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Sec. 36-1. - Authority and enactment clause.

In pursuance of the authority conferred by General Statutes, particularly G.S. 160A-381 through 160A-392, and for the purpose of promoting the health, safety, morals, convenience, order, prosperity or the general welfare of the town; securing safety from fire, panic, and other damages; preventing the overcrowding of land; avoiding undue concentration of population; facilitating the adequate provisions of transportation, water, sewerage, schools, and other public requirements; conserving the value of buildings and encouraging the most appropriate use of land and buildings throughout the town, all in accordance with a comprehensive plan, the town council of the Town of Weaverville, North Carolina, does ordain and amend [Chapter 36](#) of this Code to enact into law the following articles and sections.

(Ord. of 6-19-1978, Art. I)

Sec. 36-2. - Short title.

This chapter shall be known and may be cited as "the Zoning Ordinance of the Town of Weaverville, North Carolina."

(Ord. of 6-19-1978, Art. II)

Sec. 36-3. - Jurisdiction.

The provisions of this chapter shall apply within the corporate limits and extraterritorial jurisdiction of the Town of Weaverville as heretofore established and as shown on the map entitled "Official Zoning Map of the Town of Weaverville, North Carolina," revised December, 1988 by the town council. Said map and all explanatory matters thereon accompanies and is hereby made a part of this chapter; it shall be on file in the office of the town clerk and in the Office of the Register of Deeds for Buncombe County. The town is exempt from the provisions and requirements of this chapter.

(Ord. of 6-19-1978, Art. III)

Sec. 36-4. - Interpretation of certain words and terms.

Words defined herein or in [section 36-197](#) shall have the meanings as set forth in this chapter. Words not defined herein shall have the meaning as set forth in Webster's New Collegiate Dictionary, latest revisal. For the purpose of this chapter, certain words or terms used herein shall have meanings as follows:

- (1) Words used in the present tense include the future tense. Words used in the singular include the plural, and words used in the plural include the singular.
- (2) The word "shall" is always mandatory.
- (3) The word "lot" includes the word "plot" or "parcel."
- (4) The word "building" includes the word "structure."
- (5) The word "person" includes any firm, unincorporated association, organization, partnership, trust, company, or corporation, as well as an individual, male or female.
- (6) The word "used" or "occupied," as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be used or occupied."

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- (7) The word "map," "zoning map," or "Weaverville Zoning Map" shall mean the "Official Zoning Map of the Town of Weaverville, North Carolina", unless the word "map" is clearly used in another context.

(Ord. of 6-19-1978, Art. IV, § 17-400)

Sec. 36-5. - Definition of specific words and terms.

Abandoned sign or sign structure. A sign or sign structure which was erected on property in conjunction with a particular use which use has been discontinued for a period of 90 days or more or a sign of which the contents pertains to a time, event or purpose which no longer applies or which event has already occurred.

Accessory structure. A structure that is clearly incidental to and customarily found in connection with a principal building or use, is subordinate to and serves a principal building or use and is subordinate in area, extent and purpose to the principal building or principal use served. An accessory structure must be on the lot on which the principal use is located.

Accessory use. A use of a nature customarily subordinate or incidental to, and located on the same lot as, the principal use of any structure or property.

Advertising sign. A sign which directs attention to a business, commodity, service or entertainment conducted, sold, manufactured or offered. Such signs are further classified according to location, as follows:

- (a) *Off-premises sign.* Any sign used for the purpose of displaying, advertising, identifying or directing attention to a business, products, operations or services sold or offered for sale on a lot other than on the lot where such sign is displayed.
- (b) *On-premises sign.* Any sign used for the purpose of displaying, advertising, identifying or directing attention to a business, products, operations or services sold or offered for sale on the lot where the sign is displayed.

Agriculture. The use of land for agricultural purposes, including farming, dairying, pasturage agriculture, horticulture, floriculture, viticulture and animal and poultry husbandry and the necessary accessory uses for packing, treating, or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities.

Animated sign. Any sign using flashing or intermittent lights, sound, color changes or other mechanical or electrical means to give motion to the sign or to give the impression of motion or movement to the sign; or any sign with visible moving, revolving or relocating parts; provided, however, this shall not include "time/date/temperature" signs as hereinafter defined.

Apartment or apartment use. See "dwelling unit" and "dwelling, multi-family".

Attached sign. Any sign attached to, applied on, or supported by any part of a building, including, but not limited to, a wall, window, or projecting sign, or a sign painted on or attached to a canopy, awning or marquee of a building.

Automobile service or filling station. Any area of land, including structures thereon, which is used for the retail or wholesale sale of gasoline or any other motor vehicle fuel or oil and other lubrication substances, including any sale of motor vehicle accessories. These may or may not include facilities for lubricating, washing, or otherwise servicing motor vehicles, but may not include the painting thereof by any means. This classification shall not include convenience stores which do not dispense motor fuels.

Awning. A temporary hood or cover which projects from the wall of a building, and which may include a type which can be retracted, folded or collapsed against the face of a supporting building.

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Banner. A strip of cloth or other material on which a sign is painted.

Berm. See "mounded earth".

Billboard. An advertising sign used as an outdoor display for the purpose of directing attention to a business, commodity, service or entertainment conducted, sold, manufactured, or offered at a location other than the location of said sign.

Boarding house. Any dwelling in which three or more persons, either individually or as families, are housed or lodged for hire, with or without meals. A boarding house shall be managed or operated by a person or family who resides on the premises. A "rooming house" and a "bed and breakfast" establishment shall be deemed a boarding house. If such an establishment is not managed by a person who resides on the premises, it shall be considered as a hotel or motel, hereinafter defined.

Buffer. A landscaped strip of land designed to minimize the potential conflicts between adjoining land uses. Specific buffers are defined as follows:

Ten-foot buffer. A planted strip of land which shall be a minimum of ten feet in width. The required planting thereon shall be composed of evergreen vegetation which at maturity will be between six and ten feet in height. Hedges or other evergreen plantings shall be installed at an initial height of at least four feet, and shall be of a variety (such as Hetizi Juniper, Carolina or Canadian Hemlock, or other variety with similar characteristics) that can be expected to grow to an average height of ten feet, by a normal growth, within four years from the time of planting. Such required buffer strip must be at the same grade level as the land on both sides thereof.

Twenty-foot buffer. A planted strip of land which shall be a minimum of 20 feet in width. The required planting thereon shall be composed of evergreen bushes, trees, and/or shrubs, initially of a height of at least four feet, planted so that at least two rows are provided which shall be planted in a staggered pattern approximately in the center of the buffer strip and which will grow from the initial four-foot height to a height of six feet within five years and which will contain foliage overlaps within six years of planting. Each buffer shall contain at least one deciduous tree for each 40 feet of lot perimeter which shall be at least one inch caliper with an initial height of six feet. Buffer strips must be maintained and inspected annually by the original developer or current owner with a report of conditions being submitted to the zoning administrator or his designee. Such required buffer strip must be at the same grade level as the land on both sides thereof. The planning and zoning board may approve as a buffer strip a previously planted strip of land, provided that the existing vegetation is of a height and density which will afford equal or better protection to the adjoining properties as would a newly planted buffer strip, as provided for in the foregoing portions of this definition.

Building. Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals, property or business activity. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one building. The connection of two buildings by an enclosed corridor connector where the buildings connected are not less than 50 feet apart at all points, and the connecting corridor is not less than 50 feet in length nor more than 15 feet in inside width, one story in height, and the outside walls of which contain not less than 30 percent glazing, shall not be deemed to make them one building provided the corridor has no other use than as a passage from one building to the next.

Building addition or expansion. Any construction that increases the size of a building or structure in terms of site coverage, height, length, width or gross floor area or where a portion of the gross floor area is relocated.

Building frontage. The linear length of any building occupied by a single owner or tenant or the linear length of that portion of a building used by an individual tenant in a multiple tenant development which faces a public street or alley or which faces the access road in a unified business development.

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Building, height of. The vertical distance measured from the front ground floor level of the structure to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the mean height level between the eaves and ridge of a gable, hip, or gambrel roof. Height limitations shall not apply to chimneys, steeples, communication antennas, spires, and other similar objects.

Building line. The line, parallel to the street line, that passes through the point of the principal building nearest the front lot line.

Building permit. See "permit, building."

Building, principal. A building in which is conducted the principal use of the lot on which said building is located.

Caliper. The diameter of a tree trunk measured 4½ feet above the ground.

Canopy. A permanently attached structure which projects from and is supported by a building, which structure serves as a cover providing shelter or decoration and which extends beyond the building.

Changeable copy sign. Any permanent sign, illuminated or not, which is principally devoted to and designed for changeable text and graphics, but which specifically excludes "time/date/temperature" signs as hereinafter defined. Portable or moveable signs are not considered changeable copy signs.

Church. A place of worship; a building(s) or structure(s) including, but not limited to, accessory classrooms, meeting rooms, offices, and housing quarters for religious leaders, that are primarily intended for religious services and which operates as a private, not-profit, tax exempt institution. The term includes, but is not limited to, churches, synagogues, and temples.

Clearance (as used regarding signs). The vertical distance from the established finished grade of the property upon which a sign is located to the lowest edge of the sign. No sign shall be built on a berm which would raise the height of the sign more than two feet.

Clinic. See "hospital facility".

Cluster development. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project provided there is no increase in the overall density of the development. This term includes nonresidential development as well as single-family residential subdivisions and multifamily developments that do not involve the subdivision of land.

Cluster home. The configuration of dwellings such that each single-family dwelling is on its own lot; and such that one or more of the building's sides is located directly on a lot line; and such that one or more of the sides of each building directly abuts one or more of the sides of adjacent buildings.

Clustering of buildings. A development design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreation, common open space, and preservation of environmentally sensitive areas.

Commemorative sign. Any sign erected in remembrance or a historical person, place or event or which denotes, honors, celebrates or acknowledges a historical person, place or event.

Construction sign. A sign with a message limited to the identification of architects, engineers, contractors, and other persons involved with a particular construction project or to set forth the name of the building being constructed, the intended purpose of the building and the expected completion date.

Customary incidental home occupations. Any use conducted entirely within a dwelling and which use is clearly incidental and secondary to the use of the dwelling for residential purposes and which use does not change the residential character of the dwelling. No more than one employee, other than family members residing on the premises, shall be employed in connection with the home occupation. No mechanical or electrical equipment shall be installed or used except such equipment as is normally used for domestic or professional purposes, and not over 25 percent of the total floor space of any residential structure shall be used for such home occupation.

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Day care center (or facility). The term "day care center" or "facility" shall be defined as the terms "day care facility" or "child day care home" are defined in G.S. 110-86.

Developer. A person undertaking any or all the activities covered by this chapter, or for whose benefit such activities are commenced or carried on.

Development. Any human change or alteration to the unimproved or improved state of land, including, but not limited to changes or alteration to vegetation, soil, geology, hydrology, buildings or other structures for any residential, commercial, industrial, utility, or other uses, including, but not limited to, all areas for vehicular access, circulation, and parking and including, but not limited to, mining, dredging, filling, grading, paving, excavating and drilling operations and any subdivision of land.

Development identification sign. A sign bearing the name of a residential or commercial development or subdivision, including an apartment house, unified housing or business district or mobile home park.

Directional sign. A sign, the sole purpose of which is to direct pedestrian or vehicular traffic to a particular premises. A particular premises will be limited to having two directional signs at each entrance to the premises from a public road. Such directional sign shall contain no advertising material.

Drip line. An imaginary line on the ground formed by water falling from the end of the tree branches which extend the furthest from the trunk of the tree in all directions.

Duplex. See "dwelling, two-family".

Dwelling, multi-family. A building or portion thereof used or designed as a residence for three or more families living independently of each other and doing their cooking therein, including apartments, apartment houses or apartment hotels, and group houses.

Dwelling, single-family. A building or manufactured, modular or mobile home arranged or designed to be occupied by one family.

Dwelling, two-family. A building or manufactured, modular or mobile home arranged or designed to be occupied by two families living independently of each other. This shall include what is sometimes referred to as a "duplex".

Dwelling unit. A building, or portion thereof, designed to provide complete and permanent living facilities for one family, including restroom and cooking facilities.

Easement. A grant of one or more property rights by the owner to, or for the use by, the public, a corporation, or another person or entity.

Eave line. The point where a cornice or projection occurs at the top of an exterior building wall.

Electronic message signs. Signs which display changeable information in an easily comprehensible way and for which the message changes more than two times in a 24-hour period. All messages shall be visible for a minimum of three seconds and shall be kept accurate. Electronic message signs shall include tri-panel message systems. These will not be deemed to constitute changeable copy or animated signs and are permitted only on marquee signs.

Erect. To construct, build, raise, assemble, install, place, replace, locate, relocate, affix, attach, display, alter, use, create, paint, draw, illuminate, or in any other way bring into being or establish.

Erosion. The wearing away of land surface by the action of wind, water, gravity or any combination thereof. Externally illuminated sign. Any sign which reflects light from a source intentionally directed upon it, for example, by means of floodlights or externally mounted fluorescent light fixtures.

Exterior architectural features. The architectural style, general design and general arrangement of the exterior of a building or other structure, including the color, the kind and texture of the building material and the type and style of all windows, doors, light fixtures, signs and other appurtenant fixtures.

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In the case of outdoor advertising signs, exterior architectural features shall be construed to mean the style, material, size and location of all such signs.

Externally illuminated sign. Any sign which reflects light from an exterior source intentionally directed upon the sign such as a sign illuminated by an exterior floodlight or externally mounted fluorescent or incandescent light fixture.

Facade. The entire sides of a building, including any parapet and wingwalls.

Family care home. An adult care home with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six resident handicapped persons.

Farm. A tract of land, generally composed of one acre or more, with or without a house, barn or other structures, used for the cultivation of the soil for production of crops, including but not limited to fruits, vegetables, flowers and ornamental plants, the planting and production of trees and timber, and the raising of livestock, for individual and public use, consumption, and marketing. A farm may consist of water devoted to the raising of fish or water related crops.

Fence. A barrier, usually installed along a property line for security, privacy or decorative purposes whether open or solid in construction. A fence may be an interior fence erected to keep in livestock. No fence shall be located within the right-of-way of any street or highway. Fences located within any minimum required "yard" as provided for in this chapter shall not exceed seven feet in height. Where a fence is located at the top of a slope or retaining wall, the fence height shall be measured from the top of the slope or retaining wall.

Festival signs. Temporary signs or banners which are placed to commemorate and/or attract attention to a festival recognized by the town. This type of sign includes signs erected by a school, church, or civic club to commemorate events which they sponsor and will be limited to being erected three weeks prior to the event sponsored.

Finished grade (as used with reference to a sign). The final ground level immediately next to a sign.

Fire chief. The principal fire code enforcement official of the Town of Weaverville.

Fire official. The designee of the fire chief for purpose of enforcement of the Weaverville Fire Prevention Code.

Flashing sign. A sign illuminated by direct or indirect artificial light which flashes on and off in regular or irregular sequences, including, but not limited to, strobe lights.

Flood insurance study. The official report provided by the Federal Emergency Management Agency. The report may contain flood profiles as well as the flood hazard boundary-floodway map and the water surface elevation of the base flood.

Flood maps. The flood boundary and floodway maps for Asheville, North Carolina, as provided by the FEMA, including amendments and updates, pursuant to the Flood Disaster Protection Act of 1973 (Public Law 93-234) as amended.

Floodplain. Any normally dry land area that is susceptible to being inundated by flooding. Includes both the floodway and the flood fringe area. The susceptibility of this area to flooding may pose hazards for building construction.

Flood profiles. A graph or longitudinal profile showing the relationship of the water surface elevation of a flood to a location along a river or stream, as provided by the Federal Emergency Management Agency, pursuant to the Flood Disaster Protection Act of 1973 (Public Law 92-234) as amended.

Floodproofing. Structural additions, changes, or adjustments to structures subject to flooding which will reduce or eliminate flood damages to the structure, building contents, water and sewer facilities, and utilities.

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Floodway. The channel of a river or other watercourse and the adjacent land areas in which development must be restricted in order to permit the unrestricted flow of the waters of the regulatory flood.

Freestanding or pole sign. A sign which is permanently affixed to the ground by a pole or other structure and which is not a part of or attached to a building.

Funeral establishment. A building used for the activity of preparation of deceased human beings for burial or cremation is the primary use of the premises. Secondary uses may include the display of the deceased, consummation of rituals connected therewith before burial or cremation, the storage of funeral vehicles and funeral supplies necessary for the preparation of the dead for burial or cremation, and for the sale of caskets, urns, and other funeral supplies.

Gaming terminal. Electronic machines, including, but not limited to, computers and gaming terminals, where one may play games including, but not limited to, sweepstakes, lotteries, games and/or games of chance where cash, merchandise, or other items of value are redeemed or otherwise distributed, whether or not value of such distribution is determined by electronic games played or be predetermined odds which have a finite pool of winners. This term includes, but is not limited to, internet cafes, internet sweepstakes, or cybercafes. Gaming terminal operations do not include operations associated with the official N.C. State Education Lottery or any nonprofit operation that is otherwise lawful under state law (for example, church or civic organization fundraisers), nor shall it include arcade games of skill.

Gated community. A subdivision, neighborhood, or residential community to which entry is restricted to residents and their guests. Often includes barriers such as gates, security personnel, fences and/or walls.

Gift shop. A retail space of 1,000 square feet or less in floor area in which miscellaneous articles appropriate as gifts are sold. This definition excludes food and beverage items intended for immediate consumption.

Golf course. Outdoor facility with at least nine holes, including par three courses, and including driving ranges as accessory uses, but not including putt-putt, miniature golf, or driving ranges as a principal use.

Governmental sign. Any sign erected by or on the order of an authorized public official or public body which shall include, but shall not be limited to, traffic control signs, street name and identification signs, warning and directional signs, public notices or signs of a similar nature.

Grade (as used with reference to a sign). The lowest point at which a sign is attached to the ground.

Gross floor space. The overall total area of a building or other structure including covered porches.

Ground level sign. A freestanding sign erected flush to the ground and not elevated upon poles or stanchions and not attached to a building.

Guarantee in lieu of construction of improvements. Cash, irrevocable letters of credit, bonds, or similar financial instruments deposited with and accepted by the town to insure that improvements required as part of a development will be satisfactorily completed.

Hardship. A practical difficulty in carrying out the requirements of this chapter. Unless otherwise indicated, financial difficulties, in and of themselves, do not constitute a hardship.

Height (as used with reference to a sign). The vertical distance between the highest part of the sign or its supporting structure, whichever is highest, and the base of the sign at grade.

Hospital facility. Any type of hospital; facility operated in connection with a hospital such as a clinic, including mental health clinics; nursing, convalescent, or rehabilitative facility; public health center; or any facility of a local health department. The term "hospital facility" also includes related facilities such as laboratories, outpatient departments, housing and training facilities for nurses and other health care

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professionals, central service facilities operated in connection with hospitals, and all equipment necessary for its operation.

Hotel. An establishment that provides lodging and usually meals, entertainment, and various personal services for the public.

Identification sign. A sign used to identify, indicate or advertise the name, logo or other identifying symbol of a building, business, profession, institution, service, or entertainment conducted on the lot upon which the sign is located.

Improvement. An addition to real property which is intended to enhance the value, beauty or utility of the property or to adapt the property for new or further purposes.

Incidental sign. A single face professional or announcement sign attached wholly to a building, window or door containing information relative to emergencies, store hours, credit cards honored and other similar accessory information.

Industry, light. Research and development activities, the manufacturing, compounding, processing, packaging, storage, assembly, and/or treatment of finished or semi-finished products from previously prepared materials, which activities are conducted wholly within an enclosed building. Light industry typically involves land uses operated in such a manner as to control external effects of the manufacturing process, such as smoke, noise, soot, dirt, vibration, odor, etc.

Inflatable balloon sign. A sign which is inflated with air or other gases and which is tethered to the ground in some manner. Self-propelled aircraft and hot air balloons which are not tethered to the ground are specifically excluded.

Internally illuminated sign. Any sign designed to provide constant artificial light to the sign through the sign face or through transparent or translucent material from a light source within the sign.

Joint identification sign. A sign bearing the names of individual tenants located within a multiple tenant development and which may include the name of the multiple tenant development.

Junk yard. A lot, land or structure, or part thereof, used primarily for the collection, storage and sale of waste paper, rags, scrap metal, or other discarded material; or for the collecting, dismantling, storage or salvaging of machinery or vehicles not in operating condition. This shall include the sale of parts from any such machinery or vehicles.

Kennel. Any premises where domestic animals, such as dogs and cats, are boarded, trained, or bred for commercial or animal control purposes.

Landscaped area of a lot. All pervious surfaces of a lot not including buildings, roofs, driveways, roads, parking areas, and sidewalks.

Landowner. Any person who owns a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a plan or application under this chapter.

Letter of credit. A written instrument issued by a financial institution at the request of a customer where the financial institution promises to honor drafts or demands for payment from a person named in the instrument upon compliance with conditions set forth in the instrument.

Logo. A business symbol or trademark.

Lot. 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 same.

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Lot depth. The mean horizontal distance between front and rear property lines measured along both side property lines and at the mid-point of the front and rear property lines.

Lot of record. A lot which is a part of a subdivision, a plat of which has been recorded in the office of the Register of Deeds of Buncombe County, North Carolina, or a lot described by metes and bounds in a deed which has been so recorded.

Lot width. The distance between the side lines of a lot measured at the front building setback line.

Maintain (as used with reference to a sign). To clean, paint, repair or replace defective parts of a sign in a manner which does not alter the basic design or structure of the sign.

Manufactured home or mobile home. A structure, transportable in one or more sections, which, in the traveling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

Manufactured home dealer or dealer. Any person engaged in the business of buying, selling or dealing in manufactured homes or offering or displaying manufactured homes for sale. Any person who buys, sells or deals in three or more manufactured homes in any 12-month period, or who offers or displays for sale three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

Manufactured home parks or mobile home parks. Any premises where manufactured or 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 travel trailers for living and sleeping purposes, and which include any buildings, structures, vehicles or enclosures used or intended for use as part of such park.

Manufactured or mobile home site. A plot of ground within a manufactured or mobile home park designed for the accommodation and use of one manufactured home or mobile home, and containing all improvements and utility connections required under this chapter and other applicable town codes.

Map, official zoning. See "zoning map."

Marquee. A sign on a theater, auditorium, fairground or museum which advertises current and scheduled events.

Menu board. A freestanding or wall mounted sign primarily designed for the display of menu items and prices for the purpose of placing orders for such items in conjunction with a restaurant.

Mixed use development. A development project integrating different types of land uses within one or more structures; for example residential units with office and/or retail facilities.

Mobile home. See "manufactured home", and "trailers or travel trailers".

Modular home. A dwelling unit constructed in accordance with the construction standards of the North Carolina Uniform Residential Building Code for One- and Two-Family Dwellings, and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly and placement on a permanent foundation. Without limiting the generality of the foregoing, a modular home may consist of two or more sections transported to the site on each's own chassis or steel frame, or a series of panels or room sections transported to the site on a truck and erected, assembled, or joined there. This unit is deeded, and not titled by the state department of motor vehicles.

Modular home site. A plot of ground designed for the accommodation and use of one modular home, and containing all improvements and utility connections required under this chapter and other applicable town codes.

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Motel. An establishment which provides lodging and parking and in which the rooms are usually accessible from an outdoor parking area.

Mounded earth (or berm). A mound of earth, sometimes referred to as a "berm", which shall not be more than four feet higher than the elevation of the surrounding property and with a slope no steeper than one foot of vertical distance for each two feet of horizontal distance. Any mounding of earth located within a required buffer strip must be mounded in conjunction with planting. The mounding of earth in a buffer strip shall not relieve the developer of the requirement of planting said buffer strip as herein specified. The mounding of earth outside of a buffer strip may be permitted without the required planting, but such mounding shall not exceed the height set forth above.

Multiple tenant development. A unified development in which there exist a number of individual and/or separate activities and in which there are appurtenant shared facilities (such as parking areas or a pedestrian mall area). The maximum sign height in such a development shall be 20 feet.

Nameplate sign. A sign located on a particular premises which identifies a business or home occupation.

New construction. Structures for which the "start of construction" commenced on or after the effective date of this chapter.

Nonconforming occupied lot. A lot which contained a structure on the effective date of this chapter or at the time the lot was brought into the city's jurisdiction but which does not meet the minimum requirements for width, area, front, side, or rear yard, height and/or open space for the zoning district in which it is located.

Nonconforming open uses of land. An open use on a lot when the only structures are incidental and accessory to the principal open use which was in existence prior to the effective date of this chapter or at the time the lot was brought into the city's jurisdiction and which would not be permitted by this chapter in the zoning district in which it is located. Uses such as storage yards, used car lots, auto wrecking yards, and golf driving ranges are examples of open uses.

Nonconforming sign. Any sign which does not conform with the standards of this chapter.

Nonconforming structure. Any structure which does not conform with the requirements of the zoning district in which it is located, either at the effective date of the ordinance from which this chapter derives or as a result of subsequent amendments to this chapter.

Nonconforming use of structure. A use of a structure which existed prior to the effective date of this chapter, or at the time the lot on which the structure is sited was brought into the town's jurisdiction, and which would not be permitted in the zoning district in which it is located.

Nonconforming vacant lot. A lot which does not meet the dimensional requirements for the zoning district in which it is located, but which was recorded prior to the effective date of this chapter or prior to the time the lot was brought into the city's jurisdiction. This definition shall not be interpreted to include lots recorded prior to the adoption of this chapter which were in violation of any prior subdivision regulation of the town.

Nonresidential development. All development other than residential development, agriculture, and silviculture.

Nursing home. See "hospital facility".

Office-warehouse. A land use that includes offices that support showroom or warehouse uses.

Off-premises sign. Any sign used for the purpose of displaying, advertising, identifying or directing attention to a business, products, operations or services sold or offered for sale on a lot other than on the lot where such sign is displayed.

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On-premises sign. Any sign used for the purpose of displaying, advertising, identifying or directing attention to a business, products, operations or service sold or offered for sale on the lot where the sign is displayed.

Open space. An area that is intended to provide light and air, and is designed for either environmental, scenic, or recreational purposes. Open space may include, but is not limited to, lawns, decorative planting, walkways, active and passive recreation areas, playgrounds, fountains, swimming pools, wooded areas, and water courses. Open space shall not be deemed to include driveways, parking lots, or other surfaces designed or intended for vehicular travel.

Outdoor storage. The storage of any item not enclosed within a building.

Owner. This term shall have the same meaning as the term "landowner."

Parapet. That portion of a building wall which rises vertically above the roof line.

Parking space. An area for vehicular parking of not less than nine feet by 18 feet, exclusive of the necessary access space to reach such parking space. Parking spaces shall be provided with vehicular access to a street or alley, and shall always be located outside of the dedicated street right-of-way.

Pedestrian oriented design. Development designed with and emphasis on pedestrian access and interest from adjoining streets and sidewalks. In pedestrian oriented design, buildings are generally placed close to the street and the main entrances are oriented to the street sidewalk; additionally, there are generally windows or display cases along building facades that face the street. Site characteristics of pedestrian oriented design typically include: site grading that enhances the relationship of the building to the adjoining street(s) and sidewalk(s) from the perspective of the pedestrian; parking facilities placed to the side or rear of the building; and the provision of pedestrian oriented amenities, such as outdoor dining areas, landscaping/hardscaping, and seating.

Performance guarantee. See "guarantee in lieu of construction of improvements."

Permit, building. A permit for work or construction which is regulated by the North Carolina State Building Code in any or all of its volumes.

Permit, grading and stormwater. The document issued by the city which allows grading and stormwater management operations to commence and to proceed in accordance with the requirements of this chapter.

Person. Includes individuals, corporations, partnerships, associations, legal representatives, trustees, trustees in bankruptcy or receivers.

Place of worship. A building(s) or structure(s) including, but not limited to, sanctuaries, accessory classrooms, meeting rooms, offices, and housing quarters for religious leaders, that are primarily intended for religious services and which operate as a private, nonprofit, tax exempt institution. The term includes, but is not limited to, churches, synagogues, and temples. Child care centers, schools, recreational facilities, and other uses developed as a part of the place of worship shall meet the standards for these uses set forth for the zoning district in which they are located.

Plat. A map, or representation on paper, of a piece of land subdivided into lots, with streets and alleys, usually drawn to scale.

Pole sign. See definition of "freestanding pole sign."

Portable or moveable sign. Any sign designed or intended to be readily relocated and which is not permanently affixed to the ground or to a building but which is on wheels, a trailer or a truck bed and signs which are rented and which are intended to be moved from one location to another.

Private driveway. A roadway serving one or more lots, building sites or other divisions of land, which lots also have public street frontage and which driveway is maintained by a private person or groups of people and which is not intended to be used for public ingress or egress.

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Professional office. The office of a member of a recognized profession maintained for the conduct of that profession and licensed by the State of North Carolina, including, but not limited to, the offices of doctors, lawyers, dentists, landscape architects, architects, stockbrokers and financial analyst, accountants, chiropractors, engineers, or surveyors.

Projecting sign. A sign end-mounted (or otherwise attached) to an exterior wall of a building and which projects from the wall.

Public dedications. Land offered or dedicated to the public (open space, park land, etc.) for the public's use.

Public utility. Any structure or facility transmitting a service provided by a utility company to include private systems such as telephone, electric, water and sewer, gas, power, etc., but not including utility substations, telecommunication towers, concealed telecommunication support structures, and other telecommunications devices.

Public utility structure. Utility structures including, but not limited to, pumping stations, transformers, utility poles, transmission lines, and pipelines that require a specific location to provide service. No employees are housed in these facilities.

Reader boards. See "changeable copy sign."

Real estate direction sign. A sign indicating the direction to a property being offered for sale. (See [section 36-201\(3\)f.](#))

Real estate sign. A sign offering property for sale, lease or development. (See subsection [36-201\(3\).](#))

Recreational uses, governmental. Facilities owned or operated by governmental agencies for public recreational use.

Recreational vehicle or trailer. See "trailer or travel trailer".

Residential development. A development consisting of buildings for residential uses such as attached and detached single-family dwellings, manufactured homes, apartment complexes, condominiums, townhouses, cottages, etc., and their associated outbuildings such as garages, storage buildings, gazebos, etc., and home occupations.

Retail business. An establishment selling commodities, the sale of which is not otherwise prohibited, in small quantities to the consumer.

Retail services. Establishments providing intangible needs for members of the public.

Retaining structure. A structure specifically designed to keep or hold an element in a particular place, condition, or position.

Retaining wall. A wall constructed for the purpose of retaining or holding earth or fill, normally in lieu of a slope, to accommodate differences in the elevation or grade of adjacent properties. Retaining walls located within any minimum required yard as provided for in this chapter, shall not project more than one foot above the finished grade of the property they are erected to retain or hold.

Retention basin. A basin designed to retain a permanent pool of water after having provided the planned detention of runoff during a storm event.

Ridge. The elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.

Right-of-way. An area or strip of land, either public or private, on which an irrevocable right-of-passage has been recorded for use as a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees, or other special use.

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Riparian. The characteristic of an ecological zone along bodies of water with distinct soils, plants, and wildlife characterized by an increase in moisture and different soil conditions.

Roof sign. Any sign erected, constructed or maintained upon or over the roof of any building or structure and which is wholly or partially dependent upon the roof or building structure for support. Roof sign shall not include a sign painted on the roof of a building or structure.

Sanctuary. A room in or that section of a place of worship containing the altar and/or where regularly scheduled primary worship services are conducted. The room or part of the place of worship may be used for other purposes also.

Sandwich board or A-frame signs. Any sign, other than portable or movable signs, as defined above, which is single or double faced, which may readily be moved from place to place on the premises and which is intended to be used in premise parking areas (example: No parking signs, package pickup signs, garage signs).

Screening. A fence, wall, hedge, or other natural planting of sufficient density to serve the purpose of a fence or wall that is opaque and minimizes the physical or visual intrusion generated by an existing or future use.

School. A public or private institution offering a curriculum of education authorized by the State of North Carolina giving regular instruction at the primary and/or secondary level. This definition includes kindergartens, elementary schools, junior high schools, middle schools and high schools but does not include day care facilities, individual instruction, or classes in a specialized subject.

Self-service storage facility. A building or group of buildings in a controlled access and fenced compound that contains varying sizes of individual, compartmentalized, and controlled access stalls or lockers for the storage of customer's goods or wares.

Setback means:

- (1) The required minimum horizontal distance between the building line and the related front, side, or rear property line.
- (2) For the sign regulations found in article VIII of this chapter, setback shall mean the horizontal distance between the leading face of the curb of a street and the closest point of a sign or sign structure on such lot. Where there is no curb, the measurement shall be made from the edge of the pavement.

Shrub. A woody deciduous or evergreen plant which consists of a number of small branches from or near the ground.

Siding. The exterior wall covering of a structure.

Sign. Any words, lettering, numerals, parts of letters or numerals, figures, phrases, sentences, emblems, devices, designs, material, except live vegetation, including any surface, fabric or other material background structure designed to carry such devices, as are used to designate or attract attention.

Sign area. The area of a sign shall be determined by measuring the display and border parts of a sign structure. The structure holding the sign will not be included in calculating in the surface area. If the sign is composed in whole or in part of freestanding letters, devices, or sculptured matter and not mounted on a measurable surface, the sign area shall be construed to be the area of least squares, rectangles, or circles that will enclose the letters, the devices, and/or sculptured matter.

Sign height. Vertical distance shall be measured from the street grade of the closest point in the street upon which the sign is located from the grade at the base of the sign, whichever is higher, to the highest point of the sign structure.

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Sign structure. Any structure which supports, has supported or is capable of supporting a sign, including any decorative cover for said sign structure.

Single-family residential development. Any development where:

- (1) No building contains more than one dwelling unit;
- (2) Every dwelling unit is on a separate lot; and
- (3) Where no lot contains more than one dwelling unit.

Single tenant. A single business establishment, activity, or use which does not share any facilities such as parking, storage areas, entrances, etc., with another use.

Site. All contiguous parcels of land, including any contiguous bodies of water, under one or diverse ownership, contemplated for development or already developed as a unit, although not necessarily all at one time, and including such portions which the planning and development director determines, because of their characteristics, shall comply with the requirements of this chapter.

Site plan. A plan, prepared to scale, showing accurately all information required by these regulations with respect to the development proposal.

Site specific development plan. For the purposes of applying for zoning vested rights approval under this ordinance, this term shall mean a plan of land development submitted to the Town of Weaverville by a landowner or agent for purposes of obtaining or land use permits or approvals.

Soffit. The underside of a structural component such as an arch, beam or cornice.

Solid screens. A closed wooden fence or solid wall (minimum seven feet in height) used for screening. Closed fences and solid walls shall be identical to or of compatible texture and quality with the material and color of the principal building. Where solid screens are specifically required by this chapter, landscape plantings shall be located between the fence or wall and adjoining property or right-of-way lines. Such plantings shall be provided so that no more than two-thirds of the height of the fence or wall is visible from the adjoining property within five years of initial construction.

Start of construction. The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, or improvement was within 180 calendar days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Storage container. Any container, storage unit, shed-like container or other portable structure that can be or is used for the storage of personal property of any kind and which is located for such purposes outside of an enclosed building other than an accessory building or shed which complies with all applicable building and land use requirements.

Storm drainage facilities. The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

Storm sewer. A closed conduit for conveying collected stormwater.

Stormwater discharge permit. The stormwater discharge permit issued by the Buncombe County authorizing stormwater discharge activities in accordance with applicable ordinances and regulations.

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Stormwater management. The collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to meet the objectives of this section and its terms, including, but not limited to measures that control the increased volume and rate of stormwater runoff and water quality impacts caused by manmade changes to the land.

Street. A paved or unpaved route which provides the principal means of access to abutting property.

Street frontage. That portion of a lot abutting a publicly maintained street or alley.

Street, major thoroughfare. Major streets that provide for the expeditious movement of high volumes of traffic within and through urban areas.

Street, minor thoroughfare. Minor thoroughfares perform the function of collecting traffic from local access streets and carrying it to the major thoroughfare system. Minor thoroughfares may be used to supplement the major thoroughfare system by facilitating a minor through-traffic movement and may also serve abutting property.

Street, private. Any paved or unpaved area not owned or maintained by a governmental entity, that is meant for the conveyance of vehicular traffic and is not a parking lot, although it may pass through a parking lot and be at times indistinguishable from said parking lot.

Street, public. A dedicated public right-of-way in which the roadway has been constructed to public standards for vehicular traffic and has been accepted for maintenance by a governmental entity, but does not include alleys.

Street right-of-way. A strip of land occupied or intended to be occupied by a travelway for vehicles and also available, with the consent of the appropriate governmental agency, for installation and maintenance of sidewalks, traffic control devices, traffic signs, street name signs, historical marker signs, water lines, sanitary sewer lines, storm sewer lines, gas lines, power lines, and communication lines. The location of any street planned, developed, or built after the effective date of this chapter must be shown on a legally approved plat recorded in the Office of the Register of Deeds for Buncombe County.

Street tree. A tree located along a roadway in compliance with [section 36-152](#).

Structure. That which is built or constructed, a structure is a walled and roofed building, a manufactured home, a gas or liquid storage tank, or other manmade facility or infrastructure.

Subdivider. Any person, firm, corporation, or entity who subdividers or develops any land deemed to be a subdivision.

Subdivision. All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the town as shown in the town's subdivision regulations;
- (2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors;
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the town as shown in the town's subdivision regulations; and

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(5) The subdivision or recombination of land by public utilities.

In case of a conflict between this definition and state law (G.S. 160A-376, or any successor statute), state law shall control.

Substantial construction progress. The actual start of construction as defined under "start of construction".

Substantial or significant improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the tax value, as determined by the Buncombe County Tax Department or market value based upon a certified appraisal, whichever value is greater, of the structure before the start of construction of the improvement or when an existing building is structurally altered such that the first floor gross square footage increased by more than 20 percent. Improvements, modifications, and additions to existing buildings are counted cumulatively for at least five years. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed.

Surface area (with reference to a sign). The entire area shall be measured by the square, rectangle, semi-circle, or parallelogram thereof, and shall comprise the entire sign inclusive of any border or trim and all of the elements of the matter displayed, but excluding the base or apron, supports and other structural members. In the case of three dimensional letters or painted letters directly on a wall surface, the surface area shall be defined as the area encompassing the individual letters themselves including any trim or border and excluding the background that supports the three dimensional letters.

Surveyor. A person licensed and qualified as a registered land surveyor in North Carolina.

Suspended or transom sign. A sign which is suspended from the underside of a horizontal plane surface, such as a canopy or marquee, and which is supported by such surface.

Tattoo parlor. An establishment whose principal business activity, either in terms of operation or as held out to the public, is the practice of placing designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments to contact or puncture the skin.

Temporary portable building. A building intended for nonresidential use for a limited time period, consisting of one or more modules constructed off the ultimate site of use and transported to that site either on its own wheels or otherwise.

Temporary portable building, construction-related. A temporary portable building directly related to the development of a lot and limited in duration to a time period extending from issuance of the initial zoning permit for such development to issuance of the final certificate of occupancy for the development.

Temporary sign. A sign with or without a structural frame, not permanently attached to a building, structure or the ground and intended for a limited period of display.

Time/date/temperature sign. A sign containing numerals or letters, which may be alternately displayed, and which alternating portion shows only the time, date and/or temperature. This sign shall not be considered a flashing or animated sign.

Tract. This term shall have the same meaning as the term "site."

Trademark. A name, symbol, or other device identifying a product which is officially registered and legally restricted to the use by its owner.

Trailer or travel trailer. Any vehicle or structure, other than a manufactured or mobile home, but including what is commonly known as a recreational vehicle or RV, capable of moving or being moved over streets and highways on its own wheels or on flat beds or other carriers, which is designed to be utilized to:

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- (1) Provide temporary or permanent quarters for the conduct of a business, profession, trade, occupation or recreation;
- (2) Serve as a carrier of people, new or used goods, products or equipment.
- (3) No trailer or travel trailer shall be used in any use district as a dwelling.

Unified business development. A development consisting of one or more principal business structures or buildings and necessary accessory structures or buildings to be constructed on a lot or plot of two acres or more not subdivided into the customary streets and lots and which will not be so subdivided.

Unified housing development. A development consisting of one or more principal residential structures or buildings and accessory structures or buildings to be constructed on a lot or plot which may or may not be subdivided into the customary streets and lots.

Use. Any activity, occupation, business or operation carried on, or intended to be carried on, in a building or structure or on a tract of land.

Utility company accessory building or structure. A building or structure used by a utility company to provide utility services to the general area in which the building or structure is located, including pumping stations, water wells, reservoirs, equipment buildings, sewerage lift stations, etc., but not including ordinary utility appurtenances such as poles, pad mounted transformers and splicing pedestals as may be required to serve the area in which they are located. The provisions of [section 36-12](#) and the minimum lot width and area provided for in article IV of this chapter shall not apply to any lot used for the purpose as defined by this paragraph; provided that the minimum front yard requirement of article IV is maintained and the minimum side and rear yard requirements of article IV are increased by ten feet.

Variance. A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship.

Vegetative screens. A screen consisting of a hedge or other vegetative plantings and shall contain a planting of two or more rows of shrubs and trees at such intervals and with the rows so staggered as to restrict visibility through the same by continually providing a year-round opaque foliage screen. Each shrub and tree shall have an initial height of at least four feet and shall be expected to reach a height of eight to 12 feet at maturity. At maturity, the portion of intermittent visual observations shall not contain unobstructed openings more than six feet wide. Shrubs and trees planted on mounded earth or berms may have a lesser height provided the combined height is at least eight feet. Planting strips for vegetative screens shall be a minimum of six feet in width with shrubs and trees planted a sufficient distance from the property line so that the drip line will not extend beyond the property line at maturity. Such required vegetative screens must be at the same grade level as the land abutting the land being developed.

Violation. The failure of a use, structure, or other development to comply with the regulations set forth in this chapter. A use, structure, or other development without the elevation certification, other certifications, or other evidence of compliance required is presumed to be in violation until such time as that documentation is provided.

Wall. An upright structure of masonry, wood, plaster or other building material serving to enclose, divide or protect an area.

Wall sign. Any sign painted or attached flat against and parallel to the exterior wall or surface of a building or other structure and/or which projects from that wall or surface.

Wholesale business. An establishment selling commodities in large quantities to retail businesses and not to the general public at large.

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Wind sign. A suspended sign made of a flexible material such as canvas, sailcloth, plastic or waterproof paper, including, but not limited to, banners, pennants, spinners or streamers.

Window sign. A sign which is permanently painted on, permanently attached to or designed to be visible through a window, excluding displays of merchandise.

Yard. A space on the same lot with a principal building which is open, unoccupied, and unobstructed by buildings or structures from ground to sky except where encroachments and accessory buildings are expressly permitted in such yard.

Yard, front. An open, unoccupied space on the same lot with a principal building, extending the full width of the lot, and situated between the street and front line of the building, projected to the side lines of the lot.

Yard, rear. An open, unoccupied space on the same lot with a principal building, extending the full width of the lot situated between the rear line of the lot and the rear line of the building, projected to the side lines of the lot.

Yard, side. An open, unoccupied space on the same lot with a principal building, situated between the building and the side lot lines and extending from the rear line of the front yard to the front line of the rear yard.

Zoning administrator. The official designated by the town manager to administer and enforce the provisions of this chapter. The duties of the zoning administrator may be assigned to an existing office, or a designee.

Zoning permit. A permit issued by the Town of Weaverville stating that a particular development project, change in use, or addition, is in compliance with the ordinances of the town pertaining to use of the land on which such use is situated. A zoning permit is typically issued after all other approvals have been obtained.

Zoning vested right. A right pursuant to G.S. 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

(Ord. of 6-19-1978, Art. IV, § 17-410; Ord. of 8-8-1994; Ord. of 1-20-1992; Ord. of 2-15-1999; Ord. of 9-15-2008, § 1(a); Ord. of 7-16-2012, § 1)

Sec. 36-6. - Use.

No building or land shall hereafter be used or occupied and no building or structure or part thereof shall be erected, moved, or structurally altered except in conformity with the regulations of this chapter, as amended, applicable to the district in which the building, structure or land is located.

(Ord. of 6-19-1978, Art. V, § 17-510)

Sec. 36-7. - Height and density.

No building or structure shall hereafter be erected or altered so as to exceed the height limits, or to exceed the density regulations of this chapter for the district in which it is located.

(Ord. of 6-19-1978, Art. V, § 17-512)

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Sec. 36-8. - Right-of-way.

Street and highway rights-of-way shall not be included in determining the size of a lot or any required yard or open space.

(Ord. of 6-19-1978, Art. V, § 17-514)

Sec. 36-9. - Lot reduction prohibited.

No building lot, even though it may consist of one or more adjacent lots of record, shall be reduced in size so that the lot width or depth, front, side or rear yards, lot area per family, or other requirements of this chapter are not maintained. Building lots created after the effective date of the ordinance from which this chapter derives shall meet the minimum dimensional requirements established for the district in which they are located.

(Ord. of 6-19-1978, Art. V, § 17-516)

Sec. 36-10. - Yard use limitations.

No part of a yard or other open space required to surround any building for the purpose of complying with the provisions of this chapter shall be included as part of a yard or other open space similarly required for another building.

(Ord. of 6-19-1978, Art. V, § 17-518)

Sec. 36-11. - Only one principal building on any lot.

Only one principal building and its customary accessory buildings may hereafter be erected on any lot, except as authorized by Article IX (Special Exceptions).

(Ord. of 6-19-1978, Art. V, § 17-520)

Sec. 36-12. - Street access.

No building shall be erected, structurally altered, moved to, or relocated on any lot which does not abut at least 35 feet on a publicly dedicated or maintained street or on a private street which meets the standards of the North Carolina Department of Transportation as to maintenance, disclosure and construction. The right-of-way of any dedicated public or private street shall not be considered in computing any required square footage of a lot necessary to meet the other requirements of this chapter.

Provided, however, that in areas outside of the town limits but within the extraterritorial zoning jurisdictional area of the town and in areas zoned other than R-1, a building may be erected, structurally altered, moved to or relocated on a lot abutting at least 35 feet on a private street not necessarily built to the same specifications as public streets but only if the following conditions are met:

- (1) The private street must have a right-of-way of at least 15 feet dedicated by the developer to the owners of lots served by said street;
- (2) There must be a maintenance agreement with reference to such private street duly recorded in the Office of the Register of Deeds for Buncombe County, North Carolina providing for the continuing maintenance of such "private" street in all weather conditions.

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(3) There must be subdivision disclosure statements with reference to such "private street" in accordance with G.S. 136-102.6, as amended.

(4) Such private street may serve only six or less individual lots in different ownership.

(Ord. of 6-19-1978, Art. V, § 17-530; Ord. of 9-15-2008, § 1(b))

Sec. 36-13. - Front yard setback for dwellings.

The front yard setback requirements of this chapter for dwellings shall not apply to any lot where the average front yard setback of the existing buildings, located either 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 same street, is less than the minimum required front yard setback. In such case, the setback on the lot in question may be less than the required setback, but no less than the average of the setbacks of the aforementioned adjacent buildings.

(Ord. of 6-19-1978, Art. V, § 17-532)

Sec. 36-14. - Side yard setback for dwellings corner lots.

Where a side yard abuts a street, the setback requirement for said side yard shall be the same as the front yard setback requirements for abutting property facing the side street.

(Ord. of 6-19-1978, Art. V, § 17-534)

Sec. 36-15. - Double frontage lots.

On lots having frontage on two streets, but not located on a street corner, the minimum front yard setbacks shall be provided on each street in accordance with the provisions of this chapter.

(Ord. of 6-19-1978, Art. V, § 17-536)

Sec. 36-16. - Projections into required open space.

Every part of a required yard shall be open and unobstructed from its lowest point to the sky, except for the ordinary projection of sills, cornices, buttresses, ornamental features, eaves, chimneys and flues into such area; provided, however, that none of the above shall project into a minimum required yard (front or side) more than 24 inches.

(Ord. of 6-19-1978, Art. V, § 17-538)

Sec. 36-17. - Visibility at intersections.

In all use districts except the C-1 general business district, no fence, wall, shrubbery, gutter or other obstruction to vision between the heights of 2½ feet and 15 feet shall be permitted to exist within 20 feet of the intersection of the right-of-way lines of streets.

(Ord. of 6-19-1978, Art. V, § 17-540)

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Sec. 36-18. - Farms exempt.

Except as they may be regulated by other ordinances of the town, the provisions of this chapter shall not apply to bona fide farms, other than poultry or swine farms which shall not be allowed in any use district except as an existing, nonconforming, use. This chapter shall in no way regulate crop lands, timber lands, pasture lands, idle or productive farm lands, nor any farm house, barn, poultry house, or other farm buildings, including tenant or other houses for persons working on said farms as long as such houses or other structures shall be owned by the same owner (or one of the owners) as the farm and shall be located on the farm. Such agricultural uses maintain the openness of the land and achieve the purpose of this chapter without the need for regulation. However, any non-farm use of farm land shall be subject to the regulations set forth in this chapter.

(Ord. of 6-19-1978, Art. V, § 17-550)

Sec. 36-19. - Nonconforming uses.

Nonconforming land uses in a particular use district are declared by this chapter to be incompatible with the permitted uses in the particular use district involved. However, to avoid undue hardship, the lawful use of any land at the time of the enactment of this chapter, or at the time of any applicable amendment thereof, may be continued even though such use does not conform with the land use for that district. Such nonconforming use shall not be:

- (1) Changed to a nonconforming use of higher intensity, such as from a commercial use to an industrial use, but may be changed to a nonconforming use of a similar character.
- (2) Restarted after discontinuance of the use for nine consecutive months, or in cases of the settlement of an estate, after one year.
- (3) Reestablished or replaced with the same or similar use after relocation of the use from its specific site.

(Ord. of 6-19-1978, Art. V, § 17-560)

Sec. 36-20. - Nonconforming structures.

(a) Nonconforming buildings or structures in a particular use district are declared by this chapter to be incompatible with the permitted use in the district involved. However, to avoid undue hardship, the lawful use of any building or structure at the time of the enactment of this chapter or at the time of any applicable amendment thereof may be continued even though such structure does not conform with the provisions of this chapter applicable to the district. The nonconforming building or structure shall not be:

- (1) Replaced with the same or a similar building, after the physical removal or relocation of the building from its specific site as it was located when it became nonconforming. Provided, however, that preexisting manufactured housing used as a primary residence in the R-1 and R-2 districts may be replaced or upgraded to new manufactured housing as close as possible to the size of the manufactured housing being replaced.
- (2) Repaired, rebuilt, or altered after damage to the building which exceeds 60 percent of its tax value, as determined by the Buncombe County Tax Department, or market value, based upon a certified appraisal, whichever value is greater, at the time of such damage; unless a building permit for the reconstruction or repair to such building, otherwise permissible, is issued not later than six months after such damage occurred and reconstruction is completed no later than 12

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months after issuance of the building permit; provided, however, the zoning administrator may extend either time period for good cause shown.

- (3) Enlarged or altered in a way which increases the nonconformity of such building.
- (b) Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety. In addition, nothing in this chapter shall prohibit the owner of a building from lawfully occupying or using a nonconforming building if the occupancy or use existed at the time of the adoption of this chapter, or any applicable amendment thereof.
- (c) All noncomplying signs shall be removed, changed, or altered to conform with the provisions of this chapter within 30 days after a finding by the zoning administrator that the sign poses an immediate danger to the public health, safety or general welfare, or, in any event, within five years after the same become nonconforming, except that signs having a valid permit issued pursuant to the provisions of the North Carolina Outdoor Advertising Control Act shall be exempt from the provisions of the five year amortization provision above set forth.
- (d) Failure to remove, change, or alter a nonconforming sign within the amortization period set forth above shall result in the removal of said sign by the town at the expense of the owner of said sign.
- (e) If the owner of a nonconforming sign which has been removed by the town fails to pay for the costs of removal within 30 days of the billing date for such action, a lien shall be placed against the property and the town clerk shall certify the same to the town tax collector for collection in the same manner as ad valorem property taxes are collected. The amount certified by the town clerk to the town tax collector for collection shall include the actual cost of removal of said sign, plus 15 percent of the total cost, representing penalty and interest for costs of collection.

(Ord. of 6-19-1978, Art. V, § 17-562; Ord. of 9-15-2008, § 1(c), (d))

Sec. 36-21. - Nonconforming lots of record.

In the event that the owner of a lot of record in any particular use district owned such lot of record at the time of the adoption of this chapter or any applicable amendment thereto and neither he nor a successor in title to such lot of record own sufficient land contiguous to such lot to enable them to conform to the minimum lot size requirements of this chapter, or is unable to meet street access requirements of this Code, the owner or successor in title to such lot may, nevertheless, use such lot as a building site, provided that the current owner obtains a zoning permit or variance in accordance with the following provisions:

- (1) Where the lot area and lot width are not more than 20 percent below the minimum standards specified in this chapter, and all other dimensional requirements are otherwise complied with, the zoning administrator is authorized to issue a zoning permit.
- (2) Where the lot area and lot width are more than 20 percent below the minimum standards specified in this chapter or other dimensional requirements cannot be met, the board of adjustment is authorized to consider requests for variances of such dimensions as shall conform as closely as possible to the required dimensions.
- (3) There must be a maintenance agreement with reference to such private street duly recorded in the Office of the Register of Deeds for Buncombe County, North Carolina providing for the continuing maintenance of such "private" street in all weather conditions and setting forth the party or parties responsible for such maintenance.

(Ord. of 6-19-1978, Art. V, § 17-564; Ord. of 9-15-2008, § 1(e))

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Sec. 36-22. - Conflict with other laws.

Whenever the regulations of this chapter require a greater width or size of yard, or require a lower height of buildings or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other more restrictive standards than are required in or under any other statute, the requirements of this chapter shall govern. Whenever the provisions of any other statute require more restrictive standards than are required by this chapter, the provisions of such statute shall govern.

(Ord. of 6-19-1978, Art. XVIII, § 17-1810)

Sec. 36-23. - Penalties for violations.

Civil penalties for violations. Any person who erects, constructs, reconstructs, alters, repairs, converts, or maintains any building, structure, sign or sign structure or develops, grades or otherwise alters property in violation of this chapter, any person who uses any building, structure, sign or sign structure or land in violation of this chapter or owns property where a person erects, constructs, reconstructs, alters, repairs, converts, or maintains any building, structure, sign or sign structure or develops, grades or otherwise alters property in violation of this chapter shall be subject to a civil penalty as provided for in [section 1-6](#) of the Code of Ordinances of the Town of Weaverville.

(Ord. of 6-19-1978, Art. XIX, § 17-1910; Ord. of 9-15-2008, § 1(f); Ord. of 2-21-2011)

Sec. 36-24. - Sidewalk requirements.

- (a) *Purpose.* The purpose of this section is to ensure that applicants for new construction and renovations, additions, and/or expansions to existing structures consider the need for sidewalks as part of the proposed development and to establish requirements for the construction of sidewalks. While the town recognizes its need to maintain sidewalks and to construct sidewalks to meet the needs of the general population, project applicants may be required to participate in the construction of sidewalks to meet the pedestrian needs of the citizens of the town. The town also recognizes that in certain cases, sidewalks may not be needed or their construction may not be feasible.
- (b) *Sidewalks required.* Sidewalks shall be required for all new construction and for renovations, additions and/or expansions to existing structures which fall into one of the following categories:
 - (1) All new multifamily residential development;
 - (2) All new office, institutional, and commercial development; and
 - (3) All renovations to multi-family residential development, office, institutional, and commercial, existing structures where the cost of the renovation exceeds 50 percent of the assessed value, as determined by the Buncombe County Tax Office, of the structure for which the renovation is proposed.
 - (4) All additions or expansions to multi-family residential development, office, institutional, commercial, and industrial development existing structures where the addition or expansion results in an increase of more than 50 percent in the gross floor area of the structure and/or the gross floor area of the addition or expansion is more than 40,000 square feet.

Sidewalks shall be constructed along all street frontages of the lot for which the development is proposed. All sidewalks shall be constructed to a minimum of five feet in width in accordance with the standards set forth in the Town of Weaverville Standard Specifications and Details Manual. Sidewalk rehabilitation shall be required for the types of development projects identified above where the existing sidewalk has been determined by the department of public works to be dilapidated.

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(c) *Waiver of requirement.*

- (1) *Waiver of requirement.* For additions to existing residential neighborhoods without sidewalks where sidewalks would not be in character with the existing neighborhood, the town manager is authorized to waive the requirement for sidewalks.
- (2) *Waiver of requirement by the board of adjustments.* In certain instances, the construction of a sidewalk may not be warranted or feasible. In these circumstances, the board of adjustments may waive the requirement that a sidewalk be constructed provided that certain conditions exist.

(d) *Exceptions.* Exceptions may be considered by the board of adjustment under the following circumstances:

- (1) If sidewalks are scheduled to be installed as part of a state or town project within ten years, then the developer may pay a fee in lieu of construction equal to 100 percent of the full cost of the sidewalk as estimated by the town's engineer.
- (2) Where existing and future (based on the potential for development in the area) pedestrian volumes and/or vehicle volumes are so low that the level of conflict between vehicles and pedestrians walking on the street is minimal. This exception may not be used where road geometry creates sight distance problems. (An example of where this exception could be met is on a dead-end street that has little existing or future development.)
- (3) Where the construction of sidewalks in the findings of fact by the Weaverville Board of Adjustment would create greater harm or danger to the pedestrians.

Requests for an exception to the requirement that sidewalks be constructed shall be made to the town zoning administrator on a form provided by the town.

(Ord. of 10-19-1999; Ord. of 9-15-2008, § 1(g))

Sec. 36-25. - Traffic impact analysis.

- (a) *Purpose.* The purpose of this section is to ensure that applicants for new construction, additions and/or expansions to existing structures, and/or changes of use consider and mitigate the impact of the development on the existing and/or proposed roadway system. While the town and the State of North Carolina recognize their responsibility to build and maintain a public transportation system, the project applicants may need to assist in improving transportation facilities in order to maintain the existing level of service by accommodating additional traffic generated by the development. These transportation facilities involve pedestrian, nonmotorized vehicular traffic and motorized vehicular traffic. The town zoning administrator will provide any necessary assistance in the preliminary review of these requirements.
- (b) *Required.* For the purpose of this section, the term "peak hour trip" shall be as defined in the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers. All proposals for new construction, additions and/or expansions to existing structures, and/or changes of use which will result in total peak hour trips equal to or greater than 40 peak hour trips using trip generation rates from the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers shall include an analysis of the traffic to be generated by such construction, addition or extension. The traffic impact analysis shall be submitted with the zoning or project application and shall include the following information:
 - (1) *Introduction and summary.*
 - a. Purpose of report and study objectives.
 - b. Executive summary.

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1. Site location and study area.
 2. Development description.
 3. Principal findings.
 4. Conclusions.
 5. Recommendations.
- (2) *Proposed development (site and nearby).*
- a. Off-site development: Provide map (the town zoning administrator will identify).
 - b. Description of on-site development.
 1. Land use and intensity.
 2. Location: Provide vicinity map.
 3. Site plan.
 4. Zoning.
 5. Phasing and timing.
- (3) *Area conditions.*
- a. Study area (includes the project area and extends to any intersection where the volume of peak hour traffic on any approach leg will be increased by ten percent or more as a result of the additional traffic generated by the proposed use).
 1. Area of influence: Provide map.
 2. Area of significant traffic impact: Provide map. (signalized/unsignalized intersections and driveways)
 - b. Study area land use.
 1. Existing land uses.
 2. Existing zoning.
 3. Anticipated future development.
 - c. Site accessibility.
 1. Area roadway system.
 - (i) Existing.
 - (ii) Planned completion by horizon year (shall be the year in which the project is to be completed).
 - (iii) Future (the town zoning administrator will identify) proposed roadway improvements must be under construction and proposed for completion at the time of the issuance of the initial certificate of occupancy for the development in order for the improvement to be considered in the impact analysis.
 2. Traffic volumes and conditions.
 - (i) Provide a figure showing existing daily traffic volumes and peak hour turning movements for identified study intersections.
 - (ii) Provide all documentation in an appendix to the report.

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3. Pedestrian access and circulation.
 - (i) Review proposed pedestrian access and circulation amenities.
 - (ii) Provide adequate pedestrian facilities.
 4. Other modes as applicable.
- (4) *Projected traffic.*
- a. Site traffic: Existing and proposed zoning.
 1. Trip generation [\[1\]](#): Provide tables.
 - (i) Daily.
 - (ii) Peak hour; in/out and total: a.m./p.m.
 2. Pass-by trips: To be determined by zoning administrator.
 3. Trip distribution: Provide figures.
 4. Model split: If applicable.
 5. Trip assignment: Provide figures.
 - b. Background traffic (horizon year shall be the year in which the project is to be completed).
 1. Method of projection (the city's traffic engineer will provide factor).
 2. Nonsite traffic for anticipated development in study area.
 - (i) Trip generation.
 - (ii) Trip distribution.
 - (iii) Model split, if applicable.
 - (iv) Trip assignment.
 3. Background traffic.
 - c. Total traffic (horizon year—provide two figures).
 1. Background + (nonsite) + (site-existing zoning) = total for each traffic movement.
 2. Background + (nonsite) + (site-proposed zoning) = total for each traffic movement.
- (5) *Traffic analysis.* Highway capacity manual/software.
- a. Site access (review all access points).
 - b. Capacity and level of service. Provide summary/worksheets in appendix; include a copy on diskette.
 1. Driveways (site).
 2. Internal street intersections, if applicable.
 3. External signalized/unsignalized intersections and driveways in study area as identified by the zoning administrator. Provide comparative table for existing conditions, horizon year with existing zoning/nonsite development, and horizon year with proposed zoning/development.
 - c. Review impact of cut-through traffic.

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- d. Traffic safety. Analyze accident history including adjacent roadway system at signalized and unsignalized intersections as per city traffic engineer.
 - e. Traffic signals. NCDOT may require developer to fund any warranted traffic signal modifications on state system streets in Weaverville. The Town of Weaverville does not maintain traffic signals.
 - f. Other traffic impact reviews. Review to include, but not limited to, parking analysis, internal circulation analysis, traffic calming measures and techniques, and traffic demand management requirements.
- (6) *Improvements analysis.*
- a. Improvements to accommodate site traffic.
 - b. Alternative improvements.
 - c. Status of improvements already funded, programmed or planned.
 - d. Evaluation.
- (c) *Improvements required.* In those cases where the traffic impact analysis required by the Town of Weaverville pursuant to this section or where a similar requirement of the North Carolina department of transportation requires certain improvements to be constructed in order to accommodate additional traffic generated by the proposed developments, the improvements shall be constructed by the project developer, at its expense, in accordance with the standards and direction provided by the Town of Weaverville or by the North Carolina department of transportation. The improvements shall be in place before the final plat is approved, or, if not constructed prior to final approval of the proposed project and plat, the completion of such improvements shall be granted in accordance with the following section.
- (d) *Improvements guarantee; bond for undertaking* Unless the construction of all improvements required by this section (or by the State of North Carolina) have been totally completed prior to the approval by the town of a final plat and the recording of the same, the town shall, for the purpose of approving a final plat prior to the completion of construction, accept an agreement to complete and a guarantee from the developer that construction of required or contemplated improvements will be completed according to the town (or State of North Carolina) approved specifications at the developer's expense. Such guarantee may be in the form of:
- (1) A surety performance bond made by a surety bonding company licensed and authorized to do business in North Carolina;
 - (2) A bond of the developer with an assignment to the town of a certificate of deposit as security for the bond;
 - (3) A bond of the developer secured by an official bank check drawn in favor of the town and deposited with the town clerk;
 - (4) Cash or an irrevocable letter of credit; or
 - (5) A bank escrow account whereby the developer deposits cash, a note, a bond or some other instrument readily convertible into cash for a specific face value, with a federally insured financial institution in an account payable to the town.

Such guarantee shall be in an amount equal to 125 percent of the cost of the construction of the required or contemplated improvements as estimated by the developer or his contractors and approved, as to the amount, by the town council. The town manager may allow up to 180 days from the date of the council approval of the final plat for the developer to post the necessary performance guarantee in addition to all other necessary documents. If prior to the expiration of the 180 days, the developer requests a further extension, the town manager may, at his or her

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discretion, grant an additional 180 days to complete the improvements required by the traffic impact analysis. If all documents and guarantees are not received by the town manager within the 180 day period, the council's approval of the final plat shall become null and void. All guarantees shall be reviewed by the town attorney and shall be subject to town council approval. Performance guarantees shall be kept by the town until the town manager determines that all public and private improvements as required by the traffic impact analysis have been constructed in accordance with the approved plans.

If a bank escrow account is used as outlined in subsection (5) above, then the developer shall file with the town an agreement between the financial institution and himself guaranteeing that the account shall be held in trust until released by the town and may not be used or pledged by the developer for any other matter during the term of the escrow.

The town council may release, from time to time, a portion of any security deposited with the town or deposited in a bank escrow account as the required improvements are completed. Such partial release of a security deposit shall be upon the petition of the developer to the town manager, who must then recommend such partial release of security deposit to the town council with the advice of the town's consulting engineers. Requested releases of security deposits shall be facilitated by the town manager and the town council shall process the requested release and shall release the requested funds within 45 days from the date the request is received by the town manager or the town council shall, within such time, deliver to the developer, a written list of deficiencies in construction which must be corrected before such petition to release a portion of a security deposit will be granted. Not until the town manager determines that all public and private improvements as required by the traffic impact analysis have been constructed in accordance with the approved plans, shall the total amount of a security deposit required, in excess of the actual costs of such improvements expended to a particular time, be released.

(Ord. of 5-20-2002(1))

Sec. 36-26. - Outdoor lighting.

- (a) *Intent and purpose.* Outdoor lighting shall be designed to provide the minimum lighting necessary to ensure adequate safety, night vision, and comfort and not create or cause excessive glare onto adjacent properties and public street rights-of-way.
- (b) *IESNA Cutoff Classifications (translated into laymen's terms).* See the appendix (on file with the city clerk) for diagrams of these cutoff classifications.
 - (1) Full cutoff: A fixture light distribution where no light intensity is emitted at or above a horizontal plane drawn through the bottom of the fixture and no more than ten percent of the lamp's light intensity is emitted at an angle ten degrees below that horizontal plane, at all lateral angles around the fixture.
 - (2) Cutoff: A fixture light distribution where no more than 2.5 percent of a lamp's light intensity is emitted at or above a horizontal plane drawn through the bottom of the fixture and no more than ten percent of the lamp's light intensity is emitted at an angle ten degrees below that horizontal plane, at all lateral angles around the fixture.
 - (3) Semi-cutoff: A fixture light distribution where no more than five percent of a lamp's light intensity is emitted at or above a horizontal plane drawn through the bottom of the fixture and no more than 20 percent of the lamp's light intensity is emitted at an angle ten degrees below that horizontal plane, at all lateral angles around the fixture.

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(4) Noncutoff: A fixture light distribution where there is no light intensity limitation in the zone above the maximum distribution of light intensity.

(c) *Definitions (translated in some instances into laymen's terms).*

Candela means a measure of luminous or light intensity in a certain direction. Useful in determining how much light is shining out of a fixture and in what direction.

Flood lamp means a form of lighting designed to direct its output in a specific direction with a reflector formed from the glass envelope of the lamp itself. Such lamps are so designated by the manufacturers and are typically used in residential outdoor area lighting.

Flood light means a form of lighting designed to direct its output in a diffuse, more or less specific direction, with reflecting or refracting elements located external to the lamp.

Footcandle (FC) means a quantitative unit measuring the amount of light (illumination) falling onto a given point. One footcandle equals one lumen per square foot.

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.

IESNA means the Illuminating Engineering Society of North America, a nonprofit professional organization of lighting specialists that has established recommended design standards for various lighting applications.

Illuminance means the amount of light falling on a surface measured in lux or footcandles.

Internal refractive lens means a glass or plastic lens installed between the lamp and the sections of the outer fixture globe or enclosure. Refractive refers to the redirection (bending) of the light as it goes through the lens, softening and spreading the light being distributed from the light source thereby reducing direct glare.

Light source means the element of a lighting fixture that is the point of origin of the lumens emitted by the fixture.

Lumen means a quantitative unit used to identify the amount of light emitted by a light source. A lamp is generally rated in lumens.

Lux means a unit of illuminance equal to one lumen per square foot.

Maintained footcandles means illuminance of lighting fixtures adjusted for a maintenance factor accounting for dirt build-up and lamp output depreciation. The maintenance factor used in the design process to account for this depreciation cannot be lower than 0.72 for high-pressure sodium and 0.64 for metal halide and mercury vapor.

Medium base means the size of lamp socket designed to accept a medium or Edison base lamp.

Outdoor performance area means an area permanently dedicated to the public presentation of music, dance, theater, media arts, storytelling, oratory, or other performing arts, whether publicly or privately owned, including but not limited to amphitheaters and similar open or semi-enclosed structures.

Right-of-way means an interest in land to the city which provides for the perpetual right and privilege of the city, its agents, franchise holders, successors, and assigns to construct, install, improve, reconstruct, remove, replace, inspect, repair, maintain, and use a public street, including related and customary uses of street rights-of-way such as sidewalks, bike paths, landscaping, mass transit facilities, traffic control, traffic control devices and signage, sanitary sewer, stormwater drainage, water supply, cable television, electric power, gas, and telephone transmission and related purposes in, upon, over, below, and across the rights-of-way.

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Vehicular canopy means a roofed, open, drive-through structure designed to provide temporary shelter for vehicles and their occupants while making use of a business' services.

Wall pack means a type of light fixture typically flush-mounted on a vertical wall surface.

Wide-body refractive globe means a translucent lamp enclosure used with some outdoor fixtures to provide a decorative look (including but not limited to acorn and carriage light style fixtures). Wide-body refers to a wider than average size globe (greater than 15.75 inches in diameter). Refractive refers to the redirection (bending) of the light as it goes through the lens, rendering the light fixture more effective. Wide-body refractive globes are intended to soften and spread the light being distributed from the light source thereby reducing direct glare.

(d) *Light measurement technique.* Light level measurements shall be made at the property line of the property upon which the light to be measured is being generated. If measurement on private property is not possible or practical, light level measurements may be made at the boundary of the public street right-of-way that adjoins the property of the complainant or at any other location on the property of the complainant. Measurements shall be made at finished grade (ground level), with the light-registering portion of the meter held parallel to the ground pointing up. The meter shall have cosine and color correction and have an accuracy tolerance of no greater than plus or minus five percent. Measurements shall be taken with a light meter that has been calibrated within the year. Light levels are specified, calculated and measured in footcandles (FC). All FC values below are maintained footcandles.

(e) *General standards for outdoor lighting.*

- (1) Unless otherwise specified in subsections (e) through (k) below, the maximum light level shall be 0.5 maintained footcandle at any property line in a residential district, or on a lot occupied by a dwelling, congregate care or congregate living structure, and 2.0 maintained footcandles at any public street right-of-way, unless otherwise approved by the town council.
- (2) All floodlights shall be installed such that the fixture shall be aimed down at least 45 degrees from vertical flood lights and display lights shall be positioned such that any such fixture located within 50 feet of a public street right-of-way is mounted and aimed perpendicular to the right-of-way, with a side-to-side horizontal aiming tolerance not to exceed 15 degrees from perpendicular to the right-of-way.
- (3) All flood lamps emitting 1,000 or more lumens shall be aimed at least 60 degrees down from horizontal or shielded such that the main beam from the light source is not visible from adjacent properties or the public street right-of-way.
- (4) All wall pack fixtures shall be cutoff fixtures.
- (5) All fixtures installed by public agencies, their agents, or contractors for the purpose of illuminating public streets are otherwise exempt from this regulation.

(f) *Lighting in parking lots and outdoor areas.*

- (1) Other than flood lights and flood lamps, all outdoor area and parking lot lighting fixtures of more than 2,000 lumens shall be cutoff fixtures, or comply with subsection (4) below.
- (2) The mounting height of all outdoor lighting, except outdoor sports field lighting and outdoor performance area lighting, shall not exceed 37 feet above finished grade, unless approved by the planning commission as having no adverse effect.
- (3) Open parking facilities. For lighted parking lots the minimum light level shall be no less than 0.2 footcandles. All light levels are measured at ground level. The minimum light level requirements vary depending on the activity classification. The specified minimum FC value above 0.2 FC as outlined in the following table means that the lowest light level point or location in the parking lot must not exceed the minimum stated FC value in the table (i.e. 0.9 FC for large shopping

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centers). An average to minimum uniformity ratio of 4:1 means that the average FC to minimum FC ratio cannot be worse (higher) than 4:1. See the following table:

Light Levels for Open Outdoor Parking Facilities*		
Use/Task	Maintained Footcandles	Uniformity Avg/Min
(a) Parking, residential, multi-family		
• Low to medium vehicular/pedestrian activity	Range from 0.2 Min to 0.6 Min	4:1
(b) Parking, industrial/commercial/institutional/municipal		
• High activity, i.e. large shopping centers/fast food facilities, major athletic/civic cultural events	0.9 Min	4:1
• Medium/low activity, i.e. community shopping, office parks, hospitals, commuter lots, cultural/civic/recreational events, residential neighborhood shopping, industrial employee parking, schools, church parking	Range from 0.2 Min to 0.6 Min	4:1

* Source: IESNA 8th Edition Lighting Handbook

Notes:

1. Illumination levels are horizontal on the task, e.g. pavement or area surface.
2. Uniformity ratios dictate that average illuminance values shall not exceed minimum values by more than the product of the minimum value and the specified ratio. For example, for commercial parking medium/low activity, the average footcandles shall not be in excess of 2.4 (0.6 x 4).
3. A low/medium activity can be reclassified upward when appropriate and only with Town of Weaverville approval.

(4) Exceptions:

- a. Noncutoff fixtures may be used when the maximum initial lumens generate by each fixture shall not exceed 9,500 initial lamp lumens per fixture.

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- b. All metal halide, mercury vapor, fluorescent, induction, white high pressure sodium and color improved high pressure sodium lamps used in noncutoff fixtures shall be coated with an internal white frosting inside the outer lamp envelope.
 - c. All metal halide fixtures equipped with a medium base socket must utilize either an internal refractive lens or a wide-body refractive globe as described in subsection (c) Definitions.
- (g) *Lighting for vehicular canopies.* Areas under a vehicular canopy shall have an average maximum horizontal illuminance of 24 maintained footcandles (FC). Areas outside the vehicular canopy shall be regulated by the standards of subsection (f) above. Lighting under vehicular canopies shall be designed so as not to create glare off-site. Acceptable methods include one or more of the following:
- (1) Recessed fixture incorporating a lens cover that is either recessed or flush with the bottom surface (ceiling) of the vehicular canopy that provides a cutoff or shielded light distribution.
 - (2) Surface mounted fixture incorporating a flat glass that provides a cutoff or shielded light distribution.
 - (3) Other method approved by the Town of Weaverville.
- (h) *Lighting of outdoor display areas.*
- (1) Parking lot outdoor areas shall be illuminated in accordance with the requirements for subsection (f) above. Outdoor display areas shall have a maximum average of illuminance of 24 maintained footcandles.
 - (2) All light fixtures shall meet the IESNA definition of cutoff fixtures. Forward throw fixtures (type IV light distribution, as defined by the IESNA) are required within 25 feet of any public street right-of-way. Alternatively, directional fixtures (such as floodlights) may be used provided they shall be aimed in accordance with subsections (e)(2) and (e)(3) of this section.
 - (3) The mounting height of outdoor display area fixtures shall not exceed 37 feet above finished grade, unless approved by the planning commission as having no adverse effect.
- (i) *Lighting of buildings and landscaping.*
- (1) Lighting fixtures shall be selected, located, aimed, and shielded so that direct illumination is focused exclusively on the building facade, plantings, and other intended site feature and away from adjoining properties and the public street right-of-way.
 - (2) Minimum illumination on any vertical surface or angular roof shall not exceed 5.0 FC average maintained.
 - (3) To the extent practical and where possible, lighting fixtures shall be directed downward rather than upward.
 - (4) When aiming upward is used, placing low wattage fixtures with shields as needed close to the building to graze the facade is encouraged to minimize reflected light from windows and other surfaces that would be present from a flood design.
- (j) *Permits.* The applicant for any permit required for work involving outdoor lighting shall submit documentation at time of site plan or plot plan approval that the proposed lighting plan complies with the provisions of this Code. The submission shall contain, but not be limited to the following, all or part of which may be part of or in addition to the information required elsewhere in this Code:
- (1) A point-by-point footcandle array in a printout format indicating the location and aiming of illuminating devices. The printout shall indicate compliance with the maximum maintained footcandles required by this Code.
 - (2) Description of the illuminating devices, fixtures, lamps, supports, reflectors, poles, raised foundations and other devices (including but not limited to manufacturers or electric utility

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catalog specification sheets and/or drawings, and photometric report indicating fixture classification [cutoff fixture, wall pack, flood light, etc.]).

The zoning department personnel may waive any or all of the above permit requirements, provided the applicant can otherwise demonstrate compliance with this Code.

(k) *Nonconformities.*

- (1) Any lighting fixture lawfully in place or approved by the town prior to the adoption of this ordinance shall be exempt from these requirements. At the time that a nonconforming fixture is replaced, moved, upgraded, or otherwise changed, the fixture must be brought into compliance with the requirements of this ordinance. Routine maintenance, including changing the lamp, ballast, starter, photo control, lens, and other required components, is permitted for all existing fixtures.
- (2) Property owners that install lighting fixtures after the effective date of this section and are found to be in noncompliance shall receive written notification and will be given 90 calendar days from the date of written notification to bring the lighting system into compliance.
- (3) Should the property owner fail to bring the lighting system into compliance, the owner shall be subject to a civil penalty of \$50.00 for the violation. Each day that the lighting system remains out of compliance with the requirements of this section after the notification period shall constitute a separate violation.

(Ord. of 5-20-2002(2))

Sec. 36-27. - Hillside development standards.

- (a) *Hillside area definition.* For the purposes of this section, a hillside area is defined as any lot, parcel, or tract of land which meets all of the following standards:
 - (1) Is located within the zoning jurisdiction of the Town of Weaverville.
 - (2) Is defined by section 26-26 as a minor or major subdivision.
 - (3) Has an average slope of its natural terrain of 15 percent or greater.
- (b) *Previously approved developments exempt.* Any portion of the lot, parcel, or tract of land which has been approved by the planning board as a minor or major subdivision prior to the adoption of this section, or developed prior to the adoption of this section, shall not be included within the definition of a hillside area if no further development is proposed within that portion of the lot, parcel, or tract of land. Subsequent phases of a minor or major subdivision, as well as approved subdivision projects where the site plan has been changed, or approved subdivisions where the lot design has changed, shall indicate the proposed contours, limit and area of grading, and percentage of the site to be graded. Grading shall mean any manipulation of the ground forms including, but not limited to cutting of trees with excavation of stumps or any other earth-disturbing activities; provided:
 - (1) That installation of utilities in an area with a topographical change of not more than five percent where the area disturbed is not wider than 18 inches (including ditch and spill areas); and
 - (2) That creation of stormwater drainage and erosion control ditches except when the ditch is located in an existing natural drainage channel and the only improvement is the lining of the channel with rock, shall not be considered grading.
- (c) *Average slope determination.*
 - (1) *Contour map required.* Each application for a minor or major subdivision which meets the standards set forth in the hillside definition shall include a contour or topographical map which

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includes a scale and contour interval of two feet on the site plan to determine the average slope of a lot, parcel, or tract of land in its natural state.

- (2) *Calculation of natural average slope.* The natural average slope is calculated using the following formula:

$$S\% = 0.0023 \times I \times L / A$$

Where:

S = Average natural slope of parcel in percent

I = Contour interval of map in feet, with said contour intervals to be five feet or less

L = Total length of all of the contours of the parcel in feet (from highest elevation at the property line to the lowest elevation on property line)

A = Area of the parcel in acres

0.0023 = Constant which converts square feet into acres

Once "S" or the average natural percent is calculated and rounded off to the nearest whole number, the grading and density graph, as set forth hereinafter, shall be used to determine development requirements.

- (d) *[Consultation required.]* Consultation with a geotechnical engineer, registered to practice in North Carolina, shall be required for road construction in areas of a tract in excess of 40 percent natural slope, and an investigation for colluvial deposits shall be made. Recommendations of the geotechnical engineer shall be submitted with the application review.
- (e) *[Grade of slope.]* Areas with a natural slope over 40 percent shall not have fill-slopes steeper than a 2H:1V, nor cut slopes steeper than 1.5H:1V unless designed by a geotechnical engineer.
- (f) *[Guardrails and shoulders.]* Guardrails, installed to NCDOT specifications of the Standard Specifications for the Construction of Roads and Bridges on Federal Highway Projects, and shoulders of four feet minimum width will be required in construction of roads over 15 percent grade and with downhill slopes of 30 percent or more.
- (g) *[Soil maps.]* Soils maps shall be submitted if available from the Natural Resources Conservation Service (NRCS).
- (h) *[Global stability analysis.]* Global stability analysis should be performed for home sites on a greater than 40 percent or greater slope.
- (i) *Density chart.*
- (1) *Residential development regulated; exceptions.* Residential developments which meet the standards set forth in the definition of hillside area shall further be regulated with regard to the permitted density on the site. The permitted density for residential uses shall be determined by the average slope for a site to be developed for residential use in accordance with the density chart for the purposes of this section.
- (2) *Density chart.* The density chart to be used in this section is shown in Figure 1 below. This density should be rounded off to the nearest whole number.
- (3) *[Exceptions.]* As the chart and the definition of hillside area indicate, any proposed development whose average natural slope is less than 15 percent is not subject to the regulations for permitted density and as set forth herein. Any proposed development which meets the definition

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of hillside area and whose average natural slope is above 65 percent is subject to the most restrictive percent labeled on the maximum density scales.

(j) *Hillside area development review process.*

(1) *Information required.* Compliance with this section shall be evaluated as part of the subdivision review process set forth in [chapter 25](#) of the Weaverville Code of Ordinances. In addition to the application information required for a subdivision review, those proposed developments which meet the standards of the hillside area definition must include the following information:

- a. A site plan which includes the boundaries and acreage of the parcel, scale and contour interval, existing and proposed contours;
- b. Average natural slope calculations which include the average natural slope in percent, contour intervals of five feet or less, individual and total length of contour lines in feet and area of the parcel in acres;
- c. A density graph which shows the line that connects the hinge point and average natural slope and maximum density scales, labeled with the appropriate number for each scale where it is intersected by the line to describe the potential development limits with the number of proposed units or lots in the development; and
- d. Other information or descriptions or maps which may be requested by the zoning administrator or the planning board to address concerns regarding geologic hazards, soil stability, building-to-site relationships, and similar characteristics.

(2) *Issuance of land disturbing permit.* No land disturbing permit shall be issued for a site plan review or a subdivision review which meets the standards set forth in the definition of hillside area until the site plan review and subdivision plat review have been completed.

(k) *[Unified housing developments.]* For unified housing developments as defined in [section 36-241](#) of the Weaverville Town Ordinances, road grades shall not exceed ten percent in grade.

Exception: Grades steeper than ten percent as approved by the Weaverville Fire Chief.

Figure 1

Slope	Septic	Sewer
	Units/Acre	Units/Acre
15%—28%	2	6
29%—34.99%	1	6
35%—42%	1	4
43%—44.99%	1	3
45%—53%	0	2

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54%—65%	0	1
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(Ord. of 2-20-2006; Ord. of 9-15-2008, § 1(h))

Sec. 36-28. - Adult oriented business.

- (a) *Authority and jurisdiction.* The provisions of this article are adopted by the town council under the authority granted by the state general assembly. From and after the effective date hereof, this article shall apply to every building, lot tract, or parcel of land within the town and its extraterritorial jurisdiction.
- (b) *Purpose.* For the purpose of promoting the health, safety, morals and general welfare of the citizenry of the town, this section is adopted by the town council to regulate adult and sexually oriented businesses, as hereby defined, located in the town and its extraterritorial jurisdiction. Further the regulations of this section have been made with reasonable consideration among other things, as to the character of the town and its areas.
- (c) *Abrogation.* These regulations shall not repeal, impair, abrogate, or interfere with any existing easements, covenants, deed restrictions, setback requirements, rules, definitions, regulations previously adopted pursuant to law in any established zoning district in the town. However, where these regulations impose greater restrictions, the provisions of these regulations shall govern.
- (d) *Definitions relating to adult oriented businesses.*
 - (1) *Adult oriented business.* An adult arcade, adult bookstore, or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center (including adult massage parlor and adult health club), sexually oriented device business or any combination of the foregoing or any similar business. As used in this section the following definitions shall apply:
 - (2) *Adult arcade (also know as "peep show").* Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed depict or describe "specified sexual activities" or "specified anatomical areas".
 - (3) *Adult bookstore or adult video store.* A commercial establishment which as one of its principal business purposes officers for sale or rental for any form of consideration any one or more of the following:
 - a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas"; or
 - b. Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities".
 - (4) *Adult cabaret.* A nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits or displays as one of its principal business purposes:
 - a. Persons who appear nude or seminude; or

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- b. Live performance which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
 - c. Films, motion pictures, video cassettes, slides, or other photographic reproductions which depict or describe "specified sexual activities" or "specified anatomical areas".
- (5) *Adult motel.* A hotel, motored, or similar commercial establishment that:
- a. Offers accommodations to the public for any form of consideration which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe "specified sexual activities" or "specified anatomical areas" as one of its principal business purposes; or
 - b. Offers a sleeping room for rent for a period of time that is less than ten hours; or
 - c. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.
- (6) *Adult motion picture theater.* A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown as one of its principal business purposes that depict or describe "specified sexual activities" or "specified anatomical areas".
- (7) *Adult theater.* A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits or displays, as one of its principal business purposes, persons who appear in a state of nudity or seminude, or live performances that expose or depict "specified anatomical areas" or "specified sexual activities".
- (8) *Escort.* A person who, for any tips or any other form of consideration, agrees or offers to act as a date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (9) *Escort agency.* A person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its principal business purposes, for a fee, tip, or other consideration.
- (10) *Massage.* Any manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping, by hand or mechanical device. (See Weaverville Town Code, sections 6-126—6-136).
- (11) *Massage business.* Any establishment or business wherein massage is practiced, including establishments commonly known health clubs, physical culture studios, massage studios or massage parlors. (See Weaverville Town Code, sections 6-126—6-136).
- (12) *Nude model studio.* Any place where a person who appears, nude, or seminude, or who displays "specified anatomical areas" is provided to be observed, sketches, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a proprietary school licensed by the state or a college or university supported entirely or in part by public taxation; a private college or university which maintains an operated educational programs in which credits are transferable to a college, junior college; or university supported entirely or partly by taxation; or in a structure:
- a. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or seminude person is available for viewing; and
 - b. Where in order to participate in a class a student must enroll at least three days in "advance of class; and
 - c. Where no more than one nude or seminude model is on the premises at any one time.
- (13) *Nude or a state of nudity.*

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- a. The appearance of a human anus, male genitals or female genitals; or
 - b. A state of dress that fails to opaquely cover a human anus, male genitals or female genitals.
- (14) *Seminude*. A state of dress in which clothing covers no more than the genitals, [pubic] region, and areola of the female breast, as well as portions of the body covered by or supporting straps or devices.
- (15) *Sexual encounter center*. A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling (including sexually oriented massaging) between persons of the opposite sex, or similar activities between male and female persons and/or between persons of the same sex when one or more of the persons is in a state of nudity or seminude.
- (16) *Sexually oriented devices*. Any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device.
- (17) *Specified anatomical areas*. Human genitals in a state of sexual arousal.
- (18) *Specified sexual activities*. Is and includes any of the following:
- a. The fondling or other erotic touching of human genitals, [pubic] region, buttocks, anus, or female breasts; or
 - b. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or
 - c. Masturbation, actual or simulated; or
 - d. Excretory functions as part of or in connection with any of the activities set forth in subsections (a—c) above.
- (e) *Adult oriented business*. No adult oriented business shall be permitted in any building located in the following areas:
- (1) Located within 1,500 feet in any direction from a residential building or residentially zoned property.
 - (2) Located within 1,000 feet in any direction from a building in which an adult oriented business is located.
 - (3) Located within 1,500 feet in any direction from a building used as a church, synagogue or other house of worship.
 - (4) Located within 1,500 feet in any direction from a building used as a public or private elementary or secondary school, child day care or nursery school.
 - (5) Located within 1,500 feet in any direction from any lot or parcel on which a public playground, public swimming pool, or public park is located.
 - (6) Located within 1,500 feet in any direction from any establishment with an onpremise ABC license.
 - (7) The gross floor area of any adult oriented business shall not exceed 3,000 square feet and all business-related activity shall be conducted in a building.
 - (8) Except for an adult motel, no adult oriented business may have sleeping quarters.

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- (9) There shall not be more than one adult oriented business in the same building, structure, or portion thereof. No other principal or accessory use may occupy the same building, structure, property, or portion thereof with any adult oriented business.
- (10) Except for signs as may be permitted by [chapter 36](#), article VIII of this Code, no printed material, slide, video, photograph, written text, live show, or other visual presentation format shall be visible from outside the walls of the establishment, nor shall any live or recorded voices, music, or sounds be heard from outside the walls of the establishment.
- (11) No enclosed or underground parking shall be permitted.
- (f) *Interpretation of terms and definitions.*
- (1) Words used in the present tense include the future tense.
- (2) Words used in the singular number include the plural and words used in the plural number include the singular.
- (3) The word "person" includes and owner, firm, joint venture, association, organization, partnership, corporation, trust, and company, as well as an individual.
- (4) The word "owner" when applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant, or tenant by entirety of the whole or part of such building or land.
- (5) The word "lot" includes the words "plot" or "parcel".
- (6) The word "building" includes the word "structure".
- (7) The word "shall" is always mandatory and not merely directory.
- (8) The words "located", or "used" or "occupied" as applied to any land or building, shall be construed to include the words "intended, arranged or designed to be located, used or occupied.
- (9) The word "dwelling" shall mean a structure or portion thereof which is used exclusively for human habitation.
- (g) *Severability.* It is hereby declared to be the intention of the board that the sections, paragraphs, sentences, clauses, and phrases of this section are severable, and if any phrase, clause, sentence, paragraph or section of this article is declared unconstitutional or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this article, since the same would have been enacted by the town council without the incorporation in this section of any such unconstitutional or invalid phrase, clause, sentence, paragraph, or section.
- (h) All permitted uses must meet all compliance regulations set forth in the this section.
- (1) Adult oriented businesses are only a permitted use within the commercial-2 (C-2) zoning district.
- (2) Adult oriented businesses will not be a permitted use in the following residential zones:
- Residential-1 (R-1);
- Residential-2 (R-2);
- Residential-3 (R-3);
- Traditional neighborhood development (TND).
- (3) Adult oriented businesses will not be a permitted use in the central business district (CBD) zoning district.

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- (4) Adult oriented businesses will not be a permitted use in the light industrial (I) zoning district.
- (5) Adult oriented businesses will not be a permitted use in any newly created zoning district except commercial-2 (C-2) zoning district.

(Ord. of 5-21-2007)

Secs. 36-29—36-55. - Reserved.

FOOTNOTE(S):

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Note— Institute of Transportation Engineers (I.T.E.) Trip Generation Handbook, latest edition. ([Back](#))

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Chapter 36 - ZONING

ARTICLE II. - ESTABLISHMENT OF DISTRICTS

ARTICLE II. - ESTABLISHMENT OF DISTRICTS

Sec. 36-56. - Use districts.

For the purpose; of this chapter, The Town of Weaverville, North Carolina, is divided into eight use districts designated as follows:

R-1 primary residential

R-2 transition residential

R-3 general residential

C-1 central business

C-2 general business

I-1 light industrial

TND traditional neighborhood developments

CZD conditional zoning district

(Ord. of 6-19-1978, Art. VI, § 17-610; Ord. of 4-15-2002; Ord. of 8-20-2007)

Sec. 36-57. - District boundaries.

The boundaries of the districts enumerated in [section 36-56](#) above, are hereby established as shown on the map entitled "Official Zoning Map of the Town of Weaverville, North Carolina," adopted by the town council and certified by the town clerk. Said map, and all explanatory matter thereon, accompanies, and is hereby made part of this chapter as if fully written herein. Said map shall be retained at all times in the office of the town clerk.

(Ord. of 6-19-1978, Art. VI, § 17-620)

Sec. 36-58. - Interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the official zoning map, the following shall apply:

- (1) Where district boundaries are so indicated as approximately following the center lines of streets, highways, streams or rivers, street right-of-way lines or such lines, extended, such center lines shall be construed to be such district boundaries.
- (2) Where district boundaries are so indicated as approximately following lot lines, such lot lines shall be construed to be such district boundaries.
- (3) Where district boundaries are so indicated as being approximately parallel to the center lines of streets or highways, or the rights-of-way of the same, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the zoning map. If no distance is indicated on the map, such dimension shall be determined by the use of the scale shown on said zoning map.

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ARTICLE II. - ESTABLISHMENT OF DISTRICTS

- (4) Where a district boundary line divides a lot with single ownership, the zoning district requirements for the least restricted portion of such lot shall be deemed to apply to the whole of such lot. Provided, that such extensions shall not include any part of such lot more than 35 feet beyond the district boundary line of the least restrictive use district.

(Ord. of 6-19-1978, Art. VI, § 17-630)

Secs. 36-59—36-75. - Reserved.

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Chapter 36 - ZONING

ARTICLE III. - USE REGULATIONS

ARTICLE III. - USE REGULATIONS

Sec. 36-76. - Intent.

It is the intent of this article that if any use or class of use is not specifically permitted in a particular use district as set forth below, such use shall be prohibited in that district.

(Ord. of 6-19-1978, Art. VII, § 17-700)

Sec. 36-77. - R-1, primary residential district.

(a) *Intent.* The R-1 primary residential district is established in which the principal use of land therein is for single-family dwellings. The R-1 district is established in order to:

- (1) Protect the present residential development.
- (2) Protect and promote a suitable environment for family life.
- (3) Discourage any use which would create excessive requirements and cost for public services in excess of that of the surrounding area.

(b) *Uses permitted.* Within the R-1 primary residential district, a building or premises shall be used only for the following purposes:

- (1) Single-family dwellings.
- (2) A garage apartment for a single family located on the same lot and incidental to a single-family dwelling located on the premises.
- (3) Churches and other places of worship; provided that no building for such use shall be located within 50 feet of any property line and such use shall be on a lot which abuts and has primary access to a major thoroughfare.
- (4) Customary incidental home occupations, including the lodging of two boarders or roomers; provided that the operation is conducted within the dwelling and employs no more than one person other than the persons resident therein. Each home occupation shall be allowed one nameplate sign for the purpose of identification. Such sign shall not exceed two square feet of total surface area. Nameplate signs in residential areas shall not be illuminated.
- (5) Customary accessory buildings, including private garages and non-commercial greenhouses and workshops, provided they comply with the yard requirements of the district.
- (6) Public parks and playgrounds.
- (7) Single-family modular homes.
- (8) Day care centers operating with five or less children.
- (9) Utility company accessory buildings and structures owned and operated by the town or the utility providing water and sewerage services to the area, including such facilities constructed by others under the terms of an agreement whereby operation and ownership will revert to the town or the utility providing water and sewerage services to the area.

(c) *Special exceptions.*

- (1) Unified housing developments, provided such developments meet the requirements of [section 36-241](#)

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ARTICLE III. - USE REGULATIONS

- (2) Fraternal organizations and clubhouses. Lots used for fraternal organizations and clubhouses shall be separated from abutting properties in any residential district by a ten-foot buffer as defined in [section 36-5](#)
- (3) Cemeteries or the expansion of existing cemeteries. Burials in cemeteries established prior to the enactment of this chapter shall not require a special exception permit. Gravesites on individual residential lots are expressly prohibited. No gravesite in any cemetery shall be located within any minimum required yard as provided for in this chapter and must be screened as set forth below.

Screening. All new cemeteries or the expansion of any existing cemeteries must provide a vegetative screen, as defined in [section 36-5](#), along all new exterior boundaries of the cemetery except along the street upon which the cemetery fronts. Screening shall not extend beyond the established setback line along any street. These planting requirements may be modified by the board of adjustment where adequate buffering exists in the form of vegetation and/or terrain.

- (4) Schools, both public and private.
 - (5) Governmental buildings.
- (d) *Further restrictions within the R-1, primary residential district.*
- (1) For dimensional requirements, see Article IV.
 - (2) Height. In the R-1 residential district, no building or structure shall hereafter be erected or structurally altered to exceed 35 feet in height.
 - (3) For sign requirements, see Article VIII.
 - (4) Parking. Two off-street spaces shall be provided for each dwelling unit. (See [section 36-176](#)).

(Ord. of 6-19-1978, Art. VII, § 17-710)

Sec. 36-78. - R-2, transition residential district.

- (a) *Intent.* The R-2 transitional residential district is established in which the principal use of land therein is for residential purposes. The R-2 district is established in order to:
 - (1) Protect the present residential development.
 - (2) Protect and promote a suitable environment for family life.
 - (3) Discourage any use which would create excessive requirements and costs for public services in excess of that of the surrounding area.
- (b) *Uses permitted.* Within the R-2 transitional residential district, a building or premises shall be used only for the following purposes:
 - (1) All uses permitted in the R-1 primary residential district.
 - (2) Two-family dwellings.
 - (3) Multi-family residential buildings provided that such building meets the requirements of subsection [36-241](#)(d).
- (c) *Special exceptions.*
 - (1) All special exceptions listed for the R-1, primary residential district.
 - (2) Unified housing developments; provided such development meets the requirements of [section 36-241](#)

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ARTICLE III. - USE REGULATIONS

- (3) Boarding houses with no more than ten guest rooms.
 - (4) Professional offices and medical offices not used primarily for the treatment of drug addicts or alcoholics.
 - (5) Day care centers operating with more than five children; provided such center meets the requirements of [section 36-117](#)
- (d) *Further restrictions within the R-2 transition residential district.*
- (1) For dimensional requirements, see Article IV.
 - (2) Height. In the R-2 residential district, no building or structure shall hereafter be erected or structurally altered to exceed 35 feet in height.
 - (3) For sign requirements, see Article VIII.
 - (4) Parking. Two off-street spaces shall be provided for each dwelling unit (see [section 36-176](#)).
- (Ord. of 6-19-1978, Art. VII, § 17-720)

Sec. 36-79. - R-3, general residential district.

- (a) *Intent.* The R-3 general residential district is established in order to provide a location for manufactured (mobile) home parks, and manufactured (mobile) homes on individual lots. The R-3 zone is established in order to:
- (1) Protect the present residential development.
 - (2) Protect and promote a suitable environment for family life.
 - (3) Discourage any use which would create excessive requirements and costs for public services in excess of that of the surrounding area.
- (b) *Uses permitted.* Within the R-3 general residential district, a building or premises shall be used for the following purposes:
- (1) All uses permitted in the R-1 primary residential and R-2 transition residential districts.
 - (2) Family care homes.
 - (3) Manufactured (mobile) homes on individual lots.
 - (4) Manufactured (mobile) home parks, provided that:
 - a. There shall be no more than eight, manufactured or mobile homes per acre.
 - b. Each park shall have a minimum area of three acres.
 - c. No home or other structure within a park shall be closer to another home or structure than 25 feet, except that storage or other auxiliary structures for the exclusive use of an individual home may be closer to the individual home than 25 feet.
 - d. There shall be at least two off-street parking spaces for each home. Such spaces shall be provided either on the same site as the home served or in a designated parking area serving several or all homes within the park.
 - e. No home or other structure shall be located closer than 40 feet to the exterior boundary of the park or to an abutting street or highway right-of-way.
 - f. A 20-foot buffer, as defined in [section 36-5](#) of this chapter, shall be located along all sides of the park, other than on the street upon which it fronts.

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ARTICLE III. - USE REGULATIONS

- g. All parks shall be served by a water system approved by the state department of environment, health and natural resources. Any park not served by a public sewerage system must be approved by the Buncombe County Health Department or the state department of environment, health and natural resources.
- h. The park owner shall be responsible for providing enclosed garbage containers, stands, and for the collection of all garbage and trash if municipal garbage service is not available. If a dumpster system is used, common dumpsters shall be located at least 40 feet from any manufactured or mobile home and at least ten feet from any internal street within the park.
- i. The resident of each home shall be responsible for securing that particular home on the site with proper anchors or tie downs.
- j. All homes shall be underpinned to screen the understructure and wheels.
- k. All internal streets within a park shall be at least 30 feet in width. All streets shall have unobstructed direct access to a public street or highway and shall be hard surfaced with a minimum of four inches of asphalt, well marked and lighted by the park owner.
- l. All parks shall have at least two access points to a public street or highway for ingress and egress of traffic.

(c) *Special exceptions.*

- (1) All special exceptions listed for the R-1 primary residential and the R-2 transition residential district.

(d) *Further restrictions within the R-3 general residential district.*

- (1) For dimensional requirements, see Article IV.
- (2) Height. In the R-3 residential district, no building or structure shall hereafter be erected or structurally altered to exceed 35 feet in height.
- (3) For sign requirements, see Article VIII.
- (4) Parking. Two off-street spaces shall be provided for each dwelling unit (see [section 36-176](#)).

(Ord. of 6-19-1978, Art. VII, § 17-730)

Sec. 36-80. - C-1, central business district.

- (a) *Intent.* The C-1 central business district is established in which the principal use of land thereon is for retail businesses and services. The C-1 district is established in order to:

- (1) Protect the present retail business and service development within the district.
- (2) Promote the future development within the district of businesses which are required to serve the retail and service needs of the residents of the town.

- (b) *Uses permitted.* Within the C-1 central business district, a building or premises shall be used only for the following purposes:

- (1) All uses permitted in the R-1 primary residential and R-2 transition residential districts, provided that the more restrictive area and dimensional requirements of the R-1 or R-2 district are met and provided all provisions of Article IX regarding any special exception are met.
- (2) Ordinary retail businesses or services, including restaurants and private schools but excluding mobile home dealers; the sale of bulk petroleum products; warehouses; mini-warehouses for individual storage of personal property; and freight terminals.

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- (3) Any business also making products sold at, on and/or off the premises; provided, however, the sales area must account for a minimum of 25 percent of the total floor area of the business and the business must not employ more than five persons at one time in the making of the product at the business site.
 - (4) Offices.
 - (5) Public buildings.
 - (6) Enclosed entertainment facilities.
 - (7) Public parks.
 - (8) Any business of a drive-in nature including, but not limited to, banks, and pick-up stations for laundry and dry cleaning.
 - (9) Automobile repair garages or service stations provided they meet the requirement of [section 36-118](#)
 - (10) Lending institutions, which are FDIC approved.
 - (11) Automobile sales.
 - (12) Funeral homes.
- (c) *Special exceptions.* All special exceptions listed for the R-1 primary residential and R-2 transition residential districts, provided all provisions of article IX, regarding any special exceptions are met.
- (d) *Further restrictions within the C-1 central business district.*
- (1) For dimensional requirements, see article IV.
 - (2) Height. In the C-1 central business district, every building or structure hereafter erected or structurally altered to exceed 35 feet in height, shall, above such 35-foot height, be set back from the front line of the property on which the building or structure is located on the ratio of one set back foot for each two-foot rise above such 35-foot height. In no case shall the required setback exceed 11 feet.

Where lots comprising more than one-half of the frontage on one side of a particular block are zoned residential and the lots comprising the remainder of such frontage on the same side of the particular block are zoned business, the height regulations for the residential district shall apply to the lots zoned for business uses on that side of the particular block.

- (3) For sign requirements, see article XII.
- (4) Lots abutting residential district. Where a lot in the C-1 central business district abuts a residential district, either directly or across a street (on the side of the C-1 lot), and any use is hereafter established on the C-1 lot by the construction of a new building thereon or by the enlargement of an existing building on the C-1 lot which enlargement exceeds by 25 percent the floor area of the existing building, such building and such lot shall be screened from the lot in the residential district by a vegetative screen as defined in [section 36-5](#). Only the side of the building or lot facing the residential lot shall require screening.

Exception No. 1: The provisions of this subsection [36-80\(d\)\(4\)](#) shall not apply to any lot which is used for a use which would be permitted in the adjacent residentially zoned district.

Exception No. 2: The vegetative screen required by this subsection [36-80\(d\)\(4\)](#) shall be omitted along the street where the C-1 lot fronts.

Exception No. 3: The zoning administrator shall have the authority to alter or eliminate the vegetative screen required by subsection [36-80\(d\)\(4\)](#) where the lot requiring the vegetative

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screen and the adjacent lot zoned residential are in single ownership or upon receipt of a notarized statement waiving or modifying the screening provisions of this section, between the owner of the lot requiring the vegetative screen and the owner of the adjacent lot zoned residential. Any such agreements shall be attached to the application for zoning permit and retained by the town.

- (5) Parking. No additional off-street parking other than the parking currently available in the C-1 central business district shall be required except where the structures currently located on an existing lot of record containing more than 1,875 square feet are razed and the lot of record is put to a new use in which event the parking regulations of [section 36-176](#) shall be fully applicable to said property.

(Ord. of 6-19-1978, Art. VII, § 17-740; Ord. of 8-8-1994; Ord. of 9-15-2008, § 1(i)—(k); Ord. of 7-21-2009, §§ 1, 2)

Sec. 36-81. - C-2, general business district.

- (a) *Intent.* The C-2 general business district is established in order to:
- (1) Protect the present residential development.
 - (2) Protect and promote a suitable environment for family life.
 - (3) Promote the future development of businesses which are required to serve the needs of residents of the town with convenient shopping, goods and services.
- (b) *Uses permitted.* Within the C-2 general business district, a building or premises shall be used only for the following purposes:
- (1) All uses permitted in the R-1 primary residential and R-2 transition residential districts, provided the more restrictive area and dimensional requirements of the R-1 or R-2 districts are met and provided all provisions of article IX regarding any special exceptions are met.
 - (2) All uses permitted in the C-1 central business district.
 - (3) Any business also making products sold at, on and/or off the premises; provided, however, the sales area must account for a minimum of 25 percent of the total floor area of the business and the business must not employ more than five persons at one time in the making of the product at the business site.
 - (4) Automobile repair garages or service stations provided they meet the requirements of [section 36-118](#)
 - (5) Hospital facilities as defined under definitions.
 - (6) Businesses with gaming terminals, as defined in [section 36-5](#), provided all use restrictions in [section 36-119](#) are met.
 - (7) Any business of a drive-in nature including, but not limited to, banks, restaurants, and pick-up stations for laundry and dry cleaning.
 - (8) Storage buildings and fenced storage yards, not including junk yards or mini-warehouses. All new fenced storage yards or expansions of existing storage yards must provide a "vegetative screen" as defined under "screen" in [section 36-5](#) of this chapter, along all new exterior boundaries of the fenced storage yard.
 - (9) Hotels and motels.
- (c) *Special exceptions.*

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- (1) All special exceptions listed for the R-1 primary residential, R-2 transition residential, and C-1 central business districts, provided all provisions of Article IX regarding any special exceptions are met.
 - (2) Unified business developments, provided such developments meet the requirements of [section 36-240](#)
- (d) *Further restrictions within the C-2 general business district.*
- (1) For dimensional requirements, see article IV.
 - (2) Height. In the C-2 central business district, no building or structure shall hereafter be erected or structurally altered to exceed 75 feet in height.
 - (3) Access. Any lot in the C-2 central business district hereafter used for business or service purposes shall have its only access upon the street on which it fronts.
 - (4) Lots abutting residential district. Where a lot in the C-2 general business district adjoins any property zoned residential, and any business or service is hereafter established on the C-2 lot as permitted in subsection [36-81\(b\)](#) or (c), such lot shall have a minimum setback requirement of 30 feet from all abutting property zoned residential. Such lot shall also be separated from the abutting property in a residential district by a 20-foot buffer as defined in [section 36-5](#) of this chapter, which buffer may be planted within the 30-foot setback area.
 - (5) For sign requirements, see article VIII.
 - (6) For parking, see [section 36-176](#)
- (Ord. of 6-19-1978, Art. VII, § 17-750; Ord. of 7-21-2009, § 3; Ord. of 7-16-2012, § 2; Ord. of 10-15-2012, § 1)

Sec. 36-82. - I-1, light industrial district.

- (a) *Intent.* The I-1 light industrial district is established in which the principal use of the land is for light industrial development. The I-1 zone is established in order to:
- (1) Protect the present residential development.
 - (2) Promote industrial development but provide that the permitted use be conducted within a confined, enclosed building, insofar as practical.
 - (3) Promote industrial development but provide that the noise, dust, glare, and odor of each such industrial operation be kept to a minimum.
- (b) *Uses permitted.* Within the I-1 light industrial district, a building or premises shall be used only for the following purposes:
- (1) All uses permitted in the R-1 primary residential, R-2 transition residential, R-3 general residential, C-1 central business and C-2 general business districts, provided all provisions of article IX regarding any special exceptions are met.
 - (2) Any industry which does not cause injurious or obnoxious noise, vibrations, smoke, gas, fumes, odor, dust or fire hazard.
 - (3) Wholesaling or warehousing, but excluding petroleum or gas bulk storage.
 - (4) Freight transportation terminals.
 - (5) Farm equipment services.

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- (6) Businesses with gaming terminals, as defined in [section 36-5](#), provided all use restrictions in [section 36-119](#) are met.
- (c) *Special exceptions.*
- (1) Any special exceptions listed for the R-1 primary residential, R-2 transition residential, R-3 general residential, C-1 central business or C-2 general business districts, provided all provisions of article IX regarding any special exceptions are met.
 - (2) Community facilities and convenience trade establishments which provide needed services to industrial development.
 - (3) Light manufacturing or assembly operations, provided such operations are conducted entirely within an enclosed structure, and are of such a nature as to produce no obnoxious or injurious noise, vibrations, smoke, gas, fumes, odors, dust or fire hazard. The board of adjustment shall also ensure that the following conditions are met:
 - a. No outside storage of materials or products shall be permitted.
 - b. Solid waste service shall be provided by the applicant firm in accordance with the provisions of [chapter 22](#) of this Code.
 - c. Adequate off-street parking and loading spaces shall be provided in at least the following numbers: One parking space for each employee on the shift of maximum employment; plus one additional parking space for each company vehicle operating from the premises; plus one additional parking space per 2,500 square feet of gross floor area, or any fraction thereof; plus one loading space for each loading door or dock.
 - d. Any previously existing building or structure modified and used for light manufacturing or assembly operations shall have all electrical wiring updated to comply with the current National Electrical Code requirements as they apply to the proposed use. No production operations shall begin prior to final certification by the county building inspector that the structure meets all building, plumbing and electrical codes applicable to the proposed use of the structure.
- (d) *Further restrictions within the I-1, light industrial district.*
- (1) For dimensional requirements, see article IV.
 - (2) Height. In the I-1 district, no building or structure shall hereafter be erected or structurally altered to exceed 75 feet in height.
 - (3) Lots abutting residential district. Where a lot in the I-1 light industrial district adjoins any property zoned residential, and any use is hereafter established on the I-1 lot as permitted in subsection [36-82\(b\)](#) or (c), such lot shall have a minimum setback requirement of 40 feet from all abutting property zoned residential. Where a lot in the I-1 district adjoins a lot zoned residential, and any use is hereafter established as permitted in subsection [36-82\(b\)](#) or (c), such lot shall also be separated from the abutting property in the residential district by a 20-foot buffer as defined in [section 36-5](#) of this chapter, which buffer may be within the 40-foot setback area.
 - (4) For sign requirements, see article VIII.
 - (5) For parking, see [section 36-176](#)
- (Ord. of 6-19-1978, Art. VII, § 17-760; Ord. of 7-21-2009, § 4; Ord. of 7-16-2012, § 3; Ord. of 10-15-2012, § 2)

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Sec. 36-83. - TND, traditional neighborhood development district.

- (a) *Intent.* The TND, traditional neighborhood development district, is intended to establish land use and design standards to be applied specifically in neighborhoods where a variety of residential uses are permissible. Foremost among these standards is adherence to an approved traditional neighborhood development plan. TND districts are designed to be walkable, pedestrian-oriented communities where mixed residential uses are located to encourage a vibrant community and minimize sprawl. The TND district may include a variety of building types in accordance with the approved traditional neighborhood development plan, including attached and detached single-family and multifamily and recreational uses.
- (b) *Uses permitted.* Within the TND, traditional neighborhood development district, any of the following uses shall be permitted as set forth in the traditional neighborhood development plan approved by the Weaverville Town Council, upon a recommendation for approval by the Weaverville Planning and Zoning Board.
- (1) All uses permitted in the R-1, primary residential and R-2, transition residential districts.
 - (2) Fraternal organizations, clubhouses used for education or recreational purposes, health clubs (including swimming pools, tennis courts, unlit soccer or ball fields, and retail sales related to the health club and contained within the facility) both private and public.

Lots used for fraternal organizations, clubhouses or health clubs shall be separated from abutting properties in the traditional neighborhood development district by a ten-foot buffer as defined in [section 36-5](#).
 - (3) Schools, both public and private.
 - (4) Government buildings.
 - (5) Buildings used for public utility purposes (water, sewer, natural gas, telephone and cable).
 - (6) Professional offices as defined in [section 36-5](#), and medical offices not used primarily for the treatment of drug addicts or alcoholics.
 - (7) Day care centers, as defined in [section 36-5](#), operating with more than five children, provided such centers meet the requirements of [section 36-117](#)
 - (8) Commercial development as allowed for in C-1, central business district and a C-2 general business district.
- (c) *Design guidelines for TND districts.* The following guidelines must be incorporated into a traditional neighborhood development plan although topography will play a significant role in how these guidelines are applied.
- (1) No minimum development size shall be required.
 - (2) The maximum permitted density shall not exceed eight dwelling units per acre, which shall be spread over the entire project so that no individual acre shall have more than eight dwelling units. Lot setbacks shall be consistent throughout the traditional neighborhood development and shall be approved as a part of the approval of the traditional development plan submitted for approval.
 - (3) A consistent building line should be maintained at the setback line along a particular street. However, projections of porches, bay windows, stoops, and other minor building masses over the street setbacks are encouraged in order to create an interesting block character. Large street setback lines to accommodate parking lots in front of a building are prohibited.

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- (4) No building or structure shall be erected or structurally altered within the traditional neighborhood development, as approved, which will exceed 35 feet in height.
- (5) The traditional neighborhood development should have a high proportion of interconnected streets, sidewalks and paths. Streets and rights-of-way are to be shared between vehicles (moving and parked), bicycles and pedestrians. The dense network of traditional neighborhood development streets shall be designed in order to function in an interdependent manner, providing continuous routes that enhance nonvehicular travel. Traditional neighborhood development streets are to be designed to minimize through traffic by the design of the street and the location of land uses. Cul-de-sacs or dead-end streets are to be eliminated wherever practical. Streets shall be designed to be only as wide as needed to accommodate the usual vehicular mix for that particular street while providing adequate access for moving vans, garbage trucks, fire engines and school buses.

The traditional neighborhood development should encourage walking and biking, enhance transit service opportunities, and improve traffic safety by promoting low speed, cautious driving while fully accommodation the needs of pedestrians and bicyclists.

- (6) A continuous network of alleys, built to the rear of lots but having access to the front street, is encouraged within the traditional neighborhood development area. Such alleys shall be built to the following specifications:

Right-of-way of alley: 20 feet.

Minimum width of pavement: 12 feet.

No parking shall be allowed within the alleys or their right-of-way. Such alleys will not be accepted into the town's road system for maintenance and must be maintained by individual lot owners or by an appropriate homeowners association.

- (7) Any rear vehicle access to a lot or tract shall be from an alley. Any garage facing a front street shall be located a minimum of ten feet behind the front facade of the principal structure where practical. Freestanding garages and carport structures for multiple-dwelling unit buildings should be designed to be an integral part of the building design or situated so as to avoid long and monotonous rows of garage doors and long monotonous building walls.
- (8) The length of any separate block (from street intersection to street intersection) should not exceed 600 feet, unless constrained by topographical considerations.
- (9) Any traditional neighborhood development must be served by the Town of Weaverville Municipal Water System and by the Metropolitan Sewerage District of Buncombe County and be built in accordance with the construction standards for each of these utility systems.
- (10) All other water lines, where possible, should be constructed within the right-of-way of the street, lane or avenue in front of a lot. Utilities shall be constructed underground and shall be constructed within alleys wherever possible. All utility installations shall be in accordance with the Town of Weaverville utility policy, Metropolitan Sewerage District of Buncombe County policy and the current utility policy of the North Carolina Department of Transportation.
- (11) Residential roadways within a traditional neighborhood development (excluding alleys) shall be known as lanes or streets and roadways leading from these lanes or streets to main roads outside of the traditional neighborhood development shall be known as avenues or main streets. Within these lanes, streets, avenues, and main streets underground utilities may cross under or run longitudinally with and under the pavement of such roadways, provided future utility stub-outs are installed from these utility lines prior to paving. If properly constructed, such residential roadways may be accepted into the town road system for maintenance.

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- (12) Shorter and more frequently placed street lamps are to be preferred to fewer and taller street lamps. High-intensity lamps are discouraged. The scale of lighting fixtures and the illumination provided therefrom must be appropriate for both pedestrian and vehicular movements. Street lamps shall be installed on both sides of a street and must be placed 100 feet apart, unless this requirements is specifically varied in a particular neighborhood by the town council. All lighting plans and specifications must be approved by the town council and must be followed.
- (13) Open spaces within a traditional neighborhood development shall be designed in order to provide and emphasize safe and inviting traditional neighborhood areas such as squares, parks, and greenways, and to integrate such areas into the neighborhood pattern for the active and passive enjoyment of neighborhood residents. Such open space should be incorporated into and be a fundamental element of the traditional neighborhood development plan. Traditional neighborhood open space should be planned and improved to be highly accessible and usable by persons living or working nearby. Except for areas designated as natural preserves, such areas should be cleared of underbrush and debris and may contain one or more of the following types of improvements: landscaping, walks, benches, seating areas, fountains, ponds, ball fields and playground equipment. Significant stands of trees, streamside areas, and other valuable topographic features should be preserved within such open space areas.
- (14) All streets (including lanes, streets, avenues or main streets as defined in subsection (11) above) within a traditional neighborhood development shall be designed and constructed, so far as practical, in keeping with the traditional neighborhood development (TND) guidelines published by the North Carolina Department of Transportation.
- (15) Unless impractical, sidewalks should be constructed on both sides of a street. Whenever possible, there should be a continuous pedestrian network of sidewalks adjacent to the streets. Curb cuts should be minimized in order to reduce conflicts with pedestrian traffic. Sidewalks shall be a minimum of five feet wide. Sidewalks may need up to an additional two feet of width where they directly abut fences, walls or buildings. Sidewalks should be sized and surfaced appropriately for anticipated pedestrian traffic volumes and to meet or exceed the guidelines for the Americans with Disabilities Act.
- (16) Bicyclists. On streets with a lower volume of traffic, bicyclists should be considered a normal part of the vehicle mix on such street. On streets having a higher volume of traffic, bicyclists should be accommodated with six-foot wide bike lanes, but separate routes for less experienced bicyclists may also be considered. Routing bicyclists within and through a traditional neighborhood development may include signage and striping, including changing color for the entire bike lane, as appropriate.
- (17) On-street parking. Parking in unmarked areas on the residential roadways known as streets or lanes shall be allowed and shall be known as informal parking. Parking on collector roadways known as avenues or main streets shall be only in areas designated by signs or other clearly defined markings.
- (18) Planting strips and street trees. Planting strips shall be located between the curb and sidewalk parallel with the street, and shall be six feet or more in width. Care should be used to ensure that larger planting strips do not push pedestrian crossing areas back from intersections by requiring a larger curb radius. On streets with design speeds of 20 mph or less, or on streets with on-street parking, small street trees may be planted within three feet of the back of curb and should generally be planted along the centerline of the planting strip. Street trees shall have a caliper of at least 1½ inches. Section 17-1080 sets forth a list of recommended species of street trees. To maintain sight lines, trees and other objects should be restricted from corners for distances of 30 feet on all sides. Along all planting strips the area between two feet and seven feet above ground shall be maintained as a clear zone to preserve sight lines and accommodate pedestrians.

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- (19) Vertical curb and gutter construction shall be preferred throughout an entire traditional neighborhood development. Vertical curb and gutter construction shall be required within the community core, in all areas where densities are six units per acre or greater, and where sidewalks on both sides of the street are proposed. Alternative construction shall be considered in low density areas, where sidewalks only on one side of the street are proposed due to topographical conditions, or within water supply watersheds and similar environmentally sensitive areas, or preserved open space and natural areas.
- (20) Buffering requirements shall be established during the approval of a zoning application. Property located on the perimeter of traditional neighborhood development district shall have setbacks and buffers that are consistent with the setbacks and buffers of the adjoining zoning district or districts.
- (21) All signage in any traditional neighborhood development must be in compliance with article VIII of this zoning ordinance.
- (22) The Weaverville Town Council shall have the power, at all times, to regulate parking on lanes, streets, avenues, and main streets by appropriate signs, depending upon traffic counts, the need for emergency vehicle access or other appropriate factors. The town council shall also retain the power to enforce such parking requirements.
- (d) *Establishment of a traditional neighborhood development plan. Rezoning and site plan approval.* In order to receive the traditional neighborhood development district zoning, a developer must file with the town an application to rezone property to such a district in accordance with the provisions of article VIII of this zoning ordinance and must submit a proposed traditional neighborhood development plan for the project site for review by the Weaverville Planning and Zoning Board and for adoption by the town council. The filing of such an application shall be considered as a pronouncement by the applicant of the intent to adhere to higher standard of design and to place a premium upon the long-term livability and attendant value appreciation of the development. The process leading to the zoning map amendment for a traditional neighborhood development district shall include a presubmittal meeting with the zoning administrator, an application for the proposed zoning map amendment, the submission of a complete set of preliminary plans showing areas of the proposed traditional neighborhood development plan elements, review by the Weaverville Planning and Zoning Board, a public hearing on the zoning map amendment and on the particular traditional neighborhood development plan, the adoption of the zoning map amendment and the approval by the town council of the particular traditional neighborhood development plan. The process to be followed by the town council in the approval of a traditional neighborhood development district and the site plan therefore is a legislative determination involving conditional use zoning districts pursuant to G.S. 160A-381 and 160A-382.

The following constitutes an outline of the steps to be followed in the approval process:

- (1) Presubmittal meeting. A presubmittal meeting shall be held between the zoning administrator and the applicant to acquaint the town's staff with the proposed development, provide the applicant with preliminary staff comments, and identify major concerns or the need for additional data.
- (2) Application and contents. A completed application for a zoning map amendment to establish or enlarge a traditional neighborhood development district shall consist of the following elements:
 - a. A letter requesting rezoning prepared in accordance with article XVII of this chapter.
 - b. A copy of the proposed traditional neighborhood development plan itself. The particular adopted plan shall be specifically referenced in any ordinance granting zoning to the subject tract of land as a TND traditional neighborhood development district, and thenceforth that particular zone is measured.

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- (3) Traditional neighborhood development plan submission elements. The proposed traditional neighborhood development plan shall include a general site plan, drawn neatly and to scale showing the following elements:
- a. A topographical map of the project site with contours drawn at five-foot intervals;
 - b. A project design showing lots and specific land uses, property lines, street and other right-of-way lines, public utility easements and rights-of-way;
 - c. Project-specific site development standards, including dimensional standards, architectural and design standards, sign requirements, street and alley design standards, parking and sidewalks;
 - d. Location of street, trees and landscape design and the design of public open spaces;
 - e. Location of residential lots, professional offices, instructional, civic buildings and lots;
 - f. Location and amount of land in flood hazard areas and any other lands not suitable for development;
 - g. Preliminary water, sewer and street design and construction plans for the proposed traditional neighborhood development completed by a North Carolina registered engineer which meet town standards;
 - h. All proposed provisions for stormwater collections and disposal, including both natural and manmade featured, and the proposed treatment of ground cover, slopes, banks and ditches;
 - i. Any other information required by the Town of Weaverville Zoning Administrator to demonstrate conformance with the traditional neighborhood development district purposes and standards.
- (4) Zoning as a traditional neighborhood development district and adoption of the traditional neighborhood development plan. After review by the Weaverville Planning and Zoning Board, a public hearing shall be conducted by the town council to review and consider the particular traditional neighborhood development district as an amendment of the town's zoning map and the preliminary adoption of the proposed traditional neighborhood development plan. If the town council desires to zone the area as a traditional neighborhood development district, it shall adopt an ordinance amending the zoning map to reflect the change in the zoning and shall give preliminary approval if the proposed traditional neighborhood development plan.
- (5) Once an area has been rezoned by the town council as a traditional neighborhood development district and a preliminary traditional neighborhood development plan has been approved by the town council, the developer must submit the following construction details and design to the town council for approval:
- a. Final construction designs for water, sewer and streets completed by a North Carolina registered engineer and the approval of the town;
 - b. Final provisions for stormwater collection which and disposal, including both natural and manmade features, and the proposed treatment of ground cover, slopes, banks, and ditches completed by a North Carolina registered engineer; and
 - c. A statement from the North Carolina Department of Environment, and Natural Resources, approving the traditional neighborhood development site plan erosion control plan.
- The town council shall then take action to give final approval of the traditional neighborhood development plan.

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- (e) *Conformance to the adopted traditional neighborhood development plan.* Once an area has been rezoned by the town council as a traditional neighborhood development district and a traditional neighborhood development plan has been approved by the town council, minor changes in the location, siting, or use of buildings or deviations from the dimensional standards shown in the plan may be authorized by the zoning administrator if required by engineering or other circumstances not foreseen at the time of the plan adoption. It is to be expected that certain housing types and land uses will sell or be filled faster than others. This normal and usual occurrence shall not justify the removal of housing types and land use types from the neighborhood mix, but it may justify adjustments of the percentages of the neighborhood devoted to various uses.
- (f) *Streets and utilities.* Unless the construction of all street and all utilities required by this section has been completed prior to the recording of a final plat, the traditional neighborhood development developer shall make system improvements guarantee as provided in subsection [25-82\(b\)](#) of the Weaverville subdivision ordinance.
- (g) *Guaranty of defects.* Once construction of required or contemplated improvements has been completed, inspected and accepted by the town, the developer shall provide a guaranty of defects as provided for in subsections [25-82\(c\)](#) and [25-82\(d\)](#) of the Weaverville subdivision ordinance.
- (h) *Phased development.* A traditional neighborhood development to be built in phases shall meet the following requirements:
 - (1) At least 50 percent of the initial phase, as approved, must be substantially completed before the approval of another phase.
 - (2) Numbering. All phases shall be shown on the adopted traditional neighborhood development plan and numbered in the expected order of development. Changes to the order of development must be approved by the Weaverville Town Council.
 - (3) Final plat prerequisites. No final plat for a phase of a traditional neighborhood development shall be approved unless:
 - a. All common facilities included in previous phases have been completed; and
 - b. There is no violation of the traditional neighborhood development plan in any previous phase.

(Ord. of 4-15-2002; Ord. of 12-15-2003; Ord. of 9-15-2008, § 1(l)—(r))

Sec. 36-84. - Conditional zoning district.

- (a) *Intent.* The CZD-conditional zoning districts provide for those situations where a particular use, properly planned, may be appropriate for a particular site, but where the general district has insufficient standards to mitigate the site-specific impact on surrounding area.
- (b) *Use permitted.* The uses which may be considered for a conditional zoning district shall be established on an individual basis, at the request of the property owner, according to the procedures of [section 36-83\(d\)](#). Zoning of a conditional zoning district is not intended for the securing of early or speculative reclassification of property. It is expected that, in most cases, a general district will appropriately regulate site-specific impact of permitted use and structures on surrounding areas.
- (c) *Definition of conditional zoning district.* For purpose of this section, a "conditional zoning district" shall be defined as a zoning district in which the development and use of the property included in the district is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property. If the property use is ever proposed to be changed from the original approved plan, then the new proposed use and plan must be resubmitted for approved by the town council.

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- (d) *Petition of request.* Property may be rezoned to a conditional zoning district only in response to and consistent with a petition of the owners, or agents of the owners of all of the property to be included in the district and shall be accompanied by an official petition, a statement analyzing the reasonableness of the proposed rezoning request by the petitioner, the established fee, and documentation as required by the following:
- (1) A petition for a conditional zoning district must include a site plan and supporting information that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property;
 - (2) A boundary survey and vicinity map showing the property's total acreage, current zoning classification(s) general location in relation to major streets, date and north arrow;
 - (3) Existing topography on the site and within 300 feet of the boundary of the site, and the general nature of the proposed topography at four-foot contours;
 - (4) All existing easements, reservations, rights-of-way, and any other valid restrictions on the use of the land;
 - (5) The number and general location of all proposed structures;
 - (6) The proposed use of all land and structures, including the number of residential units or the total square footage of any nonresidential development;
 - (7) All yards, buffers, screening, and landscaping required by the town code;
 - (8) All existing and proposed points of access to public streets and the locations of proposed new streets;
 - (9) Delineation of areas within the floodplain;
 - (10) Proposed number and location of the signs;
 - (11) Proposed phasing, if any, and the approximate completion time for the project;
 - (12) The location of existing and proposed storm drainage patterns and facilities intended to serve the development;
 - (13) Traffic, parking, and circulation plans, showing the proposed location and arrangement of parking spaces and ingress and egress to adjacent streets, existing and proposed;
 - (14) A list of adjoining properties including county tax parcel numbers and the name and address of each owner, provided in digital form;
 - (15) The location of significant trees on the petitioned property;
 - (16) The scale of buildings relative to adjoining properties, including sight lines;
 - (17) Information on the height of all proposed structures;
 - (18) Exterior features of all of the proposed development;
 - (19) Any supporting text shall constitute part of the petition.
- (e) *Time limits.* A time limit of 240 calendar days for securing applicable permits in order to construct the project and 365 calendar days thereafter for completion of the project; provided, however, the town council may approve up to an additional 365 calendar days for completion of the project, for good cause shown. In the event that the project involves more than three acres and/or more than 15,000 thousand square feet, the time period for securing applicable permits for the project shall be 365 calendar days and the time period for completion of the project shall be 730 calendar days thereafter; provided, however, the town council may approve up to an additional 180 calendar days

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for completion of the project, for good cause shown. Conditional zoning district projects that have approved detailed plans and have secured applicable permits for start of construction as of May 1, 2009, but on which there has not been a start of construction, will have an additional 12 months to be added to the construction time limits in this subsection from the date of approval of the detailed plans for the completion of the project.

- (f) *Minor modifications.* Minor modifications to a project shall be submitted to the zoning administrator for review. No building permit for the proposed development or any part thereof shall be issued until the zoning administrator has determined that the pertinent detailed plans are in accordance with the application and general plans as approved by the town council.
- (g) *Future variance request.* Property zoned CZD will not be able to apply for a variance on the approved project.
- (h) *Maintaining the zoning district.* CZD is a change in the zoning district and therefore is maintained after the sale of the property. If the property owner wishes to change the approved CZD plan, the property owner must reapply with the town council for a zoning change.
- (i) *Guarantee of conditions.* At the discretion of the town council, the council may require the property owner to guarantee the performance or completion of conditions included in the approved conditional zoning plan. Such guarantee may be in the form of:
 - (1) A surety performance bond made by a surety bonding company licensed and authorized to do business in the state;
 - (2) A bond of the developer with an assignment to the town of a certificate of deposit as security for the bond;
 - (3) A bond of the developer secured by an official bank check drawn in favor of the town and deposited with the town clerk;
 - (4) Cash or an irrevocable letter of credit; or
 - (5) A bank escrow account whereby the developer deposits cash, a note, a bond or some other instrument readily convertible into cash for a specific face value, with a federally insured financial institution in an account payable to the town. The amount of the guarantee shall be determined by the town council.
- (j) *District approval.* If a petition for a conditional zoning is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to such district category, the approved site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district. Each conditional zoning district will be given a special number, distinguishing such district from another zoning district.
- (k) *Planning and zoning review.* All conditional zoning shall require that the request be submitted to the town planning and zoning board to determine if approvals of such plans are made in consideration of identified relevant adopted land-use plans for the area including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land-use policy documents. A statement analyzing the reasonableness of the proposed rezoning shall be prepared by the town planning and zoning board for each petition for a rezoning to a conditional zoning district and submitted to the town council for final action on the request.
- (l) *Public involvement.* Before a public hearing may be held by the town council on a petition for a conditional zoning the petitioner must file in the office of the town clerk a written report of a at least one community meeting held by the petitioner. The report shall include, among other things, a listing of those persons and organizations contacted about the meeting and the manner and date of contact, the date, time, and location of the meeting, a roster of the persons in attendance at the

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meeting, a summary of issues discussed at the meeting, and a description of any changes to the rezoning petition made by the petitioner as a result of the meeting. In the event the petitioner has not held at least one meeting pursuant to this subsection, the petitioner shall file a report documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held. The adequacy of a meeting held or report filed pursuant to this subsection shall be considered by the town council but shall not be subject to judicial review.

Notice of such a public hearing shall be given to all the property owners within 200 feet of the property boundaries and in accordance with the provisions of G.S. 160A-364.

(m) *Judicial review.* Conditional zoning district decisions under this section are a legislative process and not subject to judicial review.

In the event of noncompliance by a property owner or any subsequent resale or lease of a property for use other than that stipulated in the original CZD approval, the property owner would be in violation of the town zoning ordinance.

(n) *Approval procedures.* Except as specifically modified by this section, the procedures to be followed by the town council in reviewing, granting, or denying any petition for conditional zoning shall be the same as those established for general use district zoning petitions under G.S. ch. 160A, [art. 19](#)

The town council may not vote to rezone property to a conditional zoning district during the time period beginning on the date of a municipal general election and concluding on the date immediately following the date on which the town council holds its organizational meeting following a municipal general election unless no person spoke against the rezoning at the public hearing and no valid protest petition under G.S. 160A-386 was filed. If a valid protest petition under G.S. 160A-386 has been filed against a zoning petition which would otherwise have been scheduled for a public hearing during the period beginning on the first day of October prior to a municipal general election, but prior to the new town council taking office.

(o) *Property in R-1 use district.* Due to the distinct nature of the R-1 use district, the only lots in the R-1 district that are eligible for rezoning to a conditional use district are lots contiguous to and have the development's only access to Weaver Blvd., Main St. and Merrimon Ave.

(Ord. of 8-20-2007; Ord. of 11-17-2008, § 1; Ord. of 4-20-2009, § 3)

Secs. 36-85—36-105. - Reserved.

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ARTICLE IV. - DIMENSIONAL REQUIREMENTS

ARTICLE IV. - DIMENSIONAL REQUIREMENTS

Sec. 36-106. - Table of dimensional requirements.

Zoning District	R-1	R-2	R-3	C-1	C-2	I-1
Minimum Lot Area (sq. ft.)	10,000 ^{2,7}	7,500 ^{1,2,3,4,7}	5,445 ^{1,2,3,4,7}	None	None	None
Minimum Lot Width (ft.)	100	75	75	None	50	None
Minimum Front Yard (ft.) (From edge of right-of-way)						
Major Thoroughfare	<u>30</u>	<u>30</u>	<u>30</u>	None	60	35 ⁵
Minor Thoroughfare	<u>30</u>	<u>30</u>	<u>30</u>	None		<u>25</u> ⁵
with parking in front					60	
without parking in front					40	
Minimum Side Yard (ft.)						
Abutting Residential District	10	10 ⁶	10 ⁶	None	<u>30</u>	40
Abutting Commercial or Industrial District	10	10 ⁶	10 ⁶	None	None	40
Minimum Rear Yard (ft.)						
Abutting Residential District	10	10 ⁶	10 ⁶	None	<u>30</u>	40
Abutting Commercial or Industrial District	10	10 ⁶	10 ⁶	None	None	40

See dimensional notes in [section 36-107](#).

(Ord. of 6-19-1978, Art. VIII; Ord. of 9-15-2008, § 1(s))

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ARTICLE IV. - DIMENSIONAL REQUIREMENTS

Sec. 36-107. - Footnotes for table of dimensional requirements.

See sections: Businesses, subsection [36-81\(d\)\(4\)](#); cemeteries, subsection [36-77\(c\)\(4\)](#); churches, subsection [36-77\(b\)\(3\)](#); dwelling setbacks, sections [36-13](#) to [36-15](#); automobile service stations and repair garages, [section 36-118](#); general density, [section 36-7](#); industries, subsection [36-82\(d\)\(3\)](#); mobile and manufactured homes, subsection [36-79\(b\)\(3\)](#); nonconforming lots, [section 36-21](#); right-of-way, [section 36-8](#); unified business development, [section 36-240](#); unified housing development, [section 36-241](#).

Notes:

1. 10,000 square feet if no public sewerage is available.
2. 20,000 square feet if neither public water or sewerage is available.
3. 5,000 additional square feet for each additional dwelling unit when public water and/or sewer is available.
4. 10,000 additional square feet for each additional dwelling unit when public water and/or sewer is not available.
5. 40 feet if property directly across the right-of-way is zoned residential.
6. 15 feet for two-family dwelling unit; 25 feet for multi-family dwelling unit. (Also see [section 36-241\(d\)](#) for additional requirements for multi-family structures.)
7. Additional square footage may be required by the authority having jurisdiction over private water and/or sewerage systems located on individual lots.

(Ord. of 6-19-1978, Art. VIII)

Secs. 36-108—36-115. - Reserved.

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ARTICLE V. - USE RESTRICTIONS

ARTICLE V. - USE RESTRICTIONS

Sec. 36-116. - Intent.

It is the intent of this article to establish additional criteria, review guidelines and safeguards when certain uses are permitted in various zoning districts.

(Ord. of 6-19-1978, Art. IX, § 17-900)

Sec. 36-117. - Day care centers operating with more than five children.

- (a) *Intent.* To establish additional review guidelines for day care centers operating with more than five children to insure that such centers will provide the community with adequate, safe facilities to protect the children in such centers and the interests of adjoining property owners.
- (b) *General plans.* Each applicant for a permit to operate a day care center must treat the application as a special exception, must apply to the zoning board of adjustment and must submit a general plan, drawn to scale, with the application for a permit. The plans must show adequate play area, as prescribed below, as well as the structural facilities to be located on the property and the names of all adjoining property owners. Additional information may be required as the zoning board of adjustment sees fit.
- (c) *Standards.*
 - (1) The facilities shall provide for 100 square feet of outdoor play area for each child.
 - (2) The outdoor play area shall be surrounded by a sturdy fence of not less than four feet in height.
 - (3) The facility shall meet all state requirements for day care centers.
 - (4) For sign requirements, see article VIII.

(Ord. of 6-19-1978, Art. IX, § 17-920)

Sec. 36-118. - Automobile service stations and repair garages.

The following regulations shall apply to all automobile service stations and repair garages:

- (1) All buildings shall be located at least 40 feet from any street right-of-way line.
- (2) Gasoline pumps and other appliances, where permitted, shall be located at least 15 feet from any street right-of-way.
- (3) All service, storage or similar activities shall be conducted entirely on the premises.
- (4) All repair work, if any, shall be conducted within a completely enclosed building.
- (5) Open storage of wrecked or inoperable cars, discarded tires, auto parts, or similar material shall not be permitted.
- (6) For sign requirements, see article VIII.

(Ord. of 6-19-1978, Art. IX, § 17-930)

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ARTICLE V. - USE RESTRICTIONS

Sec. 36-119. - Gaming terminals.

- (a) *Intent.* To establish additional requirements for the placement of gaming terminals in the C-2 and I-1 districts.
- (b) *Standards.* All businesses wishing to install gaming terminals shall comply with the following conditions and use restrictions:
 - (1) There is a limit of two gaming terminals per business location.
 - (2) No persons under the age of 18 shall be allowed to use the gaming terminals.
 - (3) The gaming terminals must not be prohibited by state or federal law and must have all applicable state and local permits and business licenses and pay all applicable town fees and taxes before the gaming terminals may be placed at the business location and at all times the gaming terminals are operated.
 - (4) During hours of operation, gaming terminals shall be open for direct, unobstructed access by all safety and enforcement personnel. All entrance doors shall remain unlocked while patrons are on the premises.

(Ord. of 7-16-2012, § 4)

Secs. 36-120—36-145. - Reserved.

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ARTICLE VI. - LANDSCAPE REGULATIONS

ARTICLE VI. - LANDSCAPE REGULATIONS

Sec. 36-146. - Intent.

The intent of this article is to improve the appearance, quality, and quantity of landscaped area which is visible from public roadways, the purposes being as follows:

- (1) To assist in providing adequate light and air and to prevent the overcrowding of land.
- (2) To provide visual buffering and to enhance the beautification of the town, particularly with reference to new development.
- (3) To safeguard and enhance property values and to protect the public and private investment therein.
- (4) To preserve, protect, and restore the unique identity and environment of the Town of Weaverville and preserve the economic base attracted to the town.
- (5) To encourage the preservation of existing trees and vegetation.
- (6) To aid in stabilizing the environment by contributing to the process of air purification, groundwater recharge, and stormwater runoff retardation, while at the same time aiding in noise and glare abatement.
- (7) To protect the public health, safety, and general welfare.
- (8) To encourage sustainable landscaping, emphasizing the use of plant species native to Western North Carolina that provide wildlife habitat.

(Ord. of 6-19-1978, Art. X, § 17-1000; Ord. of 11-17-2008, § 1)

Sec. 36-147. - Applicability.

The requirements of this article shall apply to all public and private land within the town zoning jurisdiction except land used for the following purposes:

- (1) Single-family residences.
- (2) Duplex residences.

None of the other uses authorized in article III or article IX of this chapter shall be permitted until the requirements of this article are met.

(Ord. of 6-19-1978, Art. X, § 17-1005)

Sec. 36-148. - Landscape plan required.

Every application for a zoning permit, a special exception permit, or a variance shall be accompanied with a landscape plan.

Exception: Land uses exempted by [section 36-147](#).

(Ord. of 6-19-1978, Art. X, § 17-1010)

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Sec. 36-149. - Landscape plan contents.

The landscape plan required by [section 36-148](#) may be combined with the site plan required by [section 36-268](#) and shall contain the following information:

- (1) Existing and proposed landscaping;
- (2) Any buffers required by this chapter;
- (3) Any screens required by this chapter;
- (4) Existing and proposed land uses of all adjoining properties and current zoning of those properties;
- (5) Existing vegetation intended to be saved under the provisions of [section 36-154](#)
- (6) Any barriers proposed to protect vegetation during or after construction (see subsection [36-150\(c\)](#) and [section 36-154](#));
- (7) Topographic contours at intervals of not more than five feet, indication of the direction of storm water flow, and a description of all storm water control facilities.

(Ord. of 6-19-1978, Art. X, § 17-1015)

Sec. 36-150. - General provisions.

- (a) All plant materials used to comply with the requirements of this article shall be selected from the list of recommended species unless otherwise approved by the zoning administrator.
- (b) When any landscaped area required by this article involves clear cutting of the property, the wildlife habitat sub-committee of the town tree board will be permitted to conduct a plant rescue survey and, if feasible, be permitted to remove desirable native plants for use in town parks or on other town property. The sub-committee shall have 30 days from the issuance of the zoning permit to conduct the survey and remove the plants. Absent agreement by the property owner and/or the permit holder, no expense for the survey or removal of the plants shall be borne by the property owner and/or the permit holder.
- (c) When any landscaped area required by this article is adjacent to parking or vehicular circulation areas, such planted area shall be protected by curbing or other parking barriers.
- (d) Landscaping shall not obstruct the view of motorists using any street, private driveway, parking aisles, or the approach to any street intersection so as to constitute a traffic hazard. Such landscaping shall not violate the guidelines set forth in the town's minimum construction standards for streets.
- (e) All landscaped areas herein required shall be stabilized from dust and soil erosion immediately upon planting and shall thereafter be so maintained until the use of the property or the zoning thereof is changed. Water efficient landscapes and practices are encouraged.
- (f) The property owner of record shall be responsible for maintaining all required plant material in good health. Any dead, unhealthy or missing plants shall be replaced within 120 days after death with locally adapted plants which conform to the planting standards of this chapter. In the event that plant material is severely damaged due to unusual weather occurrence or other acts of God, the owner shall have two years to complete the replanting of the area so damaged.

(Ord. of 6-19-1978, Art. X, § 17-1020; Ord. of 11-17-2008, § 2)

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Sec. 36-151. - Landscaping required for all sites.

At least five percent of all lots or parcels which are subject to this article shall be landscaped. This requirement shall be met in addition to any area required for street trees, buffer strips, or screens.

Exception No. 1: Land uses exempted by [section 36-147](#).

Exception No. 2: Where property is located in the C-1 district, the provisions of this section shall not operate to impose minimum lot area, minimum lot widths, or minimum front, side or rear yard widths in excess of those required by article IV.

(Ord. of 6-19-1978, Art. X, § 17-1025)

Sec. 36-152. - Street trees required.

Landscaping shall be required on any portion of a lot adjacent to a public right-of-way. A strip shall be provided for the planting of street trees, which strip must average ten feet in width with a minimum width of five feet. The strip shall contain one tree for each 40 feet of street right-of-way frontage. Street trees shall have a caliper of at least one inch. The width of the planting strip and tree placement therein may be varied except that street trees may not be closer than 15 feet apart. Other types of plant materials shall be provided to complement street trees subject to approval by the zoning administrator. Shrubs and other types of plant materials shall be used which will complement the tree plantings subject to approval by the zoning administrator.

Exception No. 1: Land uses exempted by [section 36-147](#).

Exception No. 2: Where property is located in the C-1 central business district and a building is located nearer than five feet to the property line adjacent to the street right-of-way as may be permitted by Article IV, the provisions of this section shall not apply.

Exception No. 3: The provisions of this section shall not apply where a buffer strip or other screening is required along the property line adjacent to the right-of-way by any section of this chapter.

(Ord. of 6-19-1978, Art. X, § 17-1030)

Sec. 36-153. - Off-street parking and loading areas.

(a) Landscaping shall be required in and around all new or redesigned off-street parking and loading areas. The word "redesigned" is hereby defined as a change in configuration or increase or decrease in the lot size.

(b) Landscaping shall be provided for parking and loading areas as follows:

Number of Parking Spaces	Landscaping Requirements (as a Percent (%) of Paved area)
1—20	2.5
21 and over	5.0

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- (c) At least 50 percent of the required parking lot landscaping shall be provided as landscaped islands within the parking lot.
- (d) One tree of a least one inch caliper and an initial height of at least four feet shall be provided for each 15 parking spaces. The expected height at maturity of such trees shall be at least eight feet.
- (e) No parking space shall be more than 50 feet from a tree or 75 feet from plantings of more than one tree. (This must be shown on the landscape plan.)
- (f) Shrubs and other types of plant materials shall be used which will complement the tree plantings subject to approval by the zoning administrator.

(Ord. of 6-19-1978, Art. X, § 17-1035)

Sec. 36-154. - Credit for existing trees.

The zoning administrator may waive the requirement of planting of new trees set forth in this article if large trees existing on the site are protected and maintained before, during, and after construction. This credit for existing trees is only available on a one to one ratio for trees of more than six inches in circumference measured at a point on the trunk four feet above the ground.

In order for credit to be assigned for street trees, buffer strips, or screening trees, the zoning administrator must certify that the same buffer or screening function will be provided by the saved trees as would be provided by an equivalent number of newly planted trees. If this function will not be provided, the amount of credit shall be reduced accordingly. Saved trees must be protected before, during and after construction by a barrier at the drip line subject to the approval of the zoning administrator. Without such protection no credit shall be awarded for such trees. If a saved tree dies at any time, it shall be replaced.

(Ord. of 6-19-1978, Art. X, § 17-1050)

Sec. 36-155. - Effect of project phasing.

- (a) *Landscaping plan.* If a proposed development is to be completed in phases, the landscaping plan shall, nevertheless, include and show all required landscaping, buffering, and screening for the entire project.
- (b) *Guarantee.* If a proposed development is subject to the landscaping guarantee provided for in [section 36-156](#), below, such guarantee shall be provided as follows:
 - (1) The requirements of [section 36-152](#) (street trees) and any required buffering or screening requirements shall be met and guaranteed as provided for in [section 36-156](#) for the current phase of the project prior to the issuance of any zoning permit or special exception permit for the current phase of the project.
 - (2) The requirements of sections [36-151](#) (landscaping) and [36-153](#) (off-street parking and loading) shall be met and guaranteed as provided for in [section 36-156](#) prior to the issuance of a zoning permit or building permit for the construction of additional phases and shall be consistent with the original landscaping plan as approved at the beginning of the project. Any change or modification of the landscaping plan for the additional phases shall be reviewed and approved in the same manner as the original plan.

(Ord. of 6-19-1978, Art. X, § 17-1060)

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Sec. 36-156. - Landscaping guarantees bond or undertaking.

(a) *Applicability.* The provisions set forth in this section shall apply to all of the following:

- (1) Unified business developments as provided for in [section 36-240](#) of this chapter.
- (2) Unified housing developments as provided for in [section 36-241](#) of this chapter.
- (3) All development of land where the total lot area is two acres or more in size.

Exception: Land uses exempted by [section 36-147](#).

(b) *Requirements.* If the landscaping and buffering requirements, as shown on the approved landscaping plan, cannot be totally completed prior to issuance of the zoning permit or special exception permit due to inappropriate timing for meeting the growing season or due to conflicts with construction schedules, the zoning administrator shall, for the purpose of issuing the zoning permit, or the zoning board of adjustment, for the purpose of issuing a special exception permit, accept an agreement to complete and guarantee from the developer/owner that the landscaping and buffering requirements of this chapter will be completed, in accordance with the approved landscaping plan at the developer/owners expense. Such guarantee shall be in one of the following forms:

- (1) A surety performance bond issued by a surety bonding company licensed and authorized to do business in North Carolina;
- (2) A bond of the developer/owner with an assignment to the town of a certificate of deposit as collateral security for the bond;
- (3) A bond of the developer/owner secured by an official bank check drawn in favor of the town and deposited with the town clerk;
- (4) Cash or an irrevocable letter of credit;
- (5) A bank escrow account and agreement whereby the developer/owner deposits cash, a note, a bond or some other instrument readily convertible to cash for a specific face value, with a federally insured financial institution in an amount payable to the town. The developer/owner, in using such escrow account, shall file with the town an agreement between the financial institution and himself guaranteeing that the account shall be held in trust until released by the town and that the account may not be used or pledged by the developer/owner for any other matter during the term of the escrow agreement.

Any of the above forms of guarantee shall be in an amount equal to 150 percent of the cost of the landscaping and buffering as estimated by the developer/owner or his contractor and approved, as to amount and form, by the zoning administrator who may consult with persons with responsible knowledge of landscaping costs who are not associated with the project in order to determine the proper amount of the guarantee. All such guarantees shall be reviewed by the town attorney prior to acceptance by the zoning administrator. All such guarantees shall remain in full force for the town's benefit until the zoning administrator determines, and certifies to the town council, that all of the landscaping and buffering requirements as shown on the approved landscaping plan have been completed, at which time the town council shall take action to release said guarantees.

(Ord. of 6-19-1978, Art. X, § 17-1070; Ord. of 8-8-94)

Sec. 36-157. - List of recommended species.

All landscape planting materials required by this article shall be selected from the following "list of recommended species" or as otherwise approved on a case by case basis by the zoning administrator:

APPROVED SHRUBS TOWN OF WEAVERVILLE

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Botanical Name	Common Name	Expected Height
Shrubs		
Abelia x grandiflora	Glossy Abelia	3—6
Aronia arbutifolia "Brilliantissima" (N)	Red Chokeberry	6—8
Aronia melanocarpa (N)	Black Chokeberry	3—5
Buxus - Several species	Boxwood	Depends on species
Callicarpa americana (N)	American Beautyberry	3—8
Callicarpa dichotoma	Purple Beautyberry	3—4
Calycanthus floridus (N)	Sweetshrub	6—9
Ceanothus americanus (N)	New Jersey Tea	3—4
Chamaecyparis - Several species	Falsecypress	Depends on species
Clethra acuminata (N)	Cinnamon Clethra	8—12
Clethra alnifolia (N)	Summersweet Pepperbush	3—8
Cornus sericea	Redosier Dogwood	7—9
Cotoneaster - Several species	Cotoneaster	Depends on species/cv
Diervilla sessilifolia (N)	Southern Bush-honeysuckle	3—5
Euonymus americanus (N)	Hearts-a-Bustin'	4—8
Forsythia x intermedia	Border Forsythia	3—10
Fothergilla gardenia and major (N)	Fothergilla	2—8

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Hamamelis virginiana (N)	Common Witchhazel	10—20
Hamamelis x intermedia	Witchhazel Hybrids	8—15
Hydrangea paniculata	Panicle Hydrangea	8—15
Ilex comuta "Dwarf Burford"	Dwarf Burford Chinese Holly	5—6
Ilex crenata - Several species	Japanese Holly	Depends on species/cv
Ilex glabra (N)	Inkberry	6—8
Ilex verticillata (N)	Winterberry	6—10
Ilex decidua (N)	Possumhaw	7—15
Ilex x meserveae	Hybrid Blue Hollies	8—15
Itea virginica (N)	Virginia Sweetspire	3—5
Jasminum nudiflorum	Winter Jasmine	3—4
Juniperus - Several species*	Juniper	Depends on species/cv
Kerriajaponica	Japanese Rose	3—8
Leucothoe fontanesiana (N)	Dog-hobble	3—6
Lindera benzoin (N)	Spicewood	6—12
Physocarpus opulifolius (N)	Ninebark	8—10
Picea - Several species	Spruce	Depends on species/cv
Pinus - Several species Some are native	Pine	Depends on species/cv

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Rhododendron catawbiense (N)	Catawba Rhondendron	3—10
Rhododendron maximum (N)	Rosebay Rhododendron	10—15
Rhododendron sp (N)	Native Azaleas	6—10
Rhododerdron - Several species ***	Evergreen Azaleas	2—5
Rosa "Knock-out"	"Knock-out" Rose	3—5
Spirea virginiana (N)****	Spirea	
Taxus - Several species	Yew	Depends on species/cv
Thuja	Arborvitae	Depends on species/cv
Vaccinium corymbosum (N)	Highbush Blueberry	4—12
Viburnum acerifolium (N)	Mapleleaf Viburnum	4—6
Viburnum dentatum (N)	Southern Arrowwood	6—8
Viburnum nudum (N)	Possumhaw	6—8
Viburnum prunifolium (N)	Blackhaw Viburnum	10—15

APPROVED TREES TOWN OF WEAVERVILLE

Botanical Name	Common Name	Expected Height (in feet)
Small to Medium Trees		
Acer buergeranum (S)	Trident Maple	20—25

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Acer palmatum (S) some varieties	Japanese Maple	8—25
Acer tataricum (S)	Tataricum Maple	15—20
Amelanchier arborea (S)(N)	Downy Serviceberry	15—25
Amelanchier canadensis (N)	Thicket Serviceberry	6—25
Cercis canadensis (S)(N)	Redbud	20—30
Chionanthus virginicus (S)(N)	Fringetree	12—30
Cornus kousa	Chinese Dogwood	20—30
Cornus kousa x Florida (S)(N)	Chinese x Native Dogwood hybrid	20—30
Crataegus phaenopyrum (S)(N)*	Washington Hawthorn	20—25
Crataegus viridis (S)(N)*	Green Hawthorn	25 —30
Ilex x attenuate and other Ilex species	Holly	10—30
Ilex opaca (N)	American Holly	25 —30
Malus	Flowering Crabapple	18—30
Malus angustifolia (N)	Southern Crabapple	15—20
Malus coronaria (N)	Sweet Crabapple	15—20
Magnolia grandiflora "Little Gem"	Southern Magnolia	15—20
Oxydendrum arboretum (S)(N)	Sourwood	25 —30
Ptelea trifolata (N)	Hoptree	15—20

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Medium to Large Trees		
Acer rubrum (S certain cvs.)(N)	Red Maple	50—80
Acer saccharum (N)	Sugar Maple	50—80
Betula nigra "Heritage" and "Dura Heat" (S)(N)	River Birch	40—70
Carpinus caroliniana (S)(N)	American Hornbeam	20—40
Cercidiphyllum japonicum (S)	Katsuratree	40—60
Cladrastis kentukea (N)	Yellowwood	30 —50
Fagus grandifolia (N)	American Beech	50—70
Fagus sylvatica	European Beech	50—60
Ginkgo biloba (S certain cvs.)*	Ginkgo	50—80
Halesia tetraptera (N)	Carolina Silverbell	30 —40
Koelreuteria paniculata (S)	Goldenraintree	30 —40
Juniperus virginiana (N)	Eastern Redcedar	40—50
Liquidambar styraciflua (S)(N)	Sweetgum	60—75
Liriodendron tulipifera (N)	Tuliptree	70—90
Metasequoia glyptostroboides	Dawn Redwood	70—100
Nyssa sylvatica (S)(N)	Black Gum	30 —50
Ostrya virginiana (S)(N)	Ironwood	25 —40
Picea abies	Norway Spruce	40—60

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Pinus strobus (N)	Eastern White Pine	50—80
Prunus subhirtella "Autumnalis", "Pendula"	Flowering Cherry	20—40
Prunus x yedoensis	Yoshino Cherry	30 —50
Quercus acutissima	Sawtooth Oak	40—60
Quercus alba (N)	White Oak	50—80
Quercus palustris (S)(N)	Pin Oak	60—70
Quercus phellos (N)	Willow Oak	40—60
Quercus rubra (S)(N)	Red Oak	60—75
Taxodium distichurn (S)(N)	Bald Cypress	50—70
Tillia americana (N)	American Linden or Basswood	60—80
Tillia cordata (S)	Littleleaf Linden	60—70
Ulmus alata (N)	Winged Elm	30
Ulmus parvifolia	Lacebark Elm	40—50
Zelkova serrata	Japanese Zelkova	50—80

(S) indicates trees approved as street trees

(N) indicates native species

* Thorns are present on Hawthorns and this should be taken into consideration as to where they are planted.

** Use Ilex species that are hardy for Weaverville area and that are size appropriate.

*** Only use crabapple species that are disease resistant and have persistent fruit.

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**** *Spirea japonica* should specifically be avoided.

(Ord. of 6-19-1978, Art. X, § 17-1080; Ord. of 8-8-1994; Ord. of 11-17-2008, § 3; Ord. of 2-16-2009, § 1; Ord. of 2-16-2009, § 1)

Secs. 36-158—36-175. - Reserved.

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ARTICLE VII. - OFF-STREET PARKING AND LOADING REGULATIONS

ARTICLE VII. - OFF-STREET PARKING AND LOADING REGULATIONS

Sec. 36-176. - Off-street parking.

(a) Off-street automobile storage or parking space shall be provided on every lot on which any of the following uses are hereafter established. Each parking space shall have an all weather surface with minimum dimensions of nine by 18 feet. The number of parking spaces provided shall be at least as great as the number specified below for various uses. Each space shall be provided with vehicular access to a street or alley.

Use	Required Parking
Any residential use	Two spaces for each dwelling unit.
Rooming and boarding houses	One space for each bedroom.
Hotels and motels	One space for each unit, plus one space for each employee working on the shift of greatest employment.
Medical or dental offices or clinics	Five spaces for each doctor, or five spaces for each office, whichever is greater.
Places of public assembly, including funeral homes, churches, and similar places of worship with fixed seating	One space for each four seats or one space for each seven feet of seating capacity in the principal assembly room.
Places of assembly or recreation without fixed seating	One space for each seven feet of seating capacity dedicated to patron use and one space for each employee working on the shift of greatest employment.
Schools, elementary and junior high	Two spaces for each classroom and for each administrative office.
Schools, senior high or higher	One space for each four pupils.
Libraries and public buildings	One space for each 200 square feet of gross floor space.
Professional and business offices	One space for each 200 square feet of gross floor space.
Banks	Five spaces for each employee.

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ARTICLE VII. - OFF-STREET PARKING AND LOADING REGULATIONS

Retail stores and shops of all kinds, including barber, shoe repair and similar service outlets	One space for each 200 square feet of <u>gross</u> floor space.
Restaurants	One space for each three seats (booths and tables included), plus one space for each employee working on the shift of greatest employment.
Service stations	Five spaces for each service bay, whether a grease, wash or other type of bay.
Hospital facilities	One space for each 200 square feet of floor space.
Laundromats machines	One space for each five washing or drying.

(b) *Extension of parking space into a residential district.* Required parking space may not extend from a commercial (C-1 and C-2) use district or from a conditional use district (CZD) that contains any commercial or office use into any residential use district.

(Ord. of 6-19-1978, Art. XI, § 17-1110; Ord. of 9-15-2008, § 1(t))

Sec. 36-177. - Off-street loading and unloading space.

Every lot on which a business or multi-family residential use is hereafter established by the erection of a new structure shall provide off the street space as indicated below for the loading and unloading of vehicles. Such space(s) shall be paved and shall have access to a street. An off-street loading space shall have minimum dimensions of 12 feet by 40 feet.

- (1) Retail business: One space each loading door.
- (2) Wholesale business: One space for each 10,000 square feet of gross floor space.
- (3) Multi-family residential uses with more than ten dwelling units: One space plus one space for each additional ten units in excess of 20 dwelling units.

(Ord. of 6-19-1978, Art. XI, § 17-1120)

Secs. 36-178—36-195. - Reserved.

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ARTICLE VIII. - SIGN REGULATIONS

ARTICLE VIII. - SIGN REGULATIONS

Sec. 36-196. - Statement of purpose.

The purpose of this article is to regulate and control signs and their placement throughout the Town of Weaverville. The sign regulations contained herein are designed to enhance the health, safety and visual communication of the residents within the area in addition to preserving the natural beauty of the surrounding environment. This chapter also establishes the procedures through which such goals can be fulfilled.

(Ord. of 6-19-1978, Art. XII, § 17-1200)

Sec. 36-197. - Definitions.

Words used herein shall have the meanings set forth in sections [36-4](#) and [36-5](#) of this chapter. Words not defined in said section shall have the meaning set forth in Webster's New Collegiate Dictionary, latest revisal.

(Ord. of 6-19-1978, Art. XII, § 17-1205)

Sec. 36-198. - Signs exempt from the regulations of this chapter.

- (a) Signs erected or installed by a governmental agency under governmental authority to identify public buildings, welcome or direct visitors, or to regulate, control or direct traffic, including signs indicating bus stops, taxi stands, and similar transportation facilities. Such signs may be illuminated, flashing or moving as required for public safety. Furthermore, signs erected by a governmental agency which convey information regarding a public service or the location of a public facility may also be illuminated may be necessary [sic].
- (b) Signs required by law, including, but not limited to, building permits, exit signs, etc.
- (c) Signs which warn of hazard to life, limb, and property, such as high voltage electrical equipment, explosives, etc.
- (d) "No Trespassing" signs equal to or containing less than four square feet of surface area.
- (e) Trade names or product names and graphics which are customarily painted on newspaper stands, soft drink machines, gasoline pumps and automatic teller machines.
- (f) Temporary display of decorations, when such are clearly incidental to, and are customarily and commonly associated with any national, local or religious holiday or celebration.
- (g) Signs indicating finance or credit information such as VISA, MASTERCARD, etc., not to exceed one square foot per financial sign.
- (h) One freestanding church sign located on church property, or two freestanding church signs on church property if said church is located on a corner lot (one sign facing each street that borders the lot). Exempt church signs shall not exceed 36 square feet in surface area per side of sign up to a maximum of 72 square feet of aggregate surface area.
- (i) One church bulletin board not to exceed 12 square feet of surface area (which may be a wall sign or a freestanding sign).

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- (j) Church directional signs. These signs may be located on private property with permission of the owner, at the nearest intersection of the major thoroughfare and/or collector street to the site of the church.
- (k) The display of the flag of the United States, North Carolina, Buncombe County, or the Town of Weaverville.
- (l) Private residential signs indicating the name, box, or house number of a particular residence not to exceed two square feet.
- (m) Temporary signs or festival signs indicating town, civic club or school sponsored events, which must be removed within three days after the event is held.
- (n) Signs which are located inside a particular establishment and which are not intended for external viewing are not regulated by this chapter.
- (o) Signs considered to be historically significant and/or landmark signs if so designated by resolution of the town council.

(Ord. of 6-19-1978, Art. XII, § 17-1210)

Sec. 36-199. - Prohibited signs.

The following signs shall not be erected or maintained in any zoning district within the jurisdiction of the town:

- (1) Any sign located in a manner or place so as to constitute a hazard to traffic as determined by the zoning administrator.
- (2) Any sign (except a governmental sign) located within a street right-of-way, or projecting into a street right-of-way.
- (3) Any sign which obstructs or substantially interferes with any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, ingress or egress for any building.
- (4) Billboards and other types of off-premise advertising signs, except such signs located along U.S. 19-23 (Projected I-26) and U.S. 25-70, which permitted signs must, nevertheless, comply with all department of transportation and Buncombe County sign restrictions.
- (5) Roof signs. (Except signs painted or affixed to awnings, canopies, facades, parapets or soffits which shall be allowed.)
- (6) Any flashing device or sign displaying flashing or intermittent lights, or lights of changing degrees of intensity, except a sign indicating time and/or temperature, with changes alternating on not less than a five-second cycle.
- (7) Any sign painted on a roadway (except governmental signs) or any sign posted to utility poles, trees, fences, rocks, or upon other signs.
- (8) Any sign which is a copy of or an imitation of an official governmental sign, or which purports to have official status.
- (9) Portable or moveable signs such as rented or leased signs, not permanently affixed to the ground or to a building.

(Ord. of 6-19-1978, Art. XII, § 17-1220)

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Sec. 36-200. - Signs in general.

No freestanding pole sign, ground level sign, marquee or menu board, shall be greater than six feet in height measured from street grade of the closest point in the street upon which the sign is located or from the grade at the base of the sign, whichever is higher, to the highest point of the sign or sign structure. This shall not include wall signs, multiple tenant development signs, mobile home park name signs or projecting signs. All signs shall be aesthetically appealing and in harmony with the environment.

(Ord. of 6-19-1978, Art. XII, § 17-1225)

Sec. 36-201. - Temporary signs.

Temporary signs shall be allowable in all zoning districts.

- (1) Signs used prior to and during construction to identify the name of contractor(s) and/or developer(s) shall be considered temporary signs, and shall meet the following requirements:
 - a. Each contractor shall have no more than one sign per location which shall be removed upon completion of the project.
 - b. Construction signs shall not be placed on trees, rocks, or other natural objects.
 - c. Construction signs shall be either attached to the building or affixed to a secure temporary post.
 - d. Construction signs shall be no greater than 32 square feet per side of the sign up to a maximum of 64 square feet of aggregate surface area for the entire sign.
- (2) Political signs shall be considered temporary signs, and shall meet the following requirements:
 - a. No political sign shall be placed in any town or state public right-of-way which includes utility poles and/or street medians.
 - b. All such signs shall be removed within two days after the election day.
- (3) Real estate signs (signs offering property for sale, lease or development) shall be considered temporary signs, and shall meet the following requirements:
 - a. Real estate signs in residential zoning districts shall not exceed six square feet in surface area per side of sign up to a maximum of 12 square feet of aggregate surface area for the entire sign.
 - b. Real estate signs in all other areas shall not exceed 16 square feet in surface area per side of sign up to a maximum of 32 square feet of aggregate surface area for the entire sign.
 - c. Real estate signs shall be erected only on the property which is being offered for sale, rent, lease and development.
 - d. Real estate signs shall conform to all other applicable provisions of the ordinance not inconsistent with this section.
 - e. Real estate signs shall be removed with seven days after the sale or lease of the property is closed.
 - f. Real estate directional signs (sign indicating the direction to a property being offered for sale) must be located on private property, with written permission of the property owner, at the nearest intersection of the major thoroughfare or collector street to the street upon which the property which is being offered for sale, rent, lease or development is located.

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- (4) Any other temporary sign must be approved by the zoning administrator, and shall be of a size and height which is consistent with signs permitted in the neighborhood in which it will be located and limited to a maximum of 30 days.

(Ord. of 6-19-1978, Art. XII, § 17-1230)

Sec. 36-202. - Special exception signs for R-1, R-2 and R-3 districts.

- (a) Professional offices and medical offices not used primarily for the treatment of drug addicts and alcoholics, and boarding houses shall be allowed one nameplate sign not to exceed eight square feet per side of sign for a maximum total aggregate sign area of 16 square feet.
- (b) Manufactured or mobile home parks shall be allowed one freestanding sign per entrance. Such sign shall be no larger than 32 square feet of surface area per side up to a maximum of 64 square feet of aggregate surface area per sign. Such sign shall not exceed ten feet in height.
- (c) Such signs shall be allowed only in conjunction with the allowance of a special exception by the zoning board of adjustment.

(Ord. of 6-19-1978, Art. XII, § 17-1235)

Sec. 36-203. - Sign restrictions for C-1, C-2 and I-1 districts.

- (a) Wall signs shall not cover an area greater than 50 percent of the total surface area of the wall(s) upon which the sign(s) is located. (The surface area of a wall(s) shall be computed excluding windows and doors). All signs attached to a building, including all the visible face of flat signs, and both sides of projecting signs, and suspended signs shall be computed to determine the 50 percent wall coverage limitation.
- (b) Projecting or suspended signs shall be limited to one per business per building front, not to exceed eight square feet per side of sign up to a maximum of 16 square feet of aggregate surface area for the entire sign.
- (c) Signs overhanging any sidewalk shall be placed at least 7½ feet above the sidewalk and shall not extend over the sidewalk for a distance equal to or greater than two-thirds of the width of the sidewalk. In no event shall such a sign extend more than ten feet from the building upon which it is located.
- (d) Changeable copy signs shall be limited to one per store front, not to exceed 50 square feet in surface area per side up to a maximum of 100 square feet of aggregate surface area.
- (e) Detached ground-level signs, excluding private directional signs, shall be limited to one per commercial site. Ground level signs shall not extend more than six feet, at their highest point above ground level and shall not exceed 50 square feet in aggregate surface area per side of sign and shall not exceed a maximum of 100 square feet of aggregate surface area for the entire sign.
- (f) All ground level signs and freestanding pole signs shall be located on the immediate premises of the advertised commercial establishment, and shall be no closer than ten feet to any street pavement, but in no event shall such sign be erected on a street right-of-way.
- (g) Private directional signs on premise shall not be over six feet in sign height, and shall not have a surface area greater than four square feet per side up to a maximum of eight square feet in aggregate surface area for all sides.
- (h) Where two or more business premises share a common courtyard, alley, or access area, the businesses therein shall be limited to one freestanding identification sign, no higher than 20 feet from

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top of grade, which shall contain no greater than 75 square feet of surface area per side of sign up to a maximum of 150 square feet of aggregate surface area for the entire sign. Each business establishment located within the development shall be permitted one nameplate sign, not to exceed 12 square feet in surface area per side of sign up to a maximum of 24 square feet of aggregate surface area for the entire sign to be attached to (or hung from) the freestanding identification sign for the development as a whole. (Nameplate signs shall not be of changeable copy). The total square footage of the identification sign and all of the attached nameplate signs shall not exceed 150 square feet per side of sign or 300 square feet for both sides.

(Ord. of 6-19-1978, Art. XII, § 17-1240)

Sec. 36-204. - Sign construction, design and illumination.

- (a) All signs, except temporary signs and window signs, shall be constructed of materials which will not rapidly deteriorate, fade, fall apart, or in any way become a threat to the public's health, safety, and general welfare.
- (b) All signs shall be securely fastened, anchored, and generally placed so as to withstand ordinary adverse weather conditions.
- (c) No sign shall use a light reflecting background, but may use light reflecting letters.
- (d) Any sign may be illuminated unless otherwise prohibited by subsection [36-199\(6\)](#). The lights of indirectly illuminated signs shall be shielded in such a manner so as to illuminate only the face of the sign.

(Ord. of 6-19-1978, Art. XII, § 17-1245)

Sec. 36-205. - Sign maintenance.

- (a) The owner of each sign shall be responsible for maintaining the area around the sign, including the cutting of weeds and grass, and the removal of all trash and litter from the sign locale.
- (b) In the event that one sign is placed over another sign, the original sign shall be adequately covered or removed so that the original sign is not visible.
- (c) All signs, supports, braces, poles, wires and the anchors thereof shall be kept in good repair. They shall be maintained in a clean and safe condition, free from deterioration, missing parts, and peeling paint. Any sign not in compliance with these standards shall be deemed a nuisance and shall be subject to removal by the sign owner or by the town through the zoning administrator.

(Ord. of 6-19-1978, Art. XII, § 17-1250)

Sec. 36-206. - Sign permit required.

- (a) All signs placed or erected within the town shall require a sign permit issued by the zoning administrator. Failure to secure a permit, when required, shall constitute a violation of this article. A sign permit fee shall be charged for each sign placed or erected after the effective date of the ordinance from which this chapter derives. Fees shall be charged as follows:

Type of Sign Fee Charged

Single, freestanding commercial or industrial signs\$ 50.00

All other single, commercial or industrial signs25.00

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Freestanding identification signs with nameplate signs attached100.00*

* For the identification sign and an additional \$25.00 per nameplate sign.

- (b) A sign permit shall not be required for the following types of signs; provided they meet all of the other requirements of this chapter:
- (1) Private directional or safety signs;
 - (2) Temporary construction signs;
 - (3) Real estate signs;
 - (4) Political signs;
 - (5) Window signs;
 - (6) Any flag, badge, insignia or design customarily displayed by any governmental, charitable, civic, fraternal, patriotic, religious or similar organization;
 - (7) Municipal, school, recreational and civic club sponsored signs which indicate a schedule of events or rules and regulations, and school and public park signs which do not exceed 48 square feet of aggregate surface area per sign.
- (c) All signs which are erected or which are in place prior to the adoption of this chapter or the adoption of any amendment thereto shall require a sign permit in order to be allowed to remain or shall require a statement of noncompliance issued by the zoning administrator setting forth those things which must be done by the sign owner in order to bring the sign within the provisions of the ordinance. Such statements of noncompliance or sign permits shall be issued by the town within 180 days after the initial adoption of this chapter or after the adoption of subsequent amendments hereto which affect a sign. No permit fee shall be collected for the issuance of such noncompliance statement or sign permit.
- (d) In the event that the town fails to issue a sign permit or statement of noncompliance within the 180-day period, the sign owner may assume that the sign is in compliance with all provisions of this chapter and that the sign is permitted to stand but the town shall not be bound by such assumption and may challenge the permissibility of the sign at a later date. A sign owner may request, at any time, that the town issue a sign permit stating that the subject sign is in compliance with the provisions of this chapter.
- (e) Sign permit applications for which a statement of noncompliance is issued, shall include a list of all reasons for such statement of noncompliance. The owner of such sign shall have 90 days from receipt of the statement of noncompliance within which to bring the sign into compliance with the ordinance or to remove the sign. If the sign is not brought into compliance or removed prior to the expiration of the 90-day period, the town may remove the same at the owner's expense.
- (f) All signs erected or placed after the adoption of this chapter without prior sign permit approval shall immediately be removed upon inspection by the town if found not to be in compliance with the provisions of this chapter. If the sign is found to be in full compliance, an after-the-fact permit may be issued provided that all specified fees charged and collected.

(Ord. of 6-19-1978, Art. XII, § 17-1260)

Sec. 36-207. - Obsolete or abandoned signs.

- (a) Signs or parts of signs which advertise or pertain to a development, complex, business, product, service, commodity, or which pertain to a purpose which no longer exists or which has not been in

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use for 90 days or more shall be deemed to be an obsolete or abandoned sign. Signs which are associated with a seasonal business shall not be considered obsolete or abandoned provided there is clear intent to continue the business in an upcoming season.

- (b) Obsolete or abandoned signs are prohibited and shall be removed by the owner or agent of the owner within 30 days after the termination of the business or event so advertised.
- (c) If the owner or agent of an abandoned or obsolete sign fails to remove said sign within the time allowed, the town may seek removal of the sign by an order of abatement pursuant to G.S. § 160A-175.

(Ord. of 6-19-1978, Art. XII, § 17-1270)

Sec. 36-208. - Miscellaneous provisions.

Any sign which is not clearly covered by the provisions of this chapter shall, for the purposes of this chapter, be considered a commercial sign and shall comply with all of the provisions concerning commercial signs.

(Ord. of 6-19-1978, Art. XII, § 17-1280)

Sec. 36-209. - Violation of article.

- (a) *Notice of violation.* The zoning administrator or his designee shall have the authority to issue a notice of violation for all violations of this article. Where the owner of the sign is indicated on the sign or is otherwise apparent or known to the zoning administrator or his designee, a copy of the notice of violation shall be delivered to the sign owner by hand delivery or by registered or certified mail. In all other cases, a copy of the notice of violation shall be posted on the sign. A copy of the notice of violation shall also be delivered by hand delivery or registered or certified mail to the owner of the property where the sign is located as shown on the Buncombe County tax records. In addition, service of a notice of violation hereunder may be made in accordance with Rule 4 of the North Carolina Rules of Civil Procedure.
- (b) *Time to remedy violation.* Other than for temporary signs, all violations shall be remedied within 30 days after notice of the violation. The 30-day period shall commence upon the service of the notice of violation by any means set forth above. Violations of regulations for temporary signs shall be remedied within 24 hours after service of the notice of violation by any means set forth above.
- (c) *Extension of time for compliance.* Other than for violations of regulations for temporary signs, the zoning administrator or his designee shall have the authority to grant a single 30-day extension of time within which to remedy the violation. For violations of regulations for temporary signs, the zoning administrator or his designee shall have the authority to issue a single 24-hour extension of time within which to remedy the violation. Either single extension of time may be issued based upon a written request for an extension of time which sets forth valid reasons for not complying within the original time period.
- (d) *Remedies for failure to comply.* Pursuant to G.S. § 160A-175, the zoning administrator or his designee may choose from the remedies set forth below to enforce the requirements of this article when there is a failure to comply with the notice of violation. Those remedies are as follows:
 - (1) In addition to or in lieu of the other remedies set forth in this section, the zoning administrator or his designee may issue a citation setting forth a civil penalty of \$50.00, pursuant to G.S. § 160A-175(c). In the case of a continuing violation, each 72-hour period during which the violation continues to exist shall constitute a separate violation. The citation shall be served upon the person(s) described in subparagraph (a) by the means set forth therein. In the event

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the offender does not pay the penalty within 30 days of service of the citation, the civil penalty shall be collected by the town in a civil action in the nature of debt, which shall not subject the offender to the penalty provisions of G.S. § 14-4.

- (2) In addition to or in lieu of the other remedies set forth in this section, the zoning administrator or his designee shall have the authority to issue an order to remove for any sign not repaired or otherwise brought into compliance within the provisions of this chapter within the time required by the foregoing provisions. Orders to remove shall be issued to and served upon the person(s) described in subparagraph (a) by the means set forth therein. Any sign ordered to be removed shall be removed 30 days after the service of the order to remove at the expense of the offender. The order to remove shall describe with particularity the location of the sign to be removed and all of the reasons for issuance of the order to remove, including specific reference to the provisions of this article which have been violated.
- (3) In addition to or in lieu of the other remedies set forth above, the town may use all of the remedies set forth in G.S. § 160A-175. Specifically, the person violating a provision of this chapter may be charged with a misdemeanor or infraction pursuant to G.S. § 14-4 and fined in accordance with the provisions.
- (e) *Removal and recovery of expense.* In the event of the failure to comply with the requirements of an order to remove, the zoning administrator or his designee may cause such sign to be removed. The sign owner and property owner shall be jointly and severally liable for the expense of removal. Notice of the cost of removal shall be served upon the person(s) described in subparagraph (a) by the means set forth therein. If the cost of removal is not paid within 30 days thereafter, such costs shall be collected by the town in a civil action in the nature of debt, which shall not subject the offender to the penalty provisions of G.S. § 14-4.
- (f) *Removal of dangerous signs.* Pursuant to G.S. § 160A-193, the town, through the zoning administrator or his designee shall have the authority to summarily remove, abate or remedy a sign which is determined to be dangerous or prejudicial to the public health or safety. The expense of removal shall be paid by the sign owner, or if the sign owner cannot be determined, by the owner of the property, and if not paid, the expense shall be a lien upon the land or premises where the sign is located and shall be collected in the same manner as unpaid taxes.
- (g) *Removal of prohibited signs.* The zoning administrator or his designee shall have the authority to remove summarily any signs prohibited under [section 36-199](#) of this Article VIII.
- (h) *Stay upon appeal.* In the event of a timely appeal of a decision of the zoning administrator or his designee to the zoning board of adjustment, enforcement of all proceedings and the furtherance of the action appealed from shall be stayed, unless the zoning administrator or his designee certifies to the zoning board of adjustment that a stay would cause imminent peril to life or property.

(Ord. of 6-19-1978, Art. XII, § 17-1285)

Secs. 36-210—36-235. - Reserved.

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Sec. 36-236. - Compliance mandatory; exception.

Compliance with the requirements of this chapter is mandatory, except that under the specific conditions enumerated in the following sections of this Article IX, these requirements may be varied or modified as stated herein.

(Ord. of 6-19-1978, Art. XIII)

Sec. 36-237. - Intent.

The purpose of this article is to insure adequate review and control of various specific uses or developmental proposals which may have a direct influence or impact upon neighboring or contiguous land uses. This review is intended to aid in protecting the private and public values and interests in such land uses, whether residential or commercial in nature.

(Ord. of 6-19-1978, Art. XIII, § 17-1300)

Sec. 36-238. - Standards.

While there are many uses which are classified as "special exceptions," only a few require compliance with specific design or other criteria in order to be approved. For those few, the following sections of this article provide both the application procedure to be followed, and the special criteria which must be satisfied to obtain approval from the zoning board of adjustment. No special exception permit shall be issued unless the zoning board of adjustment shall find that:

- (1) The establishment, maintenance, or operation of the special exception will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare.
- (2) The special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the neighborhood.
- (3) The establishment of the special exception will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- (4) The exterior architectural appeal and functional plan of any proposed structure will not be so at variance with the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or with the character of the applicable district as to cause a substantial depreciation in the property values within the neighborhood.
- (5) Adequate utilities, access roads, drainage and/or other necessary facilities have been, are being or will be provided.
- (6) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- (7) The special exception shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified by the zoning board of adjustment.

(Ord. of 6-19-1978, Art. XIII, § 17-1310)

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Sec. 36-239. - Application procedure.

- (a) *Applicant.* The applicant must be the owner or lessee (or legal representative) of all land and structures included within the tract or structure where the special exception will be located or must be a governmental agency. The holder of a conditional sales contract or option on the land and/or structures shall, for the purposes of the application, be deemed to be the owner or lessee of the land and/or structures covered by the special exception application.
- (b) *Application form for special exception permits.* A special exception application form shall be obtained from the zoning administrator. Completed forms, including any attached exhibits, must contain information showing: (a) the location and intended use of the site, and (b) the names of all property owners and existing land uses within 200 feet of the property boundaries. The completed form may contain other pertinent information which will aid the Zoning Board of adjustment in making a decision and shall be filed with the zoning administrator who shall forward all information to the zoning board of adjustment. An application fee of \$100.00 shall accompany each application. This fee shall be non-refundable.
- (c) *Public hearing.* Before acting on an application for a special exception permit, the zoning board of adjustment shall hold a public hearing as provided in [section 36-329](#)
- (d) *Special exception permit.* Following the public hearing, the zoning board of adjustment may issue a special exception permit. In granting such a permit, the board may attach such conditions to the permit as will, in its opinion, assure that the use will conform to the requirements of this chapter. If at any time after a special exception permit has been issued the zoning board of adjustment finds that any conditions imposed have not been or are not being fulfilled by the holder of a special exception permit, the permit shall be immediately terminated and the use discontinued. If a request for a special exception permit is denied or if the special exception use is terminated for any reason, the matter shall not be brought back before the zoning board of adjustment for a period of six months from the date of denial or termination.
- (e) *[Majority vote required.]* When deciding special exception permits or conditional use permits, the zoning board of adjustment shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the zoning board of adjustment to issue such permits. For the purposes of this section, 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 majority. Every such decision of the board of adjustments shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.
- (f) *[Conflicts of interest.]* A member of the board or any other body exercising the functions of the zoning 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.

(Ord. of 6-19-1978, Art. XIII, § 17-1315; Ord. of 3-20-2006)

Sec. 36-240. - Unified business development.

- (a) *Intent.* To establish additional criteria and guidelines for unified business developments consisting of one or more principal structures or buildings and accessory structures or buildings to be constructed on a lot or plot not subdivided into the customary streets and lots and which lot may or may not be so subdivided. These developments are subject to additional design criteria due to the significant impact

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they are likely to have on surrounding property, traffic patterns, and the physical environment of the area.

- (b) *Applicability.* These regulations shall apply to all business developments with one or more business structures located on a parcel of land. Developments meeting either of the following criteria shall be subject to regulation under this section:
- (1) One or more buildings on the lot or plot, at least one of the buildings containing of 10,000 square feet or more; and
 - (2) Two or more principal buildings located on a parcel of land not customarily subdivided into individual lots.
- (c) *Requirements.*
- (1) No unified business development shall contain less than two acres.
 - (2) Such a development shall abut a major existing thoroughfare or collector street maintained by the state department of transportation or the town and shall have direct access thereto.
 - (3) Points on ingress and egress shall be located a sufficient distance from highway intersections to minimize traffic hazard, inconvenience and congestion. Furthermore, each development shall have a minimum of two such access points to facilitate the safe flow of traffic.
 - a. Minimum pavement width for two-way streets: 24 feet, or 18 feet, provided usable, all weather shoulders are provided on each side of the 18-foot pavement to effect an overall usable minimum width of 24 feet.
 - b. Minimum pavement width for one-way streets: 12 feet.
 - (4) The number, width and location of all curb cuts shall be such as to minimize traffic hazards, inconvenience, and congestion.
 - (5) Parking areas and loading spaces shall be provided in accordance with article VII of this chapter, and all traffic lanes shall be clearly marked. Paved parking areas may be constructed for the individual business units to within ten feet of the front of the unit and may be flush with the side of any unit.
 - (6) Storm drainage and sanitary sewerage shall be provided, as approved by the town and by the Metropolitan Sewerage District, respectively, and in accordance with the regulations set forth in this Code or other applicable regulations.
- (d) *General plan.* Each application shall be accompanied by a general site plan, drawn neatly and to scale, showing:
- (1) Property lines, street and other public right-of-way lines, public utility easements, and rights-of-way.
 - (2) Topography of the site, showing five-foot contours and true elevations.
 - (3) Location and approximate size of all existing and proposed buildings and structures within the site and ownership of all properties within 500 feet of the site boundaries.
 - (4) All proposed points of ingress and egress together with the proposed pattern of internal traffic circulation and parking areas.
 - (5) All proposed provisions for stormwater collection and disposal, including both natural and manmade features, and the proposed treatment of ground cover, slopes, banks and ditches.
 - (6) Proposed connections with the town water shall have a commitment letter from the town and sewer systems shall have a sewer system allocation approval from the Metropolitan Sewerage District and proposed locations of trash or garbage bulk containers shall be shown on the plans.

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- (7) Landscaping shall be provided and must comply with article VI of this chapter. The landscaping plan required by article VI shall be submitted for approval to the zoning board of adjustment, as well as the site plan.
- (8) Each site and landscaping plan shall be accompanied by a statement that an erosion control plan has been submitted to the North Carolina Department of Environment and Natural Resources (DENR) or its successor.
- (9) The zoning board of adjustment may require other matters to be incorporated into the special exception which are for the protection of the public health, safety, welfare and convenience.
- (e) *Area requirements.* Area and building requirements shall be the same as for the district in which the unified business district is to be located.
- (f) *Sign requirements.* See [section 36-80](#)(d)(3) and article VIII.
- (g) *Buffering requirements.* If the property adjoins a lot zoned residential, the owner or lessee of the unified business development shall be responsible for providing a 20-foot buffer as defined in [section 36-5](#) of this chapter along the side or rear lines where the property adjoins said residential district. This buffer shall be in place before beginning construction on any structure.
- (h) *Subsequent performance.*
 - (1) *Detailed plans.* Within six months of the approval of the application and general plan, the applicant shall file detailed plans for review by the zoning administrator showing the details of the proposed development as fully as possible and including elevations and perspectives of proposed construction. If the applicant later wishes to change any of the details of the proposed development, further detailed plans shall be filed for review by the zoning administrator. No building permit for the proposed development, or any part thereof, shall be issued until the zoning administrator has determined that the pertinent detailed plans are in accordance with the application and general plans as approved by the zoning board of adjustment.
 - (2) *Construction.* If construction or improvements have not begun within 12 months of the date of approval of the detailed plans, the special exception permit shall become null and void. One six-month extension may be granted by the zoning board of adjustment when reasonable cause is shown but an application for the extension must be filed prior to the end of the initial 12-month period. No building shall be occupied until a detailed report showing the outcome of construction is submitted by the applicant to the zoning administrator and the administrator has certified that all requirements of this section have been met.
 - (3) *[Extension of time limit.]* Projects that have approved detailed plans as of May 1, 2009, but on which there has not been a start of construction will have an additional 24 months (36 months total) from the date of approval of the detailed plans to the start of construction. If there has not been start of construction prior to the expiration of the approved time period, the special exception permit shall become null and void. Developers with approved plans must file a request for the additional extension of time with the Weaverville Zoning Administrator prior to the end of the initial 12-month period.

(Ord. of 6-19-1978, Art. XIII, § 17-1320; Ord. of 9-15-2008, § 1(u)—(w); Ord. of 4-20-2009, § 1)

Sec. 36-241. - Unified housing development.

- (a) *Intent.* To establish additional criteria and guidelines for unified housing developments consisting of one or more principal structures or buildings and accessory structures or buildings to be constructed on a lot or plot not subdivided into the customary streets and lots, and which may or may not be subdivided or retained in single ownership at a later date.

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- (b) *Applicability.* The following housing developments, except subdivisions, shall be classified as unified housing developments and shall be subject to the provisions set forth herein.
- (1) One or more buildings consisting of a total of 25,000 square feet or more.
 - (2) Two or more multifamily buildings.
 - (3) Twelve or more dwelling units, some of which may be connected.
- (c) *Requirements.*
- (1) The yard regulations and height regulations set forth in this chapter may be modified for a unified housing development provided that, for such a development as a whole, excluding driveways and streets, but including parks and other permanent open spaces, densities shall not be greater than eight dwelling units per acres on the proposed site on which such development is to be located.
 - (2) Points of ingress and egress shall be located a sufficient distance from highway intersections to minimize traffic hazards, inconvenience, and congestion. Furthermore, each development greater than eight dwelling units shall have a minimum of two such points to ensure the safety of the inhabitants.
 - a. Minimum pavement width for two-way streets: 24 feet, or 18 feet provided, usable, all weather shoulders are provided on each side of the 18-foot pavement to effect an overall usable minimum width of 24 feet.
 - b. Minimum pavement width for one-way streets: 12 feet.
 - c. Fire apparatus access roads shall not exceed ten percent in grade. Exception: Grades steeper than ten percent as approved by the fire chief.
 - (3) The number, width, and location of all curb cuts shall be such as to minimize traffic hazards, inconvenience, and congestion.
 - (4) Parking areas and loading spaces shall be provided as required in sections [36-176](#) and [36-177](#) of this chapter, and all parking areas and traffic lanes shall be clearly marked.
 - (5) Storm drainage and sanitary sewerage shall be provided, as approved by the town engineer or representative, and in accordance with the regulations set forth in this Code or other applicable regulations.
- (d) *Multifamily residential buildings.* Notwithstanding any other provisions of this chapter where two or more multifamily residential buildings are constructed on parcels under single ownership, whether simultaneously or at different times, the collective parcel of land occupied by such multifamily residential buildings shall be considered one lot, and parking spaces and usable open space will continue to be required in the same proportions as if the buildings were on one lot.
- (1) *Dimensional regulations.* The following dimensional regulations shall apply to the construction of all multifamily residential buildings:
 - a. Minimum horizontal distance between facing walls:
Between two walls, both of which contain a window or windows: 50 feet.

When only one facing wall contains a window: 30 feet.

When neither of the facing walls have a window or windows: 25 feet.
 - b. Minimum horizontal distance between any buildings or between any building and any outside lot line (other than a street right-of-way): 25 feet.

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- (2) *Other requirements.* No parking of motor vehicles shall be permitted within any required yard. The space within the required yard may not be used as maneuvering space for vehicles, except that driveways providing ingress and egress to the parking area may be installed across such yard area. (See [section 36-177](#) for loading space requirements.)
- (e) *General plan.* Each application shall be accompanied by a general site plan, drawn neatly and to scale, showing:
 - (1) Property lines, street and other right-of-way lines, public utility easements and rights-of-way.
 - (2) Topography of the site, showing five-foot contours and elevations.
 - (3) Location and approximate size of all existing and proposed buildings and structures within the site and the ownership of all properties within 500 feet of the site boundaries.
 - (4) All proposed points of ingress and egress together with the proposed pattern of internal traffic circulation and parking areas.
 - (5) All proposed provisions for stormwater collection and disposal, including both natural and manmade features, and the proposed treatment of ground cover, slopes, banks, and ditches.
 - (6) Proposed connections with the town water shall have a commitment letter from the town and sewer systems shall have a sewer system allocation approval from the Metropolitan Sewerage District and proposed locations of trash or garbage bulk containers shall have a sewer system allocation approval from the Metropolitan Sewerage District.
 - (7) An adequate amount of recreational area shall be provided according to the concentration of residential occupancy. Only usable land areas will be considered as recreational areas and such area must be in a safe location. The zoning board of adjustment may require that an area of land, not exceeding ten percent of the total area contained in the special exception area, to be dedicated as a public recreation area or to school use.
 - (8) Landscaping shall be provided and must comply with article VI of this chapter. The landscaping plan required by article VI shall be submitted for approval to the zoning board of adjustment, as well as the site plan.
 - (9) Each site plan shall be accompanied by a statement that an erosion control plan has been submitted to the Department of Environment and Natural Resources (DENR) or its successor.
 - (10) The zoning board of adjustment may require other matters to be incorporated into the special exception which are considered essential for the protection of the public health, safety, welfare and convenience.
- (f) *Permitted uses.* Use regulations within a district may be modified in order to permit uses which are necessary and incidental to the operation of the unified housing development, such as maintenance buildings and management offices. Such structures shall be in character with the general development and surrounding property.
- (g) *Area requirements.* The area requirements of the district in which the development is located shall apply, except as otherwise modified or provided herein.
- (h) *Subsequent performance.*
 - (1) *Detailed plans.* Within six months of the approval of the application and general plan, the applicant shall file detailed plans for review by the zoning administrator showing the details of the proposed development as fully as possible and including elevations and perspectives of proposed construction. If the applicant later wishes to change any of the details of the proposed development, further detailed plans shall be filed for review by the zoning administrator. No building permit for the proposed development, or any part thereof, shall be issued until the

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zoning administrator has determined that the pertinent detailed plans are in accordance with the application and general plans as approved by the zoning board of adjustment.

- (2) *Construction.* If construction or other improvements to the property have not begun within 12 months of the date of approval of the detailed plans, the special exception permit shall become null and void. One six-month extension may be granted by the zoning board of adjustment when reasonable cause is shown but an application for the extension must be filed prior to the end of the initial 12-month period. No building shall be occupied until a detailed report showing the outcome of construction is submitted by the applicant to the zoning administrator and the administrator has certified that all of the requirements of this section have been met.
- (3) *[Extended time limit.]* Projects that have approved detailed plans as of May 1, 2009, but on which there has not been a start of construction will have an additional 24 months (36 months total) from the date of approval of the detailed plans to the start of construction. If there has not been start of construction prior to the expiration of the approved time period, the special exception permit shall become null and void. Developers with approved plans must file a request for the additional extension of time with the Weaverville Zoning Administrator prior to the end of the initial 12-month period.
- (i) *Sign requirements.* Each unified housing development, or subdivision, shall be allowed one freestanding sign per entrance. Said signs shall be no larger than 50 square feet of surface area per side of sign up to a maximum of 100 square feet of aggregate surface area per sign. Said signs shall not exceed six feet in height.

(Ord. of 6-19-1978, Art. XIII, § 17-1330; Ord. of 9-15-2008, § 1(x)—(aa); Ord. of 4-20-2009, § 2)

Secs. 36-242—36-265. - Reserved.

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ARTICLE X. - ZONING VESTED RIGHTS

Sec. 36-266. - Intent.

The town council finds and declares that it is necessary and desirable, as a matter of public policy, to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the land-use planning process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in the area of land-use planning. Furthermore, the town council recognizes that approval of land-use development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees, and related expenses, and;

The ability of a landowner to obtain a vested right after town council approval of a site specific development plan or a phased development plan will preserve the prerogatives and authority of local elected officials with respect to land-use matters. There will be ample opportunities for public participation and the public interest will be served. These provisions will strike an appropriate balance between private expectations and the public interest, while scrupulously protecting the public health, safety, and welfare.

(Ord. of 6-19-1978, Art. XIV, § 17-1400)

Sec. 36-267. - Purpose.

The purpose of this chapter is to implement the provisions of G.S. 160A-385.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan or a phased development plan.

(Ord. of 6-19-1978, Art. XIV, § 17-1410)

Sec. 36-268. - Definitions.

Landowner means any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his agent or representative for purposes of submitting a proposed site specific development plan or a phased development plan under this section, in the manner allowed by ordinance.

Phased development plan means a plan which has been submitted to the town by a landowner for phased development which shows the type and intensity of use for a specific parcel or parcels with a lesser degree of certainty than the plan determined by the town council to be a site specific development plan.

Property means all real property subject to zoning regulations and restrictions and zone boundaries by the Town of Weaverville.

Site specific development plan means a plan which has been submitted to the town by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals: A planned unit development plan, a subdivision plat, a preliminary or general development plan, a special use permit, a conditional or special use district zoning plan, (at such time as the town may provide for conditional and special use districts by ordinance) or any other land-use approval designation as may be utilized by the town. Unless otherwise expressly provided by the town such a plan shall include the approximate boundaries of the site; significant topographical and other natural features effecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other

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structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site specific development plan under this section that would trigger a vested right shall be finally determined by the town council pursuant to this chapter, and the document that triggers such vesting shall be so identified at the time of its approval. However, at a minimum, the ordinance to be adopted by the town council shall designate a vesting point earlier than the issuance of a building permit. A variance shall not constitute a site specific development plan, and approval of a site specific development plan with the condition that a variance be obtained shall not confer a vested right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels or property may constitute a site specific development plan.

Town shall mean the Town of Weaverville or the town council of the Town of Weaverville.

Vested right means the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.

(Ord. of 6-19-1978, Art. XIV, § 17-1420)

Sec. 36-269. - Establish of zoning vested rights and procedure.

A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the town council. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan or the phased development plan including any amendments hereto. The town council may approve a site specific development plan or a phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare. Such conditional approval shall result in a vested right, although failure to abide by such terms and conditions shall result in a forfeiture of vested rights. The town council shall not require a landowner to waive his vested rights as a condition of developmental approval. A site specific development plan or a phased development plan shall be deemed approved upon the effective date of the town council's action or ordinance relating thereto.

An application for a site specific development plan or for a phased development plan shall be processed through the zoning administrator or town manager who shall cause notice of a hearing to be properly published and who shall submit the applications to the town council for action after a proper hearing. The town council may hereinafter promulgate further rules and procedures with regards to the processing of such application and may provide a form for such application. The person seeking vested rights in a site specific development plan or a phased development plan must submit such maps, plats, site plans or other documentation which may be required by the town council in order to fully determine the nature and extent of the vesting rights sought and shall include an adequate legal description of the boundaries of the site and a narrative description of significant topographical features of the site affecting development of the site, the approximate location on the site of the proposed buildings, structures, and other improvements, the approximate dimensions, including height of the proposed buildings and other structures and approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads and pedestrian walkways. Based upon the application and information supplied, the town council shall determine what constitutes a site specific development plan or a phased development plan sufficient to trigger a vested right pursuant to this chapter and the town council shall identify the document that triggers such vesting at the time of its approval. Such approval shall specifically state that the approval issued zoning vesting rights pursuant to this article and pursuant to G.S. § 160A-385.1. The approval shall further state that unless terminated at an earlier date, the zoning vested right shall be valid until a specific date.

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(Ord. of 6-19-1978, Art. XIV, § 17-1430)

Sec. 36-270. - Duration and termination of vested right.

- (a) A right which has vested as provided for in this section shall remain vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the town.
- (b) Notwithstanding the provisions of subsection [36-270\(1\)](#), the town council 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 and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the town council.
- (c) Notwithstanding the provisions of subsections [36-270\(1\)](#) and (2), the town council may provide by ordinance that approval by the town council of a phased development plan shall vest the zoning classification or classifications so approved for a period not to exceed five years. The document that triggers such vesting shall be so identified at the time of its approval. The town council still may require the landowner to submit a site specific development plan for approval by the town council with respect to each phase or phases in order to obtain final approval to develop within the restrictions of the vested zoning classification or classifications. Nothing in this section shall be construed to require the town council to adopt an ordinance providing for vesting of rights upon approval of a phased development plan.
- (d) Following approval or conditional approval of a site specific development plan or a phased development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the town council to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the town council from revoking the original approval for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.
- (e) Upon issuance of a building permit, the provisions of G.S. § 160A-418 and G.S. § 160A-422 shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.
- (f) A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(Ord. of 6-19-1978, Art. XIV, § 17-1440)

Sec. 36-271. - Subsequent changes prohibited; exceptions.

A vested right, once established as provided for in this section, precludes any zoning action by the town council which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development plan or an approved phased development plan, except:

- (1) With the written consent of the affected landowner;
- (2) Upon finding, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan or the phased development plan;

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- (3) Upon finding, 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 town council of the site specific development plan or the phased development plan; or
- (4) Upon the enactment or promulgation of a state or federal law or regulation which precludes development as contemplated in the site specific development plan or the phased development plan, in which case the town council 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.

The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land-use regulation by the town council, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property which is subject to a site specific development plan or a phased development plan upon the expiration or termination of the vesting rights period provided for in this section.

The nonconforming use provisions of [section 36-19](#) of this chapter shall not apply to any nonconforming use in which vested rights have been granted, pursuant to the provisions of this vested rights ordinance.

(Ord. of 6-19-1978, Art. XIV, § 17-1450)

Sec. 36-272. - Miscellaneous provisions.

A vested right obtained under this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan or a phased development plan, all successors to the original landowner shall be entitled to exercise such rights.

Nothing in this section shall preclude judicial determination, based on common-law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

In the event the town council fails to adopt an ordinance setting forth what constitutes a site specific development plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from the Superior Court Division of the General Court of Justice.

(Ord. of 6-19-1978, Art. XIV, § 17-1460)

Sec. 36-273. - Voluntary annexation.

A petition for annexation filed with the Town of Weaverville under G.S. § 160A-31 or G.S. § 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under G.S. § 160A-385.1 or G.S. § 153A-344.1. A statement that declares that no zoning vested right has been established under G.S. § 160A-385.1 or G.S. § 153A-344.1, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

(Ord. of 6-19-1978, Art. XIV, § 17-1470)

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Sec. 36-274. - Limitations.

Nothing in this section is intended or shall be deemed to create any vested right other than those established pursuant to G.S. § 160A-385.1.

(Ord. of 6-19-1978, Art. XIV, § 17-1480)

Sec. 36-275. - Repealer.

In the event that G.S. § 160A-385.1 is repealed, this section shall be deemed repealed and the provisions hereof no longer effective.

(Ord. of 6-19-1978, Art. XIV, § 17-1490)

Secs. 36-276—36-295. - Reserved.

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ARTICLE XI. - ADMINISTRATION AND ENFORCEMENT

Sec. 36-296. - Intent.

It is the intent of this chapter that all questions arising in connection with the enforcement or the interpretation of this chapter shall be first presented to the zoning administrator and that such questions shall be presented to the zoning board of adjustment only on appeal from the zoning administrator, and that from the decision of the zoning board of adjustment, recourse shall be taken to the courts as provided by law. It is further the intent of this chapter that the duties of the town council in connection with this chapter shall not include hearing and passing on disputed questions which might arise in connection with the enforcement or interpretations of this chapter, but that the procedures for determining such questions shall be as stated in this chapter. The duties of the town council in connection with this chapter shall only be the duty of holding a public hearing and voting upon any proposed amendment to repeal of this chapter, as provided by law.

(Ord. of 6-19-1978, Art. XV, § 17-1500)

Sec. 36-297. - Zoning administrator.

It shall be the duty of the town manager to appoint a zoning administrator who shall be given the authority to administer and enforce the provisions of this chapter. The zoning administrator shall have the power to designate duties of inspection and enforcement to deputies but shall pass upon any matter appealed from the deputy.

(Ord. of 6-19-1978, Art. XV, § 17-1510)

Sec. 36-298. - Permits required.

A zoning permit shall be obtained from the zoning administrator before beginning any construction on any lot within the town's zoning jurisdiction. No lot shall be graded so as to alter its contour and no building or other structure shall be erected, moved, added to, or structurally altered prior to the issuance of said zoning permit. In no event will the zoning administrator approve any permit for the grading of any lot or the construction or alteration of any building if such building, or its intended use would be in violation of any of the provisions of this chapter, or if the contour of any lot would be altered or graded in violation of the screening and buffering requirements of this chapter.

(1) *Application for permit.* All applications for zoning permits shall be accompanied by a site plan (or plot plan) in duplicate, drawn to scale, showing the following:

- a. Title block, containing:
 - Name of owner.
 - Location (including Buncombe County tax lot number).
 - Date or dates survey was conducted and plan prepared.
 - A scale of the drawing, in feet per inch, listed in words or figures.
 - Deed book and page reference of the deed conveying the property to the current owner (or information on will and estate file).
- b. The exact dimensions, by metes and bounds, of the lot, including any interior lot lines if the lot consists of more than one lot of record under single ownership.

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- c. The lot area in acres or square feet.
- d. The location, right-of-way width and name of all streets bordering the property.
- e. The minimum building setback lines applicable to the lot and any drainage or utility easements located on the lot.
- f. The exact size and location of any existing buildings or structures located on the lot or within eight feet of any exterior lot line.
- g. The exact dimension and location of all proposed buildings or structures or additions thereto, including any projections except those projections provided for in [section 36-16](#), as therein limited.
- h. The exact size and location of any patios, decks, porches, awnings, carports and similar structures which may be attached to the proposed building or structure or which may be an addition to an existing building or structure.
- i. The exact dimension and location of all off-street parking and loading spaces including all turn-around spaces and vehicular access to a street or alley which may be required by Article VII.
- j. Any landscaping (plan) which may be required by Article VI.
- k. Any other information which may be required by the zoning administrator in order to assure compliance with the provisions of this chapter, including a grading contour plan in order to assure compliance with the screening and buffering requirements of this chapter.

Property corners shall be in place on the ground and the location of all proposed buildings or structures or additions thereto shall be accurately located upon the lot by stakes or other acceptable means prior to the submission of the application for a zoning permit.

- (2) *Issuance of zoning permit.* Prior to issuing a zoning permit the zoning administrator shall first review the application, site (plot) plan, and the required landscaping plan to determine compliance with all of the applicable requirements of this chapter. If the plans show that the proposed construction meets all of the requirements of this chapter the zoning administrator shall, prior to the issuance of the zoning permit, make an inspection of the site to determine that the actual location of all existing or proposed buildings or structures, parking areas, buffer strips etc. are located as shown on the plans. If the services of the town engineer or of a registered land surveyor are required to assure that the actual locations, on the ground, are as shown on the plans, the cost of this service shall be paid by the applicant prior to issuance of the zoning permit. Any such charges shall be in addition to the normal charges for such zoning permit. After the zoning administrator finds that the plans and on-site locations meet the requirements of this chapter, the administrator shall issue a zoning permit stating that the proposed construction, if built as located, meets the provisions of this chapter and that the applicant can apply for building and other permits.

Explanatory note: While it may be obvious that a proposed building or structure to be located on a large tract of land meets the setback requirements by simple observation, actual field measurements would be required to determine compliance on a typical residential lot. All such measurements must be made from actual property or right-of-way lines using property corner or right-of-way markers. It may be assumed that the paved portion of any street or alley is in the center of the right-of-way for this purpose only if the right-of-way of record cannot be otherwise established by actual surveys.

- (3) *County building permit.* After the zoning permit is approved and issued, the applicant shall apply to the Buncombe County Public Works Department for building, plumbing, electrical or other

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required permits. If such permits are not issued within 60 days after issuance of the zoning permit, the zoning permit shall become invalid.

- (4) *Construction progress.* If no substantial construction progress has been made within 180 calendar days of the date of the issuance of the zoning permit, or if work is suspended for 365 calendar days, the zoning permit shall become invalid; provided, however, the zoning administrator may extend the time for substantial construction progress to be made by up to 180 calendar days, for good cause shown. This provision shall not be applicable, however, for time periods for projects in conditional zoning districts, which shall be governed by subsection [36-84\(e\)](#).

(Ord. of 6-19-1978, Art. XV, § 17-1520; Ord. of 9-15-2008, § 1(bb); Ord. of 11-17-2008, § 2)

Secs. 36-299—36-325. - Reserved.

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ARTICLE XII. - ZONING BOARD OF ADJUSTMENT

ARTICLE XII. - ZONING BOARD OF ADJUSTMENT

Sec. 36-326. - Establishment.

A zoning board of adjustment is hereby established to consist of five members. Three of the members shall be appointed by the mayor, with the approval of the town council, and shall be residents of the corporate limits of the town. Two members shall be residents of the area outside of the corporate limits but within which area the Town of Weaverville has elected to exercise its extraterritorial zoning jurisdiction at the time of the appointment of such members. The two members from said extraterritorial area shall be appointed by the Board of Commissioners of Buncombe County, North Carolina, pursuant to the provisions of G.S. § 160A-362. The town council shall, from time to time when a vacancy occurs on the zoning board of adjustment which should be filled by a person from the extraterritorial area, pass a resolution requesting that the Board of Commissioners of Buncombe County appoint such member, which resolution may also recommend one or more names for possible appointment by said board of commissioners.

The mayor, with the approval of the town council, may appoint one alternate member to serve on the zoning board of adjustment in the absence of a regular member which alternate shall be a resident of the corporate limits of the town. The board of county commissioners may appoint one alternate member of the zoning board of adjustment from the extraterritorial zoning jurisdiction area of the town. Any alternate member may serve in the absence of any regular member of the zoning board of adjustment and it shall not be necessary that an absent member of the board be temporarily replaced by a person residing in the same jurisdiction as said absent member.

The term of office of each member and alternate member of the zoning board of adjustment shall be for three years. Vacancies occurring on said board shall be filled for the unexpired term only. Any member who is absent without good cause from three consecutive meetings shall be removed from the board. The members of the board shall receive no compensation for their services.

(Ord. of 6-19-1978, Art. XVI, § 17-1610)

Sec. 36-327. - Proceedings.

The zoning board of adjustment shall elect a chairman and a vice chairman from its members who shall serve for one year or until reelected or until their successors are elected. The board shall appoint a secretary, who may be a municipal officer, an employee of the town, or a member of the zoning board of adjustment. The board shall adopt rules and by-laws in accordance with the provisions of this chapter and G.S. ch. 160A, [art. 19](#). Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence, the vice chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the board shall be open to the public.

(Ord. of 6-19-1978, Art. XVI, § 17-1620)

Sec. 36-328. - Powers and duties.

The zoning board of adjustment shall have the following powers and duties:

- (1) *Administrative review.* The zoning board of adjustment is authorized to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the zoning administrator in the enforcement of this chapter.

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- (2) *Granting of special exceptions.* The zoning board of adjustment is authorized to grant special exceptions where authorized in a particular use district. A special exception is a use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area, location, or relation to neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity, or general welfare. Such uses may be permitted in a zoning district as a special exception, if specific provision for such special exception in a particular district is made in this chapter.
- (3) *Granting of variances.* The zoning board of adjustment is authorized, upon appeal in specific cases to grant such variance from the terms of this chapter as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the ordinance will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. The existence of a nonconforming use of neighboring land, buildings or structures in the same use district or the existence of permitted or nonconforming uses in other use districts shall not constitute a reason for the requested variance. A variance may be granted in any individual case of practical difficulty or unnecessary hardship upon a finding by the zoning board of adjustment that the following conditions exist:
- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district.
 - b. Granting the requested variance will not confer upon the applicant any special privileges that are denied to other residents of the district in which the property is located.
 - c. A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located.
 - d. The requested variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or to the general welfare.
 - e. The special circumstances are not the result of the actions of the applicant.
 - f. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.
 - g. The variance is not a request to permit a use of land, building or structure which is not permitted in the district involved.
 - h. Without the requested variance, the applicant may make no reasonable use of the property.
 - i. The variance is not a request to permit a prohibited sign.
- (4) *Appeals.* Appeals to the zoning board of adjustment concerning the interpretation or administration of this chapter may be taken by any person, officer, department or board of the town directly affected by the decision. An appeal stays all proceedings in furtherance of the action appealed from, unless the zoning administrator certifies to the board, after notice of appeal shall have been filed with him, that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board or by a court of record upon proper application, upon proper notice to the zoning administrator and for due cause shown.

In exercising the above powers, the zoning board of adjustment may, in conformity with the provisions of this act, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination of the zoning administrator. To that end, the zoning board of adjustment shall have all of

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the powers of the zoning administrator and may issue or direct the issuance of any permit which the zoning administrator could issue.

(Ord. of 6-19-1978, Art. XVI, § 1630; Ord. of 3-16-98)

Sec. 36-329. - Hearings and notices.

Appeals to the zoning board of adjustment may be taken by any person, officer, department or board of the town directly affected by a decision of the zoning administrator, town manager, or other town official based upon this chapter. Such appeal shall be taken within 30 days of the decision appealed from by filing with the zoning administrator and with the zoning board of adjustment a written notice of appeal specifying the grounds thereof. All papers constituting the record upon which the action appealed from was taken shall forthwith be transmitted to the zoning board of adjustment.

The zoning board of adjustment shall fix a time within 30 days after receipt of an appeal for the hearing of the appeal or for the hearing of other matters referred to it. It shall give due notice thereof to the parties in interest, and decide the same within 60 days after its hearing. Upon a hearing before the zoning board of adjustment, any party may appear in person, or by agent, or by an attorney.

The zoning board of adjustment shall hold a public hearing upon any application directed to the board, other than appeals. Notice of the time and the place of the public hearing shall be published weekly for two consecutive weeks in a newspaper of general circulation in the town. The first weekly notice shall be published not less than ten days nor more than 25 days before the date fixed for the public hearing. In computing such period, the day of publication is not to be included, but the day of the hearing shall be included. If the application is for a variance or special exception, written notification shall be made to all property owners within 200 feet of the property boundaries.

(Ord. of 6-19-1978, Art. XVI, § 17-1640)

Sec. 36-330. - Decisions.

The concurring vote of four members of the zoning board of adjustment shall be necessary to reverse any order, requirement, decision or determination of the zoning administrator or to decide in favor of the applicant on any matter upon which the zoning board of adjustment is required to pass under this chapter, or to effect any variation of this chapter. The board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact; it shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the zoning administrator and which shall be public records. On all appeals, applications and matters brought before the zoning board of adjustment, the board shall inform, in writing, the applicant of its decision. The board shall also send written copies of its decisions to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case. All decisions and findings of the zoning board of adjustment shall, in all instances, be final administrative decisions.

(Ord. of 6-19-1978, Art. XVI, § 17-1650)

Sec. 36-331. - Appeals from decisions.

Any person who may have a substantial interest in any decision of the zoning board of adjustment may appeal any decision of the board to the superior court in and for the County of Buncombe by filing with the clerk of such court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within 30 days after the decision of the board is filed

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in the office of the zoning administrator or delivered to interested parties, whichever is later. Such appeal shall be in accordance with the North Carolina General Statutes.

(Ord. of 6-19-1978, Art. XVI, § 17-1660)

Sec. 36-332. - Fees for variances, appeals and special exceptions.

A fee of \$100.00 shall be paid to the Town of Weaverville, North Carolina, for each application for a variance, special exception permit, or appeal to the zoning board of adjustment, to cover the necessary administrative costs and advertising. During the review of any request, if additional costs are incurred (i.e. attorney or engineering fees), the applicant shall be responsible for reimbursing the town the cost of these services, if over and above the initial \$100.00 application fee.

(Ord. of 6-19-1978, Art. XVI, § 17-1670)

Sec. 36-333. - Moratoria on development.

The Town of Weaverville may adopt temporary moratoria on any town development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the town prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the town prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

- (1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the town and why those alternative courses of action were not deemed adequate.
- (2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
- (3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
- (4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the town during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

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No moratorium may be subsequently renewed or extended for any additional period unless the town shall have taken all reasonable and feasible steps proposed to be taken by the town in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in paragraphs (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the town shall have the burden of showing compliance with the procedural requirements of this subsection.

(Ord. of 3-20-2006)

Secs. 36-334—36-354. - Reserved.

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Sec. 36-355. - Purposes in view.

Zoning regulations shall be made in accordance with a comprehensive plan. Prior to adopting or rejecting any zoning amendment, the town council shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the town council 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 town council.

Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the town.

(Ord. of 3-20-2006; Ord. of 1-24-2011, § 1)

Sec. 36-356. - Initiation of amendments.

Proposed changes or amendments to the text of this chapter may be initiated by the town council, the planning board, the board of adjustment, any owner of a legal or equitable interest in land located in the town or its extraterritorial jurisdiction, or any resident of the town or its extraterritorial jurisdiction. Except for petitions for a conditional zoning district, which must follow the procedure set forth in [section 36-84](#), proposed zoning map amendments may be initiated by the town council, the planning board, the board of adjustment, or any owner of a legal or equitable interest in the property for which the map amendment is requested.

(Ord. of 6-19-1978, Art. XVII, § 17-1710; Ord. of 3-20-2006; Ord. of 1-24-2011, § 1)

Sec. 36-357. - Petition requirements.

- (a) *Prefiling meeting.* Before filing a petition for an amendment to the text or map, an applicant shall meet with the zoning administrator to discuss the proposed amendment or request and to become more familiar with the applicable requirements and approval procedures of the town.
- (b) *Filing.*
 - (1) A petition requesting an amendment shall be filed with the zoning administrator on a form provided by the town.
 - (2) Petitions must be submitted no later than 10 business days before a regularly scheduled town council meeting in order to be considered at the next regularly scheduled town council meeting.
- (c) *Content of petition applications.*

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- (1) Each application shall contain or be accompanied by all information required on the application form provided by the town.
- (2) Every amendment proposing to change the district boundary lines shall be accompanied by a metes and bounds description, a survey of the area involved, or reference to existing lots, sufficient in the estimation of the zoning administrator to plot or otherwise identify the amendment on the official zoning maps of the town.
- (3) Any person designated by the owner(s) of the property included in the petition to serve as agent for the owner shall submit such authorization in writing with the application.
- (d) *Petition fees.* Fees shall be paid to the town for each application for an amendment to the text or map according to the schedule of fees and charges adopted by the town.

(Ord. of 3-20-2006; Ord. of 1-24-2011, § 1)

Sec. 36-358. - Initial review by the town council.

- (a) *Review—General.* Upon receipt of a completed and timely application, the town council shall consider the request at its next regularly scheduled meeting.
- (b) *Action.* After its initial consideration of the application, the town council may refer the request to the planning board for the full review process, or may decide that the request shall not be considered. If the town council decides that the request shall not be considered, the request shall be terminated.

(Ord. of 6-19-1978, Art. XVII, § 17-1770; Ord. of 3-20-2006; Ord. of 1-24-2011, § 1)

Sec. 36-359. - Review by the planning board.

- (a) *Review—General.* The planning board shall consider a proposed amendment to the text or map. The planning board will make recommendations to the town council regarding whether to approve or deny each proposed amendment.
- (b) *Affirmative recommendation by the planning board.* Following an affirmative recommendation by the planning board on the proposed amendment, the action shall be reported to the town council for a public hearing and final action.
- (c) *Negative recommendation by the planning board.* If the planning board has made a negative recommendation on an amendment, the petitioner may, within 30 days after written notification from the town clerk of such negative recommendation, request that a public hearing be held by the town council. This request shall be in writing and submitted, within the 30-day period, to the town clerk. If the petitioner fails to request a public hearing before the town council within the allotted 30-day time frame, then the denial shall be considered affirmed by the town council and the normal administrative remedies provided by this chapter satisfied. Furthermore, the waiting period for subsequent applications as set forth in [section 36-364](#) shall apply to all property included in a petition denied in this manner.

Amendments initiated by the town council which receive a negative recommendation from the planning board shall not be required to follow the appeals process set forth above. The recommendation of the planning board on an amendment initiated by the town council shall be forwarded to the town council for review and action.

- (d) *No action by the planning board.* If the planning board has made neither a positive nor a negative recommendation on a proposed amendment within 90 days of first considering it, the proposed amendment shall be forwarded to the town council for consideration. The proposed amendment shall

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be accompanied by a record of the planning board's comments regarding the amendment and the reasons, if any, for their lack of action.

- (e) *Content of recommendations.* Any recommendation made by the planning board to the town council pursuant to this section shall be in writing and shall include a statement describing whether the proposed amendment is consistent with the comprehensive land use plan and any other applicable plan, and shall address any other matter deemed appropriate by the planning board.

(Ord. of 3-20-2006; Ord. of 1-24-2011, § 1)

Sec. 36-360. - Action by the town council.

- (a) *Review—General.* Following receipt of a recommendation on a proposed amendment or, in the case of a negative recommendation, the receipt of the petitioner's request for a public hearing or in the case of no action by the town planning board as described in [section 36-359](#) above, the town council shall hold a public hearing on the proposed amendment. Notice of the hearing shall be provided in accordance with the provisions of the North Carolina General Statutes. In addition, when a zoning map amendment is proposed, the town 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 town shall post sufficient notices to provide reasonable notice to interested persons.

- (b) *Action.*

- (1) Before acting on any proposed amendment, the town council shall consider any recommendation made by the planning board, the comments made at the public hearing, and any other relevant additional information.
- (2) When considering a proposed amendment, the town council will not evaluate the petition based on any specific proposal for the use or development of the property. The petitioner shall not use any graphic materials or descriptions of the proposed development except for those which would apply to all uses permitted by the requested classification.
- (3) Upon reviewing all pertinent information, the town council may:
 - a. Adopt the proposed amendment;
 - b. Reject the proposed amendment;
 - c. Refer the proposed amendment back to the planning board for further consideration or hearing; or
 - d. Modify the proposed amendment.
- (4) Considerations during decisions. Prior to adopting or rejecting any amendment, the town council shall adopt a statement describing whether its action is consistent with the comprehensive land use plan and any other applicable plan, and shall state why the action taken is considered to be reasonable and in the public interest.

(Ord. of 1-24-2011, § 1)

Sec. 36-361. - Protests.

- (a) *Protest petitions.* In case of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the town council. For the purposes of this subsection, vacant positions on the council and members who are

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excused from voting shall not be considered 'members of the council' for calculation of the requisite supermajority.

(b) *Qualifications.*

(1) *Signatories required.* To qualify as a protest, under this section, the petition must be signed by the owners of either: (i) 20 percent or more of the area included in the proposed change; or (ii) five percent of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the town may rely on the Buncombe County tax listing to determine the 'owners' of potentially qualifying areas.

(2) *Qualified signatures.* Where the owner of property submitting a protest petition is something other than an individual, married couple holding the property as an entirety, or fewer than five joint owners (tenancy in common, joint tenants, etc.), the petition shall be accompanied by copies of appropriate documentation that the petition has been signed by all of the record owners of the protesting property, and in the case of an owner that is not a real person, documentation showing that the petition has been executed in the proper form for that entity. Where the property is titled in the name of someone who is deceased, divorced, or otherwise no longer an owner of the property, the petition shall so state. An opinion from a licensed North Carolina attorney as to the legal sufficiency of the form of execution of a protest petition will suffice for this requirement.

(c) *Exceptions.* The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or otherwise, or to an amendment to a conditional zoning district if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the conditional zoning district.

(d) *Form and time for filing.* No protest against any change in or amendment to the zoning map shall be valid or effective unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the town clerk in sufficient time to allow the town at least two normal work days, excluding Saturdays, Sundays, and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. The town council requires that all protest petitions be on a form prescribed and furnished by the town, and such form may prescribe any reasonable information deemed necessary to permit the town to determine the sufficiency and accuracy of the petition. The town provides protest petition forms at the office of the town clerk. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in G.S. 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement,

(Ord. of 1-24-2011, § 1)

Sec. 36-362. - Applicability.

Amendments to zoning ordinances shall not be applicable or enforceable without consent of the owner with regard to buildings and uses for which either: (i) building permits have been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes so long as the

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permits remain valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422; or (ii) a vested right has been established pursuant to G.S. 160A-385.1 and such vested right remains valid and unexpired pursuant to G.S. 160A-385.1.

(Ord. of 1-24-2011, § 1)

Sec. 36-363. - Conflict of interest.

A town council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the town council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(Ord. of 1-24-2011, § 1)

Sec. 36-364. - Waiting period for subsequent applications.

- (a) *Waiting period—General.* When an application for a zoning amendment has been approved or denied by the Town Council, no rezoning application covering the same property shall be accepted or considered within 12 months after the date of the approval or denial. This restriction shall apply regardless of whether or not the new application is for a zoning classification different from the original application.
- (b) *Waiting period—Waiver.* The waiting period required by this section may be waived by a three-fourths vote of town council if it determines that there have been substantial changes in conditions or circumstances which may relate to the request.

(Ord. of 1-24-2011, § 1)

Secs. 36-365—36-400. - Reserved.

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ARTICLE XIV. - TELECOMMUNICATION FACILITIES ^[2]

Sec. 36-401. - Definitions.

Alternative structure means, for antenna-mounting purposes, a structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. The term "alternative structures" includes, but is not limited to, buildings, silos, water tanks, pole signs, lighting standards, steeples and electric transmission towers.

Antenna means any exterior transmitting or receiving device that radiates or captures electromagnetic waves (excluding radar signals).

Antenna array means two or more antennas that operate as components of a complete antenna suite for a single wireless telecommunication facility.

Antenna, concealed means an antenna that is designed and erected on or in a building or alternative structure in such a way that it blends in with the existing facade and/or is located such that it is not readily visible to an individual at adjacent street level.

Antenna, dual-band/multiband means an antenna with separate elements for two or more commercial wireless service frequency bands (example: cellular and PCS or specialized mobile radio).

Broadcast tower means a structure situated on a lot that is intended for transmitting television or radio signals.

Collocation means, for purposes of regulating wireless telecommunication facilities, the placement of additional antennas or antenna arrays on an existing or approved telecommunication tower (or alternative structure or concealed telecommunication support structure), the sharing of an antenna or antenna array, or otherwise sharing a common location by two or more FCC licensed providers of personal wireless services. Collocation includes antennas, combiners, transmitters, receivers and related electronic equipment, cabling, wiring, equipment enclosures and other components or improvements associated with a wireless telecommunication facility.

Combiner means a device which allows two or more wireless service providers to share an antenna or antenna array by combining signals being transmitted and separating signals being received.

Commercial wireless service provider means persons who operate radio systems requiring an FCC license and who employ those facilities to provide point-to-point microwave links for wireless communication services, fixed wireless (including microwave), or mobile wireless communication services to third parties for compensation. Commercial wireless service providers include, but are not limited to, cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, competitive local exchange carriers (CLEC) utilizing point-to-multipoint microwave, and point-to-point microwave links for wireless communication services.

Discernible means capable of being distinguished with the unaided eye from its surroundings as a telecommunication tower.

Electric distribution towers means metal, wooden or concrete towers and poles used to suspend wires transporting electricity between substations at the terminus of transmission lines and individual customer premises.

Electric transmission towers means metal, wooden or concrete towers and poles used to suspend wires transporting electricity between generating plants and substations supplying electricity to distribution and feeder lines.

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Equipment enclosure means, for purposes of regulating wireless telecommunication facilities, a building, cabinet or shelter used to house transmitters, receivers and other electronic equipment and accessories.

FAA means Federal Aviation Administration.

Facade, RF-transparent means a facade used to conceal antennas and other components of a wireless telecommunication facility which is constructed of materials that allow the free passage of radio frequency or other electromagnetic signals.

FCC means Federal Communications Commission.

Functionally equivalent service means FCC-licensed providers of commercial mobile radio services (CMRS) classified as cellular, personal communication services (PCS), paging, specialized mobile radio (SMR) and enhanced specialized mobile radio (ESMR).

Governmental user means federal, state or local governments, or agencies or instrumentalities thereof, volunteer fire departments or rescue squads which operate radio systems (including microwave) requiring an FCC license and which employ those facilities exclusively for intra-governmental or inter-governmental public service, public safety or administrative purposes.

Microcell means a wireless telecommunication facility for which all electronics (if not located within an existing and approved building) are contained in equipment enclosures which occupy less than 40 cubic feet and for which all antennas are eight feet or less in height and have a combined surface area of less than 30 square feet.

Modification means the addition, removal, repositioning (other than downtilt adjustments), alteration or other material change in the number or type of antennas employed in a wireless telecommunication facility; changes in the height, size, shape or appearance of telecommunication towers; and increases in the number or size of equipment enclosures or other improvements at an existing or approved wireless telecommunication facility.

Primary public safety provider means a FCC licensed governmental user, which uses wireless telecommunication facilities to provide primary communications for law enforcement, fire, ambulance or related emergency services. Primary public service provider does not include commercial wireless service providers who provide telecommunication services on a commercial basis to primary public safety providers or who deliver emergency calls from its customers to a public safety answering point (PSAP).

Private business user means persons who operate radio facilities (including microwave) requiring an FCC license solely for intra-company communications and who do not employ those facilities to offer fixed or mobile wireless communication services, or point-to-point microwave links for wireless communication services, to third parties for compensation.

Public utility means any structure or facility transmitting a service provided by a utility company to include private systems such as telephone, electric, water and sewer, gas, power, etc. but not including utility substations, telecommunication towers, concealed telecommunication support structures, and other telecommunications devices.

Replacement tower means a telecommunication tower intended to replace an existing approved tower where such replacement tower is (1) at or within 100 yards of the existing tower base, and (2) no higher than the existing tower.

Restricted mountain ridge means a ridge whose elevation is 500 or more feet above the elevation of an adjacent valley floor.

Ridge means the elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.

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Telecommunication support structure, concealed means a support structure used to mount antennas for a wireless telecommunication facility which has all structural members concealed within a facade which matches or complements the architectural character of buildings and other structures located on the same parcel as the wireless telecommunication facility.

Telecommunication tower means any tower, pole or similar structure 20 feet or more in height, used to support one or more antennas including self-supporting lattice-framed towers or monopoles and guyed towers.

Tower base means the foundation, usually concrete, on which the telecommunication tower is situated. For measurement calculations, the tower base is the actual or geometric center of the tower.

Tower height means the vertical distance measured from the tower base to the highest point on a telecommunication tower, including any antennas or other equipment affixed thereto, but excluding any lightning protection rods extending above the tower and attached equipment.

Tower site means the land area that contains, or will contain, a proposed telecommunication tower, and related equipment enclosures and other improvements.

Utility substation means a structure or facility for transforming or transmitting a service provided by a utility company to include private utility systems such as telephone, electric, water, sewer, gas, power, etc., but not including telecommunication towers, or concealed telecommunication support structures.

Vegetative canopy means trees that create a roof-like layer of spreading branches.

Visible means capable of being seen by the unaided eye in the daylight.

Wireless telecommunication facility means equipment at a single location used by a private business user, governmental user or commercial wireless service provider to transmit receive or relay electromagnetic signals (including microwave). Such facility includes antennas or antenna arrays, telecommunication towers, support structures, transmitters, receivers, base stations, combiners, amplifiers, repeaters, filters or other electronic equipment; together with all associated cabling, wiring, equipment enclosures and other improvements.

Wireless telecommunication facility, collocated means a wireless telecommunication facility located (or proposed to be located) upon or within a supporting structure or building which hosts one or more existing and approved wireless telecommunication facilities.

Wireless telecommunication facility, concealed means a wireless telecommunication facility with all antennas camouflaged to match or complement the color and architectural treatment of the surface upon which they are mounted, or which has all facility components concealed behind a facade or parapet wall.

Wireless telecommunication facility, microcell means a wireless telecommunication facility for which all electronics (if not placed within an existing and approved building) are contained in equipment enclosures which occupy less than 40 cubic feet and for which all antennas are eight feet or less in height and have a combined surface area of less than 30 square feet.

Wireless telecommunication facility, temporary means a vehicle-mounted or portable wireless telecommunication facility including portable towers, antennas, equipment enclosures, generators and associated electronics, cabling, wiring and hardware.

(Ord. of 7-16-2001, § 1)

Sec. 36-402. - General application requirements.

- (a) *Permits required.* It shall be unlawful for any person, corporation, partnership or other entity to erect any communication tower without first obtaining a permit from the Weaverville Zoning Administrator. A permit shall be required for the erection of a replacement tower or the modification of an existing

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tower. Existing towers owned by governmental agencies and designed for noncommercial emergency communications are exempt from this article.

- (b) *Permit application.* Telecommunications tower permit applications are available from the Weaverville Zoning Administrator.
- (c) *Application fee.* A fee for reviewing tower permit applications shall be established by the Weaverville Town Council.
- (d) *Application submission and review process.* A completed tower permit application and three copies of all supporting documentation identified in subsections (e) and (f) [of this section] shall be submitted to the zoning administrator for review. The zoning administrator shall review the completed tower permit application for compliance with subsections (e) and (f). Any application not containing all information required in subsection (e) and (f), shall be returned to the applicant for correction and resubmission. If the zoning administrator deems it necessary, he (she) may retain, at a reasonable expense to the permit applicant, one or more professional engineers to assist him in reviewing any technical requirements.
- (f) *Requirements for site development.* The site development plan and preliminary design plan shall contain the following information and be part of the tower permit application. The site development plan shall be prepared by a N.C. Registered Land Surveyor and contain the following:
 - (1) The tower applicant's name and property owner's name and their addresses, scale, north arrow, vicinity map, tax parcel identification number, and the tower's latitude and longitude coordinates.
 - (2) The name, address, signature and seal of the surveyor preparing the site development plan.
 - (3) The surveyed boundary lines of the parcel(s) that will contain the proposed tower and its fall area.
 - (4) The name, addresses and tax parcel identification numbers of all owners of property abutting the subject property.
 - (5) All identifiable structures located on the parcel, all private and public roads, highways, and underground and overhead utilities.
 - (6) All existing towers on the property or any towers whose fall area encroaches onto the property.
 - (7) The proposed tower's location, the proposed fall area and the location of all support structures and guy line anchors.
 - (8) The ground elevation of the proposed tower's base, all proposed support structures, property corners, and a permanent site bench mark. All elevations shall be determined using the National Geodetic Vertical Datum of 1929.
 - (9) The height of the existing vegetative canopy surrounding the proposed tower.
 - (10) Tower set backs from all property lines must be one half the total height of the proposed tower.
- (f) *The preliminary tower design plan.* The preliminary tower design plan shall be prepared by a N.C. Registered Professional Engineer and contain the following:
 - (1) The tower permit applicant's name and address, scale, north arrow, vicinity map and tax parcel identification number.
 - (2) The name, address, signature and seal of the engineer preparing the preliminary tower design plan.
 - (3) A plan showing the base of the tower and the foundations for all guy line anchors and support structures, all proposed buildings and any other proposed improvements including access roads and utility connections within and to the proposed site.

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- (4) A tower elevation showing the proposed lighting, tower color and all proposed antennas.
 - (5) An elevation of each proposed set of guy line anchors.
 - (6) The proposed tower design loads.
 - (7) A map or description showing the service area(s) for the proposed tower's antenna(s).
 - (8) The applicant shall provide written statements from the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) showing that the proposed tower complies with all permit regulations administered by that agency or evidence that the proposed tower is exempt from those regulations.
 - (9) The applicant shall identify all other possible alternatives considered within the service area for the proposed tower's antenna(s) and explain why the proposed tower is necessary and why existing towers and structures (e.g., Carolina Power transmission towers) cannot accommodate the proposed antenna(s).
 - (10) The applicant shall identify any variance(s) to the ordinance, the reason(s) for seeking the variance(s) and any measures that are proposed to mitigate possible adverse affects of the proposed variance(s). All variances must be approved by the Weaverville Zoning Board of Adjustments.
 - (11) All towers must be of a mono (single) pole design. No lattice towers will be allowed.
- (g) *Issuance of permit.* Following the zoning administrator's approval of any tower permit application not requesting a variance, the zoning shall issue a tower permit. All tower permit conditions shall appear on the face of the site development plan. The permit owner shall acknowledge and agree to permit conditions approved by the board of adjustments if necessary. If a building permit is not obtained within 12 months after the tower permit is issued, the tower permit shall expire. No permit under the state building code shall be issued until or unless any tower permit required by this article is granted.
- (h) *Tower approval standards.* Any proposed tower shall provide a needed service and/or benefit to the residents of the Town of Weaverville and residents of the extraterritorial zoning jurisdiction.

(Ord. of 7-16-2001, § 2)

Sec. 36-403. - Public emergencies.

In the event of a natural disaster, catastrophic event or public emergency the town manager or his or her designee may waive any temporary use permit procedures and authorize the placement of temporary use facilities which are deemed necessary or desirable in conjunction with the management of the emergency.

(Ord. of 7-16-2001, § 3)

Sec. 36-404. - Wireless telecommunication facilities, microcell.

- (a) Use districts: C-1, C-2, I-1 and all Town of Weaverville owned property located in R-1, R-2 and R-3.
- (b) Microcellular wireless telecommunication facilities are permitted on buildings and other existing structures (other than off-premises signs) which do not require an increase in height to accommodate the facility. Electric distribution poles may be extended in height in R-3 residential zoning districts to the lesser of 20 feet above the vegetative canopy in the vicinity of the site as determined by the town zoning administrator or 100 feet in height. Such extensions shall qualify as an existing structure for purposes of this section. Such height extensions of electric distribution poles shall only be permitted if no other distribution pole within 1,320 feet of the proposed site has been

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extended in height above the average pole height on the same distribution line as documented by the utility owning such poles.

- (c) All antennas associated with microcellular wireless telecommunication facilities mounted on a building or other existing structure (other than a utility pole) shall be flush-mounted against the side of the building or structure and camouflaged to match or complement the color and architectural treatment of the surface on which they are mounted.
- (d) Antennas associated with a microcellular wireless telecommunication facility mounted on a utility pole must be mounted atop the pole or flush mounted against the sides of the pole, and shall be colored to match or complement the color of the utility pole and shall be mounted in as unobtrusive a manner as possible.
- (e) Antennas associated with a microcellular wireless telecommunication facility may not be collocated on a tower or other support structure used by an amateur radio operator.
- (f) Equipment enclosures associated with microcellular wireless telecommunication facilities mounted on a building or other existing structure (other than a utility pole) shall be mounted inside the building or structure, attached to an exterior surface, or placed underground or on a concrete pad on the ground outside the building or structure. If mounted on an exterior surface, the enclosures shall be colored or camouflaged to match or complement the color and architectural treatment of the surface on which they are mounted. If placed on a concrete pad on the ground, the enclosures shall be screened so as to make them unobtrusive.
- (g) Equipment enclosures associated with a microcellular wireless telecommunication facility mounted on a utility pole, must be mounted on the utility pole provided, however, if combiners are used to allow collocation by sharing of an antenna or antenna array and pole-mounting of equipment enclosures cannot be accommodated on the pole, the combiner and additional equipment enclosures may be placed underground or on a concrete pad on the ground. If placed on a concrete pad on the ground, such additional equipment enclosures shall be screened so as to make them unobtrusive.
- (h) All cabling and wiring connecting antennas, equipment enclosures, and other components of a microcellular wireless telecommunication facility shall be colored or concealed in a manner as to render them unobtrusive.
- (i) No towers may be mounted on a roof structure.
- (j) Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.
- (k) A copy of the applicant's FCC license must accompany its application. If the applicant is not an FCC licensee, the applicant must demonstrate that it has binding commitments from one or more FCC licensees to utilize the wireless telecommunication facility and must submit a copy of each such wireless service provider's FCC license. If FCC licenses have previously been filed with the Town of Weaverville in conjunction with other wireless telecommunication facilities, the applicant may certify that such licenses remain in full force and effect.
- (l) As part of its application each applicant for a microcellular wireless telecommunication facility shall be required to execute a standard maintenance/removal agreement binding the applicant and its successors and assigns to properly maintain the exterior appearance of and ultimately remove the facility upon abandonment or cessation of operations. Such agreement shall require the applicant to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the Town of Weaverville for all costs it incurs to perform any work required of the applicant by the agreement that the applicant fails to perform. A \$5,000.00 cash bond, or other security acceptable to the Town of Weaverville, shall be required in conjunction with the maintenance/removal agreement.

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The applicant and its successors and assigns shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of its maintenance/removal agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.

- (m) Abandoned or unused wireless telecommunication facilities shall be removed within one year (365 days) of abandonment or cessation of operations. If not removed within that period, such facilities may be removed as provided in the permittee's maintenance/removal agreement and the costs of removal recovered from the permittee's bond or other security. Prior to removing a wireless telecommunication facility pursuant to this provision, the Town of Weaverville shall give 30 days written notice of its intention to do so to the permittee at its last known address.
- (n) An annual wireless telecommunication facility permit shall be required for each wireless telecommunication facility located in the Town of Weaverville. Before an annual permit shall be issued or renewed an applicant or permittee must certify that:
 - (1) It currently holds an FCC license to provide commercial wireless services and that such license is in good standing or, if the permittee is not an FCC licensee, that the license of each of its FCC tenants is in good standing.
 - (2) The wireless telecommunication facility continues to be operated by the permittee and that it has a continuing need for the facility to meet the requirements of its FCC license.
 - (3) That the facility continues to comply with all FCC and FAA rules and regulations.
 - (4) That the permittee currently has general liability insurance of at least \$1,000,000.00 in force covering the wireless telecommunication facility as evidenced by a certificate of insurance attached to its renewal application.
 - (5) That it is in compliance with its maintenance/removal agreement and that any bond or other security given in conjunction therewith remains in full force and effect.
 - (6) That it has not constructed, maintained, modified or operated any wireless telecommunication facilities in the Town of Weaverville without the Town of Weaverville's approval or, if it has done so, that it has ceased operating and has removed all such facilities.

Failure to obtain or renew an annual wireless telecommunication facility permit shall result in the wireless telecommunication facility being deemed abandoned and subject to removal, as well as subjecting the facility's owner to all other penalty and enforcement provisions of the Code of Ordinances of the Town of Weaverville. The Town of Weaverville shall give 30 days' advance written notice to the permittee at its last known address of the pending expiration of the permittee's annual wireless telecommunication facility permit. Fees for annual wireless telecommunication facility permits shall be in accordance with the Town of Weaverville Fees and Charges Manual.

(Ord. of 7-16-2001, § 4)

Sec. 36-405. - Same—Concealed.

- (a) Use districts: C-1, C-2, I-1 and all Town of Weaverville owned property located in R-1, R-2 and R-3.
- (b) Concealed wireless telecommunication facilities are permitted on buildings and alternative structures (other than off-premises signs and telecommunication towers).
- (c) For purposes of this section antennas mounted on an electric transmission tower shall qualify as a concealed wireless telecommunication facility provided antennas associated with such a facility do not extend more than ten feet above the top of the supporting structure, nor more than two feet from

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the sides of the structure. Equipment enclosures associated with such a facility may be mounted on the structure or placed underground or on the ground. If placed on the ground, equipment enclosures shall be placed on a concrete pad and screened so as to make them unobtrusive.

- (d) For purposes of this section, antennas mounted on an electric distribution tower, street lighting pole or traffic light pole shall qualify as a concealed wireless telecommunication facility provided antennas associated with such a facility do not extend more than ten feet above the top of the supporting structure, nor more than two feet from the sides of the structure, and equipment enclosures associated with the facility occupy less than 60 cubic feet. Equipment enclosures associated with such a facility may be mounted on the structure or placed underground or on the ground on a concrete pad. Electric distribution poles may be extended in height in I-1, zoning districts to 20 feet above the vegetative canopy in the vicinity of the site as determined by the town zoning administrator. Such extensions shall qualify as an existing structure for purposes of this section. Such height extensions of electric distribution poles shall only be permitted if no other distribution pole within 1,320 feet of the proposed site has been extended in height above the average pole height on the same distribution line as documented by the utility owning such poles.
- (e) Panel antennas associated with concealed wireless telecommunication facilities may not exceed eight feet in height. If flush-mounted on the side of a building or alternative structure, antennas shall be camouflaged to match or complement the color and architectural treatment of the surface. Antennas extending above the roofline of a building shall be concealed behind a RF-transparent parapet wall or facade, which is camouflaged to match or complement the color and architectural treatment of the building or structure. Such parapet walls or facades shall not extend more than ten feet above the roofline. Where a parapet wall is at least eight feet in height, omnidirectional (whip-type) antennas may extend above the parapet wall by a distance equal to the height of the parapet wall.
- (f) Antennas associated with a concealed wireless telecommunication facility may not be collocated on a tower or other support structure used by an amateur radio operator.
- (g) Electronic equipment associated with concealed wireless telecommunication facilities may be placed inside a building or, if placed on a rooftop, all equipment enclosures shall be mounted behind a parapet wall or facade which is camouflaged to match or complement the color and architectural treatment of the building. If placed on the ground on a concrete pad, except as provided in subsection (d) above, equipment enclosures shall be screened so as to make them unobtrusive.
- (h) All cabling and wiring connecting antennas, equipment enclosures, and other components of concealed wireless telecommunication facilities shall be colored or concealed in a manner as to render them unobtrusive.
- (i) Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.
- (j) Reserved.
- (k) Applicants for concealed wireless telecommunication facilities shall first be encouraged to consider properties owned by the Town of Weaverville, before considering private properties. Public properties shall be subject to the same restrictions and standards of appropriateness as private properties. All such public agencies or instrumentalities shall retain discretion as to whether to make a specific property available for wireless telecommunication facilities and to make determinations with respect to site capacity, aesthetics, or suitability of such facilities.
- (l) A copy of the applicant's FCC license must accompany its application. If the applicant is not an FCC licensee, the applicant must demonstrate that it has binding commitments from one or more FCC licensees to utilize the wireless telecommunication facility and must submit a copy of each such wireless service provider's FCC license. If FCC licenses have previously been filed with the Town of

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Weaverville in conjunction with other wireless telecommunication facilities, the applicant may certify that such licenses remain in full force and effect.

- (m) Before a concealed wireless telecommunication facility is approved an applicant shall be required to post a \$5,000.00 cash bond, or other security satisfactory to the Town of Weaverville, to secure the costs of maintaining the exterior appearance of the facility if the wireless provider or its successors or assigns fails to continually do so, or removing such facility in the event the wireless provider shall fail to do so within one year (365 days) of abandonment or cessation of operation of the facility. The applicant shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of its maintenance/removal agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.
- (n) Abandoned or unused wireless telecommunication facilities shall be removed within one year (365 days) of abandonment or cessation of operations. If not removed within that period, such facilities may be removed as provided in the permittee's maintenance/removal agreement and the costs of removal recovered from the permittee's bond or other security. Prior to removing a wireless telecommunication facility pursuant to this provision, the Town of Weaverville shall give 30 days' written notice of its intent to do so to the permittee at its last known address.
- (o) An annual wireless telecommunication facility permit shall be required for each wireless telecommunication facility located in the Town of Weaverville. Before an annual permit shall be issued or renewed an applicant or permittee must certify that:
 - (1) It currently holds an FCC license to provide commercial wireless services and that such license is in good standing or, if the permittee is not an FCC licensee, that the license of each of its FCC tenants is in good standing.
 - (2) The wireless telecommunication facility continues to be operated by the permittee and that it has a continuing need for the facility to meet the requirements of its FCC license.
 - (3) That the facility continues to comply with all FCC and FAA rules and regulations.
 - (4) That the permittee currently has general liability insurance of at least \$1,000,000.00 in force covering the wireless telecommunication facility as evidenced by a certificate of insurance attached to its renewal application.
 - (5) That it is in compliance with its maintenance/removal agreement and that any bond or other security given in conjunction therewith remains in full force and effect.
 - (6) That it has not constructed, maintained, modified or operated any wireless telecommunication facilities in the Town of Weaverville without the Town of Weaverville's approval or, if it has done so, that it has ceased operating and has removed all such facilities.

Failure to obtain or renew an annual wireless telecommunication facility permit shall result in the wireless telecommunication facility being deemed abandoned and subject to removal, as well as subjecting the facility's owner to all other penalty and enforcement provisions of the Code of Ordinances of the Town of Weaverville. The Town of Weaverville shall give 30 days' advance written notice to the permittee at its last known address of the pending expirations of the permittee's annual wireless telecommunication facility permits. Fees for annual wireless telecommunication facility permits shall be in accordance with the Town of Weaverville Fees and Charges Manual.

(Ord. of 7-16-2001, § 5)

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Sec. 36-406. - Same—Collocated.

- (a) Use districts: Use Districts: C-1, C-2, I-1 and all Town of Weaverville owned property located in R-1, R-2 and R-3.
- (b) Application fees for a collocated wireless telecommunication facility shall be in accordance with the Town of Weaverville's Fees and Charges Manual.
- (c) Wireless telecommunication facilities may be collocated on any structure which hosts one or more permitted and approved wireless telecommunication facilities provided, however, that the proposed collocated wireless facility must meet equipment enclosure and antenna size restrictions for the type of facility and zoning district in which the existing facility was approved (i.e., microcell and concealed wireless telecommunication facilities).
- (d) Where collocation is proposed by use of a combiner (allowing two or more commercial wireless service providers to share a common antenna or antenna array), an equipment enclosure which houses only the combiner and amplifiers may exceed the maximum permitted dimensions for other types of equipment enclosures.
- (e) Antennas associated with a co-located wireless telecommunication facility may not be collocated on a tower or other support structure used by an amateur radio operator.
- (f) Collocated wireless telecommunication facilities shall meet the following design standards:
 - (1) Use of dual-band/multi-band antennas (to allow sharing of antennas or antenna arrays by wireless providers using different frequency bands) or by using combiners (to allow antenna sharing by users of the same frequency band) is encouraged in order to minimize the height of support structures and the visual impact of multiple collocated antennas or antenna arrays.
 - (2) Antennas associated with a collocated wireless telecommunication facility shall be mounted so as to present the smallest possible silhouette, profile, or cross-section. Preferred antenna mounting scenarios are, in order of descending preference:
 - a. Compact dual-polarized antennas in a cylindrical unicell arrangement extending less than two feet from the structure, and mounted atop the tower;
 - b. Panel antennas flush-mounted against the tower;
 - c. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.
 - (3) No collocated wireless telecommunication facility located on a telecommunication tower shall have constructed thereon, or attached thereto in any way, any platform, catwalk, crow's nest, triangular framework, or like structures or equipment, except during periods of construction or repair. Curved or straight davit arms or brackets used for antenna mounting shall be connected to the tower at the base of the arms or brackets only and such arms or brackets (and any antennas or hardware mounted thereon) shall not be physically interconnected with any similar arm or bracket.
 - (4) All equipment enclosures and other improvements accessory to a collocated wireless telecommunication facility shall be architecturally designed to blend in with the surrounding environment and shall be maintained in good appearance and repair. No equipment enclosure may exceed 12 feet in height. Ground mounted equipment shall be screened from view, except where a design of nonvegetative screening better reflects and complements the architectural character of the surrounding neighborhood.
 - (5) Generators may not be used as a primary electrical power source. Backup generators shall only be operated during power outages or for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.

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- (6) Equipment enclosures and other improvements shall be enclosed within a security fence consisting of chain link fencing at least eight feet in height. The fence may be topped with barbed wire. The zoning administrator may require as a condition of approval that the fencing be screened by appropriate landscaping or other means, or may waive or modify the fencing requirement if it determines that doing so will enhance the overall appearance of the facility without any compromise in safety or security.
- (7) Signage at any ground-based portion of a collocated wireless telecommunication facility site shall conform to the following provisions:
 - a. A sign listing the name of the wireless telecommunication service provider operating the site, the site name or number and an emergency telephone number shall be posted at or near the entrance to the site so as to be readily visible to persons outside the site's security fencing. Maximum size of the sign is four square feet.
 - b. Equipment hazard warning and informational signs are permitted.
 - c. The posting of any other signs or advertising is prohibited at any wireless telecommunication facility or upon any telecommunication tower.
- (g) A copy of the applicant's FCC license must accompany its application. If the applicant is not an FCC licensee, the applicant must demonstrate that it has binding commitments from one or more FCC licensees to utilize the wireless telecommunication facility and must submit a copy of each such wireless service provider's FCC license. If FCC licenses have previously been filed with the Town of Weaverville in conjunction with other wireless telecommunication facilities, the applicant may certify that such licenses remain in full force and effect.
- (h) Before a collocated wireless telecommunication facility is approved, an applicant shall be required to post a \$5,000.00 cash bond, or other security satisfactory to the Town of Weaverville, to secure the costs of maintaining the exterior appearance of the facility if the wireless provider fails to continually do so, or removing such facility in the event the wireless provider shall fail to do so within one year (365 days) of abandonment or cessation of operation of the facility. The applicant shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of its maintenance/removal agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.
- (i) Abandoned or unused wireless telecommunication facilities shall be removed within one year (365 days) of abandonment or cessation of operations. If not removed within that period, such facilities may be removed as provided in the permittee's maintenance/removal agreement and the costs of removal recovered from the permittee's bond or other security. Prior to removing a wireless telecommunication facility pursuant to this provision, the Town of Weaverville shall give 30 days' written notice of its intention to do so to the permittee at its last known address.
- (j) Collocated wireless telecommunication facilities shall not be constructed unless the facility owner has general liability coverage of at least \$1,000,000.00. The owner of a collocated wireless telecommunication facility shall provide the town with a certificate of insurance showing evidence of its coverage and the certificate shall contain a requirement that the insurance company notify the town 30 days prior to the cancellation, modification or failure to renew the insurance coverage required.
- (k) An annual wireless telecommunication facility permit shall be required for every wireless telecommunication facility located in the Town of Weaverville. Before a permit shall be issued or renewed an applicant or permittee must certify that:

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- (1) It currently holds an FCC license to provide commercial wireless services and that such license is in good standing or, if the permittee is not an FCC licensee, that the license of each of its FCC tenants is in good standing.
- (2) The wireless telecommunication facility continues to be operated by the permittee and that it has a continuing need for the facility to meet the requirements of its FCC license.
- (3) That the facility continues to comply with all FCC and FAA rules and regulations and all conditions of its conditional use permit.
- (4) That the permittee currently has general liability insurance of at least \$1,000,000.00 in force covering the wireless telecommunication facility as evidenced by a certificate of insurance attached to its renewal application.
- (5) That it is in compliance with its maintenance/removal agreement and that any bond or other security given in conjunction therewith remains in full force and effect.
- (6) That it has not constructed, maintained, modified or operated any wireless telecommunication facilities in the Town of Weaverville without the Town of Weaverville's approval or, if it has done so, that it has ceased operating and has removed all such facilities.

Failure to obtain or renew an annual wireless telecommunication facility permit shall result in the wireless telecommunication facility being deemed abandoned and subject to removal, as well as subjecting the facility's owner to all other penalty and enforcement provisions of the Code of Ordinances of the Town of Weaverville. The Town of Weaverville shall give 30 days' advance written notice to the permittee at its last known address of the pending expiration of the permittee's annual wireless telecommunication facility permit. Fees for annual wireless telecommunication facility permits shall be in accordance with the Town of Weaverville Fees and Charges Manual.

(Ord. of 7-16-2001, § 6)

Sec. 36-407. - Same—Monopole.

- (a) *Use districts.* Use districts C-2 and I-1 and all Town of Weaverville owned property located in R-1, R-2, and R-3.
- (b) Applications fees for a monopole wireless telecommunication facility shall be in accordance with the Town of Weaverville's Fee and Charges Manual.
- (c) Monopole wireless telecommunications facilities may be located on any property located in the C-2 and I-1 district that can provide the required fall zones as described herein. In addition, a wireless telecommunications company may construct a monopole telecommunication facility only if they can prove that no other type of wireless telecommunication facility will allow them to provide service.
- (d) Monopole wireless telecommunication facilities shall meet the following design standards:
 - (1) Use of dual-band/multi-band antennas (to allow sharing of antennas or antenna arrays by wireless providers using different frequency bands) or by using combiners (to allow antenna sharing by users of the same frequency band) is encouraged in order to minimize the height of support structures and the visual impact of multiple collocated antennas or antenna arrays.
 - (2) Antennas associated with a monopole wireless telecommunication facility shall be mounted so as to present the smallest possible silhouette, profile, or cross section. Preferred antenna mounting scenarios are, in order of descending preference:
 - i. Compact dual-polarized antennas in a cylindrical unicast arrangement extending less than two feet from the structure, and mounted atop the tower;

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- ii. Panel antennas flush-mounted against the tower;
 - iii. Antennas mounted at the end of straight or curved davit arms or brackets extending from the sides of the tower.
- (3) No monopole wireless telecommunication facility shall have constructed thereon, or attached thereto in any way, any platform, catwalk, crow's nest, triangular framework, or like structures or equipment, except during construction or repair. Curved or straight davit arms or brackets used for antenna mounting shall be connected to the tower at the base of the arms or brackets only and such arms or brackets (and any antennas or hardware mounted thereon) shall not be physically interconnected with any similar arm or bracket and shall not extend more than two feet from the structure.
- (4) All equipment enclosures and other improvements necessary to a monopole wireless telecommunications facility shall be architecturally designed to blend in with the surrounding environment and shall be maintained in good appearance and repair. No equipment enclosure may exceed 12 feet in height. Ground-mounted equipment shall be screened from view, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.
- (5) Generators may not be used as the primary electrical power source. Backup generators shall only be operated during power outages and for testing and maintenance purposes. Testing and maintenance shall only take place on weekdays between the hours of 8:30 a.m. and 4:30 p.m.
- (6) Equipment enclosures and other improvements shall be enclosed within a security fence consisting of chain link fencing at least eight feet in height. The fence may be topped with barbed wire. The zoning administrator may require as a condition of approval that the fencing be screened by appropriate landscaping or other means, or may waive or modify the fencing requirement if he determines that doing so will enhance the overall appearance of the facility without any compromise in safety or security.
- (7) Signage at a monopole wireless telecommunications facility shall conform to the following provisions:
- a. A sign listing the name of the wireless telecommunication service provider operating the site, the site name or number and an emergency telephone number shall be mounted at or near the entrance to the site so as to be readily visible to persons outside the site's security fencing. Maximum size of the sign is four square feet.
 - b. Equipment hazard warning and informational signs are permitted.
 - c. The posting of any other signs or advertising is prohibited at any wireless telecommunication facility or upon any telecommunication tower.
- (8) Notwithstanding any height limitations otherwise set forth in the Town Code, monopoles may be constructed up to, but shall not exceed 150 feet in height in the C-2 and I-1 use districts and 100 feet in height in all other use districts.
- (e) Monopoles shall be constructed in a manner to provide a fall zone all around the monopole in a length of one-half of the heights of the monopole unless the applicant provides a sealed statement from a North Carolina professional engineer that a shorter length for all or a part of the fall zone area shall provide adequate distance to provide protection from damage to adjacent property. A copy of the applicant's FCC license must accompany its application. If the applicant is not an FCC licensee, the applicant must demonstrate that it has binding commitments from one or more FCC licensees to utilize the wireless telecommunication facility and must submit a copy of each wireless service provider's FCC license. If FCC licenses have been previously filed with the Town of Weaverville in conjunction with other wireless telecommunication facilities, the applicant may certify that such licenses remain in full force and effect.

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- (f) Before a monopole wireless telecommunication facility is approved, an applicant shall be required to post a \$25,000.00 cash guarantee or other security satisfactory to the Town of Weaverville, to secure the costs of maintaining the exterior appearance of the facility, including the property on which the facility is located and any improvements on the property which are associated with the facility if the wireless provider fails to continually do so, or removing such facility in the event the wireless provider shall fail to do so within one year (365 days) of abandonment or cessation of operation of the facility. The applicant shall be required to continue such guarantee or other security until such time as the facility has been removed and all other requirements of its maintenance/removal agreement have been satisfied. Private business users operating a single wireless telecommunications facility at their principal place of business and governmental users are exempt from the guarantee requirement.
- (g) Abandoned or unused wireless telecommunications facilities shall be removed within one year (365 days) of abandonment or cessation of operations. If not removed within that period, such facilities may be removed as provided in the permittee's maintenance/removal agreement and the costs of removal recovered from the permittee's bond or other security. Prior to removing a wireless telecommunication facility pursuant to this provision, the Town of Weaverville shall give 30 days' written notice of its intention to do so to the permittee at its last known address. The remedies of the town set forth herein are not exclusive and the town may elect to use any or all of the remedies for enforcement of town ordinances set forth in [section 1-6](#) of the town's Code of Ordinances or any other remedies available to the town in state statutes or other applicable law.
- (h) Monopole wireless telecommunication facilities shall not be constructed unless the facility owner has general liability coverage of at least \$1,000,000.00. The owner of a collocated wireless telecommunication facility shall provide the town with a certificate of insurance showing evidence of its coverage and the certificate shall contain a requirement that the insurance company notify the town 30 days prior to the cancellation, modification or failure to renew the insurance coverage required.
- (i) An annual wireless telecommunication facility permit shall be required for every monopole wireless telecommunication facility located in the Town of Weaverville. Before a permit shall be issued or renewed, an applicant or permittee must certify that:
- (1) It currently holds an FCC license to provide commercial wireless services and that such license is in good standing or, if the permittee is not an FCC licensee, that the license of each of its FCC tenants is in good standing.
 - (2) The wireless telecommunication facility continues to be operated by the permittee and that it has a continuing need for the facility to meet the requirements of its FCC license.
 - (3) The facility continues to comply with all FCC and FAA rules and regulations and all conditions of its conditional use permit.
 - (4) The permittee currently has general liability insurance of at least \$1,000,000.00 in force covering the wireless telecommunication facility as evidenced by a certificate of insurance attached to its renewal application.
 - (5) It is in compliance with its maintenance/removal agreement and that any bond or other security given in conjunction therewith remains in full force and effect.
 - (6) It has not constructed, maintained, modified or operated any wireless telecommunication facilities in the Town of Weaverville without the Town of Weaverville's approval or, if it has done so, that it has ceased operating and has removed all such facilities.

Failure to obtain or renew an annual wireless telecommunication facility permit shall result in the wireless telecommunication facility being deemed abandoned and subject to removal, as well as subjecting the facility's owner to all other penalty and enforcement provisions of the Code of Ordinances

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of the Town of Weaverville. The Town of Weaverville shall give 30 days' advance written notice to the permittee at its last known address and pending the expiration of the permittee's annual wireless telecommunications facility permit. Fees for annual wireless telecommunication facility permits shall be in accordance with the Town of Weaverville Fees and Charges Manual.

(Ord. of 6-18-2012, § 1)

Secs. 36-408—36-500. - Reserved.

FOOTNOTE(S):

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State Law reference— Authority to adopt, G.S. ch. 160A, art. 19, pt. 3. [\(Back\)](#)

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Sec. 36-501. - Definitions.

As used in this article, unless the context clearly indicates otherwise, the following definitions apply:

Active construction. Activities which contribute directly to the completion of facilities contemplated or shown on the construction plans.

Adequate erosion control measure, structure or device. Control of the soil material within the land area under responsible control of the persons conducting the grading activity.

Borrow. Fill material which is required for on-site construction and is obtained from other locations.

Buffer. The definition included in [section 36-5](#) is incorporated herein.

Buffer zone. The strip of land adjacent to a lake or natural watercourse, the width of which is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the grading or land-disturbing activity containing natural or artificial means of confining visible siltation. Waters that have been classified as trout waters by the North Carolina Environmental Management Commission ("EMC") shall have an undisturbed buffer zone of 25 feet wide or whatever width may be subsequently required by the EMC.

Design professional. An engineer, surveyor or landscape architect licensed by or registered in the State of North Carolina.

Erosion. The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

Grading or land grading. A land-disturbing activity intended to alter the contour or topography of a tract of land or portion thereof, generally as part of a plan for the development of the land which may or may not include the construction of buildings or structures.

Ground cover. Any natural vegetation growth or other material which renders the soil surface stable against accelerated erosion.

Lake or natural watercourse. Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

Land-disturbing activity. Any use of the land by any person in residential, industrial, education, institutional, or commercial development, highway and road construction and maintenance that results in a change in the topography and that may cause or contribute to sedimentation.

Landscape grading. The leveling or contouring of an area of a lot or tract for aesthetic purposes where such area will not be used to support a building or structure, does not exceed 5,000 square feet in area, is not part of a storm drainage easement, is not within a street right-of-way, and involves cut or fill of the existing contour of less than four feet in depth.

Natural erosion. The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

Person. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Person responsible for the violation. As used in this article, means:

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- a. The developer or other person who has or holds himself out as having financial or operational control over the grading or land-disturbing activity; and/or
- b. The landowner or person in possession or control of the land when he has directly or indirectly allowed the grading or land-disturbing activity or has benefitted from it or he has failed to comply with any provision of this article, or any order adopted pursuant to this article.

Person conducting land-disturbing activity. Any person who may be held responsible for a violation unless expressly provided otherwise by this article.

Phases of land-grading activity. Defined portions (area or implementation) of grading that are required to be done in a specific sequence as part of the plan.

Plan. The grading plan and the supporting documentation for such plan.

Storm drainage facilities. The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

Stormwater runoff. The direct runoff of water resulting from precipitation in any form.

Types of grading. One of two types of grading, rough or fine.

Undertaken. The initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

Waste. The surplus materials resulting from on-site construction and disposed of at other locations.

(Ord. of 8-16-10, § 1)

Sec. 36-502. - Activities affected.

This article pertains to all land-disturbing activity and grading conducted within the town's jurisdiction. It is the responsibility of the property owner and the person conducting land-disturbing activity and grading to ensure that provisions of this article are adhered to, including activities contracted for, or performed by those under their employ. The exception from plan approval requirements in [section 36-503](#) hereinafter due to the size or type of activity contemplated does not relieve the property owner of responsibility for complying with soil erosion control requirements, and complying with North Carolina statutes and this article.

(Ord. of 8-16-10, § 1)

Sec. 36-503. - Plan approval required.

- (a) Town review and approval of a site-specific plan, is required when any land-disturbing activity is proposed, with the exception of the following:
 - (1) Single- and two-family projects of less than 21,780 square feet (0.5 acre) where none of the lot has a slope steeper than 15 percent.
 - (2) Commercial site improvements that involve no more than 2,500 square feet of land-disturbed area where none of the lot has a slope steeper than 15 percent.
 - (3) Landscape grading as defined in this article.
 - (4) Temporary removal of soil to allow installation of tanks, septic fields or basements where the final grade upon completion of the project will be unchanged from the original grade and topography.

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- (5) Removal of top or subsoil to allow placement of another material such as gravel for a driveway or parking area when the final grade upon completion of the project will be unchanged from the original grade and topography and no storm drainage structures are required.
- (6) Activities undertaken on farms or other agricultural land for the production of plants, including, but not limited to, forages and sod crops, grains and feed crops, tobacco, cotton and peanuts.
- (b) The following grading or land-disturbing activities should be included in the submission for plan approval, when not already covered by a valid plan approval:
 - (1) *Access and haul roads:* Temporary access and haul roads, other than public roads, constructed or used in connection with any grading activity and are subject to the requirements of this article which pertain to road building.
 - (2) *Borrow and waste areas:* When the applicant conducting the grading activity is also the responsible party conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and the waste areas for surplus materials other than landfills regulated by the North Carolina Department of Human Resources, Division of Health Services, shall be considered as part of the grading activity where the borrow material is being used or from which the waste material originated. When the applicant conducting the grading activity is not the responsible party for obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate grading activity.
- (c) *[Approval process.]* Approval of the plan shall be completed as part of the zoning approval process. A plan will not be approved unless it is submitted with an application for a zoning permit.

(Ord. No. 8-16-10, § 1)

Sec. 36-504. - Administrative procedures for plan approval.

- (a) The plan along with all supporting calculations shall be submitted with the zoning permit application. The plan with supporting calculations shall be designated collectively throughout this subsection as the plan.
 - (1) The plan(s) shall be prepared by, and shall bear the seal and signature of a design professional.
 - (2) Supporting documentation shall be considered an integral part of the plan submittal. The applicant shall include general supporting documentation such as location map and written specifications governing work performance and materials, for the plan submitted. Although specific plan content will vary to meet the needs of particular site requirements, following are some typical forms of specific supporting documentation:
 - (A) *Grading plan:* Site specific soils investigation (if performed), detail drawings and cross-section of earthwork, construction details for retaining structures, and whatever other narrative statements may be necessary to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this article. More specialized documentation may include such items as design calculations for temporary excavation support, calculations for temporary surface water diversion, dewatering methods with provisions for handling extracted water, importation of fill material (quantity and type), description of rock excavation techniques (blasting) with protection or monitoring of neighboring properties and structures.
 - (B) *Soil erosion and sediment control plan:*
 - 1. Buncombe County enforces the North Carolina Sedimentation Pollution Control Act of 1973, as amended, within the jurisdiction of the Town of Weaverville. Where a land-

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disturbing permit is required by Buncombe County, said permit and erosion control plans shall be included in the supporting documentation accompanying the plan.

2. Where a permit is not required by Buncombe County, the plan shall include erosion control measures specific to the site to prevent erosion and damage to adjacent or downstream properties.
- (b) The zoning administrator shall review the plan for completeness and for compliance with the requirements of this article. Incomplete or nonconforming plans will be returned to the applicant prior to further review with an explanation of issues requiring resolution before plan review can be [approved].
 - (c) Approval or denial of the proposed plan shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal the decision of the zoning administrator to the board of adjustment as provided in article XII of [chapter 36](#). A condition of plan approval will be the right to physical inspection by the town of the grading activity at any time.
 - (d) Application for amendment of a plan in written and graphic form may be made at any time by repeating the filing process outlined above in subsections [36-504](#) (a) through (c). Until such time as any amendment is approved by the zoning administrator, it shall be unlawful to deviate from the approved plan.
 - (e) In the enforcement of this article, town staff may perform random independent inspections of the grading activity to ensure compliance with the approved plan and this article. No person shall willfully resist, delay, or obstruct any town official or duly appointed agent, who is inspecting or attempting to inspect a grading or land-disturbing activity.

(Ord. of 8-16-10, § 1)

Sec. 36-505. - Compliance with approved plans.

The property owner is responsible for ensuring that the grading and land-disturbing activity is completed in accordance with the approved plan and specifications. The zoning administrator shall require that the design professional who prepared the plan certify that the grading and land-disturbing activity was completed in compliance with the approved plan.

(Ord. of 8-16-10, § 1)

Sec. 36-506. - Grading plan details.

- (a) The plan shall define the existing site topography and the proposed elevations for all site improvements in sufficient detail to accurately plan and control earthwork construction. The plan shall be prepared to meet the grading performance standards required by subsection [36-509](#), and presented at a scale not smaller than one inch = 50 feet.
- (b) The plan shall be prepared by and shall bear the seal and signature of a design professional. Plans submitted for grading approval, and plats submitted for major and minor subdivisions for approval, shall include detailed plans, specifications and supporting calculations for the construction of stormwater management installation.
- (c) The applicant shall follow the administrative process for permit applications required by subsection [36-298](#) of the Town Code.
- (d) Plans shall contain sufficient information as specified herein, but not limited to the topographic survey required by subsection [36-507](#) and the grading plan format required by subsection [36-508](#), to

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allow the zoning administrator to determine if the requirements and intent of this article as applied to the proposed development have been met.

- (e) The construction sequence describing major work activities shall be listed on the plan. Grading that will be conducted in phases should be clearly indicated on the plan. Multiple plans may be necessary to portray adequately tracts with complex phasing or discontinuous areas of land-disturbing activity.

(Ord. of 8-16-10, § 1)

Sec. 36-507. - Topographic survey.

- (a) The plan shall be based upon a topographic survey of the tract that includes detailed information of both natural and cultural physical features prior to development. In addition to showing physical features such as existing buildings, overhead and/or underground utilities, roadways, walks, water or drainage features, the plan shall also indicate the location of existing vegetation, particularly significant trees being retained and protected, either pursuant to article VI of [chapter 36](#) of the Town Code or pursuant to development plans, and limits of vegetation if the tract is partially wooded.
- (b) Survey information can be provided through submittal of a separate topographical survey, or included as part of the grading and utilities plans. This survey shall be produced by a North Carolina registered land surveyor. Topographical maps prepared for the town or Buncombe County are also acceptable providing that the maps reflect the current existing conditions of the tract and are certified as accurate by a North Carolina registered land surveyor.
- (c) Contour lines shall be used to present the topography of the entire tract, including sufficient distance into adjoining properties to indicate continuity. The contour line interval should be selected to appropriately convey the topographic information for planning and controlling construction. Generally, a two-foot contour interval is sufficient. However, smaller intervals (one-half to one foot) may be used for flatter areas and larger intervals (five to ten feet) for steeper terrain. Contour intervals may be no greater than ten feet.
- (d) The following basic survey data is required for proper execution of the plan:
 - (1) Boundary information (metes and bounds, legal description of the site if available), including all existing and proposed street rights-of-way.
 - (2) Location of existing curbing, walks, grass, utility or planting strips, edge of pavement, roadway medians, if any, and their respective grades, widths, and alignments.
 - (3) Location, size, and depths of all underground utilities when available, including; gas, electric, water, sanitary sewer, stormwater drainage features, telephone, television cable, etc.
 - (4) Location and approximate height above existing grade of overhead utility lines and poles for lighting, electric, telephone, cable television, and any other utilities.
 - (5) Location and description of all recorded public or private utility easements, building setbacks, and drainage easements encumbering the tract.
 - (6) Location of all natural features such as rock outcroppings, watersheds, streams, ponds, etc. on the lot or within 100 feet of the graded area. This information conveys the impact of the proposed development on the lot.
 - (7) Location of any wells or septic fields within 100 feet of the graded area.
 - (8) Location of existing structures such as buildings, retaining walls, fences, building foundations, underground storage tanks and similar structures. Reference of the setbacks of other buildings on adjacent properties and adjacent property lines.

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- (9) Location of sufficient spot elevations on existing land surface to generate a topographic map of the entire tract.
- (10) The location and size of any landscaping, screening and/or buffering requirements applicable to the site based on the provisions of the Town Code.

(Ord. of 8-16-10, § 1)

Sec. 36-508. - Grading plan format.

- (a) The plan must show the existing and proposed shape of earth and surfaced areas. The method of portrayal should be well thought out, systematized, and clearly presented graphically. The following information shall be included in all plans submitted to the town for approval:
 - (1) Contour lines shall be used to present the existing and proposed topography of the entire tract, including sufficient distance into adjoining properties to indicate continuity. The contour line interval should be selected to appropriately convey the topographic information for planning and controlling construction. Generally, a two-foot contour interval is sufficient. However, smaller intervals (one-half to one foot) may be used for flatter areas and larger intervals (five to ten feet) for steeper terrain. Contour intervals may be no greater than ten feet.
 - (2) Grades at corners of buildings, step landings, and first floor elevations.
 - (3) Finished grades at the edges of surfaced areas and at such interior points as necessary to show the shaping of the area. A combination of proposed contours and spot elevations may be used to convey this information.
 - (4) Proposed roadway elevations by indicating proposed contours and spot elevations where necessary. Profiles, cross sections, and spot elevations are to be used to establish grading of paved areas such as roadways.
 - (5) Top-of-curb grades at all connecting walks, curb returns, and all catch basin locations including inlet elevations.
 - (6) Spot elevations along swale lines, by using arrows to show direction of flow. Slope gradients should also be shown.
 - (7) Top elevation of all catch basins, storm and sanitary sewer manholes and other appurtenances and the invert elevations of all pipes entering such structures.
 - (8) Lawn and earth grades can be shown by proposed contours and by spot elevations where necessary.
 - (9) The proposed location of stockpiled topsoil for future land use in landscaped areas. To avoid root compaction the stockpile should be located outside root zones of significant vegetation to be preserved.
 - (10) The storage locations of construction materials outside the root zones of significant vegetation to avoid root compaction.
 - (11) The location of existing significant vegetation such as specimen trees or the canopy limits of wooded areas intended for preservation.
 - (12) The elevations of any floodplains located on, or directly affecting a tract (i.e. drainage, sediment and erosion control considerations and/or watershed protection).
 - (13) The location and size of any landscaping, screening and/or buffering requirements applicable to the site based on the provisions of the Town Code.

(Ord. of 8-16-10, § 1)

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Sec. 36-509. - Grading performance standards.

- (a) Any land-disturbing activity that includes alteration of existing topographic slope grades shall conform to grading performance standards contained in subsections (b) through (j) hereinafter.
- (b) The plan and specifications controlling execution of grading activities shall adhere to the following standards unless superseded by a site-specific subsurface investigation, report and recommendation performed by a North Carolina registered professional engineer competent in geotechnical engineering.
 - (1) Existing grade may remain, if natural vegetation undisturbed and slope(s) are unaffected by the planned site improvements.
 - (2) Maximum cut grade shall be 2H:1V.
 - (3) Maximum fill grade shall be 2H:1V.
 - (4) Grades shall be sloped to drain surface water away from buildings, pavements, slopes and structures, and toward storm drainage facilities.
- (c) Conventional seeding with native grasses and mulching are acceptable permanent erosion control measures for slopes flatter than 2H:1V, provided the grasses can be established and properly nourished to maturation.
- (d) Site-specific permanent erosion control and stabilization of slopes steeper than 2H:1V must be designed by a design professional competent in such practice. Universally accepted armoring techniques and innovative approaches will be considered appropriate when properly detailed and specified.
- (e) Notification of the zoning administrator shall be made prior to starting grading for any slope steeper than 3H:1V.
- (f) Cut and fill slopes that are steeper than 3H:1V shall have intermediate benches to control surface water runoff. These benches shall be a minimum of five feet wide and sloped back from the crest of the lower slope, to form a drainage swale at the toe of the upper slope. The drainage swale invert shall divert surface water to the appropriate storm drainage facilities. The maximum change in elevation between these benches shall be 20 feet. Slope stability considerations may require wider benches for steeper or taller slopes. If a site specific evaluation is performed and recommendations submitted by a North Carolina registered professional engineer with a specialization in sub-surface evaluations, the provisions of this subsection may be modified or waived.
- (g) Exposed and fill covered slope cuts in rock foundations or slopes greater than five feet and steeper than 1H:1V should be properly investigated and designed by a North Carolina registered professional engineer or geologist competent in rock slope engineering. The plan should clearly indicate the depth, orientation, and method to accomplish a cut into rock formations.
- (h) Retaining systems providing a cumulative vertical relief greater than five feet within a horizontal distance of 50 feet or less, including retaining walls or mechanically stabilized earth walls, shall be designed and constructed under the responsible charge of a North Carolina registered professional engineer. Testing and inspection reports shall verify:
 - (1) Foundation support system is adequate for the intended site conditions;
 - (2) Quality of construction materials conform with specifications;
 - (3) Actual soil conditions are substantially and functionally similar to those anticipated in design; and
 - (4) Backfill materials and any drainage systems comply with plans and specifications.

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The engineer will submit a separate summary report stating that the constructed retaining structures are in compliance with the intent of the design.

- (i) Utilize a maximum 3H:1V slope within any temporary or permanent buffer zone adjacent to any lake or natural watercourse, tying into existing grades along the perimeter or property line of the tract. Landscape buffer areas shall be limited to a maximum 3H:1V slope unless otherwise approved by the administrator.
- (j) Property boundary and field grading stakes sufficient to define the grading activity shall be established prior to starting, and maintained until earthwork construction is completed.

(Ord. of 8-16-10, § 1)

Sec. 36-510. - Violations.

- (a) The following shall constitute a violation of this article:
 - (1) Land-disturbing activity is being undertaken in a manner which is in violation of this article.
 - (2) Substantial departure from the approved plan and specifications.
 - (3) Refusal or failure to comply with the requirements of any applicable state law, local law, local ordinance, or local regulation.
 - (4) Plan approvals granted on the basis of false statements or misrepresentations made by the property owner or their representatives during application.
 - (5) Plan approvals mistakenly granted in violation of an applicable state law, local law, local ordinance, or local regulation.
- (b) Violations of this article shall result in revocation of approval of the plat and revocation of the zoning permit and additional enforcement shall be conducted pursuant to [section 36-23](#) of the Town Code.

(Ord. of 8-16-10, § 1)