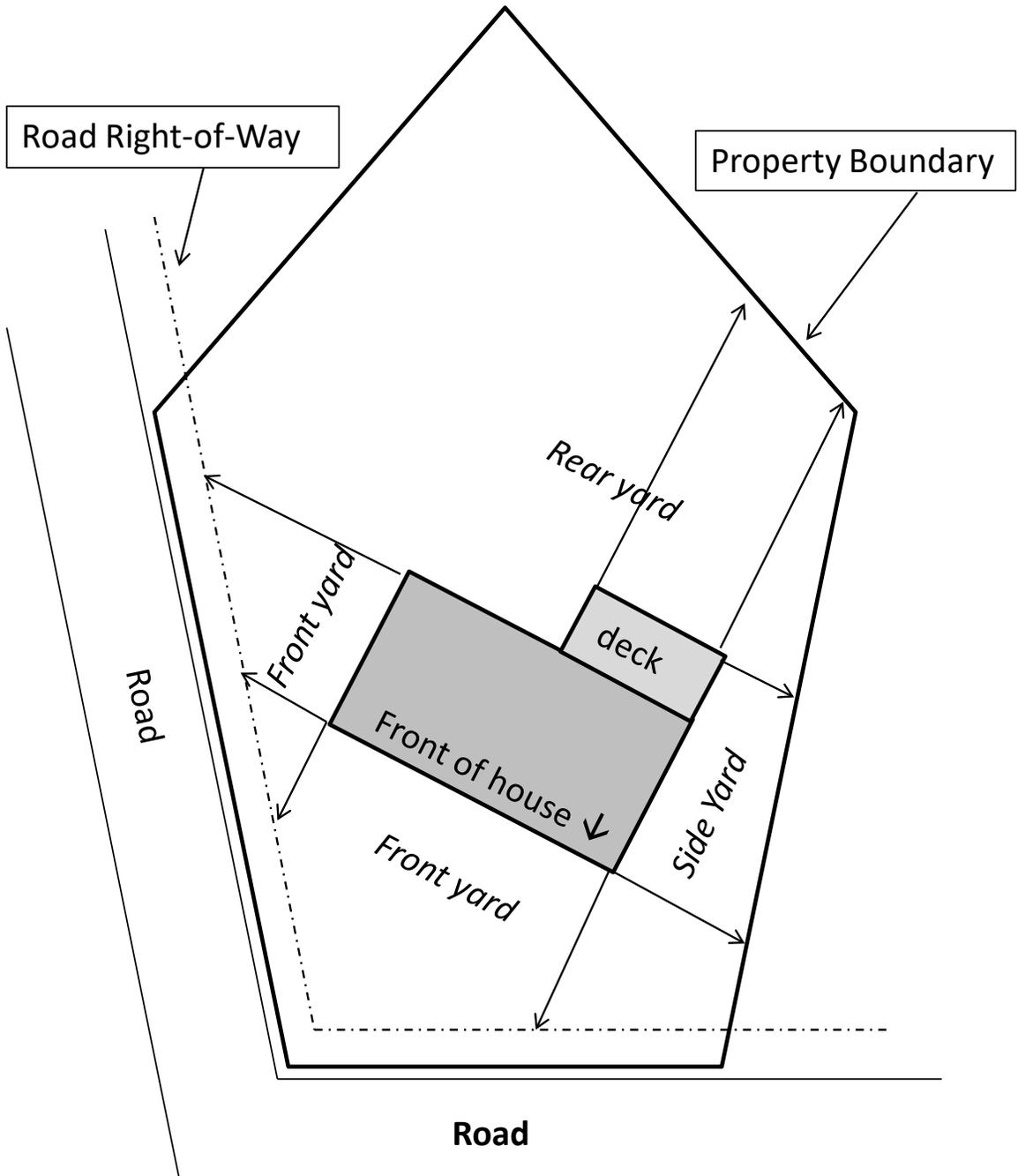
*Ridge* means the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain.

*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 10 rental units. A rooming house with more than 10 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 (5 percent) at or above an angle of 90° above nadir, and 200 (20 percent) at or above a vertical angle 80° 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.”<sup>2</sup>

*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’ in length on any given side and less than 10’ in height, incidental to a residential use; utility poles; fences 10’ in height or less; and on-premise 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, Sec. 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, Sec.

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<sup>2</sup> Definition added April 2, 2019 via Ordinance No. 19-04-07; ZPH2018-00048

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 (3) 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 of no more than 9,000 square feet gross floor area which are rented for two (2) 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 (2) days or more to tourists, vacationers, or similar transients. A vacation rental complex shall include no more than 10 separate vacation rental units. A development consisting of more than 10 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.

*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 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

### **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.

### **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 Sec. 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 Sec. 78-623.
- (c) Any person violating this Article of this Chapter shall be subject to the remedies as set forth in Code Sec. 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 thirty (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.

### **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. Non-motorized 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 5% 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 3" diameter at breast height (DBH) is prohibited except when installing passive recreation facilities.

**INVASIVE SPECIES**

Scientific name	Common name
<i>Ailanthus altissima (Mill.) Swingle</i>	Tree of Heaven
<i>Albizia julibrissin Durz.</i>	Mimosa
<i>Alliaria petiolata (Bieb.) Cavara &amp; Grande</i>	Garlic-mustard

<i>Alternanthera philoxeroides</i> (Mart.) Griseb.	Alligatorweed
<i>Celastrus orbiculatus</i> Thunb.	Asian bittersweet
<i>Elaeagnus angustifolia</i> L.	Russian olive
<i>Elaeagnus umbellata</i> Thunb.	Autumn olive
<i>Hedera helix</i> L.	English ivy
<i>Hydrilla verticillata</i> (L.f.) Royle	Hydrilla
<i>Lespedeza bicolor</i>	Bicolor lespedeza
<i>Lespedeza cuneata</i> (Dum.-Cours.) G. Don	Sericea lespedeza
<i>Ligustrum sinense</i> Lour.	Chinese privet
<i>Lonicera fragrantissima</i> Lindl. & Paxton	Fragrant honeysuckle
<i>Lonicera japonica</i> Thunb.	Japanese honeysuckle
<i>Microstegium vimineum</i> (Trin.) A. Camus	Japanese stilt-grass
<i>Murdannia keisak</i> (Hassk.) Hand.-Mazz.	Asian spiderwort
<i>Myriophyllum aquaticum</i> (Vell.) Verdc.	Parrotfeather
<i>Paulownia tomentosa</i> (Thunb.) Sieb.&Zucc. ex Steud.	Princess tree

<i>Phragmites australis</i> (Cav.) Trin. ssp. australis	Common reed
<i>Polygonum cuspidatum</i> Seib. & Zucc.	Japanese knotweed
<i>Pueraria montana</i> (Lour.) Merr.	Kudzu
<i>Rosa multiflora</i> Thunb.	Multiflora rose
<i>Salvinia molesta</i> Mitchell	Aquarium water-moss
<i>Vitex rotundifolia</i> L.f.	Beach vitex
<i>Wisteria sinensis</i> (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.

### **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.

### **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 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.

**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.

**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.

**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.

**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.

**Sec. 78-601. Construction progress.**

If no building permit or certificate of occupancy is obtained within two (2) years of the date of the issuance of the zoning compliance certificate, the permit becomes invalid.

**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.

**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.

**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.

**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.

**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.

### **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. 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.

### **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 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 thirty (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.

## **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 Sec. 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 uses.* The board of adjustment shall grant in particular cases and subject to appropriate conditions and safeguards, permits for conditional uses as authorized in division 6 of this article set forth as conditional 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.
- (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.

## **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 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 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 (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. 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-344.1. 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 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. 153A-358 and the revocation provisions of G.S. 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. 153A-344.1.

(g) *Repealer.* In the event that G.S. 153A-344.1 is repealed, this section shall be deemed repealed and the provisions hereof no longer effective.

### **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 N.C. Gen. Stat. §153A-345.1 or as amended.

(c) *Hearings.* All board of adjustment hearings shall be conducted in accordance with N.C. Gen. Stat. §153A-345.1 or as amended.

(d) *Decisions.* All board of adjustment decisions shall be made in accordance with N.C. Gen. Stat. §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 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.

### **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. 153A-345.1.

### **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

### **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.

### **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.

### **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.

#### **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 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 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' in elevation.

**Sec. 78-641. Permitted uses.**

(a) *Permitted use table*. Uses are permitted in the various zoning districts pursuant to Table 1.

<b>Table 1 – Permitted Use Table</b>												
<b>Uses</b>	<b>P = Permitted</b> <b>C = Allowed as Conditional Use</b> <b>SR = Permitted with Special Requirements</b> <b>Blank Space = Not Permitted</b>											
	<b>Districts</b>											
	<b>R-LD</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>NS</b>	<b>CS</b>	<b>EMP</b>	<b>PS</b>	<b>CR</b>	<b>AI</b>	<b>BDM</b>	<b>OU</b>
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 <sup>3</sup>	P	SR	SR	P			P				SR	P

<sup>3</sup> This use added to R-1, R-2, BDM on April 2, 2019 via Ordinance No. 19-04-07; ZPH2018-00048

**Table 1 – Permitted Use Table**

Uses	<b>P = Permitted</b> <b>C = Allowed as Conditional Use</b> <b>SR = Permitted with Special Requirements</b> <b>Blank Space = Not Permitted</b>											
	<b>Districts</b>											
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	CR	AI	BDM	OU
Manufactured home parks (8 units or fewer)				P								P
Manufactured home parks (more than 8 units)				C								P
Planned unit developments, level I		C	C	C	C	C	C	C	C			C
Planned unit developments, level II						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

**Table 1 – Permitted Use Table**

Uses	<b>P = Permitted</b> <b>C = Allowed as Conditional Use</b> <b>SR = Permitted with Special Requirements</b> <b>Blank Space = Not Permitted</b>											
	<b>Districts</b>											
	<b>R-LD</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>NS</b>	<b>CS</b>	<b>EMP</b>	<b>PS</b>	<b>CR</b>	<b>AI</b>	<b>BDM</b>	<b>OU</b>
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
Places of worship	P	P	P	P	P	P	P	P	P		P	P
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

**Table 1 – Permitted Use Table**

Uses	<b>P = Permitted</b> <b>C = Allowed as Conditional Use</b> <b>SR = Permitted with Special Requirements</b> <b>Blank Space = Not Permitted</b>											
	<b>Districts</b>											
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	CR	AI	BDM	OU
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 maintenance and repair					C	P	P	P	P	P		P
Motor vehicles impoundment lot or tow yard						SR	SR	SR				SR
Motor vehicles sales and rental						P	P			P		P
Motor vehicles service stations (fueling stations)					P	P	P	P	P	P		P

**Table 1 – Permitted Use Table**

Uses	<b>P = Permitted</b> <b>C = Allowed as Conditional Use</b> <b>SR = Permitted with Special Requirements</b> <b>Blank Space = Not Permitted</b>											
	Districts											
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	CR	AI	BDM	OU
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
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

**Table 1 – Permitted Use Table**

Uses	<b>P = Permitted</b> <b>C = Allowed as Conditional Use</b> <b>SR = Permitted with Special Requirements</b> <b>Blank Space = Not Permitted</b>											
	<b>Districts</b>											
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	CR	AI	BDM	OU
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

**Table 1 – Permitted Use Table**

Uses	<b>P = Permitted</b> <b>C = Allowed as Conditional Use</b> <b>SR = Permitted with Special Requirements</b> <b>Blank Space = Not Permitted</b>											
	<b>Districts</b>											
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	CR	AI	BDM	OU
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.

**Sec. 78-642. Dimensional requirements.**

The dimensional requirements for structures and land in the various zoning districts shall be in accordance with Table 2.

<b>Table 2. Dimensional Requirements</b>										
<b>Districts</b>	<b>Minimum Lot Size</b> 1,2,4,5 (Square Feet)	<b>Density<sup>2,4</sup></b>		<b>Minimum Yard Setback Requirements in Feet <sup>3,4</sup></b>						<b>Maximum Height</b> (Feet)
		<b>Minimum Land Area Per Dwelling Unit (multiple units on a single lot) (square feet)</b>	<b>Maximum Number Dwelling Units Per Acre</b>	<b>Front Yard</b> Public Sewer	<b>Side Yard</b> Public Sewer	<b>Rear Yard</b> Public Sewer	<b>Front Yard</b>	<b>Side Yard</b>	<b>Rear Yard</b>	
<b>R-LD Residential</b>	43,560	No more than 2 units per lot	2 (no more than 2 units per lot)	10	10	20	10	10	20	35
<b>R-1 Residential</b>	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
<b>R-2 Residential</b>	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
<b>R-3 Residential</b>	Same as R-2	Same as R-2	12	10	7	15	20	10	20	35
<b>NS Neighborhood Service</b>	30,000 (no public sewer)	Minimum lot size shown in	12	10	7	15	20	10	20	35

**Table 2. Dimensional Requirements**

Districts	Minimum Lot Size 1,2,4,5 (Square Feet)	Density <sup>2,4</sup>		Minimum Yard Setback Requirements in Feet <sup>3,4</sup>						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	
	10,000 (public sewer no public water)  5,000 (public water and sewer)	column two plus 0 for first additional unit  Plus: 3,600 for each additional unit								
<b>CS Commercial Service</b>	Same as NS	Same as NS	12	10	10	10	10	10	10	50
<b>EMP Employment</b>	Same as NS	Same as NS	12	20	10	20	20	10	20	90
<b>CR Conference Center/Resort</b>	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 1ft additional for each additional 5 feet of setback from all property lines up to 100ft total).
<b>PS Public Service</b>	Same as NS	Same as NS	12	20	10	20	20	10	20	50
<b>AI Airport Industry</b>	Same as NS	NA	NA	20	10	20	20	10	20	50
<b>BDM Beaverdam</b>	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
<b>OU Open Use</b>	No dimensional requirements except as applied to conditional 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).<sup>4</sup>

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:

<b>% Natural Slope</b>	<b>Lot Frontage (Feet)*</b>	<b>Minimum Lot Size (Acres)</b>	<b>Maximum Disturbed</b>	<b>Maximum Impervious Cover (Acres)</b>
0-9.99 with public water and sewer	100	0.5	<i>If lot is &lt; 0.75 Acres: 80% of lot</i>	0.375
			<i>If lot is 0.75 - 1 Acres: 75% of lot</i>	
			<i>If lot is &gt;1 Acre: 0.75 acres</i>	
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

<sup>4</sup> Section added April 2, 2019 via Ordinance No. 19-04-07; ZPH2018-00048

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
<b>*Minimum lot frontage shall be 75 feet where adjoining a cul-de-sac.</b>				

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.

### **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 10 linear feet of the structure. See Sec. 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 (10) 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:

<b>Tree Dimensions</b>	<b>Credits</b>
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 uses, and variances proposed within the Blue Ridge Parkway Overlay District.

**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 uses.* All conditional 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 Sec. 78-678. All uses not listed are not allowed. <sup>5</sup>

<b>Steep Slope/High Elevation Overlay Permitted Use Table</b>											
<b>Uses</b>	<b>P = Permitted C = Allowed as Conditional Use Blank Space = Not Permitted</b>										
	<b>Districts</b>										
	<b>R-LD</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>NS</b>	<b>CS</b>	<b>EMP</b>	<b>PS</b>	<b>CR</b>	<b>BDM</b>	<b>OU</b>
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

<sup>5</sup> Section added on April 2, 2019 via Ordinance No. 19-04-07; ZPH2018-00048

## Steep Slope/High Elevation Overlay Permitted Use Table

<b>Uses</b>	<b>P = Permitted</b> <b>C = Allowed as Conditional Use</b> <b>Blank Space = Not Permitted</b>										
	<b>Districts</b>										
	<b>R-LD</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>NS</b>	<b>CS</b>	<b>EMP</b>	<b>PS</b>	<b>CR</b>	<b>BDM</b>	<b>OU</b>
HUD-labeled manufactured homes-Residential <sup>6</sup>	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

<sup>6</sup> This use added to R-1, R-2, BDM on April 2, 2019 via Ordinance No. 19-04-07; ZPH2018-00048

## Step Slope/High Elevation Overlay Permitted Use Table

<b>Uses</b>	<b>P = Permitted</b> <b>C = Allowed as Conditional Use</b> <b>Blank Space = Not Permitted</b>										
	<b>Districts</b>										
	<b>R-LD</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>NS</b>	<b>CS</b>	<b>EMP</b>	<b>PS</b>	<b>CR</b>	<b>BDM</b>	<b>OU</b>
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 telecommunications 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

## Steep Slope/High Elevation Overlay Permitted Use Table

<b>Uses</b>	<b>P = Permitted</b> <b>C = Allowed as Conditional Use</b> <b>Blank Space = Not Permitted</b>										
	<b>Districts</b>										
	<b>R-LD</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>NS</b>	<b>CS</b>	<b>EMP</b>	<b>PS</b>	<b>CR</b>	<b>BDM</b>	<b>OU</b>
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
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

### Steep Slope/High Elevation Overlay Permitted Use Table

Uses	<b>P = Permitted</b> <b>C = Allowed as Conditional Use</b> <b>Blank Space = Not Permitted</b>										
	Districts										
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	CR	BDM	OU
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 (10) 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 (2) dwelling units or two (2) 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 8 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 Sec. 70-5 of the Land Development and Subdivision Ordinance and results in more than three (3) 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 (10) 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 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 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 10 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.

#### **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 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.
- (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 uses.* All conditional uses shall be administered in accordance with Division VI of this chapter.
- (e) *Special Requirements.* Uses are permitted in the Protected Ridge Overlay District pursuant

to Sec. 78-678. All uses not listed are not allowed. <sup>7</sup>

Protected Ridge Overlay Permitted Use Table											
Uses	<b>P = Permitted</b> <b>C = Allowed as Conditional Use</b> <b>Blank Space = Not Permitted</b>										
	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 <sup>8</sup>	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

<sup>7</sup> Section added on April 2, 2019 via Ordinance No. 19-04-07; ZPH2018-00048

<sup>8</sup> This use added to R-1, R-2, BDM on April 2, 2019 via Ordinance No. 19-04-07; ZPH2018-00048

Protected Ridge Overlay Permitted Use Table											
Uses	<b>P = Permitted</b> <b>C = Allowed as Conditional Use</b> <b>Blank Space = Not Permitted</b>										
	Districts										
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	CR	BDM	OU
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 (10) percent of the area in the Protected Ridge Overlay District after the effective date of this section shall be a minimum of two (2) acres.
- (2) Density standards. No more than two (2) dwelling units or two (2) 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%

(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 8%

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 Sec. 70-5 of the Land Development and Subdivision Ordinance and results in more than three (3) 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 (10) 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 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 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 10 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 through out 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.

**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 twenty percent of the proposed units will be made available at workforce rates. No variance(s) from this requirement may be requested or obtained under Sec. 78-621(4) or Sec. 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 Sec. 78-642, according to the following table in section 78-650(c)(1)(a). No variance(s) may be requested or obtained under Sec. 78-621(4) or Sec. 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% and the density earned will be 159% of that allowed in Sec. 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
<b>Community</b>			
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 years minimum)	1.5 points for each % workforce (20% minimum)	Under guidelines of the Workforce Housing Services 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)	105
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 <a href="mailto:activekidswnc@gmail.com">activekidswnc@gmail.com</a>	25
<b>Environment/Transit</b>			
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

	POINTS	PERFORMANCE METRIC	MAXIMUM POSSIBLE POINTS
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 <a href="http://portal.ncdenr.org/web/lr/bmp-manual">http://portal.ncdenr.org/web/lr/bmp-manual</a> , 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 collection	5 points for water collection systems	Development incorporates the installation of either rainwater or greywater collection systems through the use of cistern reservoirs subject to review and approval of the County Stormwater Management Engineer	5
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
<b>Economy</b>			
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

	POINTS	PERFORMANCE METRIC	MAXIMUM POSSIBLE POINTS
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 CUP. Deed restrictions indicating use (public or private) must be recorded. Structures must provide community meeting space (not a pool building, etc.)	25
<b>Added Amenities</b>			
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 every 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; 2 points for every 500 linear feet external to the development	5 foot wide sidewalk with a 5 foot wide utility strip/setback from the street or curb edge	10
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% to ≤80% of area median income and workforce housing will be targeted to individuals at >80% to 120% 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 Sec. 78-621(4) or Sec. 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 Sec. 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 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 Sec. 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:

- i. the complete construction of the affordable or workforce housing units;
- ii. the provision of community building(s) or facilities;
- iii. the provision of sidewalks, greenways, or other forms of passive recreation;
- iv. the provision of street trees;
- v. 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).

**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 Sec. 78-657 Nonconforming Uses; Sec. 78-664 Travel Trailers and Recreational Vehicles; and Sec. 78-668 Lighting Standards, which shall be applicable in the Open Use District.

### **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 (2) 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.

**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).

<b>Table 3: Required Parking</b>	
<b>Land Use</b>	<b>Required Parking</b>
<b><i>Residential Uses</i></b>	
Residential dwellings, single-family and two-family	2 spaces per dwelling unit
Residential dwellings, multifamily	1.75 spaces per dwelling unit
<b><i>Other Uses</i></b>	
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

**Table 3: Required Parking**

Land Use	Required Parking
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 trailer sales, outdoor equipment and machinery sales	1 space per 2 employees, plus 1 space per 600 square 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	<ul style="list-style-type: none"> <li>• Tennis, squash, or racquet ball, 2 spaces per court</li> <li>• Skating rink, 1 space per 200 square feet</li> <li>• Swimming pool, 1 space per 140 square feet of pool surface area, plus 1 space per employee on shift of maximum employment</li> <li>• Golf and miniature golf courses, 2 spaces per hole</li> </ul>

<b>Table 3: Required Parking</b>	
<b>Land Use</b>	<b>Required Parking</b>
	<ul style="list-style-type: none"> <li>• Athletic fields, 10 spaces per field</li> <li>• Bowling establishment, 3 spaces per lane</li> <li>• Billiard or pool hall, 2 spaces per table</li> <li>• Shooting ranges, 1 space per target area</li> </ul>
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.

**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.

**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.

**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.

**Sec. 78-662. Relationship of building to lot.**

In no case, shall there be more than four (4) principal buildings, in addition to any customary accessory buildings on a single lot, except in the case of a designated planned unit development, manufactured home park, place of worship, or community oriented development.

**Sec. 78-663. Accessory structures and buildings.**

- (1) Accessory uses or structures shall not involve any use or structure otherwise prohibited by this division or requiring a conditional 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:

- (a) Front yard: set forth per relevant zoning district under Sec. 78-642;
  - (b) Side yard setback: seven feet; and
  - (c) Rear yard setback: seven feet.
- (2) 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:
- (a) Front yard, set forth per relevant zoning district under Sec. 78-642;
  - (b) Side yard setback, no public sewer: ten feet;
  - (c) Side yard setback, public sewer: seven feet; and
  - (d) 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 Sec. 78-642. In such cases, the setback shall be that of the aforementioned existing buildings.

**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.

**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.

**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.

**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.

### **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 ordinance, 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% of the value of the structure or is replaced in its entirety, all lighting attached to the new or renovated canopy must comply with Section 78-668(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 façade of a building) are replaced, the new lighting must comply with Section 78-668(e).
- (3) All existing dusk-to-dawn utility/security lights shall conform to the provisions of Section 78-668(e) within 5 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 Sec. 78-668(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 Sec. 78-668(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 Sec. 78-668(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 section 78-668(f)(5) shall be exempt from this requirement.

- (3) Accent and Façade Lighting. Accent or façade 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 façade 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 luminaire 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 Section 78-668(f)(2) and 78-668(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 Section 78-668(f)(1) 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 Sec. 78-668(d)(1) must submit a written request to the Zoning Administrator. The Zoning Administrator shall have 10 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 Section 78-668(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 Section 78-668(d)(1) shall be event-specific and shall not be permitted for a duration of more than five (5) 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.

**Secs. 78-669--78-675. Reserved.**

**DIVISION 6. CONDITIONAL USES**

**Sec. 78-676. Purpose.**

The following conditional 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 uses if the provisions of this and all other divisions of this article have been met.

**Sec. 78-677. Procedure for obtaining a conditional use permit.**

- (a) *Application.* A written application for a conditional use permit is submitted to the zoning

administrator.

(b) *Conference with applicant.* Prior to submission of an application for a conditional 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 N.C. Gen. Stat. §153A-345.1 or as amended.

(d) *Development plan; submission; contents.* At least thirty (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" x 17" or 8.5" x 11", 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 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 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 10 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, 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 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, the permit shall be terminated and the operation of such use discontinued. If a conditional use permit is terminated for any reason, it may be reinstated only after a public hearing is held. Before any conditional 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) Buffering, 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 N.C. Gen. Stat. §153A-345.1 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 permits shall retain vesting in accordance with N.C. Gen. Stat. §153A-344.1 or as amended.

### **Sec. 78-678. Uses by right subject to special requirements and conditional use standards.**

(a) *Uses by right, subject to special requirements (SR).* Uses by right, subject to special requirements (SR) 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 (8) square feet, with a maximum height of four (4) 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 Sec. 78-658.
- c. *Buffering.* Property line buffering must meet the requirements described in Sec. 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 (10) 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 (8) square feet, with a maximum height of four (4) feet.
- b. *Enrollment.* Maximum enrollment is limited to eight (8) 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 Sec. 78-658.
- e. *Buffering.* Property line buffering must meet the requirements described in Sec. 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 (4) feet in width and shall be composed of trees or shrubs of a type, which at maturity shall be not less than six (6) 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 (1) 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 (1) additional bathroom and shower shall be provided for every ten (10) 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 (4) feet in height at the time of planting and shall be planted within eight (8) 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 (8) 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:<sup>9</sup>

- (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% 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

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<sup>9</sup> Section added on April 2, 2019 via Ordinance No. 19-04-07; ZPH2018-00048

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 Use Standards.* Before issuing a conditional 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 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 (2) feet in height at the time of planting shall be planted within eight (8) 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 (6) 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 5 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 NC or US 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.

- (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 (4) feet in width and shall be composed of trees or shrubs of a type, which at maturity shall be not less than six (6) 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 (1) 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 (1) additional bathroom and shower shall be provided for every ten (10) travel trailer spaces in the park without water and sewer connections.
- (6) *Planned Unit Developments, level I (PUDI).* 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 PUDIs. PUDIs may be located in the relevant districts as conditional uses, subject to a finding by the board of adjustment that the following conditions are met:

1. *Ownership control.* The land in a 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 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 PUDI lies in more than one district, the number of allowable dwelling units must be separately calculated for each portion of the PUDI that is in a separate district, and must then be combined to determine the number of dwelling units allowable in the entire PUDI. When the PUDI is a community oriented development, the allowed density shall be in accordance with Sec. 78-650.
3. *Land uses.* A mixture of land uses shall be allowed in any PUDI. However, within residential districts, nonresidential uses shall be carefully designed to complement the residential uses within the PUDI. All PUDIs must be compatible with and not violate the intent of the zoning district; however, said uses may include uses not permitted under Sec. 78-641 within the zoning district(s) within which the project is located, provided that the board of adjustment finds that 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 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 PUDI, provided that unique elements of the development impose requirements for additional height that are not universal throughout the zoning district. Additionally, 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. 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, walls, 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 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 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) *Planned Unit Developments, level II (PUDII).* Planned unit development, level II standards shall be as follows:
- a. *Land development standards.* The following land development standards shall apply for all PUDIIs. PUDIIs may be located in the relevant districts as conditional uses, subject to a finding by the board of adjustment that the following conditions are met:
    - 1. *Ownership control.* The land in a 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.* PUDII 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 PUDII, provided that unique elements of the development impose requirements for additional height that are not universal throughout the zoning district. Additionally, 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. 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 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 10 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 NC 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 fifteen 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 thirty 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 (8) square feet, with a maximum height of four (4) 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 Sec. 78-658.
- c. Buffering. Property line buffering must meet the requirements described in Sec. 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 twenty 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 (8) square feet, with a maximum height of four (4) 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 Sec. 78-658.
- d. *Buffering.* Property line buffering must meet the requirements described in Sec. 78-667 and parking areas and outdoor play areas must be screened from adjacent properties through the use of vegetation or solid fencing.

**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.

### **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.

### **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.

### **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.

**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.

**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.

**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.

**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 10 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 10 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 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 Sec. 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.

### **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.

**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 10 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 10 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 Sec. 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 Sec. 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.

***-End-***