ORDINANCE AMENDING WEAVERVILLE TOWN CODE
TO ENACT UPDATED LAND DEVELOPMENT REGULATIONS

WHEREAS, in accordance with and under the authority granted in N.C. Gen. Stat. Chapter 160D, the Town of Weaverville has undertaken a substantial rewrite of the Town's land development regulations and now wishes to enact its new land development regulations for compliance with G.S. Chapter 160D and consistency with Town Council guided land development policy goals;

WHEREAS, over a series of eight (8) public meetings, the Planning and Zoning Board has participated in the land development regulations update project, reviewed the proposed amendments, and found such amendments consistent with the Town's comprehensive land use plan, reasonable, and in the best interest of the public, and with a unanimous vote of the Planning and Zoning Board on May 4, 2021, recommends the approval of such amendments;

WHEREAS, a public comment period was held from April 27, 2021, through May 24, 2021, and four public information/input sessions were held, in order to provide information to the public and to receive input from the public on these proposed amendments;

WHEREAS, after proper notice Town Council held a public hearing on May 24, 2021, in order to receive input from the public on these proposed amendments;

WHEREAS, Town Council wishes to adopts the pertinent findings and recommendation of the Planning and Zoning Board dated May 4, 2021, and presented during the public hearing;

NOW, THEREFORE, BE IT ORDAINED by Town Council of the Town of Weaverville, North Carolina, as follows:

1. The findings and recommendations of the Planning and Zoning Board dated May 4, 2021, concerning plan consistency and reasonableness are hereby incorporated by reference and adopted by Town Council.
2. Code Chapter 25, entitled Subdivisions, is hereby repealed.
3. Code Chapter 36, entitled Zoning, is hereby repealed.
4. Code Chapter 2 is hereby amended as follows:
    a. Article IV, Division 2, is hereby retitled "Planning Board", and is repealed and replaced in its entirety as set out on Attachment A.
    b. Article IV, Division 3, entitled "Board of Adjustment", is hereby enacted as set out in Attachment A.

DRAFT

c. Article VI, entitled "Conflicts of Interest", is hereby enacted as set out in Attachment A.

5. Code Chapter 20 is hereby repealed and replaced in its entirety as set out on Attachment B.

6. It is the intention of Town Council that the sections and paragraphs of this Ordinance are severable and if any section or paragraph of this Ordinance shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining paragraphs or sections of this Ordinance, since they would have been enacted by Town Council without the incorporation in this Ordinance of any such unconstitutional or invalid section or paragraph.

7. These amendments shall be effective on July 1, 2021 and codified immediately thereafter.

ADOPTED THIS the ____ day of _____, 2021, by a vote of ___ in favor and ___ against.

_____

ALLAN P. ROOT, Mayor

ATTESTED BY:

_____

JAMES ELLER, Town Clerk

APPROVED AS TO FORM:

_____

JENNIFER O. JACKSON, Town Attorney

DRAFT

ATTACHMENT A

Chapter 2 – Administration

ARTICLE IV. BOARDS, COMMISSIONS AND COMMITTEES

DIVISION 2. PLANNING BOARD

Sec. 2-151. Establishment

Pursuant to the authority granted in G.S. 160D-301, the town council establishes a planning board of the town, which board shall consist of five regular members and up to two alternate members who shall all serve at the pleasure of town council. Only residents of the Town of Weaverville are eligible to serve on the planning board. Members shall be appointed by town council. An alternate member may serve on the planning board in the absence or temporary disqualification of a regular member and when so serving has all of the powers and duties of a regular member.

The term of office of each member and alternate member of the planning board shall be for three years. In appointing original members or in filling vacancies caused by the expiration of the terms of existing members, the mayor and town council may appoint certain members for less than three years so that the terms of all members do not expire at the same time. Vacancies occurring on the planning board shall be filled for the unexpired term only.

Members of the planning board shall receive no compensation for their services.

Any member of the planning board who is absent without good cause from three consecutive meetings of the board shall be reported to the mayor and may be removed from the board and replaced in the manner prescribed for appointments.

Sec. 2-152. Records

The planning board shall keep records of its meetings and proceedings and may certify attendance of board members to the town council.

Sec. 2-153. Officers

The planning board shall elect a chair and a vice-chair from its membership, who shall each serve for one year or until reelected or until their successors are elected. The planning board shall appoint a secretary, who may be a municipal officer, an employee of the town, or a member of the board.

Sec. 2-154. Rules of Procedure

The planning board shall adopt appropriate rules of procedure, which rules shall be consistent with G.S. Chapter 160D and subject to the approval of the town council. A copy of the adopted rules of procedure shall be maintained by the town clerk and posted on the town's website.

Sec. 2-155. Duties

The planning board shall primarily act in an advisory or administrative capacities and shall perform the following duties:

(1) To prepare, review, maintain, monitor, and periodically update and recommend to the governing board a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis;
(2) To facilitate and coordinate citizen engagement and participation in the planning process;
(3) To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;

(4) To advise the governing board concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604;
(5) To exercise any functions in the administrative and enforcement of various means for carrying out plans that the governing board may direct;
(6) To perform any other related duties that the governing board may direct, either through ordinance or action.

Sec. 2-156. Oaths of Office.

Members of the planning board shall, before entering into their duties, qualify by taking an oath of office as required by G.S. 160A-61.

DIVISION 3. BOARD OF ADJUSTMENT

Sec. 2-161. Establishment

Pursuant to the authority granted in G.S. 160D-302, the town council establishes a board of adjustment of the town, which board shall consist of five regular members and up to two alternate members who shall all serve at the pleasure of town council. Only residents of the Town of Weaverville are eligible to serve on the board of adjustment. Members shall be appointed by town council. An alternate member may serve on the board of adjustment in the absence or temporary disqualification of a regular member and when so serving has all of the powers and duties of a regular member.

The term of office of each member and alternate member of the board of adjustment shall be for three years. In appointing original members or in filling vacancies caused by the expiration of the terms of existing members, the mayor and town council may appoint certain members for less than three years so that the terms of all members do not expire at the same time. Vacancies occurring on the board of adjustment shall be filled for the unexpired term only.

Members of the board of adjustment shall receive no compensation for their services.

Any member of the board of adjustment who is absent with or without good cause from three consecutive meetings of the board shall be reported to the mayor and may be removed from the board and replaced in the manner prescribed for appointments.

Sec. 2-162. Records

The board of adjustment shall keep records of its meetings and proceedings and may certify attendance of board members to the town council.

The board of adjustment shall keep a record of all quasi-judicial matters which shall include the decision and all documents and exhibits submitted to the board of adjustment, together with the minutes of the meeting or meetings at which the decision was considered and decided. To aid the board of adjustment in creating the record of quasi-judicial matters, audio or videotaping of the hearing is recommended.

Sec. 2-163. Officers

The board of adjustment shall elect a chair and a vice-chair from its membership, who shall each serve for one year or until reelected or until their successors are elected. The board of adjustment shall appoint a secretary, who may be a municipal officer, an employee of the town, or a member of the board.

ATTACHMENT A

Sec. 2-164. Rules of Procedure

The board of adjustment shall adopt appropriate rules of procedure which shall be consistent with G.S. Chapter 160D and subject to the approval of the town council. A copy of the adopted rules of procedure shall be maintained by the town clerk and posted on the town's website.

Sec. 2-165. Duties

The board of adjustment shall primarily act in a quasi-judicial capacity and shall perform the following duties:

(a) **Quasi-Judicial Procedures** – The board of adjustment shall follow quasi-judicial procedures as specified in G.S. 160D-406 and Code Sec. 20-1309 when making any quasi-judicial decision.

(b) **General** – The board of adjustment shall hear and decide all other matters which it is required to pass under any statute or development regulation adopted under the authority of GS Chapter 160D.

(c) **Appeals** – Except as otherwise provided by G.S. Chapter 160D, the board of adjustment shall hear and decide appeals from administrative decisions regarding administration and enforcement of all development regulations and may hear appeals arising out of any other ordinance that regulates land use or development all as set out in Chapter 20, including specifically Code Sec. 20-1308 and Code Sec. 20-3108(b).

(d) **Special Use Permits** – The board of adjustment shall hear and decide special use permits in accordance with principles, conditions, safeguards, and procedures specified in Chapter 20, including specifically Code Sec. 20-3108(c) and Code Sec. 20-3204.

(e) **Variances** – The board of adjustment shall hear and decide all variance requests in accordance with the principles, conditions, safeguards, and procedures specified in Chapter 20, including specifically Code Sec. 20-3108(d).

(f) **Sidewalk Waivers** – The board of adjustment shall hear and decide all requests for waivers of sidewalk requirements in accordance with principles, conditions, limitations and procedures specified in Chapter 20, including specifically Code Sec. 20-3108(e).

(g) **Vegetative Screening and/or Buffer Waivers** – The board of adjustment shall hear and decide all requests to alter or eliminate the required vegetative screening or buffering requirement in accordance with principles, conditions, limitations and procedures specified in Chapter 20, including specifically Code Sec. 20-3108(f).

Sec. 2-166. Oaths of Office.

Members of the board of adjustment board shall, before entering into their duties, qualify by taking an oath of office as required by G.S. 160A-61.

ATTACHMENT A

ARTICLE VI. CONFLICTS OF INTEREST

Sec. 2-301. Governing Board

A governing board member, including all town council members and the mayor, shall not vote on any legislative decision, including but not limited to a development regulation adopted pursuant to G.S. Chapter 160D or Code Chapter 20~~,~~ where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any text or map amendment if the landowner of the property subject to such amendment or the applicant for the amendment is a person with whom the governing board member has a close familial, business, or other associational relationship.

Sec. 2-302. Appointed Boards

Members of appointed boards, including but not limited to the planning board and the board of adjustment, shall not vote on advisory, administrative or legislative decisions, including but not limited to a development regulation adopted pursuant to G.S. Chapter 160D or Code Chapter 20, where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any administrative decision or text or map amendment if the landowner of the property subject to such decision or amendment or the applicant for the development approval or amendment is a person with whom the governing board member has a close familial, business, or other associational relationship.

Sec. 2-303. Administrative Staff

No staff member shall make a final decision on an administrative decision, including but not limited to any decision required by G.S. Chapter 160D or Code Chapter 20, if the outcome of the decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest, the decision shall be assigned to the supervisor of the staff person. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this chapter unless the staff member is the owner of the land or building involved. No staff member of other individual or an employee of a company contracting with the town to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the town as determined by the town.

Sec. 2-304. Quasi-Judicial Decisions

A member of any board exercising quasi-judicial functions shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business or other associational relationship with the affected person, or a financial interest in the outcome of the matter.

Sec. 2-305. Resolution of Objection

If an objection is raised to a member's participation at or prior to the hearing or vote on that matter and the member does not recuse themselves, the remaining members of the board shall by majority vote rule on the objection.

Sec. 2-306. Familial Relationship

For purposes of this article, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild, and those step, half, and in-law relationships.

ATTACHMENT B

Contents

PART I – GENERAL PROVISIONS, DEFINITIONS, ADMINISTRATION, ENFORCEMENT, APPEALS, PLANNING, ADOPTION AND AMENDMENTS, NONCONFORMITIES 8
ARTICLE I. GENERAL PROVISIONS 8
Sec. 20-1101. Title. 8
Sec. 20-1102. Authority. 8
Sec. 20-1103. Jurisdiction. 8
Sec. 20-1104. Split Jurisdiction. 8
Sec. 20-1105. Pending Jurisdiction. 8
Sec. 20-1106. Abrogation 8
Sec. 20-1107. Severability. 8
Sec. 20-1108. Development Approvals Run with the Land. 8
Sec. 20-1109. Effect of Plat Approval on Dedication. 9
Sec. 20-1110. Erosion and Sedimentation Control 9
Sec. 20-1111. Floodplain Regulations 9
Sec. 20-1112. Stormwater Control 9
Sec. 20-1113. Development Agreements 9
Sec. 20-1114. North Carolina State Building Code Enforcement 9
Sec. 20-1115. Oversized Improvements. 9
Sec. 20-1116. Vested Rights and Permit Choice. 9
Sec. 20-1117. Vested Rights - Site-Specific Vesting Plans. 11
Sec. 20-1118. Moratoria. 13
Sec. 20-1119. Fees. 14
ARTICLE II - DEFINITIONS 14
Sec. 20-1201. Generally. 14
Sec. 20-1202. Specific definitions. 14
ARTICLE III. ADMINISTRATION, ENFORCEMENT AND APPEALS 35
Sec. 20-1301. Administrative Staff. 35
Sec. 20-1302. Administrative Approvals and Determinations. 36
Sec. 20-1303. Changes to Prior-Approved Development. 37
Sec. 20-1304. Enforcement. 38
Sec. 20-1305. Civil Penalties for Violations. 39
Sec. 20-1306. Penalties for Transferring Lots in Unapproved Subdivisions 39
Sec. 20-1307. Appeals of Decisions on Subdivision Plats 40
Sec. 20-1308. Appeals. 40
Sec. 20-1309. Quasi-Judicial Procedure 41
Sec. 20-1310. Declaratory Judgments and Other Civil Actions 42
Sec. 20-1311. Appeals in the Nature of Certiorari 42

Sec. 20-1312. Statute of Limitations 46
ARTICLE IV. PLANNING 46
Sec. 20-1401. Plans 46
Sec. 20-1402. Grants, Contracts and Technical Assistance 47
Sec. 20-1403. Coordination of Planning 47
ARTICLE V. ADOPTION AND AMENDMENT OF DEVELOPMENT REGULATIONS 47
Sec. 20-1501. Applicability. 48
Sec. 20-1502. Definitions 48
Sec. 20-1503. Procedure for Approval of Text Amendments 48
Sec. 20-1504. Procedure for Approval of Zoning Map Amendments 49
Sec. 20-1505. Planning Board Review and Comment 50
Sec. 20-1506. Governing Board Statement and Action 51
Sec. 20-1507. Down-Zoning. 52
Sec. 20-1508. Waiting Period for Subsequent Requests. 52
ARTICLE VI. NONCONFORMITIES 52
Sec. 20-1601. Purpose and Application. 52
Sec. 20-1602. Nonconforming Lots. 52
Sec. 20-1603. Nonconforming Structures. 53
Sec. 20-1604. Nonconforming Uses. 54
Sec. 20-1605. Nonconforming Signs. 55
Sec. 20-1606. Replacement of Manufactured Homes. 55
PART II – SUBDIVISION REGULATIONS 56
ARTICLE I. GENERAL PROVISIONS 56
Sec. 20-2101. Title. 56
Sec. 20-2102. Authority. 56
Sec. 20-2103. Applicability. 56
Sec. 20-2104. Purpose. 56
Sec. 20-2105. Definitions. 56
Sec. 20-2106. Development Approvals Run with the Land. 57
Sec. 20-2107. Plat Approval and Recordation Required. 57
Sec. 20-2108. Effect of Plat Approval on Dedication. 57
Sec. 20-2109. Incorporation of Federal, State and Local Laws, Rules, Regulations, Policies, and Plans. 57
Sec. 20-2110. Limitations on Minor Subdivisions. 57
Sec. 20-2111. Appeals of Decisions on Subdivision Plats 57
Sec. 20-2112. Performance Guarantees Not Allowed. 58
Sec. 20-2113. School Sites 58
Sec. 20-2114. Underground Utilities and Exception. 58
Sec. 20-2115. Modifications 58

ATTACHMENT B

ARTICLE II. SUBDIVISION REVIEW PROCEDURE 59
Sec. 20-2201. Generally. 59
Sec. 20-2202. Process of Review of Minor Subdivisions. 60
Sec. 20-2203. Process of Review of Major Subdivisions. 60
ARTICLE III. DESIGN STANDARDS 62
Sec. 20-2301. General. 62
Sec. 20-2302. Suitability of Land. 62
Sec. 20-2303. Historic Properties and Natural Areas. 62
Sec. 20-2304. Lots and Building Sites. 63
Sec. 20-2305. Utility Easements. 63
Sec. 20-2306. Existing Trees and Vegetation. 63
Sec. 20-2307. Sight Distance. 63
ARTICLE IV. REQUIRED IMPROVEMENTS 63
Sec. 20-2401. Generally. 63
Sec. 20-2402. Sedimentation and Erosion Control. 63
Sec. 20-2403. Streets. 64
Sec. 20-2404. Sidewalks. 64
Sec. 20-2405. Water. 64
Sec. 20-2406. Fire Hydrants. 64
Sec. 20-2407. Sewer or Septic System. 65
Sec. 20-2408. Stormwater Drainage System. 65
ARTICLE V. MAPPING STANDARDS 65
Sec. 20-2501. General Requirement for Plats. 65
Sec. 20-2502. Number and Type of Plans and Plats to be Submitted. 65
Sec. 20-2503. Construction Plans. 66
Sec. 20-2504. Required Plan and Plat Information. 66
Sec. 20-2505. Certifications, Notes and Approval Blocks. 69
PART III – ZONING REGULATIONS 73
ARTICLE I. GENERAL PROVISIONS 73
Sec. 20-3101. Title. 73
Sec. 20-3102. Authority. 73
Sec. 20-3103. Applicability. 73
Sec. 20-3104. Purpose. 73
Sec. 20-3105. Definitions. 73
Sec. 20-3106. Zoning Districts. 73
Sec. 20-3107. Incentives. 74
Sec. 20-3108. Quasi-Judicial Zoning Decisions. 74
Sec. 20-3109. Zoning Conflicts with Other Development Standards. 75
Sec. 20-3110. Zoning Permit Required. 76

ATTACHMENT B

ARTICLE II. CONVENTIONAL DISTRICTS, OVERLAY DISTRICTS, CONDITIONAL DISTRICTS, TABLE OF USES, TABLE OF DIMENSIONAL REQUIREMENTS, ZONING MAP AND DISTRICT BOUNDARIES, AND MISCELLANEOUS 77
Sec. 20-3201. Conventional Districts. 77
Sec. 20-3202. Overlay Districts. 77
Sec. 20-3203. Conditional Districts. 78
Sec. 20-3204. Special Use Permits. 80
Sec. 20-3205. Table of Uses. 82
Sec. 20-3206. Table of Dimensional Requirements. 87
Sec. 20-3207. Zoning Map and District boundaries. 88
Sec. 20-3208. Miscellaneous Provisions. 89
(a) Height, Buffering, and Density 89
(b) Effect of Street and Highway Rights-of-Way on Calculations 89
(c) Setback Calculations 89
(d) Lot Reduction Prohibited 89
(e) Yard Use Limitations 89
(f) Limit of One Principal Building 89
(g) Street Access 89
(h) Alternate Setbacks for Some Dwellings 89
(i) Front Yard Setbacks for Corner Lots and Double Fronted Lots 90
(j) Projections into Open Space and Required Yards 90
(k) Visibility at Intersections 90
(l) Fences 90
(m) Conflict with other laws 90
(n) Traffic Impact Study 90
ARTICLE III. ADDITIONAL STANDARDS FOR CERTAIN USES 91
Sec. 20-3301. Intent. 91
Sec. 20-3302. Child Care Center 91
Sec. 20-3303. Automobile Services, Repair. 91
Sec. 20-3304. Gaming Terminals. 91
Sec. 20-3305. Agriculture – Commercial. 92
Sec. 20-3306. Agriculture – Neighborhood. 92
Sec. 20-3307. Banks, Credit Unions, Financial Services. 93
Sec. 20-3308. Cultural or Community Facility. 93
Sec. 20-3309. Dwelling – Secondary. 93
Sec. 20-3310. Farmers Market. 94
Sec. 20-3311. General Retail (10,000 – 24,999 sq. ft.). 94
Sec. 20-3312. Home Occupation 94
Sec. 20-3313. Kennels. 94
Sec. 20-3314. Manufactured Homes. 95

Sec. 20-3315. Mobile Food Vendors. 95
Sec. 20-3316. Multi-Tenant Development (under 25,000 sq. ft.). 96
Sec. 20-3317. Recreational Facilities – Indoor. 96
Sec. 20-3318. Recreational Facilities – Outdoor. 96
Sec. 20-3319. Temporary Use. 96
Sec. 20-3320. Wireless Communication Facility – Stealth 97
Sec. 20-3321. Wireless Communication Facility – Tower 97
Sec. 20-3322. Child Care Homes. 97
Sec. 20-3323. Accessory Structures. 97
Sec. 20-3324. Dwelling – Multifamily (more than 4 units/building). 98
Sec. 20-3325. Mixed-Use Building or Structure. 98
Sec. 20-3326. Family Care Homes. 101
ARTICLE IV. LANDSCAPE REGULATIONS 101
Sec. 20-3401. Intent. 101
Sec. 20-3402. Applicability. 102
Sec. 20-3403. Landscape Plan. 102
Sec. 20-3404. General Provisions. 102
Sec. 20-3405. Landscaping Requirements. 102
Sec. 20-3406. Street Tree Requirements. 103
Sec. 20-3407. Landscaping Requirements in Off-Street Parking and Loading Areas. 103
Sec. 20-3408. Credit for Existing Trees. 103
Sec. 20-3409. Effect of Project Phasing. 104
Sec. 20-3410. Performance Guarantees for Landscaping Requirements. 104
Sec. 20-3411. List of Recommended Species. 104
ARTICLE V. OFF-STREET PARKING, LOADING AND UNLOADING AREAS, AND SIDEWALK REGULATIONS 104
Sec. 20-3501. Off-street parking. 104
Sec. 20-3502. Loading and unloading areas. 108
Sec. 20-3503. Sidewalks. 108
ARTICLE VI. OUTDOOR LIGHTING 109
Sec. 20-3601. Intent and Purpose. 109
Sec. 20-3602. IESNA Cutoff Classifications. 109
Sec. 20-3603. Definitions. 109
Sec. 20-3604. Light Measurement Technique. 110
Sec. 20-3605. General Standards for Outdoor Lighting. 110
Sec. 20-3606. Lighting in Parking Lots and Outdoor Areas. 111
Sec. 20-3607. Lighting in Vehicular Canopies. 112
Sec. 20-3608. Lighting of Outdoor Display Areas. 112
Sec. 20-3609. Lighting of Buildings and Landscaping. 112

Sec. 20-3610. Permits. 113
Sec. 20-3611. Nonconformities. 113
ARTICLE VII. HILLSIDE DEVELOPMENT REGULATIONS 113
Sec. 20-3701. Authority. 113
Sec. 20-3702. Definitions. 113
Sec. 20-3703. Exemptions. 113
Sec. 20-3704. Average slope determination. 114
Sec. 20-3705. Consultation required. 114
Sec. 20-3706. Grade of slope. 114
Sec. 20-3707. Guardrails and shoulders. 114
Sec. 20-3708. Soil maps. 115
Sec. 20-3709. Global stability analysis. 115
Sec. 20-3710. Density chart. 115
Sec. 20-3711. Development review process. 115
PART IV – REGULATIONS REQUIRING SEPARATE PERMITS 117
ARTICLE I. SIGN REGULATIONS 117
Sec. 20-4101. Purpose. 117
Sec. 20-4102. Signs Exempt from Regulation. 117
Sec. 20-4103. Prohibited Signs. 118
Sec. 20-4104. Signs – Generally. 118
Sec. 20-4105. Temporary Signs. 118
Sec. 20-4106. Sign Restrictions for R-1, R-2, and R-3 Districts. 119
Sec. 20-4107. Sign Restrictions for C-1, C-2, I-1, and R-12 Districts. 119
Sec. 20-4108. Sign Construction, Design, and Illumination. 120
Sec. 20-4109. Sign Maintenance. 120
Sec. 20-4110. Sign Permit Required. 121
Sec. 20-4111. Obsolete or Abandoned Signs. 121
Sec. 20-4112. Miscellaneous Provisions. 122
Sec. 20-4113. Violation of Article. 122
Sec. 20-4114. Fence Wraps. 123
Sec. 20-4115. Outdoor Advertising 123
Article II. WIRELESS TELECOMMUNICATION FACILITY REGULATIONS 123
Sec. 20-4201. Title. 123
Sec. 20-4202. Authority. 123
Sec. 20-4203. Applicability. 124
Sec. 20-4204. Purpose and Compliance with Federal Law. 124
Sec. 20-4205. Definitions. 124
Sec. 20-4206. Conflict 128
Sec. 20-4207. General Application Requirements. 128

ATTACHMENT B

Sec. 20-4208. Public Emergencies. 130
Sec. 20-4209. Wireless Telecommunication Facilities - Microcell. 130
Sec. 20-4210. Wireless Telecommunication Facilities - Concealed. 132
Sec. 20-4211. Wireless Telecommunication Facilities - Collocated 134
Sec. 20-4212. Wireless Telecommunication Facilities – Monopole 136
Sec. 20-4213. Construction of New Wireless Support Structures or Substantial Modifications of Wireless Support Structures. 139
Sec. 20-4214. Collocation and Eligible Facilities Requests for Wireless Support Structures. 140
Sec. 20-4215. Collocation of Small Wireless Facilities. 140
Sec. 20-4216. Use of Public Right-of-Way. 142
Sec. 20-4217. Access to Town Utility Poles to Install Small Wireless Facilities. 144
Sec. 20-4218. Limits on Applicability. 144

ATTACHMENT B

Chapter 20 – Planning and Development

PART I – GENERAL PROVISIONS, DEFINITIONS, ADMINISTRATION, ENFORCEMENT, APPEALS, PLANNING, ADOPTION AND AMENDMENTS, NONCONFORMITIES

ARTICLE I. GENERAL PROVISIONS

Sec. 20-1101. Title.

This chapter contains the development regulations of the Town of Weaverville, North Carolina, and shall be referred to as the "Land Development Ordinance."

Sec. 20-1102. Authority.

The development regulations contained in this chapter are adopted under the authority and provisions of Chapter 160D of the North Carolina General Statutes.

Sec. 20-1103. Jurisdiction.

The development regulations contained in this chapter shall apply to all development within the town's municipal jurisdiction.

Sec. 20-1104. Split Jurisdiction.

If a parcel of land lies within the planning and development regulation jurisdiction of more than one local jurisdiction, for the purposes of this chapter and G.S. Chapter 160D, the local governments may, by mutual agreement pursuant to Article 20 of G.S. Chapter 160A and with the written consent of the landowner, assign exclusive planning and development regulation jurisdiction under this chapter and G.S. Chapter 160D for the entire parcel to any one of those local governments. Such a mutual agreement shall only be applicable to development regulations and shall not affect taxation or other nonregulatory matters. The mutual agreement shall be evidenced by a resolution formally adopted by each governing board and recorded in the Buncombe County register of deeds within 14 days of the adoption of the last required resolution.

Sec. 20-1105. Pending Jurisdiction.

When changes to the town's jurisdiction are formally proposed, the town may receive and process proposals to adopt development regulations and any application for development approvals that would be required in the town if the jurisdiction is changed. No final decisions shall be made on any development approval prior to the actual transfer of jurisdiction. Acceptance of jurisdiction, adoption of development regulations, and decisions on development approvals may be made concurrently and may have a common effective date.

Sec. 20-1106. Abrogation

Nothing in this chapter shall be deemed to repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, conditional zoning districts, special use permits, or zoning permits previously established, issued, or adopted pursuant to law.

Sec. 20-1107. Severability.

Should any section or provision of this chapter be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole or any part, article, or section thereof, other than the section so declared to by unconstitutional or invalid.

Sec. 20-1108. Development Approvals Run with the Land.

Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by these regulations and development approvals made pursuant to this chapter attach to an run with the land.

Sec. 20-1109. Effect of Plat Approval on Dedication.

In accordance with G.S. 160D-806, the approval of a plat shall not be deemed to constitute or effect the acceptance by the town or public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat. However, the town may be resolution accept any dedication made to the public lands or facilities for streets, parks, public utility lines, or other public purposes, when the lands or facilities are located within its planning and development regulation jurisdiction.

Sec. 20-1110. Erosion and Sedimentation Control

The town has consented to the application of the Buncombe County erosion and sedimentation control regulations, adopted as allowed by Article 4 of G.S. Chapter 113, within the town's jurisdiction and all permitting, inspections and enforcement of those regulations shall be conducted by Buncombe County.

Sec. 20-1111. Floodplain Regulations

The town has adopted floodplain regulations consistent with the Buncombe County floodplain regulations that were authorized by Part 6 of Article 21 of G.S. Chapter 143, and all permitting, inspections and enforcement of those regulations within the town's jurisdiction shall be conducted by Buncombe County.

Sec. 20-1112. Stormwater Control

The town has consented to the application of the Buncombe County construction and post-construction stormwater control regulations within the town's jurisdiction and all permitting, inspections and enforcement of those regulations shall be conducted by Buncombe County.

Sec. 20-1113. Development Agreements

The Town may enter into development agreements as allowed by and subject to the limitations and requirements of Article 10 of G.S. Chapter 160D.

Sec. 20-1114. North Carolina State Building Code Enforcement

Pursuant to the authority contained in G.S. 160D-202(f), 160D-1102, and 160D-1105, Buncombe County shall perform all building inspection services and building code enforcement, as is set out in Article 11 of G.S. 160D, within the town's jurisdiction.

Sec. 20-1115. Oversized Improvements.

The town council may require the installation of certain oversized utilities (water or sewer) or the extension of such utilities to the boundary of adjacent property when it is in the interest of future development. If the town council requires the installation of improvements in excess of the ordinary standards required by this chapter, including all standards adopted by reference, the town shall pay the cost differential between the improvements to be required and the ordinary standards of this chapter.

Sec. 20-1116. Vested Rights and Permit Choice.

(a) **Findings** – The North Carolina General Assembly has recognized that local government approval of development typically follows significant investment in site evaluation, planning, development costs, consultant fees, and related expenses. The General Assembly also finds that it is necessary and desirable to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the development regulation process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in land-use planning and development regulation. The provisions of this section and G.S. 160D-108 and 160D-108.1 strike an appropriate balance between private expectations and the public interest.

(b) **Permit choice** – If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, G.S. 143-755 applies.

(c) **Vested rights** – Amendments in land development regulations are not applicable or enforceable without the written consent of the owner with regard to any of the following:

i. Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.

ii. Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.

iii. A site-specific vesting plan pursuant to G.S. 160D-108.1.

iv. A multi-phased development pursuant to subsection (f) of G.S. 160D-108 and this Code section.

v. A vested right established by the terms of a development agreement authorized by Article 10 of G.S. Chapter 160D.

The establishment of a vested right under any subdivision of subsection does not preclude vesting under one or more other subdivisions of this subsection or vesting by application of common law principles. A vested right, once established as provided in this section, G.S. 160D-108, or common law, precludes any action by a local government that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations, except where a change in State or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use.

(d) **Duration of vesting** – Upon issuance of a developmental permit, the statutory vesting granted by subsection (c) of this section or subsection (c) of G.S. 160D-108 for a development project is effective upon filing of the application in accordance with G.S. 143-755, for so long as the permit remains valid pursuant to law. Unless otherwise specified by this section, G.S. 160D-108, or other statute, local development permits expire one year after issuance unless work authorized by the permit has substantially commenced. For the purposes of this section, a permit is issued either in the ordinary course of business of the applicable governmental agency or by the applicable governmental agency as a court directive. Except where a longer vesting period is provided by statute or land development regulation, the statutory vesting granted by this section, once established, expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory vesting period granted by this section for a nonconforming use of property expires if the use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month discontinuance period is automatically tolled during the pendency of any board of adjustment proceeding or civil action in a State or federal trial or appellate court regarding the validity of a development permit, the use of the property, or the existence of the statutory vesting period granted by this section. The 24-month discontinuance period is also tolled during the pendency of any litigation involving the development project or property that is the subject of the vesting.

(e) **Multiple Permits for Development Project** – Subject to subsection (d) above, and subsection (d) of G.S. 160D-108, where multiple local development permits are required to complete a development project, the development permit applicant may choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

(f) **Multi-Phased Development** – A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection or subsection (f) of G.S. 160D-108 remains vested for a period of 7 years from the time a site plan approval is granted for the initial phase of the multi-phased development.

(g) **Continuing review** – Following issuance of a development permit, a local government may make subsequent inspections and reviews to ensure applicable compliance with the land development regulations in effect at the time of the original application.

(h) **Process to Claim Vested Rights** – A person claiming a statutory or common law vested rights may submit information to substantiate that claim to the subdivision administrator or zoning administrator who shall make an initial determination as to the existence of the vested right. The decision of the administrator may be appealed under G.S. 160D-405 or Code Sec. 20-1308. On appeal, the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination or pursuing an appeal to the board of adjustment in accordance with G.S. 160D-405, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.

(i) **Miscellaneous provisions** – The vested rights granted by this section run with the land except for the use of land for outdoor advertising governed by G.S. 136-131.1 and 136-131.2 in which case the rights granted by this section and section (i) of G.S. 160D-108 run with the owner of a permit issued by the North Carolina Department of Transportation. Nothing in this section precludes 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.

(j) **Definitions** – Notwithstanding any other provisions of this chapter, as used in this section, the following definitions apply:

i. *Development* – As defined by G.S. 143-755(e)(1).

ii. *Development permit* – As defined in G.S. 143-755(e)(2).

iii. *Land development regulation* – As defined in G.S. 143-755(e)(3).

iv. *Multi-phased development* – A development containing 25 acres or more that is both of the following:

a. Submitted for development permit approval to occur in more than one phase.

b. Subject to a master development plan with continued elements showing the type and intensity of use of each phase.

Sec. 20-1117. Vested Rights - Site-Specific Vesting Plans.

(a) **Site-Specific Vesting Plan** – A site-specific vesting plan consists of a plan submitted to a local government in which the applicant requests vesting pursuant to this section or G.S. 160D-108.1, describing with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property. The 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 zoning district plan, or any other land use approval designation as may be utilized by the town. The plan shall include the approximate boundaries of the site; significant topographical and other natural features 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 the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site-specific vesting plan under this section that would trigger a vested right shall be finally determined by the town pursuant to a development regulation, and the document that triggers the vesting shall be so identified at the time of its approval. A variance does not constitute a site-specific vesting plan, and approval of a site-specific vesting plan with the condition that a variance be obtained does not confer a vested right unless and until the necessary variance is obtained. If a sketch or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site-specific vesting plan.

(b) **Establishment of Vested Right** – A vested right is established with respect to any property upon the valid approval, or conditional approval, of a site-specific vesting plan as provided in this section or G.S. 160D-108.1. Such a vested right confers upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the site-specific vesting plan, including any amendments thereto.

(c) **Approval and Amendment of Plans** – If a site-specific vesting plan is based on an approval required by a local development regulation, the town shall provide whatever notice and hearing is required for that underlying approval. A duration of the underlying approval that is less than 2 years does not affect the duration of the site-specific vesting plan established under this section or G.S. 160D-108.1. If the site-specific vesting plan is not based on such an approval, a legislative hearing with notice as required by G.S. 160D-602 shall be held. The town may approve a site-specific vesting plan upon any terms and conditions that may reasonably be necessary to protect the public health, safety, and welfare. Conditional approval results in a vested right, although failure to abide by the terms and conditions of the approval will result in a forfeiture of vested rights. The town shall not require a landowner to waive the landowner's vested rights as a condition of development approval. A site-specific vesting plan is deemed approval upon the effective date of the town's decision approving the plan or another date determined by the governing board upon approval. An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the town as follows: any substantial modification must be reviewed and approved in the same manner as the original approval; splits may be approved by staff.

(d) **Continuing Review** – Following approval or conditional approval of a site-specific vesting plan, the town may make subsequent reviews and require subsequent approvals by the town to ensure compliance with the terms and conditions of the original approval, provided that these reviews and approvals are not inconsistent with the original approval. The town may, pursuant to G.S. 160D-403(f), revoke the original approval for failure to comply with applicable terms and conditions of the original approval or the applicable local development regulations.

(e) **Duration and Termination of Vested Rights** –

i. A vested right for a site-specific vesting plan remains vested for a period of 2 years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the town.

ii. Notwithstanding the provisions of subdivision (i) of this subsection above, the town may provide for rights to be vested for a period exceeding 2 year but not exceeding 5 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 or other considerations. These determinations are in the sound discretion of the town and shall be made following the process specified for the particular form of a site-specific vesting plan involved in accordance with subsection (a) of this section.

iii. Upon issuance of a building permit, the provisions of G.S. 160D-1111 and 160D-1115 apply, except that a permit does not expire and shall not be revoked because of the running of time while a vested right under this section or G.S. 160D-108.1 is outstanding.

iv. A right vested as provided in this section terminates at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

(f) **Subsequent Changes Prohibited; Exceptions** –

i. A vested right, once established as provided in this section or G.S. 160D-108.1, precludes any zoning action by the town 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 vesting plan, except under one or more of the following conditions:

a. With the written consent of the affected landowner.

b. Upon findings, by ordinance after notice and an evidentiary 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 vesting plan.

c. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consulting fees incurred after approval by the town, together with interest as provided under G.S. 160D-106. Compensation shall not including any diminution in the value of the property which is caused by the action.

d. Upon findings, by ordinance after notice and an evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the approval by the town of the site-specific vesting plan or the phase development plan.

e. Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan or the phased development plan, in which case the town 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 an evidentiary hearing.

ii. The establishment of a vested right under this section or G.S. 160D-108.1 does not preclude the application of overlay zoning or other development regulations which impose additional requirements but do 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 development regulation by a local government, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations become effective with respect to property which is subject to a site-specific vesting plan upon the expiration or termination of the vesting rights period provided for in this section or G.S. 160D-108.1.

iii. Notwithstanding any provision of this section, the establishment of a vested right does not preclude, change, or impair the authority of the town to adopt and enforce development regulations governing nonconforming situations or uses.

(g) **Miscellaneous Provisions** –

i. A vested right obtained under this section or G.S. 160D-108.1 is not a personal right, but attaches to and runs with the applicable property. After approval of a site-specific vesting plan, all successors to the original landowner are entitled to exercise these rights.

ii. Nothing in this section or G.S. 160D-108.1 precludes judicial determinations, 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. Nothing in this section shall be construed to alter the existing common law.

Sec. 20-1118. Moratoria.

The town may adopt a moratorium on development approval only as authorized by and in accordance with G.S. 160D-107.

Sec. 20-1119. Fees.

All development reviews and approvals, appeals, variances, and text or map amendments shall be subject to the applicable fees as set out on the fee schedule as adopted by town council. New fees or fee increases applicable solely to subdivisions are subject to the notice and public comment requirements as set out in 160D-805.

ARTICLE II - DEFINITIONS

Sec. 20-1201. Generally.

For the purposes of this chapter, certain words or terms used herein shall be defined as provided in Code Sec. 20-1202 below. Words not defined herein shall have the meaning as set forth in the latest edition of the Merriam-Webster Dictionary. 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. The word “shall” is always mandatory and the word “may” is discretionary. To the extent that the definitions in subsection (b) below are consistent with the definitions contained in G.S. Chapter 160D, in the event that the statutory definition is amended, the definitions shall be interpreted as to be consistent with the statutory definition until appropriate text amendments can be considered.

In accordance with G.S. 160D-706(b), nothing contained herein shall be construed to define building, dwelling, dwelling unit, bedroom, or sleeping unit, inconsistently with any definition of those terms in another statute or in a rule adopted by a State agency, including the State Building Code Council.

Sec. 20-1202. Specific definitions.

Unless otherwise provided in this Chapter or any other development regulations adopted by the town, the following definitions shall apply in the administration of all development regulations adopted by the town:

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 - Retail. The on-premises, retail sale of products directly to customers, where the retail use is incidental to a primary use conducted upon the same premises. Examples include but are not limited to the following: a furniture manufacturer who operates a show floor for the display and sales of furniture produced by the manufacturer; a bicycle manufacturer who operates a floor for the display and sales of bicycles produced by the manufacturer; a brewery or distillery who operates a tasting room for the sampling and sales of beer or spirituous liquors produced within the brewery or distillery.

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.

Administrative decision. A decision made in the implementation, administrative, or enforcement of development regulations that involves the determination of facts and the application of objective standards set forth in this chapter or other local government development regulations. These are sometimes referred to as “ministerial decisions” or “administrative determinations.”

Administrative hearing. A proceeding to gather facts needed to make an administrative decision.

Adult establishment. Any business or enterprise that has as one of its principal business purposes or a significant portion of its business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10, or any successor thereto. Also known as a sexually oriented business.

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. For purposes of this chapter, the terms "agriculture", "agricultural", and "farming" are as defined by G.S. 106-581.1, which includes all of the following:

(1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.

(2) The planting and production of trees and timber.

(3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.

(4) Aquaculture as defined in G.S. 106-758.

(5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.

(6) When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm.

(7) A public or private grain warehouse or warehouse operation where grain is held ten days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry, and store grain.

Agriculture - Commercial. Any establishment used for commercial agricultural purposes.

Agriculture - Neighborhood. A parcel of land which is used for the cultivation of the soil for production of crops, including but not limited to fruits, vegetables, flowers and ornamental plants for noncommercial purposes. Livestock may also be permitted under this use provided that the additional standards established herein are also met.

Alcoholic beverage sales store. The retail sales of beer, wine, and/or other alcoholic beverages for off-premise consumption as a primary use.

Amusements, indoor. Establishments providing commercial recreation activities completely within an enclosed structure. Such uses include but are not limited to pool halls, arcades, skating rinks, roller rinks, bowling alleys and facilities designed to accommodate live performances of the arts. Gaming terminals, as defined herein are expressly prohibited from consideration under the definition of amusements, indoor.

Amusements, outdoor. Establishments that provide commercial recreation activities primarily outdoors. Such uses include but are not limited to miniature golf establishments, go-cart facilities, theme parks, carnivals, fairgrounds, midways, paintball parks, water rides and facilities designed to accommodate live performances of the arts.

Animal services, veterinary clinic. Establishments that include services by licensed practitioners of veterinary medicine, dentistry, or surgery for animals. These services may include but are not limited to the testing and medical treatment of animals and the overnight interior boarding of animals that is

necessary for, or accessory to, such testing and treatment; grooming. This term does not include "kennels."

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 or dwelling" 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.

Automated teller machines. Computerized, self-service machines used by banking customers for financial institutions without face-to-face contact with financial institution personnel. These machines may be located at or within banks, or in other locations.

Auto/mechanical parts sales. Establishments selling new, used, or rebuilt automotive or mechanical parts and accessories. Examples include but are not limited to parts and supply stores, automotive stereo stores, speed shops, truck cap stores, tires and tube shops, and similar shops for other types of motorized or mechanical equipment.

Automobile services - Gas station. An establishment that primarily retails automotive fuels. Gas stations include structures that are specialized for selling gasoline with storage tanks, often underground or hidden. Bays for car washes may also be included but any establishment offering repair services as defined by automobile services - repair are not allowed under this category of use.

Automobile services - Repair. An establishment that provides repair and maintenance of automobiles. These may or may not include facilities for lubricating, washing, or otherwise servicing automobiles, but may not include the painting thereof by any means. This classification shall not include convenience stores which do not dispense motor fuels. Gas stations as defined by automobile services - gas station may be permitted in conjunction with this use. This use does not include automobile body shop as such use shall be classified as metal product fabrication, machine or welding shop, automobile body shop as defined herein.

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.

Banks, credit unions, financial services institutions. Establishments that engage in financial transactions that create, liquidate, or change ownership of financial services. Banks, credit unions, and savings institutions may perform central banking functions, accept deposits, and lend funds from these deposits. In addition to banks and credit unions, financial services institutions include, but are not limited to, credit agencies, trust companies, holding companies, lending and thrift institutions, securities/commodity contract brokers and dealers, security and commodity exchanges, vehicle finance (equity) leasing agencies, and investment banking, securities, brokerages and insurance-related services. Pawnshops shall not be considered under this definition.

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

Bar/tavern/nightclub. A business where alcoholic beverages are sold for on-site consumption, which are not part of a larger restaurant. This term includes but is not limited to bars, taverns, pubs, and similar establishments where any food service is subordinate to the sale of alcoholic beverages. It may also include beer brewing as part of a microbrewery and other beverage tasting facilities. Entertainment including live music, and/or dancing, comedy, etc. may also be included.

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

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.

Bona fide farm purposes. Agricultural activities as set forth in G.S. 160D-903.

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 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.

Building, height of. The vertical distance measured from the center of the front ground floor level of the structure at finished grade to the highest point of the coping of a flat roof, to the deck line of a mansard roof, or to the highest 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.

Building site means each area on which a single building is to be erected. This shall apply only to a principal use building and shall not include any accessory building.

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.

Cemetery. A parcel of land used for interment of the dead in the ground or in mausoleums.

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.

Child care center. An individual, agency, or organization providing supervision or care on a regular basis for children who are not legal wards or foster children of the supervising adults. Child day care centers are designed to accommodate six or more children at a time and are not an accessory to residential use. A child care center operating in conjunction with a religious institution or school shall be considered an accessory use of such a religious institution.

Child care home. Care or supervision provided on a regular basis, as an accessory use within a primary dwelling, by a resident of the dwelling for not more than six children who are not legal wards or foster children of the supervising adult.

Church. See religious institution as defined herein.

City. See definition of *Town*.

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.

Community service organization. A public or quasi-public establishment providing social and/or rehabilitation services, serving persons with social or personal problems requiring special assistance. This term includes but is not limited to counseling centers, welfare offices, job counseling and training centers, vocational rehabilitation agencies, and community improvement and neighborhood redevelopment but does not include any services providing on-site residential or accommodation services.

Comprehensive plan. A comprehensive plan that has been officially adopted by the governing board pursuant to 160D-501.

Conditional zoning. A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.

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.

County. For the purposes of this chapter, county means Buncombe County, North Carolina.

Crematory. A structure where the technical process of using intense heat and flame to reduce human or animal remains and bone fragments to ashes.

Cultural or *community facility.* Facility designed to promote cultural advancement and serve the community. Examples include but are not limited to non-profit civic or fraternal organizations, museums, libraries, and community centers.

Decision-making board. A governing board, planning board, board of adjustment, or other board assigned to make quasi-judicial decisions under this chapter

Dedication. A gift or transfer, by the owner of property to the town or to the public of such property or of the right to use such property for a specified purpose or purposes. Since real property rights are

involved, dedication shall be made by written instrument, and shall be deemed completed only upon acceptance by the town council, and the recording of the instrument of dedication and the written acceptance by the town council in the Buncombe County Registry of Deeds office.

Determination. A written, final and binding order, requirement, or determination regarding an administrative decision.

Developer. A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

Development. Any of the following, but in no way alters the scope of regulatory authority granted by G.S. Chapter 160D:

(a) The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of a structure.

(b) The excavation, grading, filing, clearing, or alteration of land.

(c) The subdivision of land as defined in G.S. 160D-802 or this chapter.

(d) The initiation or substantial change in the use of land or the intensity of use of land.

Development approval. An administrative or quasi-judicial approval made pursuant G.S. Chapter 160D that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to G.S. Chapter 160D, including plat approvals, permits issued, development agreements entered into, and buildings permits issued.

Development identification sign. A sign bearing the name of a residential or commercial development or subdivision, including an apartment house, or manufactured home park.

Development regulation. A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to state law, or a local act or charter that regulates land use or development.

Dimensional and/or *numerical development requirements* or *standards* include, but are not limited to, those requirements or standards associated with density, lot size, lot width, lot depth, setbacks, height, structure size standards, open space, number of parking spaces, or separation requirements between particular uses or zoning districts.

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.

Drive-thru retail/restaurants. A facility where food and other products may be purchased by motorists without leaving their vehicles. Examples include but are not limited to fast-food restaurants, drive-through coffee, dairy products, photo stores, and pharmacies.

Duplex. See Dwelling-Duplex.

Dwelling or *dwelling unit* means any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, except that for purposes of minimum housing code regulations adopted pursuant to Article 12 of G.S. Chapter 160D, it does not include any manufactured homes, mobile homes, or recreational vehicle if used solely for seasonal vacation purpose.

Dwelling - Duplex. A building containing two residential dwelling units designed to have two families living independently of each other, each unit having a separate entrance from the outside or through a common vestibule.

Dwelling - Multifamily (four or *less units/building).* A building containing more than one but less than five residential dwelling units. Each unit has a separate entrance from the outside or through a common vestibule. Multi-family dwellings include but are not limited to duplexes, triplexes, fourplexes, townhouses and condos.

Dwelling - Multifamily (more than four units/building). A building containing more than four residential dwelling units. Each unit has a separate entrance from the outside or through a common vestibule. These structures may include apartments, townhouses and condos.

Dwelling - Secondary. A dwelling unit not exceeding 800 square feet of gross floor space and located on a lot with an existing single-family dwelling. No more than one such dwelling shall be situated on any lot and shall not be considered as an accessory use herein defined.

Dwelling - Single-family. A free-standing building designed to accommodate one dwelling unit.

Easement means a grant by a property owner of an interest in a parcel or strip of land for a specified purpose and use by the public, a public utility, a corporation, or persons, the grant of which shall be by appropriate instrument recorded in the Buncombe County Register of Deeds office.

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.

Equipment rental. Establishments renting or leasing equipment including but not limited to (a) office machinery and equipment, such as computers, office furniture, copiers, or fax machines; (b) heavy equipment (without operators) used for construction, mining, or forestry, such as bulldozers, earthmoving equipment, etc.; (c) other non-consumer machinery and equipment, such as manufacturing equipment and metalworking; (d) telecommunications, motion picture, or theatrical equipment; (e) institutional [i.e. public building] furniture; and (f) agricultural equipment without operators. Such establishments displaying equipment to be rented entirely within a structure at all times, shall be considered equipment rental, interior storage. Such establishments displaying equipment to be rented on the exterior of the structure shall be considered equipment rental, exterior storage.

Event center. Any assembly, conference, or convention center used for the purpose of accommodating a number of individuals for a special event or purpose. Such a facility used for this purpose may have, including but not limited to, accommodations for sleeping, food preparation and eating, recreation, entertainment, resource facilities and meeting rooms.

Evidentiary hearing means a hearing to gather competent, materials, and substantial evidence in order to make findings for a quasi-judicial decisions required by a development regulation adopted under G.S. Chapter 160D.

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. 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.

Familial relationship – For the purposes of this chapter, a close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild, and those step, half, and in-law relationships.

Family care home. A home with support and supervisory personnel that provides room and board, personal care, and habilitation services in a family environment for not more than six resident persons with disabilities, which for the purposes of this definition includes those with a temporary or permanent physical, emotional, or mental disability, including, but not limited to, mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances, and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in G.S. 122C-3(11)b.

Farmers market. A food market at which local farmers sell items including, but not limited to, fruit and vegetables, meat, cheese, and bakery products at a location other than where the products are produced.

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.

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.

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.

Fowl. Any domesticated bird or captive-raised bird kept for meat, eggs, or feathers, and includes, but is not limited to, chickens, ducks, emu, geese, guinea fowl, ostriches, pheasant, quail, turkeys.

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 home. 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. Funeral homes which also operate a crematory are subject to additional regulations as a crematory.

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.

General retail. A use category allowing premises to be available for the commercial sale of merchandise and prepared foods. Such use category does not include manufacturing.

Governing board. Any governing board without regard to the terminology employed in charters, local acts, other portions of the general statutes, or local customary usage. For purposes of this chapter, the governing board of the town is the mayor and town council of the Town of Weaverville.

Government services. This term includes federal, state, and local government agencies that administer, oversee, and manage public programs and have executive, legislative, and/or judicial authority. This term does not include public safety facilities as defined herein.

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.

Group care facilities. A facility that provides resident services to more than six individuals, at least one of whom is unrelated to the others. These individuals are handicapped, aged, or disabled, or are undergoing rehabilitation, and are being provided services in the group care facility to meet their needs. This category includes, but is not limited to, uses licensed or supervised by any federal, state, or county health/welfare agency, such as group dwellings (all ages), halfway houses, nursing homes, resident schools, resident facilities, and foster homes.

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.

Home occupation. 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, and which meets the following: (a) no more than one employee, other than family members residing on the premises, shall be employed in connection with the home occupation; (b) no mechanical or electrical equipment shall be installed or used except such equipment as is normally used for domestic purposes; and (c) not over 25 percent of the total floor space of any residential structure shall be used for such home occupation. Home occupations include, but are not limited to, child care homes as defined herein.

Hotel, motel, inn. Establishments providing lodging and short-term accommodations for travelers. These establishments may offer a wide range of services including, but not limited to, overnight sleeping space, food services, convention hosting services, laundry services, and/or entertainment and recreation activities.

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.

Impact means the effect of one land use upon another as measured by such factors which include, but are not limited to, the following: traffic, noise, site activity, hours of operation, lighting, vibration, dust, smoke, odor emissions.

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.

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. A structure intended to be used for the breeding, sale, training, accommodation or overnight boarding of small domestic animals owned by someone other than the owner of the property on which the structure is located. This term shall include animal shelters of any kind regardless of who owns the animals within the shelter. This term does not include veterinary clinics or other animal services in which the overnight interior boarding of animals is necessary for, or accessory to, the testing, treatment and general or specialized healthcare of animals.

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

Landowner or owner. The holder of the title in fee simple. Absent evidence to the contrary, a local government may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals. May also be referred to as property owner.

Lawful nonconformity means any nonconformity involving a dimensional or numerical requirement or use of property that affects a structure erected or a lot created in conformity with the then-applicable development requirements of the town (or for which a vested right has been established), but subsequently made nonconforming by action of the town through a zoning map or zoning ordinance text amendment.

Legislative decision. The adoption, amendment, or repeal of a regulation under G.S. Chapter 160D or an applicable local act. It also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 10 of G.S. Chapter 160D.

Legislative hearing. A hearing to solicit public comment on a proposed legislative decision.

Livestock. Any hoofed animal including, but not limited to, horses, mules, ponies, cows, sheep, and goats, but specifically excluding swine.

Local act. An act as is defined in G.S. 160A-1(5).

Local government. A city or county, and for purposes of this chapter means specifically the Town of Weaverville, North Carolina, unless the context requires otherwise.

Logo. A business symbol or trademark.

Lot means a portion of a subdivision, or any other parcel of land, intended as a unit of transfer of ownership or for development, or both.

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 means a lot which is part of a subdivision, a plat of which has been recorded in the office of the register of deeds of Buncombe County prior to the adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter. Lot types:

Lot on corner or corner lot means a lot located at the intersection of two or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot met at an interior angle of less than 135 degrees.

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

Lot with double frontage, double frontage lot, or through lot means a lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as a double frontage lots.

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.

Major thoroughfares consist of interstate, other freeway and expressway links, and major streets that provide for the expeditious movement of volumes of traffic within and through urban areas.

Manufactured home or mobile home. A structure as defined in G.S. 143-145(7).

Manufactured 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.

Manufacturing, heavy. A use that involves or requires the use or storage of any hazardous materials or substances as determined by the fire marshal, or that is used for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity. The operation of such a facility may be continuous (24 hours a day/seven days per week) and is not required to completely confine noise, odor, dust, glare, smoke and fumes of such operation within an enclosed building. An outdoor storage yard may be permitted in conjunction with a heavy manufacturing operation.

Manufacturing, light. A use that involves or requires the use or storage of any hazardous materials, as determined by the fire marshal, that is used for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity. Facilities are typically designed to look and generate impacts like a typical office building, but rely on special power, water, or waste disposal systems for operation. Noise, odor, dust, glare, smoke and fumes of each operation must be completely confined within an enclosed building.

Manufacturing, neighborhood. The assembly, fabrication, production or processing of goods and materials using processes that ordinarily do not create noise, odors, glare, smoke, fumes or health or safety hazards outside of a building which is visually undifferentiated from an office building. This term includes but is not limited to medical and testing laboratories but does not include more intensive uses that require frequent deliveries by trucks with more than two axles.

Map, official zoning. See "zoning map."

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

Medical services - clinic, urgent care center, hospital. Facilities that provide ambulatory or outpatient health care, including but not limited to, emergency medical clinics, outpatient family planning services, and blood and organ banks. 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 professionals, central service facilities operated in connection with hospitals, and all equipment necessary for its operation.

Medical services - professional office. An 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 chiropractors, doctors, dentists and psychologists or other counselors.

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.

Metal products fabrication, machine or *welding shop, automobile body shop.* An establishment engaged in the production and/or assembly of metal parts, including but not limited to, the production of metal cabinets and enclosures, cans and shipping containers, doors and gates, duct work forgings and stampings, hardware and tools, plumbing fixtures and products, tanks, towers, and similar products. Examples of these include, but are not limited to, blacksmith and welding shops; automobile body shops; plating, stripping, and coating shops; sheet metal shops; machine shops; boiler shops; metal casting. An outdoor storage yard may be permitted in conjunction with metal products manufacturing, machine and welding shop but not an automobile body shop.

Mini-warehouses A building or property containing separate enclosed storage spaces the sizes of which may vary, which are leased or rented on an individual basis.

Minor thoroughfares are important streets which perform the function of collecting traffic from local access streets and carrying it to the major thoroughfare system by facilitating a minor through traffic movement and which may also serve abutting property.

Mixed-use building or development. A multi-story building or structure which may accommodate both commercial and residential uses. A group of mixed-use buildings or structures can be combined to form a mixed-use development.

Mobile food vendor. Any mobile food unit, pushcart or motor vehicle, including all machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle, which is purposed for the sale for consumption of food and beverages. The sale of alcoholic beverages shall not be permitted by any mobile food vender absent the issuance of the requisite special event permit.

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

Modular home. A structure as defined in G.S. 105-164.3(143) and which complies with the design and construction standards set forth in G.S. 143-139.1.

Multiple tenant development. A development in which there exist a number of individual and/or separate establishments and in which there are appurtenant shared facilities such as parking areas or pedestrian ways, including but not limited to shopping and office centers. This definition does not include multi-family residential developments.

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 lot is a lot that was lawfully created prior to the effective date of the applicable sections of town code, or subsequent amendment thereto, but does not conform to the minimum lot size, lot depth or minimum lot width requirements established for the zoning district in which it is located.

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 town'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 town'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 means any building or structure with a nonconformity involving an applicable dimensional or numerical development requirement.

Nonconforming use means any lawful nonconformity involving the use of the property. This may include, but is not limited to, nonconformities associated with a use not permitted in the zoning district in which it is located, a use which cannot meet the newly enacted standards established in the zoning district for such use, or a use inconsistent with town zoning but existing upon annexation into the town.

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 town'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.

Noxious uses. Any use that could be harmful to health or the environment if not properly regulated. Noxious uses include, but are not limited to, the following: power plants, water and sewage plants, landfills or recycling facilities, outdoor firing ranges, junk yards or salvage yards, rendering plants and slaughterhouses, asphalt or concrete plants or any extractive industry.

Nursing home. See group care facility.

Official maps or *plans* means any maps or plans officially adopted by the town council as a guide to the development of the town.

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.

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. May also include undeveloped land upon which an obligation has been placed by deed, grant or other dedication to keep such land free from development for a stated period of time except for golf courses, parks, playgrounds, lakes and other similar recreational facilities.

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

Outdoor storage yard. An establishment which has as its principal use the open storage of various materials (including, but not limited to, motor vehicles).

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.

Pawnshop. A business in which a pawnbroker, or one who engages in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders, whether licensed pursuant to Article 45 of Chapter 66 of the NC General Statutes or not, regularly conducts business which includes, but is not limited to making loans on pledges of tangible personal property; dealing in bullion stocks; purchasing merchandise for resale from dealers, traders and wholesale suppliers; and/or any other pawn or pawn transactions.

Pedestrian oriented design. Development designed with an 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. A guarantee to ensure that improvements required as part of a development under this chapter will be successfully completed.

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 Buncombe County which allows grading and stormwater management operations to commence and to proceed in accordance with the requirements of this chapter.

Person. An individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.

Personal services. An establishment primarily engaged in providing services that are generally related to the care of a person. Such personal services include, but are not limited to hair salons and barbershops, massage and bodywork therapists, spas, and tanning salons. Personal services shall not include any use which may be defined as an adult establishment.

Planning and development regulation jurisdiction. The geographic area within which a local government may undertake planning and apply the development regulations authorized by G.S. Chapter 160D.

Planning board. Any board or commission established pursuant to G.S. 160D-301; may be referred to as a planning and zoning board.

Planning director. The head of the town department in which the town's planning and development regulations are administered and enforced.

Plat. A map or scaled drawing of a parcel of land which shows sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practices.

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

Political sign. Any sign that advocates for political action or for a particular political candidate.

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.

Post office. Establishments conducting operations of the U.S. Postal Service.

Preliminary plat. A preliminary plan and map of a tract to be developed by a subdivider/developer giving in sufficient detail the boundaries, streets and lot layout, plans for utilities, land uses, and all other information and data as to allow the subdivision administrator and/or the planning board to determine compliance with this chapter and the town zoning ordinance.

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.

Professional services. Services provided that make available the knowledge and skills of their employees to sell expertise and perform professional, scientific, and technical services to others. Such services include, but are not limited to, legal services; accounting, tax, bookkeeping, and payroll services; architectural, engineering, and related services; graphic, industrial, and interior design services; consulting services; research and development services; advertising, media, and photography services, real estate services; and offices operating in conjunction with a wholesale establishment without warehousing on the property. Investment banking, securities, brokerages and insurance-related services are defined under banking, credit unions and financial services institutions. Medical services such as physician's and dentist's offices are defined as medical services - professional office.

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

Property. All real property subject to land-use regulation by the town. The term includes any improvements or structures customarily regarded as part of real property.

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

Public safety facility. A facility operated for the purpose of providing public safety. This term includes, but is not limited to, fire stations and other fire prevention and firefighting facilities, police stations and sheriff substations and headquarters, emergency medical stations and substations. This term does not include government services as defined herein.

Public sewerage disposal system. A waste disposal system serving two or more dwellings or business units, or any combination thereof owned or operated by any municipal corporation of the state.

Public water supply means a system for the supply of potable water to two or more dwellings or business units, or to any combination thereof owned or operated by any municipal corporation of the state or any privately owned system.

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.

Quasi-judicial decision. A decision involving the finding of facts regarding a specific application of development regulation and that requires the exercise of discretion when applying the standards of the regulation. Quasi-judicial decisions include but are not limited to decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring discretionary decision on the findings to be made by the decision-making board.

Reader boards. See "changeable copy sign."

Real estate direction sign. A sign indicating the direction to a property being offered for sale. (See Code Sec. 20-4105(3)f.)

Real estate sign. A sign offering property for sale, lease or development. (See Code Sec. 20-4105(3))

Recreation area or park. An area of land or combination of land and water resources that is developed for active and/or passive recreational pursuits which may have various manmade features that accommodate such activities.

Recreation facilities, indoor. Uses or structures for active recreation including but not limited to gymnasiums, natatoriums, athletic equipment, indoor running tracks, climbing facilities, court facilities and their customary accessory uses. This definition is inclusive of both non-profit and for-profit operations.

Recreation facilities, outdoor. Parks and other open space used for active or passive recreation such as ball fields, playgrounds, greenway trails, tennis courts, pools and golf courses, and their customary accessory uses including, but not limited to, maintenance sheds, clubhouses, restrooms, and picnic shelters. This definition is inclusive of both non-profit and for-profit operations.

Recreational vehicle. A vehicular-type unit which is primarily designed not for use as a permanent dwelling but as temporary living quarters for recreational, camping, or travel use, including, but not limited to, trailers or travel trailers.

Recreational vehicle park, campground. Establishments accommodating campers and their equipment, including tents, tent trailers, travel trailers, and recreational vehicles. Facilities and services include cabins, washrooms, food services, recreational facilities and equipment, and organized recreational activities.

Religious institution. Any facility such as a church, monastery, mosque, synagogue or temple, used for worship and, if applicable, customary related uses include but are not limited to education (pre-schools, religious education, etc.), recreation (gymnasiums, activity rooms, ball fields, etc.), housing (rectory, parsonage, elderly or disabled housing, etc.) and accessory uses such as cemeteries, mausoleums, soup kitchens, and bookstores and child care centers. Accessory uses operating in conjunction with a religious institution may be permitted only on the same parcel as the religious institution or on a contiguous parcel to the primary use.

Renovation. The repairing or remodeling of a structure in which the exterior walls, foundation and roof are maintained structurally intact.

Reservation. A reservation of land does not involve any transfer of property rights. It simply constitutes an obligation to keep property free from development for a stated period of time.

Restaurant. A retail business selling ready-to-eat food and/or beverages for on or off-premise consumption. Customers may be served from an ordering counter (i.e. cafeteria or limited service restaurant), at their tables (full-service restaurant), and at exclusively pedestrian-oriented facilities that serve from a walk-up ordering counter (snack and/or nonalcoholic bars). Mobile food vendors, as defined herein, shall not be considered a restaurant.

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.

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.

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).

School. A public, private, or charter institution offering a curriculum of education giving regular instruction at the pre-school, primary, secondary, or college level. This definition includes, but is not limited to, kindergartens, elementary schools, junior high schools, middle schools, high schools, colleges, universities, but does not include child care centers, individual instruction, or classes in a specialized subject.

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.

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 1 of part IV 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.

Sidewalk. A paved or concrete pedestrian lane that provides people with space to travel by foot with separation from motor vehicles and on-street bicycles, and includes a curb, buffer, or curb with buffer, and curb ramps if necessary for ADA accessibility.

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.

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

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 scaled drawing and supporting text showing the relationship between the lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include, but is not limited to, site-specific details such as building areas, building height and floor areas, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities, that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision. A site plan may also be approved as part of a conditional zoning decision.

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.

Special use permit. A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards.

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 or 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.

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, public means 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, private means 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.

Street right-of-way. A strip of land occupied or intended to be occupied by a travelway for vehicles, pedestrians, and bicyclists, 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 Code Sec. 20-3406.

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.

Studio for art, dance, martial arts, music. Small facilities which provide individual and/or group instruction and training in the arts, including martial arts. This term also includes the processing of photographs produced only by users of the studio facilities, yoga and similar instruction, and aerobics and gymnastics studios with no other fitness facilities or equipment.

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

Subdivision. The division of land for the purpose of sale or development as specified in G.S. 160D-802.

Subdivision, major or major subdivision. Any subdivision not defined as a minor subdivision

Subdivision, minor or minor subdivision. A subdivision of land meeting all the following criteria:

(a) No more than four lots or building sites;

(b) Existing public water and sewer availability which does not require the extension of any new public utilities, other than laterals to individual lots; and

(c) Existing access for all lots to a public street or access easement thereto, which does not require any new street construction or street right-of-way dedication.

Subdivision administrator. The official designated by the town manager to administer and enforce the subdivision regulations adopted by the town.

Subdivision regulation. A subdivision regulation authorized by Article 8 of G.S. Chapter 160D and adopted by the town.

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.

Technical review committee. The staff committee which reviews and offers recommendations on certain development applications as provided in this chapter, with said committee consisting of the planning director, fire marshal, and public works director, or their respective designees.

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.

Temporary structure. A structure intended to serve a specific event and to be removed upon the completion of that event. This term includes, but is not limited to, bleachers, perimeter fencing, vendor tents/canopies, judging stands, trailers, portable toilets, sound/video equipment, stages, platforms, and other impermanent devices, which do not involve grading or landform alteration for installation, and which are not permanently affixed to the ground.

Temporary use. An activity or use of land which, having met certain requirements and conditions, may be permitted for a period of limited duration, and which may utilize "temporary structures" for the duration of the event.

Theater, motion picture. A specialized facility designed for the interior showing of movies or motion pictures on a projection screen. This category includes, but is not limited to, cineplexes and megaplexes, complex structures with multiple movie theaters, each theater capable of an independent performance.

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.

Town. A municipal subdivision as defined in G.S. 160A-1(2) and, for the purposes of this chapter, means specifically the Town of Weaverville, North Carolina.

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:

(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.

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 Code Sec. 20-3208(g) and the minimum lot width and area provided for in Code Sec. 20-3206 shall not apply to any lot used for the purpose as defined by this paragraph; provided that the minimum front yard requirement in Code Sec. 20-3206 is maintained and the minimum side and rear yard requirements in Code Sec. 20-3206 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.

Vehicle/heavy equipment sales—Indoor, Establishments which may have indoor showrooms for selling vehicles or heavy equipment. This term includes, without limitation, dealers for compact automobiles and light trucks, buses, trucks, bicycles, motorcycles, mopeds, ATV's and boat and marine craft.

Vehicle/heavy equipment sales—Outdoor. Establishments which may have indoor showrooms or open lots for selling vehicles or heavy equipment. This term includes but is not limited to dealers for compact automobiles and light trucks, buses, trucks, bicycles, motorcycles, mopeds, ATV's and boat and marine craft.

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.

Warehousing and Distribution. Facilities for the storage of furniture, household goods, or other commercial goods of any nature. Such facilities with indoor storage shall be considered "Warehousing and Distribution with Interior Storage". Such facilities with outdoor storage shall be considered "Warehousing and Distribution with Exterior Storage". Warehousing and Distribution without warehousing of any kind shall be considered "Professional Services" as defined herein.

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

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.

Wireless telecommunication facility, stealth. Equipment that designed to be unobtrusive in its appearance including but not limited to the co-location of antennas on existing tower facilities, and the placement of equipment on flagpoles, buildings, silos, water tanks, pole signs, lighting standards, steeples, billboards and electric transmission towers.

Wireless telecommunication facility, tower. Equipment constructed in accordance with Section 332(c)(7) of the Telecommunications Act at a single location by a private business user, governmental user, or commercial wireless service provider to transmit, receive, or relay electromagnetic signals (including microwave). Such facility includes but is not limited to antennas or antenna arrays, wireless 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.

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 means the official designated by the town manager to administer and enforce the zoning regulations adopted by the Town.

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 regulation means a zoning regulation authorized by Article 7 of G.S. Chapter 160D and contained in Part III of this chapter.

ARTICLE III. ADMINISTRATION, ENFORCEMENT AND APPEALS

Sec. 20-1301. Administrative Staff.

The Town Manager shall designate such staff members to serve as subdivision administrator, zoning administrator, and code enforcement officer as they deem appropriate in order to develop, administer and enforce development regulations authorized by G.S. Chapter 160D.

Duties assigned to staff may include, but are not limited to, drafting and implementing plans and development regulations to be adopted pursuant to G.S. Chapter 160D; determining whether applications for development approvals are complete; receipt and processing of applications for development approvals; providing notices of applications and hearings; making decisions and determinations regarding development regulation implementation; determining whether applications for development approvals meet applicable standards as established by law and local ordinance; conducting inspections; issuing or denying certificates of compliance; enforcing development regulations, including issuing notices of violation, and orders to correct violations; and the recommending of bringing judicial action against actual or threatened violations; keeping adequate records; and any other actions that may be required in order to adequately enforce the laws and development regulations under the town's planning and development jurisdiction.

ATTACHMENT B

The town hereby designates the Buncombe County building inspectors to serve as the building inspectors within the town's planning and development jurisdiction and authorizes the Town Manager to enter into such contracts or interlocal agreements with Buncombe County for such building inspection services.

Sec. 20-1302. Administrative Approvals and Determinations.

(a) **Development Approvals** – To the extent consistent with the scope of regulatory authority granted by G.S. Chapter 160D, no person shall commence or proceed with development without first securing any required development approvals from the local government with jurisdiction over the site of the development. A development approval shall be in writing and may contain a provision requiring the development to comply with all applicable State and local laws. A local government may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

(b) **Determinations and Notice of Determinations** – The subdivision administrator is charged with making administrative determinations as allowed under the subdivision regulations contained in this Code Chapter 20. The zoning administrator is charged with making administrative determinations as allowed under the zoning regulations contained in Code Chapter 20. In all instances, the officer making the determination shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner. It is conclusively presumed that all persons with standing to appeal have constructive notice of the determination from the date a sign providing notice that a determination has been made is prominently posted on the property that is the subject of the determination, provided the sign remains on the property for at least 10 days. The sign shall contain the words "Zoning Decision" or "Subdivision Decision" or similar language for other determinations in letters at least 6 inches high and shall identify a means to contact a local government staff member for information about the determination. Posting of signs is not the only form of constructive notice. Any such posting is the responsibility of the landowner, applicant or person who sought the determination. Verification of posting shall be provided by the staff member responsible for the determination.

(c) **Duration of Development Approvals** – Unless a different period is specified by G.S. Chapter 160D or other specific applicable law, including for a development agreement, a development approval issued pursuant to G.S. Chapter 160D expires one year after the issuance if the work authorized by the development approval has not been substantially commenced. Development approvals for temporary land uses, special events, temporary signs, and similar development may be shorter in duration. Local development regulations may also provide for development approvals of longer duration for specified types of development approvals. Nothing in this section limits any vested rights secured by G.S. 160D-108 or 160D-108.1.

(d) **Changes** – After a development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval of proposed changes or deviations has been obtained pursuant to Code Sec. 20-1303.

(e) **Inspections** – Administrative staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and the terms of the approval. In exercising this power, staff is authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials, provided the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

(f) **Revocation of Development Approvals** – In addition to initiation of enforcement actions under G.S. 160D-404 and Code Sec. 20-1304, development approvals may be revoked by the local government issuing the development approval by notifying the holder in writing stating the reason for the revocation. The local government shall follow the same development review and approval process required for the issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal of failure to comply with the requirements of any application local development regulation of any State law delegated to the local government for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of any applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405 and Code Sec. 20-1308. If an appeal is filed regarding a development approval the provisions of G.S. 160D-405(f) regarding stays apply.

(g) **Certificate of Compliance or Occupancy** – Administrative staff may, upon completion of work or activity undertaken pursuant to a development approval, make final inspections and issue a certification of compliance if staff finds that the completed work complies with all applicable State and local laws and with the terms of the permit approval. No building, structure, or use of land that is subject to a building permit required by Article 11 of G.S. Chapter 160D shall be occupied or used until a certificate of occupancy or temporary certificate pursuant to G.S. 160D-1116 has been issued by Buncombe County.

Sec. 20-1303. Changes to Prior-Approved Development.

After a development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval of proposed changes or deviations has been obtained as set out herein.

(a) **Major Amendments** – Except as allowed under Minor Modifications below, all changes to approved conditional districts, special use permits, subdivision plats, and/or other development approvals, are major amendments and shall follow the same process applicable for the original approval.

(b) **Changes to Individual Parcels within a Conditional District or Special Use Permit** – For a conditional district or special use permit applicable to multiple parcels, the owners of individual parcels may apply for minor modification or major amendment so long as the change would not result in other properties failing to meet the terms of the conditions. Any approved change shall only be applicable to those properties whose owners petitioned for the change.

(c) **Minor Modifications** – The subdivision administrator is authorized to review and approve administratively a minor modification to an approved subdivision plat, and the zoning administrator is authorized to reviewed and approve administratively a minor modification to an approved conditional district, special use permit or any other development approval. All minor modifications are subject to the following limitations:

i. **General Limitations** – The modification:

1. Does not involve a change in uses permitted or the density of overall development permitted;
2. Does not increase the impacts generated by the development on traffic, stormwater runoff, or similar impacts beyond what was projected for the original development approval; and
3. Meets all other ordinance requirements.

ii. **Site Design** – Site design minor modifications are limited to adjustments to the terms or design of an approved development plan or plat, including a site plan attached as a condition to a conditional zoning district or special use permit. In addition to the general limitations for minor modifications, a site design minor modification must:

1. Comply with underlying zoning standards and other applicable conditions of approval;
2. Be limited to a minor changes such as, without limitation, a minor adjustment to road configuration or internal circulation, a minor adjustment to building locations, or a minor adjustment to utility alignment.

(d) **Appeals and Variances** – A decision on minor modifications is an administrative decision and may be appealed to the board of adjustment. An application for a minor modification does not preclude an applicant from seeking a variance from the board of adjustment.

(e) **Notice to Governing Board** – Staff is required to notify the governing board of any minor modifications to conditional districts that have been administratively approved or denied.

Sec. 20-1304. Enforcement.

(a) **Notices of Violation** – When staff determines work or activity has been undertaken in violation of a development regulation adopted pursuant to G.S. Chapter 160D or other local development regulation, including specifically Code Chapter 20, or any State law delegated to the local government for enforcement purposes in lieu of the State or in violation of the terms of the development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail, and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1123, 160D-1206, or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405.

The Notice of violation may provide a time period within which corrective action is to be taken in order to avoid further enforcement action or civil penalty.

(b) **Stop Work Orders** – Whenever any work or activity subject to regulation pursuant to G.S. 160D or other applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the local government that the notice was provided and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112, 160D-1208, or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

(c) **Remedies** – In addition to revocation of development approval as provided for in G.S. 160D-403(f) and Code Sec. 20-1302(e), all development regulation adopted pursuant to authority conferred by G.S. Chapter 160D, including specifically Code Chapter 20, may be enforced by any remedy provided in G.S. 160A-175. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of G.S. Chapter 160D or any development regulation or other regulation adopted by the town under authority of G.S. Chapter 160D, the town, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or

development; to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.

Sec. 20-1305. 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, or 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 in section 1-6 of the Code of Ordinances of the town.

Sec. 20-1306. Penalties for Transferring Lots in Unapproved Subdivisions

(a) Any person who, being the owner or agent of the owner of any land located within the planning and development jurisdiction of the town, thereafter subdivides their land in violation of the subdivision regulation or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under such regulation and recorded in the office of the register of deeds for Buncombe County, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer of other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The town may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the subdivision regulation. Building permits required pursuant to G.S. 160D-1110 may be denied for lots that have been illegally subdivided. In addition to other remedies, the town may institute appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.

(b) Nothing herein shall prohibit any owner or their agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved under the subdivision regulation or recorded with the register of deeds, provided the contract does all of the following:

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

ii. Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.

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

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

(c) Nothing herein shall prohibit any owner or their agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not been properly approved

under the subdivision regulation or recorded with the register of deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings of the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under the subdivision regulation and recorded with the register of deeds.

Sec. 20-1307. Appeals of Decisions on Subdivision Plats

Since the subdivision regulations adopted by the town under G.S. Chapter 160D provide that the decision whether to approve or deny a preliminary or final subdivision plat is based solely upon whether the application complies with the specific requirements set forth in the subdivision regulations, and is therefore administrative in nature, then the decision of the planning board shall be subject to review by filing an action in superior court seeking appropriate declaratory or equitable relief within 30 days from receipt of the written notice of the decision, which shall be made as provided in G.S. 160D-403(b). Decisions of the subdivision administrator are appealable to the board of adjustment and governed by Code Sec. 20-1308.

Sec. 20-1308. Appeals.

(a) **Appeals** – Appeals of administrative decisions made by the staff as allowed by G.S. 160D and the development regulations adopted by the town under the authority of G.S. Chapter 160D, shall be made to the board of adjustment.

(b) **Standing** – Any person who has standing under G.S. 160D-1402(c) or the town may appeal an administrative decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the town clerk . The notice of appeal shall state the grounds for the appeal.

(c) **Time to Appeal** – The owner or other party has 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice pursuant to G.S. 160D-403(b) and Code Sec. 20-1302(b) given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(d) **Record of Decision** – The official who made the decision shall transmit to the board of adjustment all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(e) **Stays** – An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the board of adjustment after the notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would serious interfere with enforcement of the development regulation. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board of adjustment shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding any other provision of this section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in these situations the appellant or the town may request and the board of adjustment may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

(f) **Alternative Dispute Resolution** – The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution.

(g) **No Estoppel** – G.S. 160D-1403.2, limiting a local government's use of the defense of estoppel, applies to proceedings under this section.

Sec. 20-1309. Quasi-Judicial Procedure

(a) **Process Required** – The board of adjustment shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision.

(b) **Notice of Hearing** – Notice of evidentiary hearings conducted pursuant to G.S. Chapter 160D shall be mailed to the person whose appeal, application, or request is the subject of the hearing; the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. In the absence of evidence to the contrary, the town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board of adjustment may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

(c) **Administrative Materials** – The administrator or staff to the board of adjustment shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board of adjustment prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board of adjustment at the hearing.

(d) **Presentation of Evidence** – The applicant, the town, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The chair of the board of adjustment shall rule on any objections and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

(e) **Appearance of Official, New Issues** – The official who made the decision or the person currently occupying that position if the decision-maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board of adjustment shall continue the hearing.

(f) **Oaths** – The chair of the board of adjustment or any member acting as chair and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.

(g) **Subpoenas** – The board of adjustment, through the chair, or in the chair's absence anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the town, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas they determine to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a

subpoena issued pursuant to this subsection, the board of adjustment or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

(h) **Appeals in the Nature of Certiorari** – When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160D-1402(j).

(i) **Voting** – The concurring vote of four-fifths (4/5) of the board of adjustment shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) or Code Sec. 2-304 shall not be considered members of the board for calculation of the requisite majority if there are not qualified alternates available to take the place of such members.

(j) **Decisions** – The board shall determine contested facts and make its decisions within a reasonable time. When hearing an appeal, the board of adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the decision with the clerk to the board of adjustment. The decision of the board of adjustment shall be delivered within a reasonable time by personal delivery, electronic mail, or by first-class mail to the applicant, landowner, and to any person who has submitted a request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the town that proper notice has been made and the certificate shall be deemed conclusive in the absence of fraud.

(k) **Judicial Review** – Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402 and Code Sec. 20-1311. Appeals shall be filed with the clerk to the superior court of Buncombe County in the form of a petition for writ of certiorari by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with G.S. 160D-406(j) or Code Sec. 20-1309(j). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

Sec. 20-1310. Declaratory Judgments and Other Civil Actions

Challenges of legislative decisions of the town, including the validity and constitutionality of development regulations adopted pursuant to G.S. Chapter 160D, and actions authorized by G.S. 160D-108(h), 160D-108(i), and 160D-1403.1, may be brought pursuant to Article 26 of G.S. Chapter 1. If the town was the governmental unit making the challenged decision, the town shall be named as a party to the action.

Sec. 20-1311. Appeals in the Nature of Certiorari

(a) **Applicability** – This section applies to appeal of quasi-judicial decisions of decision-making boards when that appeal is in the nature of certiorari as required by G.S. Chapter 160D.

(b) **Filing the Petition** – An appeal in the nature of certiorari shall be initiated by filing a petition for writ of certiorari with the superior court of Buncombe County. The petition shall do all of the following:

i. State the facts that demonstrate that the petitioner has standing to seek review.

ii. Set forth allegations sufficient to give the court and parties notice of the grounds upon which the petition contends that an error was made.

iii. Set forth with particularity the allegations and facts, if any, in support of allegations that, as the result of an impermissible conflict as described in G.S. 160D-109 or Code Sec. 2-304, the decision-making body was not sufficiently impartial to comply with due process principles.

iv. Set forth the relief the petitioner seeks.

(c) **Standing** – A petition may be filed under G.S. 160D-1402 only by a petitioner who has standing to challenge the decision being appealed. The following persons shall have standing to file a petition under this section:

i. Any person possessing any of the following criteria

a. An ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.

b. An option or contract to purchase the property that is the subject of the decision being appealed.

c. An applicant before the decision-making board whose decision is being appealed.

ii. Any other person who will suffer special damages as the result of the decision being appealed.

iii. An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have had standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

iv. The town, if the governing body of the town believes its decision-making board made a decision that improperly granted a variance from or is otherwise inconsistent with the proper interpretation of a development regulation adopted by the town's governing body.

(d) **Respondent** – The respondent named in the petition shall be the local government whose decision-making board made the decision that is being appealed, except that if the petition is a local government that has filed a petition pursuant to subdivision(iv) of subsection (c) above, then the respondent shall be the decision-making board. If the petitioner is not the applicant before the decision-making board whose decision is being appealed, the petitioner shall also name that applicant as a respondent. Any petitioner may name as a respondent any person with an ownership or leasehold interest in the property that is the subject of the decision being appealed who participated in the hearing, or was an applicant, before the decision-making board.

(e) **Writ of Certiorari** – Upon filing the petition, the petitioner shall present the petition and a proposed writ of certiorari to the clerk of superior court of Buncombe County. The writ shall direct the respondent local government, or the respondent decision-making board, to prepare and certify to the court the record of proceedings below within a specified date. The writ shall also direct that the petitioner shall serve the petition and the writ upon each respondent named therein in the manner provided for service of a complaint under Rule 4(j) of the North Carolina Rules of Civil Procedure, except that, if the respondent is a decision-making board, the petition and writ shall be served upon the chair of that decision-making board. Rule 4(j)(5)d of the Rules of Civil Procedure shall apply in the event the chair of the decision-making board cannot be found. No summons shall be issued. The clerk shall issue the writ without notice to the respondent or respondents if the petition has been properly filed and the writ is in proper form. A copy of the executed writ shall be filed with the court. Upon the filing of a petition for writ of certiorari, a party may request a stay of the execution or enforcement of the decision of the quasi-judicial board pending superior court review. The court may grant a stay in its discretion, and on such conditions that properly provide for the security of the adverse party. A stay granted in favor of a local government shall not require a bond or other security.

(f) **Response to the Petition** – The respondent may, but need not, file a response to the petition, except that, if the respondent contends for the first time that any petitioner lacks standing to bring the appeal, that contention must be set forth in a response served on all petitions at least 30 days prior to the hearing on the petition. If it is not serve within that time period, the matter may be continued to allow petitioners time to respond pursuant to subsection (j) below.

(g) **Intervention** – Rule 24 of the North Carolina Rules of Civil Procedure shall govern motions to intervene as a petitioner or respondent in an action initiated under this section except that the exceptions noted in G.S. 160D-1402(g) shall apply.

(h) **The Record** – The record shall consist of the decision and all documents and exhibits submitted to the decision-making board whose decision is being appealed, together with the minutes of the meeting or meetings at which the decision being appealed was considered. Upon request of any party, the record shall also contain an audio or videotape of the meeting or meetings at which the decision being appealed was considered if such a recording was made. Any party may also include in the record a transcript of the proceedings, which shall be prepared at the cost of the party choosing to include it. The parties may agree that matters unnecessary to the court's decision be deleted from the record or that matters other than those specified herein be included. The record shall be bound and paginated or otherwise organized for the convenience of the parties and the court. A copy of the record shall be served by the local government respondent, or the respondent decision-making board, upon all petitioners within three (3) days after it is filed with the court.

(i) **Hearing on the Record** – The court shall hear and decide all issues raised by the petition by reviewing the record submitted in accordance with G.S. 160D-1402(h) and section (h) above. The court may, in its discretion, allow the record to be supplemented with affidavits, testimony of witnesses, or documentary or other evidence if, and to the extent that, the record is not adequate to allow an appropriate determination of the following issues:

i. Whether the petitioner or intervenor has standing.

ii. Whether, as a result of impermissible conflict as described in G.S. 160D-109 or locally adopted conflict rules, the decision-making board was not sufficiently impartial to comply with due process principles.

iii. Whether the decision-making board erred for the reasons set forth in G.S. 160D-1402(j)(1)(a) and (b).

(j) **Scope of Review** –

i. When reviewing the decision under the provisions of G.S. 160D-1402, the court shall ensure that the rights of petitioners have not been prejudiced because the decision-making board's findings, inferences, conclusions, or decisions were:

a. In violation of constitutional provisions, including those protecting procedural due process rights.

b. In excess of statutory authority conferred upon the local government or the authority conferred upon the decision-making board by ordinance.

c. Inconsistent with applicable procedures specified by statute or ordinance.

d. Affected by other error of law.

e. Unsupported by competent, materials, and substantial evidence in view of the entire record.

f. Arbitrary or capricious.

ii. When the issue before the court is whether the decision-making board erred in interpreting an ordinance, the court shall review that issue de novo. The court shall consider the interpretation of the decision-making board, but is not bound by that interpretation, and may freely substitute its judgment as appropriate.

iii. The term “competent evidence,” as used in this section, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the North Carolina General Court of Justice if (i) the evidence was admitted without objection or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term “competent evidence,” as used in this section, shall not be deemed to include the opinion testimony of law witnesses as to any of the following:

a. The use of the property in a particular way affects the value of other property.

b. The increase in vehicular traffic resulting from a proposed development poses a danger to the public safety.

c. Matters about which only expert testimony would generally be admissible under the rules of evidence.

(k) **Decision of the Court** – Following its review of the decision-making board in accordance with G.S. 160D-1402(j), the court may affirm the decision, reverse the decision and remand the case with appropriate instructions, or remand the case for further proceedings. If the court does not affirm the decision below in its entirety, then the court shall determine what relief should be granted to the petitioners:

i. If the court concludes that the error committed by the decision-making board is procedural only, the court may remand the case for further proceedings to correct the procedural error.

ii. If the court concludes that the decision-making board has erred by failing to make findings of fact such that the court cannot properly perform its function, then the court may remand the case with appropriate instructions so long as the record contains substantial competent evidence that could support the decision below with appropriate findings of fact. However, findings of fact are not necessary when the record sufficiently reveals the basis for the decision below or when the material facts are undisputed and the case presents only an issue of law.

iii. If the court concludes that the decision by the decision-making board is not supported by competent, material, and substantial evidence in the record or is based upon error at law, then the court may remand the case with an order that directs the decision-making board to take whatever action should have been taken had the error not been committed or to take such action as is necessary to correct the error. Specifically:

a. If the court concludes that a permit was wrongfully denied because the denial was not based on competent, material, and substantial evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be issued, subject to reasonable and appropriate conditions.

b. If the court concludes that a permit was wrongfully issued because the issuance was not based upon competent, material, and substantial evidence or was otherwise based on an error of law, the court may remand with instructions that the permit be revoked.

(l) **Effect of Appeal on Ancillary Injunctive Relief** –

i. If a development approval is appealed, the applicant shall have the right to commence work while the appeal is pending. However, if the development approval is reversed by a final decision of any court of competent jurisdiction, the applicant shall not be deemed to have gained any vested rights on the basis of

actions taken prior to or during the pendency of the appeal and must proceed as if no development approval has been granted.

ii. Upon motion of a party to a proceeding under G.S. 160D-1402, and under appropriate circumstances, the court may issue an injunctive order requiring any other party to that proceeding to take certain action or refrain from taking action that is consistent with the court's decision on the merits of the appeal.

(m) **Joinder** – A declaratory judgment brought under G.S. 160D-1401 or other civil action relating to the decision at issue may be joined with a petition for writ of certiorari and decided in the same proceeding.

Sec. 20-1312. Statute of Limitations

G.S 160D-1405 set out the specific applicable statute of limitations on zoning map adoption or amendments, text adoption or amendments, enforcement actions, and quasi-judicial decisions.

ARTICLE IV. PLANNING

Sec. 20-1401. Plans

(a) **Requirements for Zoning** – The town shall adopt and reasonably maintain a comprehensive plan or land use plan.

i. A comprehensive plan sets forth goals, policies, and programs intended to guide the present and future physical, social, and economic development of the jurisdiction.

ii. A land use plan is intended to guide coordinated, efficient, and orderly development within the planning and development regulation jurisdiction based on an analysis of present and future needs.

iii. Planning analysis may address inventories of existing conditions and assess future trends regarding demographics and economic, environmental, and cultural factors. The planning process shall include opportunities for citizen engagement in plan preparation and adoption.

iv. The town may prepare and adopt such other plans are deemed appropriate. This may include, but is not limited to, small area plans, neighborhood plans, hazard mitigation plans, transportation plans, housing plans, and recreation and open space plans.

(b) **Comprehensive Plan Contents** – A comprehensive plan may, among other topics, address any of the following:

i. Issues and opportunities facing the local government, including consideration of trends, values expressed by citizens, community vision, and guiding principles for growth and development.

ii. The pattern of desired growth and development and civic design, including the location, distribution, and characteristics for future land uses, urban form, utilities, and transportation networks.

iii. Employment opportunities, economic development, and community development.

iv. Acceptable levels of public services and infrastructure to support development, including water, waste disposal, utilities, emergency services, transportation, education, recreation, community facilities, and other public services, including plans and policies for provision of and financing for public infrastructure.

v. Housing with a range of types and affordability to accommodate persons and households of all types and income levels.

vi. Recreation and open spaces.

vii. Mitigation of natural hazards such as flooding, winds, wildfires, and unstable lands.

viii. Protection of the environment and natural resources, including agricultural resources, mineral resources, and water and air quality.

ix. Protection of significant architectural, scenic, cultural, historical, or archaeological resources.

x. Analysis and evaluation of implementation measures, including regulations, public investments, and educational programs.

(c) **Adoption and Effect of Plans** – Plans shall be adopted by the governing board with the advice and consultation of the planning board. Adoption and amendment of a comprehensive plan is a legislative decision and shall follow the process mandated for zoning text amendments set by G.S. 160D-601. Plans adopted under G.S. Chapter 160D may be undertaken and adopted as part of or in conjunction with plans required under other statutes, including, but not limited to, the plans required by G.S. 113A-110. Plans adopted under G.S. Chapter 160D shall be advisory in nature without independent regulatory effect. Plans adopted under G.S. Chapter 160D do not expand, diminish, or alter the scope of authority for development regulations adopted under G.S. Chapter 160D. Plans adopted under G.S. Chapter shall be considered by the planning board and governing board when considering proposed amendments to zoning regulation as required by G.S. 160D-604 and 160D-605.

If a plan is deemed amended by G.S. 160D-605 by virtue of adoption of a zoning amendment that is inconsistent with the plan, that amendment shall be noted in the plan. However, if the plan is one that requires review and approval subject to G.S. 113A-110, the plan amendment shall not be effective until that review and approval is complete.

Sec. 20-1402. Grants, Contracts and Technical Assistance

(a) **Grants and Services** – The town may accept, receive, and disburse in furtherance of its functions any funds, grants, and services made available by the federal government and its agencies, the State government and its agencies, any local government and its agencies, and any private and civil sources. The town may enter into and carry out contracts with the State and federal governments or any agencies thereof under which financial or other planning assistance is made available to the town and may agree to and comply with any reasonable conditions that are imposed upon such assistance.

(b) **Contracts** – The town may enter into and carry out contracts with any other city, county, or regional council, planning agency, or private consultant under which it agrees to furnish technical planning assistance to the other government or planning agency. Any local government may enter into and carry out contracts with any other city, county, or regional council or planning agency under which it agrees to pay the other local government for technical planning assistance.

(c) **Appropriations, Compensation, and Financing** – The town is authorized to make appropriations that may be necessary to carry out activities or contracts authorized by Article 5 of G.S. Chapter 160D and to levy taxes for these purposes as a necessary expense.

Sec. 20-1403. Coordination of Planning

A local government may undertake any of the planning activities authorized by Article 5 of G.S. Chapter 160D in coordination with other local governments, State agencies, or regional agencies created under Article 19 of G.S. Chapter 153A or Article 20 of G.S. Chapter 160A.

ARTICLE V. ADOPTION AND AMENDMENT OF DEVELOPMENT REGULATIONS

ATTACHMENT B

Sec. 20-1501. Applicability.

Adoption of new development regulations or amendments to existing development regulations shall be applicable to all properties except as provided by vested rights and permit choice.

Sec. 20-1502. Definitions

Text amendments. Revisions to the town's development regulations which include adoption of new regulations, amendments to existing regulations, or repeal of existing regulations, but do not involve the adoption of or amendment to the zoning map.

Zoning map amendments or rezonings. Amendments to zoning regulations to change the zoning district that is applied to a specified property or properties. It does not include the initial adoption of a zoning map by a local government or the repeal of a zoning map and readoption of a new zoning map for the entire planning and development regulation jurisdiction. It does not include updating the zoning map to incorporate amendments to the names of zoning districts made by zoning text amendments where there are no changes in the boundaries of the zoning district or land uses permitted in the district. It does include the initial application of zoning when land is added to the territorial jurisdiction of the local government that has previously adopted zoning regulations. It does include the application of an overlay zoning district or a conditional zoning district.

Sec. 20-1503. Procedure for Approval of Text Amendments

New development regulations or proposed changes or amendments to the text of this chapter may be initiated by town council, the planning board, the board of adjustment, town staff, any owner of a legal or equitable interest in land located within the town, or any resident of the town.

Development regulations shall be adopted, amended, or repealed, in accordance with a comprehensive plan and pursuant to the following procedures:

(a) **Initial Review by Town Council** – All proposed new development regulations or proposed amendments to existing development regulation, or the concept of such regulation, shall be presented to town council for initial review. Initial consideration by town council is intended to provide town council with the opportunity to express preliminary thoughts related to the proposed regulation and any comments made are advisory only and shall not serve as a final determination on the matter.

(b) **Planning Board Review and Comment** – The planning board shall review and comment on all proposed development regulations and amendments thereto as set out in Code Sec. 20-1505.

(c) **Hearing with Published Notice** – Before adopting, amending, or repealing any ordinance or development regulation authorized by G.S. 160D, the governing board shall hold a legislative hearing. Town council shall not hold its required hearing or take action until it has received a recommendation regarding the regulation from the planning board, unless more than 90 days have elapsed since the matter was first considered by the planning board. A notice of hearing on a text amendment shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of the publication is not to be included by the day of the hearing shall be included.

(d) **Citizen Comments** - If any resident or property owner in the town submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment that has been properly initiated as provided in G.S. 160D-601, to the town clerk at least two business days prior to the proposed vote on such change, the town clerk shall deliver such written statement to the governing board. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160D-705 or any other statute, the town clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all member of the board shall not disqualify any member of the board from voting.

(e) **Governing Board Statement** – Town council is not bound by the recommendation, if any, of the planning board. Town council shall adopt statements as required by G.S. 160D-605 and Code Sec. 20-1506 prior to taking action on proposed development regulations or amendments thereto.

(f) **Ordinance Adoption** – A development regulation adopted pursuant to G.S. Chapter 160D shall be adopted by ordinance and codified.

Sec. 20-1504. Procedure for Approval of Zoning Map Amendments

Except for petitions for a conditional zoning which must follow the procedures set out in Code Sec. 20-3203, proposed zoning map amendments may be initiated by town council, the planning board, the board of adjustment, town staff, any owner of a legal or equitable interest in land located within the town, or any resident of the town.

Development regulations shall be adopted, amended, or repealed, in accordance with a comprehensive plan and pursuant to the following procedures:

(a) **Initial Review by Town Council** – All proposed map amendments involving conditional districts or overlay districts shall be presented to town council for initial review. Initial consideration by town council is intended to provide town council with the opportunity to express preliminary thoughts related to the map amendment and any comments made are advisory only and shall not serve as a final determination on the matter.

(b) **Planning Board Review and Comment** – The planning board shall review and comment on all proposed development regulations and amendments thereto as set out in Code Sec. 20-1505.

(c) **Hearing with Mailed and Posted Notice** – Before adopting, amending, or repealing any ordinance or development regulation authorized by G.S. 160D, the governing board shall hold a legislative hearing. Notice of the legislative hearing shall be provided as follows:

(1) **Mailed Notice** – The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are “abutting” even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing. If a zoning map amendment is being proposed in conjunction with an annexation petition, separate hearings on the zoning map amendment and the annexation must be held.

(2) **Notice for Large-Scale Zoning Map Amendments** – The first-class mail notice required by subsection (1) above is not required if the zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the town elects to use the expanded published notice provided for in this subsection. In this instance, the town may elect to make the mailed notice provided for subsection (1) or, as an alternative, elect to publish the notice of the hearing as required by G.S. 160D-601, provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement is effective only for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of subsection (1) above.

(3) **Posted Notice** – When a zoning map amendment is proposed, the town shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. 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.

(4) **Optional Communication Requirements** – When a zoning map amendment is proposed, a zoning regulation may require communication by the person proposing the map amendment to neighboring property owners and residents and may require the person proposing the zoning map amendment to report on any communication with neighboring property owners and residents.

(5) **Citizen Comments** - If any resident or property owner in the town submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment that has been properly initiated as provided in G.S. 160D-601, to the town clerk at least two business days prior to the proposed vote on such change, the town clerk shall deliver such written statement to the governing board. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160D-705 or any other statute, the town clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all member of the board shall not disqualify any member of the board from voting.

(6) **Governing Board Statement and Action** – Town council shall adopt plan consistency and reasonableness statements as required by G.S. 160D-605 and Code Sec. 20-1506, prior to taking action on proposed zoning map amendments.

(7) **Ordinance Adoption** – A development regulation adopted pursuant to G.S. Chapter 160D shall be adopted by ordinance.

Sec. 20-1505. Planning Board Review and Comment

(a) **New Development Regulations** – The planning board shall review and comment upon a proposed development regulation, including the full text of such regulations and any proposed zoning maps associated with the regulations. The planning board may hold public meetings and legislative hearings in the course of preparing the regulation. Upon completion, the planning board shall make a written recommendation regarding adoption of the regulation to the governing board. The governing board shall not hold its required hearing or take action until it has received a recommendation regarding the regulation from the planning board. Following its required hearing, the governing board may refer the regulation back to the planning board for any further recommendations that the board may wish to make prior to final action by the governing board in adopting, modifying and adopting, or rejecting the regulation. The governing board is not bound by the recommendations, if any, of the planning board.

(b) **Development Regulation and Zoning Map Amendments** –Subsequent to initial adoption of a any development regulation, all proposed amendments to the development regulation or zoning map shall be submitted to the planning board for review and comment. Upon completion, the planning board shall make a written recommendation regarding adoption of the regulation to the governing board. The governing board shall not hold its required hearing or take action until it has received a recommendation regarding the regulation from the planning board. Following its required hearing, the governing board may refer the regulation back to the planning board for any further recommendations that the board may wish to make prior to final action by the governing board in adopting, modifying and adopting, or rejecting the regulation. If no written report is received from the planning board within 90 days of referral of the amendment to the board, the governing board may act on the amendment without the planning board report. The governing board is not bound by the recommendations, if any, of the planning board.

(c) **Plan Consistency** –When conducting a review of proposed zoning text or map amendments pursuant to G.S. 160D-604 and this section, the planning board shall advise and comment on whether the proposed action 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 governing board 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 governing board. If a zoning map amendment qualifies as a “large-scale rezoning” under G.S. 160D-602(b), the planning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

(d) **Reasonableness Statement for Rezonings** – When conducting its review of proposed zoning map amendments, the planning board shall, as part of its plan consistency statement or separately, provide a statement analyzing the reasonableness of the proposed rezoning. Such analysis should consider, among other factors: (i) the size, physical conditions, and other attributes of the area proposed to be rezoned; (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community; (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If the zoning map amendment qualifies as a large scale rezoning the analysis of reasonableness may address the overall rezoning.

(e) **Separate Board Required** – Notwithstanding the authority to assign duties of the planning board to the governing board as provided in G.S. Chapter 160D, the review and comment required by this section shall not be assigned to the governing board and must be performed by the planning board.

Sec. 20-1506. Governing Board Statement and Action

(a) **Plan Consistency** – When adopting or rejecting any zoning text or map amendment, the governing board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the governing board that at the time of action on the amendment the governing board was aware of and considered the planning board’s recommendations and any relevant portions of an adopted comprehensive plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a “large-scale rezoning” under G.S. 160D-602(b), the governing board statement describing the plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.

(b) **Reasonableness Statement for Rezonings** – When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the governing board. This statement of reasonableness may consider, among other factors: (i) the size, physical conditions, and other attributes of the area proposed to be rezoned; (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community; (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as “large-scale rezoning” under G.S. 160D-602(b), the governing board statement on reasonableness may address the overall rezoning.

(c) **Single Statement Permissible** – The statement of reasonableness and the plan consistency statement may be approved as a single statement.

(d) **Consideration of All Uses for Zoning Map Amendments** – Except for conditional districts, town council shall not evaluate a zoning map amendment request based on a specific proposal for the use or development of the property, but shall consider all uses permitted within the district that is proposed.

(e) **Action** – After the appropriate and required hearings and review of recommendations and citizen comments, town council may:

i. Adopt the proposed amendment;

ii. Reject the proposed amendment;

iii. Refer the proposed amendment back to the planning board for further consideration or hearing; or

iv. Reasonably modify and adopt the proposed amendment.

Sec. 20-1507. Down-Zoning.

No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the town. For purposes of this section, “down-zoning” means a zoning ordinance that affects the area of land in order of the following ways: (1) by decreasing the development density of the land to be less dense than was allowed under its previous usage; (2) by reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

Sec. 20-1508. Waiting Period for Subsequent Requests.

When an application for a zoning map amendment has been approved or denied by town council, no rezoning applications covering the same property shall be accepted or considered within 12 months after the date of 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.

The waiting period required by this section may be waived by a three-fourths (3/4) vote of town council if it determines that there have been substantial changes in conditions or circumstances which may relate to the request.

ARTICLE VI. NONCONFORMITIES

Sec. 20-1601. Purpose and Application.

(a) **Purpose** – It is recognized that, over time, lawful nonconformities may develop as a result of amendments to the zoning map or zoning ordinance text which change the application of town development regulations to particular properties. Nonconformities can also arise when improved properties and properties on which vested rights have been established are annexed into the municipal boundaries of the town. It is important that such properties, while nonconforming, be adequately maintained and permitted to continue, but not expanded or enlarged in any fashion that increases the extent of nonconformity. Where possible, such nonconformities should be made, wholly or incrementally, conforming.

(b) **Application** – The provisions of this article apply only to lawful nonconformities. Nonconformities other than lawful nonconformities shall be considered violations of the town's code.

(c) **Applicability to variances, conditional districts and special use permits** – Where a variance, conditional district, or special use permit has been granted for a use or dimensional requirement which does not otherwise conform to the requirements of this chapter, that feature/condition shall be deemed conforming so long as the property remains in compliance with their respective approved site plans. Likewise, when properties on which vested rights have been established are annexed into the municipal boundaries of the town, any use or dimensional requirement which does not otherwise conform to the requirements of this chapter shall be deemed conforming so long as they remain in compliance with the approved site specific development plan.

Sec. 20-1602. Nonconforming Lots.

(a) A nonconforming lot may be used as a building site subject to the compliance with applicable use regulations and limitations, and minimum dimensional or numerical development requirements for

the zoning district in which the lot is located including, but not limited to, setback and yards, height, open space, buffers, screening, and parking.

(b) If compliance with the applicable minimum dimensional or numerical development requirements is not possible, the nonconforming lot may be used as a building site subject to the following:

(1) Where the lot area and lot width are not more than 20 percent below the minimum standards specified, 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 dimensional and numerical requirements as shall conform as closely as possible to the required dimensions.

(c) If a lot is nonconforming in that it does not have street access as described in Code Sec. 20-3208(g), a building can be constructed on such lot if the applicant can provide evidence of a recorded legal access to a publicly maintained street or roadway which will support actual vehicular access to the lot.

Sec. 20-1603. Nonconforming Structures.

(a) A nonconforming structure devoted to a use permitted in the zoning district in which it is located may continue only in accordance with the provisions of this article. A nonconformity must have been legal when it was established in order to receive nonconforming protection. A structure which is a violation of the zoning ordinance when it was established shall not ripen into a legitimate nonconformity.

(b) Normal repair and maintenance may be performed to allow the continuation of nonconforming structures so long as no expansion of the nonconformity occurs as a result of such work.

(c) Code Sec. 20-1604 shall apply to all changes of use within a nonconforming structure, except that a nonconforming structure with a compatible use may not under any circumstances change its use to a nonconforming use.

(d) Except as provided in this article, a nonconforming structure may be renovated, expanded, or enlarged, without bringing the nonconforming structure into conformity with these regulations, only if the applicable nonconformity is not increased and no new nonconformities are created. The following shall also apply:

(1) Increases in nonconformities related to building height are not allowed;

(2) Increases in the square footage of a nonconforming structure within the setbacks of the zoning district in which the structure is located are not allowed. In considering whether an increase in square footage has been made or is proposed the zoning administrator is to take into consideration both horizontal expansion (i.e. increasing the building footprint within the setback) and vertical expansion (i.e. adding a second story to the portion of a structure within the setback).

(e) Residential structures made nonconforming by a text amendment or map amendment which rezones the property to a zoning district which does not permit residential uses may be renovated, expanded, or enlarged so long as the dimensional and numerical development standards for the R-1 district can be met. See Code Sec. 20-1604(c) for nonconforming residential uses.

(f) A nonconforming structure cannot be moved unless it thereafter conforms to the standards of the zoning district in which it is located. If such a move is not possible but a relocation of the nonconforming structure is desired, then such relocation is permissible as long as the applicable nonconformity is lessened and no new nonconformities are created.

(g) In the interest of public safety and health, structural alterations or remodeling of nonconforming structures which are required by any public law, and so ordered by a public officer in authority, shall be permitted.

(h) Where a nonconforming structure is destroyed or damaged by fire, flood, wind, or other disaster, the structure may be repaired or restored to its original dimensions and conditions as long as a zoning permit for the repair or restoration is issued within 180 days of the date of the damage. Upon request, the board of adjustment is authorized to extend this period up to an additional 180 days if the applicant can present competent, substantial and material evidence showing good cause for such extension. Good cause could include, but is not limited to, delays related to estate administration, casualty insurance issues, or litigation concerning the property.

Sec. 20-1604. Nonconforming Uses.

(a) Nonconforming uses of land or structures, and nonconforming structures that contain nonconforming uses may continue only in accordance with the provisions of this article. A nonconformity must have been legal when it was established in order to receive nonconforming protection. A use which is a violation of the zoning ordinance when it was established shall not ripen into a lawful nonconformity.

(b) Except as provided herein, no nonconforming use can be extended, expanded, enlarged, or moved if such change results in an increase in the extent or intensity of the nonconforming use as it existed at the time the lawful nonconformity was created.

(c) Residential uses made nonconforming by a text amendment or a map amendment which rezones the property to a zoning district which does not permit residential uses cannot be expanded to increase the number of residences or family units from those existing at the time the lawful nonconformity was created. See Code Sec. 20-1603(e) concerning nonconforming residential structures.

(d) Replacement of nonconforming uses.

(1) A nonconforming use of a structure may be replaced by another nonconforming use if it falls within the same use definition as the original nonconforming use. Such lawful replacement of use may be permitted by the zoning administrator.

(2) A nonconforming use of a structure may be replaced by another nonconforming use if it is no less compatible with the surrounding properties and district than the nonconforming use which it replaces. Such requests must be submitted to the board of adjustment which is authorized to grant such a request if the applicant can present competent, substantial and material evidence that the proposed use is as compatible or more compatible with the surrounding properties and district than the original nonconforming use. Factors for the board's consideration include, but are not limited to, traffic, noise, site activity, hours of operation, lighting, vibration, dust, smoke, odor emissions, and any other factors that the board finds relevant to compare or differentiate between the existing use(s) and the proposed replacement use(s). The board of adjustment may establish conditions to ensure that the compatibility factors are maintained as approved.

(e) No use may be established if it renders a conforming use as nonconforming.

(f) Once a nonconforming use is changed to a conforming use, that nonconforming use cannot be lawfully reestablished.

(g) Where a nonconforming use is visibly discontinued for 180 consecutive days, regardless of any intent or efforts to resume the use, then the use shall not be reestablished or resumed, and any subsequent use of the land or structure must conform to the requirements of town code.

(h) Where a structure in which a nonconforming use is located is destroyed or damaged by fire, flood, wind, or other disaster, the structure may be repaired or restored to its original dimensions or substantially similar dimensions if the nonconformity is not increased, and as long as a zoning permit for the repair or restoration is issued within 180 days of the date of the damage and the nonconforming use can resume. Upon request, the board of adjustment is authorized to extend this period up to an additional 180 days if the applicant can present competent, substantial and material evidence showing good cause for such extension. Good cause could include, but is not limited to, delays related to estate administration, casualty insurance issues, or litigation concerning the property.

(i) Signage for a lawful nonconforming use shall be limited to one wall mounted or attached sign which shall not exceed ten percent of the total surface area on which the sign is located. Said signage may be illuminated but must be shielded in a fashion to prevent light trespass and to brighten only the surface of the sign.

Sec. 20-1605. Nonconforming Signs.

(a) All nonconforming signs shall be removed, changed, or altered to conform with the provisions of this chapter within five years after the same became 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.

(b) 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.

(c) 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.

Sec. 20-1606. Replacement of Manufactured Homes.

Dimensional or use nonconformities associated with manufactured homes shall be addressed in the following manner:

(a) **Replacement of a manufactured home with another manufactured home in a lawfully established nonconforming manufactured home park**. Replacement shall be permitted without regard to dimensional nonconformity provided that the replacement manufactured home is no older and no smaller in footprint than the existing manufactured home, the replaced home is placed in the same location as the original home, and such replacement occurs within 30 days of the removal of the original manufactured home. In all other situations, replacement shall be prohibited.

(b) **Replacement of a nonconforming manufactured home on an individual lot with another manufactured home**. Replacement shall be permitted provided that new dimensional nonconformities are not created, the replacement manufactured home is no older and no smaller in footprint than the existing manufactured home, the replaced home is placed in the same location as the original home or a different location as long as no new nonconformities are created, and such replacement occurs within 30 days of the removal of the original manufactured home. In all other situations, replacement shall be prohibited.

ATTACHMENT B

PART II – SUBDIVISION REGULATIONS

ARTICLE I. GENERAL PROVISIONS

Sec. 20-2101. Title.

This chapter shall be known and cited as the subdivision regulations of the Town of Weaverville, North Carolina, and shall be referred to as the "subdivision ordinance."

Sec. 20-2102. Authority.

The subdivision regulations contained in this chapter are adopted under the authority and provisions of Chapter 160D of the North Carolina General Statutes, including specifically Article 8.

Sec. 20-2103. Applicability.

Subdivision regulations shall be applicable to all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future), and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to any regulations authorized by this chapter:

(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 its 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 utility easements for water, sewer or other purposes.

(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 set forth in the zoning ordinance or herein.

(5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under G.S. Chapter 29.

(6) Special use permits and conditional districts which have been approved in accordance with the provisions of this chapter, and development agreements established pursuit to Article 10 of G.S. Chapter 160D.

(7) The division of land pursuant to an order of a court of the general court of justice.

(8) The division of land for cemetery lots or burial plots.

(9) The division of land for the purpose of changing the boundary line(s) between adjoining property owners and no new road right-of-way dedication is involved, providing said division does not cause either property to be in violation of any town ordinance.

Sec. 20-2104. Purpose.

The purpose of the subdivision regulations contained in this part is to provide for the orderly growth and development of the town, the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and highways and with other public facilities, and the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety, and the general welfare.

Sec. 20-2105. Definitions.

The definitions found in Code Chapter 20, Part I, Article II shall apply, including the following definitions that are restated for the convenience in administering and enforcing this part II:

Subdivision, major or major subdivision. Any subdivision of land not defined as a minor subdivision.

Subdivision, minor or minor subdivision. A subdivision of land meeting all the following criteria:

(a) No more than four lots or building sites;

(b) Existing public water and sewer availability which does not require the extension of any new public utilities, other than laterals to individual lots; and

(c) Existing access for all lots to a public street or access easement thereto, which does not require any new street construction or street right-of-way dedication.

Sec. 20-2106. Development Approvals Run with the Land.

Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by these regulations and development approvals made pursuant to this article attach to and run with the land.

Sec. 20-2107. Plat Approval and Recordation Required.

No person shall commence with a subdivision of land without first securing approval from the town. A final plat must be prepared, approved, and recorded pursuant to the provisions of these regulations whenever any subdivision of land takes place, unless such subdivision is exempt from these regulations.

Sec. 20-2108. Effect of Plat Approval on Dedication.

In accordance with G.S. 160D-806, the approval of a plat shall not be deemed to constitute or effect the acceptance by the town or public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat. However, the town may be resolution accept any dedication made to the public lands or facilities for streets, parks, public utility lines, or other public purposes, when the lands or facilities are located within its planning and development regulation jurisdiction.

Sec. 20-2109. Incorporation of Federal, State and Local Laws, Rules, Regulations, Policies, and Plans.

All proposed subdivision plans shall incorporate relevant federal and state laws, rules and regulations, and all relevant municipal ordinances, policies, and plans as now or hereafter established or amended as if each were fully contained within these regulations. No subdivision plan may be approved which fails to incorporate such requirements and provisions or which is otherwise inconsistent with the same. State laws, rules, regulations, include but are not limited to, the state building code and the state fire prevention code. Ordinances, policies, and plans include, but are not limited to, those ordinances adopted by the town pertaining to zoning, fire prevention, flood damage prevention, utilities, streets and sidewalks, and any conditions of approval imposed through any approval process.

Sec. 20-2110. Limitations on Minor Subdivisions.

The expedited review procedure for minor subdivisions as set out in this article shall not be used a second time within three years from the date of a recordation of a final plat for a minor subdivision on any property which is less than 1,500 feet from the original property boundaries by anyone who owned, had an option on, or any legal or equitable interest in the original minor subdivision at the time of final plat approval. Should the same lot, plot or parcel be sold within the aforementioned timeframe the new owner of the property shall observe the remaining time afforded to the original minor subdivision approval as it relates to any additional minor subdivisions of the property. The minor subdivision process shall be used only where the subdivision includes all contiguous land under the ownership of the subdivider.

Sec. 20-2111. Appeals of Decisions on Subdivision Plats

Since the subdivision regulations adopted by the town under G.S. Chapter 160D provides that the decision whether to approve or deny a preliminary plan or final plat is based solely upon whether the application complies with the specific requirements set forth in the subdivision regulations, and is therefore administrative in nature.

Administrative decisions made by staff on subdivision plats are subject to appeal to the board of adjustment under Code Sec. 20-1308. Administrative decisions made by the planning board on subdivision plats are subject to review by filing an action in superior court seeking appropriate declaratory

or equitable relief within 30 days from receipt of the written notice of the decision, which shall be made as provided in G.S. 160D-403(b) and the relevant provisions of this chapter.

Sec. 20-2112. Performance Guarantees Not Allowed.

All improvements required to be constructed by this article must be successfully completed prior to final plat review and approval. Performance guarantees under G.S. 160D-804.1 for such required improvements are not allowed in lieu of the completion of the required improvements.

Sec. 20-2113. School Sites

If the town council and the Buncombe County Board of Education have jointly determined the specific location and size of any school sites to be reserved, the town shall immediately notify the Board of Education of any subdivision proposed on those reserved school sites. The Board of Education shall promptly decide whether it still wishes the site to be reserved. If the Board of Education does not wish to reserve the site, it shall so notify town council and no site shall be reserved. If the Board of Education does wish to reserve the site, the subdivision or site plan shall not be approved without such reservation. The Board of Education shall then have 18 months beginning on the date of final approval of the subdivision or site plan within which to acquire the site by purchase or by initiating condemnation proceedings. If the Board of Education has not purchased or begun proceedings to condemn the site within 18 months, the landowner may treat the land as freed of the reservation.

Sec. 20-2114. Underground Utilities and Exception.

All power, telephone, cable television, natural gas lines, and other utilities which are proposed for subdivisions must be installed underground, except that in accordance with G.S. 160D-804(h) a developer or builder is not required to bury power lines meeting all of the following criteria:

(1) The power lines existed above ground at the time of first approval of a plat or development plan by the town, whether or not the power lines are subsequently relocated during the construction of the subdivision or development plan.

(2) The power lines are located outside the boundaries of the parcel of land that contains the subdivision or the property covered by the development plan.

Sec. 20-2115. Modifications

(a) **Generally** – Except as provided in subsection (b) below, any modification to an approved subdivision preliminary plan or final plat must be made in conformity with Code Sec. 20-1303 and this section. This includes any reconfiguration, resubdivision, or replatting of land previously approved as a subdivision.

(b) **Recombinations** – In accordance with G.S. 160D-802 and Code Sec. 20-2103, 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 its subdivision regulations are exempt from these regulations. If a combination or recombination results in an increased number of lots or non-compliance with standards as adopted by the town, then such combination or recombination is considered a major modification.

(c) **Major Modifications** – All modifications are considered major modifications unless it qualifies as a minor modification. Major modifications must follow the same process and procedures applicable for the original subdivision approval.

(d) **Minor Modifications** – The subdivision administrator has the authority to approve minor modifications to subdivision only if all of the conditions stated herein can be met and only if authorized by Code Sec. 20-1303. Changes to lot sizes and configurations may be minor modifications provided that all of the following conditions can be met:

(1) No lot or tract of land shall be created or sold which is smaller than the smallest lot shown on the approved plan or plat;

(2) Lots or tracts can be eliminated by dividing the same to provide additional acreage to immediately contiguous lots or tracts which will remain in single ownership;

(3) If the original subdivision was approved as a minor subdivision, no additional lots are created;

(4) Drainage easements or public rights-of-way shall not be changed;

(5) Public rights, if any, in the streets, alleys, and public grounds, are not changed;

(6) Dedications shown on the plan or plat are not changed;

(7) Street alignment shall not be changed;

(8) The property line between the back of the lots shall not be changed;

(9) The rear portion of a lot shall not be subdivided from the front portion except as set forth in (2) above; and

(10) The character of the area shall be maintained.

The subdivider/developer or owner who wishes to reconfigure previously recorded lots pursuant without following the normal subdivision review process as allowed by this section must submit such a request to the subdivision administrator with documentation showing that changes to the lot sizes and configuration meet the conditions stated above. The subdivision administrator has the authority to approve the subdivision minor modification request only if all of the conditions can be met and only if authorized by Code Sec. 20-1303.

ARTICLE II. SUBDIVISION REVIEW PROCEDURE

Sec. 20-2201. Generally.

(a) The subdivision review process shall consist of two levels of required approval: (1) preliminary plans, which are not to be record; and (2) final plats, which are to be recorded upon approval. Preliminary plan approval shall be a prerequisite to final plat approval for major subdivisions but is not required for minor subdivisions.

(b) Prior to preliminary plan application, the subdivider may submit to the subdivision administrator a sketch plan showing the concept of the proposed subdivision. The subdivider may at that time discuss the proposed subdivision with the subdivision administrator and become familiar with the town's subdivision regulations. This procedure does not require formal application or fee. The subdivision administrator may, at their option, present any sketch plan to the planning board for review.

(c) All applications for minor and major subdivisions shall be submitted to the subdivision administrator at Town Hall and will only be presented for review when deemed complete. An application shall be deemed complete if the plan/plat meets all of the requirements set forth in Code Sec. 20-2504 The subdivision administrator may refuse to accept the submission of any plans, plats, or supporting documentation which, in their opinion, do not meet the requirements of this article, including the mapping standards as provided in section 20-2504.

(d) The planning board has 90 days from first consideration to approve or deny a preliminary plan for a major subdivision. If the planning board has failed to act within that time period the preliminary plan shall be deemed approved.

(e) The planning director, or their designee, has 30 days from receipt of a complete application for a minor subdivision to approve or deny a final plat. If the planning director, or their designee, fails to act within that time period the final plat of the minor subdivision shall be deemed approved.

(f) The planning director, or their designee, has 30 days from a fully complete final plat submission, including supporting documentation, on a major subdivision to approve or deny the final plat. If the planning director, or their designee, fails to act within that time period the final plat of the major subdivision shall be deemed approved.

ATTACHMENT B

Sec. 20-2202. Process of Review of Minor Subdivisions.

(1) **Submission of Application and Final Plat** – All applications for development of a minor subdivision shall be submitted to the subdivision administrator at Weaverville Town Hall. The subdivision administrator shall determine if the application is complete and notify the subdivider of any deficiencies. Once the application is deemed complete, the subdivision administrator will schedule review of the application by the technical review committee.

(2) **Review of Final Plat by Technical Review Committee** – The technical review committee shall review all minor subdivision applications, final plats, and supporting documentation, and plat revisions if necessary, for compliance with planning and development regulations applicable to minor subdivisions.

(3) **Approval of Final Plat** – The planning director, or their designee, shall approve the minor subdivision final plat once it is found compliant by the technical review committee. The planning director, or their designee, shall have 30 days from a complete application within which to approve or deny the final plat. Failure to take such action within this time period will be deemed an approval of the plat.

(4) **Recordation of Final Plat** – The final plat of the minor subdivision must be recorded, at the subdivider's expense, in the Buncombe County Register of Deeds within 60 days of final plat approval otherwise said approval shall be null and void. A copy of the recorded final plat must be provided to the subdivision administrator or zoning administrator prior to the issuance of any zoning permits. Access easements and road maintenance agreements must be recorded prior to or contemporaneously with the final plat.

(5) **Issuance of Zoning Permits** – No zoning permits authorizing work on the property can be issued by the zoning administrator prior to a copy of the recorded final plat being submitted to the subdivision administrator or zoning administrator.

Sec. 20-2203. Process of Review of Major Subdivisions.

(1) **Submission of Application and Preliminary Plan** – All applications for development of a major subdivision shall be submitted to the subdivision administrator at Weaverville Town Hall. The subdivision administrator shall determine if the application is complete and notify the subdivider of any deficiencies. Once the application is deemed complete, the subdivision administrator will schedule review of the application by the technical review committee. The application should include a water commitment application if the subdivider intends to extend the public water system of the town. The application should include a public street commitment application if the subdivider intends for the streets to be included within the town's public street system.

(2) **Review of Preliminary Plan (and Town Public Water/Street Commitment Applications) by Technical Review Committee and Others** – The technical review committee shall review all major subdivisions and preliminary plans, and plan revisions if necessary, for compliance with planning and development regulations applicable to major subdivisions. If town public water and/or street commitment application are part of the subdivision application, the technical review committee shall review them and provide a report and recommendation to town council on those requests. If state streets or highways are proposed the request must be submitted to the NCDOT district highway engineer for review and recommendation. If private water wells or septic systems are proposed, the request must be submitted to the Buncombe County Health Director for review and recommendation. If public sewer is proposed, the request must be submitted to MSD for review and recommendation.

(3) **Review and Action on Town Water Commitment and/or Public Street Commitment** – Any public water commitment or public street commitment applications shall be forwarded to town council for review and action. Depending on the action taken by town council, plan revisions may be necessary.

(4) **Report and Recommendation of Technical Review Committee** – Based on its findings during its review and actions taken by the town concerning public water commitment and/or public street commitment, the technical review committee shall prepare and submit to the planning board a report and recommendation concerning the major subdivision application and the preliminary plan.

(5) **Review of Preliminary Plan by the Planning Board** – The planning board shall review all major subdivisions and preliminary plans for compliance with planning and development regulations applicable to major subdivisions.

(6) **Approval of Preliminary Plan** – The planning board shall approve the preliminary plan once it is found compliant with the planning and development regulations of the town for major subdivisions. The planning board has 90 days from first consideration to approve or deny a preliminary plat. If the planning board has failed to act within that time period the preliminary plat shall be deemed approved.

(7) **Submission of Certain Construction Drawings and Supporting Documentation** – The subdivider shall submit engineer-sealed construction drawings and supporting documentation for required improvements related to the major subdivision as a whole, or for each phase which has achieved preliminary plan approval. The public works director or their designee, in conjunction with the technical review committee or their designees, shall review and approve or recommend approval of the construction drawings for all water system improvements intended to be conveyed to the town and all roads intended to be dedicated to the town as public streets. Construction drawings for sanitary sewer improvements must be provided to MSD.

(8) **Installation of Required Improvements** – Upon approval of the preliminary plan, and not before, the subdivider may proceed with the installation for required infrastructure in accordance with the approved preliminary plan and construction plans submitted. Prior to the approval of a final plat, the subdivider shall have installed the required infrastructure improvements. Required infrastructure shall be installed within 18 months of approval of the preliminary plan or phase of a preliminary plan. Otherwise, the planning board shall have the authority to grant up to an additional 12 months for completion of the infrastructure for good cause shown.

(9) **Submission of Final Plat and Supporting Documentation** – Upon completion of the required improvements, the subdivider shall prepare and submit a final plat and supporting documentation to the subdivision administrator. The subdivision administrator shall determine if the final plat is complete and the supporting documentation evidences the completion of the required improvements, and notify the subdivider of any deficiencies. Once the final plat and supporting documentation is deemed complete, the subdivision administrator will schedule review of the final plat by the technical review committee.

(10) **Review of Final Plat by Technical Review Committee** – The technical review committee shall review the final plat and supporting documentation, and plat revisions as necessary, for substantial compliance with the approved preliminary plan and with planning and development regulations for major subdivisions.

(11) **Approval of Final Plat** – The planning director, or their designee, shall approve the major subdivision final plat once it is found compliant by the technical review committee. The planning director, or their designee, shall have 30 days from a fully complete final plat submission within which to approve or deny the final plat. Failure to take such action within this time period will be deemed an approval of the plat.

(12) **Recordation of Final Plat** – The final plat of the major subdivision must be recorded, at the subdivider's expense, in the Buncombe County Register of Deeds within 60 days of final plat approval otherwise said approval shall be null and void. A copy of the recorded final plat must be provided to the subdivision administrator or zoning administrator prior to the issuance of any zoning permits. Access easements and road maintenance agreements must be recorded prior to or contemporaneously with the final plat.

(13) **Issuance of Zoning Permits** – No zoning permits authorizing work on the property can be issued by the zoning administrator prior to a copy of the recorded final plat being submitted to the subdivision administrator or zoning administrator.

(14) **Town Action on Acceptance of Town Public Water and/or Public Streets Dedication** - Improvements installed within rights-of-way or easements including but not limited to utility lines, streets, drainage facilities or sidewalks pursuant to public commitments approved by town council, may be accepted for maintenance by the town upon approval by town council.

ATTACHMENT B

ARTICLE III. DESIGN STANDARDS

Sec. 20-2301. General.

All proposed subdivisions subject to these regulations shall comply with the design standards in this article and shall be so planned as to facilitate the most advantageous development of the entire community.

Sec. 20-2302. Suitability of Land.

The general design of the subdivision shall take advantage of and be adjusted to the contour of the land so as to produce usable building sites and streets of reasonable gradients. Subdivision plans shall be drawn in consideration of the suitability of the land and its capability to support and maintain the proposed development. Due consideration shall be given to such factor as topography, soil conditions, flood damage prevention, erosion control, wetland preservation, storm water management, solar energy, tree preservation, noise and pollution control, habitat for endangered species, areas of historical, archaeological or architectural significance, and land use relationships in addition to other factors including those prescribed by these regulations. In addition:

(a) Land which has been determined by the town council, on the basis of engineering or other expert surveys, to pose an ascertainable danger to life or property by reason of its unsuitability for the type of subdivision proposed shall not be platted for that purpose unless and until the subdivider has taken the necessary measures to correct the conditions and to eliminate the dangers found to exist.

(b) Areas which have been used for the disposal of solid waste shall not be subdivided unless tests by the Buncombe County Health Department, a structural engineer, and a soil expert determine that the land is suitable for the purpose intended.

(c) Lands known to be within a floodplain or any other area known to be subject to flooding shall be so identified. Appropriate restrictions shall be entered into and recorded for those lands which are subject to flooding, prohibiting their development for dwellings or other uses unless the sites are protected against flooding in the following manner:

(1) No structures or fill shall be placed in the floodway which would interfere with the natural watercourse.

(2) Streets, utility lines and structures may be placed within the floodplain only if their elevation is raised above the maximum flood heights or if they are otherwise protected against flooding.

(3) Dwellings and self-contained sewage disposal units (if used) shall be built at an elevation above maximum flood heights.

(4) The subdivision drainage system shall be designed to prevent increased flood flows due to newly impervious surfaces.

Sec. 20-2303. Historic Properties and Natural Areas.

In all subdivisions, due consideration will be given to safeguarding the heritage of the town by preserving any district or landmark therein that embodies important elements of the town's culture, history, architectural history, or prehistory, and promoting the use and conservation of such district or landmark for the education, pleasure, and enrichment of the residents of the town, Buncombe County, and the State as a whole.

All historic districts, historic properties, and historic landmarks, that have been designated as such by the town in accordance with Part 4, of Article 9, of G.S. Chapter 160D, and that are located within the proposed subdivision or located on any immediately contiguous property, must be clearly identified on both the preliminary plan and on the final plat.

Primary consideration shall also be given wherever possible to preserving natural features such as trees, ponds, streams, rivers and lakes, which are of value not only to the subdivision but also to the town.

Sec. 20-2304. Lots and Building Sites.

(a) The size, shape and orientation of lots shall be appropriate for the location of the proposed subdivision and for the type of development contemplated.

(b) It is the intent of these regulations that lot size, shape, and orientation shall be controlled by the provisions of the zoning ordinance contained in part III of this chapter. Every lot shall have sufficient area, dimensions, and shape to permit a principal building to be constructed thereon in conformance with the applicable provisions of the zoning ordinance. Conformity with the zoning ordinance shall mean, among other things, that the smallest lot in the subdivision must meet all dimensional requirements of the zoning ordinance.

(c) As applicable, each lot shall meet any Buncombe County Health Department requirements.

(d) Such building area shall lie at or be elevated above the 100-year flood elevation as provided for in the flood damage prevention ordinance codified as Code chapter 13.

(e) Double frontage lots or “through” lots shall be avoided wherever feasible.

(f) Side lot lines shall be substantially at right angles to or radial to street lines.

Sec. 20-2305. Utility Easements.

Easements for underground or aboveground utilities shall be provided, where necessary, across lots or centered on rear or side lot lines and shall be at least 20 feet wide for water and sanitary sewer lines and as required by the companies involved, for telephone, gas, and power lines. The subdivider shall provide all necessary easements to accommodate the required utilities.

Sec. 20-2306. Existing Trees and Vegetation.

All subdividers shall make every effort to protect and retain all existing trees, shrubbery, vines, and grasses that are not considered an invasive species and not lying in public roadways, drainageways, building foundation sites, private driveways, soil absorption waste disposal areas, paths and trails. All trees are to be protected and preserved during construction in accordance with sound conservation practices recommended by the U.S. Department of Agriculture in Agricultural Information Bulletin No. 285, "Protecting Trees Against Damage from Construction Work," U.S. Government Printing Office, as amended or as superseded. All such trees are to be preserved by well islands or retaining walls whenever abutting grades are altered. Temporary vegetation and mulching shall be used to protect critical areas and replaced by permanent vegetation as soon as practical.

Sec. 20-2307. Sight Distance.

No planting, structure, sign, fence, wall, or obstruction greater than 2 ½ feet in height shall be placed or maintained within the sight triangle. The sight triangle shall be formed by the intersecting street centerlines and a straight line connecting points on the street centerlines, each of which is 75 feet for minor streets and 150 feet for major streets in distance from the point of the intersection.

ARTICLE IV. REQUIRED IMPROVEMENTS

Sec. 20-2401. Generally.

Each subdivision shall contain the required improvements as specified in this article: paved streets, sidewalks, water supply, fire hydrants, sewage systems, and storm drainage. Such subdivision may contain other appropriate improvements. These improvements shall be installed in accordance with the requirements of this chapter and paid for by the subdivider, unless other means of financing is specifically provided for in this chapter. Land shall be dedicated and reserved in each subdivision as specified in this article. Each subdivision shall adhere to the minimum standards of design established by this article.

Sec. 20-2402. Sedimentation and Erosion Control.

The subdivider shall fully comply with all applicable construction site runoff control regulations as adopted, administered, and enforced by the town and Buncombe County, and shall cause all grading, excavations, open cuts, side slopes, and other land surface disturbances to be mulched, seeded, sodded, or otherwise protected to comply with the applicable provisions of town code and with the requirements of the North Carolina Sedimentation Pollution Control Act, G.S. Ch. 113A, art. 4.

Sec. 20-2403. Streets.

Access to a publicly maintained street must be provided to all lots within a subdivision. Existing direct public street access or access to a public street through recorded access easements must be documented.

All new streets proposed for a subdivision shall be constructed in accordance with the requirements of Code Chapter 24, including street construction standards for private streets and construction standards and inspection procedures for public streets.

If new private streets are proposed, appropriate easements and road maintenance agreements must be recorded at the time the final plat is recorded to provide all lots with access to a publicly maintained street. Documentation evidencing such private street easements and road maintenance agreements must be submitted by the subdivider as part of the final plat review process.

Where curbs are provided on streets or where curbs, ramps, and sidewalks are constructed within any subdivision, any construction or reconstruction of such curbs, ramps, and sidewalks shall be in full compliance with ADA accessibility standards.

Any guardrails or bridges proposed must be constructed in accordance with the minimum standards for subdivisions as established by North Carolina Department of Transportation or the North Carolina Fire Prevention Code as adopted by the town, whichever is stricter.

Sec. 20-2404. Sidewalks.

Sidewalks shall be constructed along all street frontages of the property or properties for which the subdivision, whether major or minor, is proposed if the street is shown on a sidewalk master plan, sidewalk improvement plan, or sidewalk priority list adopted by the town, state, or regional council. Sidewalks shall be provided on at least one side of new streets constructed within major subdivisions. Curbs and sidewalks shall be constructed in accordance with the Town of Weaverville Street Standard Specifications and Details Manual applicable to sidewalks and in full compliance with ADA accessibility standards, including specifically but not limited to width, ramp and crosswalk construction. Sidewalk rehabilitation shall be required where the existing sidewalk has been determined by the department of public works to be dilapidated.

Subdivisions may apply to the board of adjustment for a sidewalk waiver in accordance with Code Sec. 20-3108(e).

Sec. 20-2405. Water.

(a) **Generally** - All subdivisions shall be designed to provide public water or meet health department requirements for on-site systems. The subdivider shall be responsible for obtaining all necessary permits and approvals.

(b) **Public Water System** - If town water is to be provide the water system infrastructure shall be constructed in accordance with the Town of Weaverville Water Department Standard Details for Construction and for any permits issued for that purpose.

(c) **Private Well Water System** – If a private well water system or systems are proposed, such improvements shall be constructed in accordance with the well construction standards established by and under the authority of NC Department of Environmental Quality (DEQ) as administered by Buncombe County Environmental Health, and any permits issued for that purpose.

Sec. 20-2406. Fire Hydrants.

Fire hydrants shall be installed in conformity with the North Carolina Fire Prevention Code as adopted by the town, including specifically any appendices that have been adopted by the town, as the same may from time to time be amended.

Sec. 20-2407. Sewer or Septic System.

(a) **Generally** – All subdivisions shall be designed to provide MSD public sanitary sewer service or meet health department requirements for on-site systems. The subdivider shall be responsible for obtaining all necessary permits and approvals.

(b) **Public Sanitary Sewerage System** – If public sanitary sewer is proposed such improvements shall be constructed in accordance with the standards and requirements of the Metropolitan Sewerage District of Buncombe County (MSD) and any permits issued for that purpose.

(c) **Private Septic System** – If a private septic system or systems are proposed, such improvements shall be constructed in accordance with the sewerage disposal laws and rules established by and under the authority of NC Department of Environmental Quality (DEQ) as administered by Buncombe County Environmental Health, and any permits issued for that purpose.

Sec. 20-2408. Stormwater Drainage System.

Stormwater drainage improvements are required to be installed in accordance with the applicable Buncombe County stormwater management ordinance and applicable construction and post-construction site runoff control regulations. The subdivider shall be responsible for obtaining all necessary permits and approvals and for fully complying with all post-construction obligations.
If town public streets are proposed, the stormwater drainage system must also be constructed and inspected in accordance with Code Chapter 24 and the Town of Weaverville Street Standard Details applicable to storm drainage.

ARTICLE V. MAPPING STANDARDS

Sec. 20-2501. General Requirement for Plats.

This article requires that plats show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformance with good surveying practices.

All plans and plats shall be prepared by a surveyor or engineer licensed in the State of North Carolina and shall comply with G.S. 47-30.

All plans and plats shall be drawn to scale which, unless otherwise stated herein, shall be not less than 1" = 200'.

Sec. 20-2502. Number and Type of Plans and Plats to be Submitted.

Prints may be blue line or black line and map size shall be a minimum of 11" × 17" and a maximum of 24" × 36", except that final plats must be black line and shall not exceed an outside dimension of 18" X 24". The final plat prints for town file shall be copies of the final plat as presented for recording.

MAP	STAFF AND TECHNICAL REVIEW COMMITTEE	PLANNING BOARD	TOWN FILE (as approved)
Preliminary Plan	4 prints, 1 digital	1 digital, prints as requested	4 prints, 1 digital
Construction Plans (certified by engineer)	4 sets, 1 digital		1 set, 1 digital
Final Plat	4 prints, 1 digital		4 prints, 1 digital

ATTACHMENT B

Sec. 20-2503. Construction Plans.

Construction plans shall be at a scale of not less than 1" = 50' and shall include the following:

(1) Plan and profile showing streets with complete design showing all horizontal curve data, vertical curve data, super-elevation, etc. and DOT approvals such as driveway permits, DOT streets, etc.

(2) Storm drainage design and calculations with size, material, grade, length and cover on all pipes, and size, type and location of all catch basins.

(3) Location of all flood boundaries and temporary and permanent erosion control methods and proposed fill.

(4) Utility system plan and profile to show size, material, cover, and grade on all mains; size, depth and type of all manholes, location of all hydrants and cleanouts, location of all services and meter boxes, and location of easements.

(5) Distribution systems of electric, telephone, natural gas, cable, antenna television and other services in right-of-way.

(6) A copy of the approved state erosion control plan and approval letter prior to beginning construction.

Sec. 20-2504. Required Plan and Plat Information.

Preliminary plans and final plats shall contain the information noted below:

Information	Preliminary Plan	Final Plat
Title block containing:		
Name of the development	X	X
Name of map or plan (sketch plan, preliminary plan, final plat, etc.)	X	X
Owner's name with address and daytime phone number	X	X
Developer's name, address, and daytime telephone number (if different from owner's)	X	X
Name, firm name, license number, address, & telephone number of preparer	X	X
Location (including address, city, township, state)	X	X
Date map prepared, dates and descriptions of revisions after original signing	X	X
Scale of drawing in feet per inch (not less than 1" equal to 200')	X	X
Bar graph scale	X	X
Vicinity map showing location of site relative to surrounding area typically drawn in upper right hand corner, at a scale of 1"=2000'.	X	X
Zoning district designation within the property & adjacent properties	X	X
Existing land use within the property & adjacent properties	X	
Plat book or deed book references	X	X

Names of adjoining property owners (or subdivision or developments of record with plat book and/or deed book reference)	X	X
Parcel Identification Number(s) (PINs) of the property & adjacent properties	X	X
Corporate limits, city limits, and other jurisdiction lines, if any, on the tract	X	X
North arrow coordinated with bearings & orientation (north arrow shall be oriented towards top of map where practicable)	X	X
Boundaries of tract to be subdivided or developed:		
Distinctly and accurately represented boundary; show bearings and distances and curve data on outside boundaries sufficient to form a continuous closure of the entire perimeter	X	X
Street centerlines on preliminary with street centerline tied to boundary	X	X
Tie at least one corner to NC grid and provide grid coordinates where at least one of two control monuments needed are within 2,000 feet of the boundary or tie to nearest street intersection.		X
Showing locations of intersecting boundary lines of adjoining properties.	X	X
Location and descriptions of all monuments, markers and control corners		X
Existing property lines on tract to be subdivided. If existing property lines are to be changed, label as "old property lines" and show as dashed lines.	X	X
Dimensions, location and use of all existing buildings; distances between buildings measured at the closest point; distance from buildings to closest property lines; building to remain on final.	X	X
Name and location of any property or building on the National Register of Historic Places or locally designated historic site	X	X
Water courses, ponds, lakes or streams	X	X
Marshes, swamps and other wetlands areas to be dedicated or reserved for the public or a local jurisdiction	X	X
Areas designated as common area or open space under control of an owners' association	X	X
Existing and proposed topography of tract and 100 feet beyond property showing existing contour intervals of no greater than 5 feet (2 feet where available) and labeling at least two contours per map and all others at 10 foot intervals from sea level	X	X
Proposed lot lines and dimensions; show bearings and distances on final	X	X
Acreage and square footage for all lots	X	X

ATTACHMENT B

Site calculations including:		
Acreage in total tract	X	X
Acreage in public greenways and other open space	X	X
Total number of lots	X	X
Linear feet in streets	X	X
Area in newly dedicated right-of-way	X	X
Lots sequenced or numbered consecutively	X	X
Density in units per acre	X	X
Street and sidewalk data illustrating:		
Existing and proposed rights-of-way within and adjacent to property showing:		
a. R/W lines	X	X
b. Total R/W width dimension	X	X
c. R/W width dimension from centerline of existing public streets	X	X
d. Cul-de-sac R/W radius from centerpoint	X	X
Existing and proposed streets and sidewalks showing:		
a. Pavement or curb lines	X	
b. Pavement width dimensions (face-to-face or EP to EP)	X	
c. Cul-de-sac pavement radius from centerpoint	X	
d. Existing & proposed sidewalks	X	
e. Existing & proposed street names (as approved by Buncombe County)	X	
f. Location, dimension & type of all easements (existing & proposed)	X	
g. Designation of public or private for each street or note concerning same	X	X
Utility layout plan showing connections to existing systems, line sizes, material of lines, location of fire hydrants, blowoffs, valves, manholes, catch basins, force mains, etc. for the following types of utility lines (not to substitute for construction plans):		
Sanitary sewer system	X	
Water distribution system including fire hydrants	X	
Storm drainage system	X	
Natural gas, electric, cable TV	X	
Plan for providing water and sewer service; graphic or narrative form.	X	

Utility easements for underground or aboveground utilities, min. 20’ width		X
Additional documentation to be provided separately (not on plans or plats)		
Application for town public street commitment, if public streets proposed	X	
Application for town public water commitment, if town water proposed	X	
Road maintenance agreement for private streets		X

Sec. 20-2505. Certifications, Notes and Approval Blocks.

The following certifications, notes and approval blocks shall appear on the appropriate plans and plats in substantially the following formats:

Preliminary Plan	Certificate of Approval (Planning Board)	I hereby certify that this Preliminary Plan was found to be in conformity with applicable development regulations and approved by the Planning Board of the Town of Weaverville on the _____ day of _____ 20___. _____ Planning Board Chairman Date
Final Plat	Certificate of Ownership and Dedication (Owner(s))	I (We) hereby certify that I am (we are) owner(s) of the property shown and described hereon, which is located within the planning and development regulation jurisdiction of the Town of Weaverville and that I (we) hereby adopt this plan of subdivision with my (our) free consent and hereby establish all lots, establish minimum building setback lines, and dedicate all streets, alleys, walks, parks and other open spaces and easements to public or private use as noted. It is understood that dedications to the Town of Weaverville are subject to official acceptance. _____ Owner(s) _____ Owner(s) Date
	Certificate of Survey and Accuracy (Surveyor)	I, _____, certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in book _____, page _____, etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in book _____, page _____; that the ratio of precision as calculated is 1:_____; that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, license number, and seal this _____ day of _____ A.D., 20___. *(Seal or stamp)*

		_____ Surveyor Registration Number (maximum allowable error: 1:10,000)
	Certificate of Plat Review Officer	State of North Carolina County of Buncombe I, _____, review officer of Buncombe County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording. _____ Plat Review Officer Date
	Certificate of Approval of Design and Installation of Public Streets and related improvements	I hereby certify that all public streets and other related improvements have been installed in an acceptable manner and according to N.C. Department of Transportation and/or Town of Weaverville specifications and standards. Official Seal _____ Professional Engineer Registration Number Date _____ NCDOT District Engineer Date _____ Weaverville Public Works Director Date
	Certificate of Approval of Design and Installation of Utilities – Public Water	I hereby certify that all public utilities, specific to the extension of the town's water system, and related improvements have been installed in an acceptable manner and according to N.C. Department of Environmental Quality and/or Weaverville specifications and standards and permits issued for such improvements. Official Seal _____ Professional Engineer Registration Number Date _____ Weaverville Public Works Director Date

	Certificate of Approval of Design and Installation of Utilities – Public Sewer	I hereby certify that all public utilities and related improvements have been installed in an acceptable manner and according to N.C. Department of Environmental Quality and/or MSD specifications and standards and permits issued for such improvements. Official Seal _____ Professional Engineer Registration Number Date _____ MSD Engineer Date
	Certificate of Final Approval (Planning Director)	I hereby certify that this Final Plat has been found to be in compliance with the development regulations of the Town of Weaverville and has been approved for recording by the Town of Weaverville on the _____ day of _____ 20___. Must be recorded within thirty (30) days of this date. _____ Planning Director Date
	Onsite Water and/or Sewer Note	*Note:* (ALL THE LOTS) or (LOTS # _____) as shown on this plat are proposed to be served with on-site water and/or septic systems. The lots as shown meet the minimum size prescribed by the Buncombe County Health Department for such system(s). However, the recording of this plat does not guarantee that any such lots will meet the requirements for the approval by the Health Department for such on-site system(s). _____ Professional Engineer/Surveyor Registration Number Date
	Register of Deeds Certificate	This instrument was presented for registration and recorded in Map Book _____, Page _____ this _____ day of _____, 20___ at _____ (a.m./p.m.).
	Note concerning streets	The notation of a “public” street serves only as an offer of dedication for public use. The approval of a plat shall not be deemed to constitute or affect the acceptance of the town or by the public of the dedication of any street or related infrastructure show on the plat. Streets remain private until the town or NCDOT formally accepts the street into its public street system.

	Exempt Subdivisions	This subdivision of land has been found to be exempt from the subdivision ordinance of the Town of Weaverville.
	Special Use Permits	This plat has been approved by the Town of Weaverville as part of the issuance of a special use permit and all lots shown are subject to all the conditions, rules and regulations contained in that permit. Any modification to any lot or improvement shown on this plat may only be accomplished as an amendment to the special use permit and in accordance with the applicable Code provisions of the Town of Weaverville.
	Conditional Districts	This plat has been approved by the Town of Weaverville as part of a conditional district and all lots shown are subject to all the conditions, rules and regulations governing that conditional district. Any modification to any lot or improvement shown on this plat may only be accomplished as an amendment to the conditional district and in accordance with the applicable Code provisions of the Town of Weaverville.
	Other Special Notes	Special Flood Hazard Area Note

ATTACHMENT B

PART III – ZONING REGULATIONS

ARTICLE I. GENERAL PROVISIONS

Sec. 20-3101. Title.

This Part III contains the development regulations pertaining to zoning within the planning and development regulation jurisdiction of the Town of Weaverville and shall be known and cited as the zoning regulations of the Town of Weaverville, North Carolina, and may be referred to as the "zoning ordinance."

Sec. 20-3102. Authority.

The zoning regulations contained in this Part III are adopted under the authority and provisions of Chapter 160D of the North Carolina General Statutes, including specifically Article 7 and G.S. 160D-702.

Sec. 20-3103. Applicability.

The zoning regulations contained in this Part III shall be applicable to the use of all land or buildings and to the development of land within the town's planning and development regulation jurisdiction.
With these regulations the town divides its territorial jurisdiction into zoning districts best suited to carry out its planning and development purposes. These districts regulate and restrict the erection, construction, reconstruction, alteration, repair, and/or use of buildings, structures, and land.
No building or land shall be used or occupied and no building or structure or part thereof shall be erected, constructed, altered, repaired, or moved except in conformity with the regulations of this Part III applicable to the district in which the building, structure or land is located, as the same may from time to time be amended.

Sec. 20-3104. Purpose.

These zoning regulations are made in accordance with a comprehensive plan and are designed to promote the public health, safety, and general welfare. To that end, these 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; to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and to promote the health, safety, morals, or general welfare of the community.
These regulations are 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 through the town's planning and development regulation jurisdiction.
The regulations contained herein do not permit, as a basis of denying a zoning or rezoning request from a school, the level of service of a road facility or facilities abutting the school or proximately located to the school.

Sec. 20-3105. Definitions.

The definitions found in Code Chapter 20, Part I, Article II shall apply.
In accordance with G.S. 160D-706(b), nothing contained herein shall be construed to define building, dwelling, dwelling unit, bedroom, or sleeping unit, inconsistently with any definition of those terms in another statute or in a rule adopted by a State agency, including the State Building Code Council.

Sec. 20-3106. Zoning Districts

(a) **Types of Zoning Districts** – Zoning districts within the town's planning and development regulation jurisdiction include the following:

(1) Conventional Districts, in which a variety of uses are allowed as permitted uses or uses by rights and uses permitted with standards;

(2) Overlay Districts, in which different requirements are imposed on certain properties within one or more underlying conventional or conditional districts;

(3) Conditional Districts, in which site plans or individualized development conditions are imposed.

(b) **Uniformity Within Districts** – Except as authorized by the foregoing, all regulations shall be uniform to each class or kind of building throughout each district but the regulations in one district may differ from those in other districts.

(c) **Standards Applicable Regardless of District** – These regulations and the land development ordinance may include development standards that apply uniformly jurisdiction-wide rather than being applicable only in particular zoning district.

Sec. 20-3107. Incentives.

For the purpose of reducing the amount of energy consumed by new development, these regulations may grant density bonuses, make adjustments to otherwise applicable requirements, or provide other incentives within its planning and development regulation jurisdiction, if the person receiving the incentives agrees to construct new development or reconstruct existing development in a manner that the town determines, based on generally recognized standards established for such purposes, makes a significant contribution to the reduction of energy consumption and increased use of sustainable design principles.

Sec. 20-3108. Quasi-Judicial Zoning Decisions.

(a) **Quasi-Judicial Procedures** – The board of adjustment shall follow quasi-judicial procedures as specified in G.S. 160D-406 and Code Sec. 20-1309 when making any quasi-judicial decision.

(b) **Appeals of Administrative Decisions** – Except as otherwise provided by G.S. Chapter 160D, the board of adjustment shall hear and decide appeals from administrative decisions regarding administration and enforcement of all development regulations and may hear appeals arising out of any other ordinance that regulates land use or development. A majority vote of the members shall be required to decide an appeal. The provisions of G.S. 160D-405 and Code Sec. 20-1308 governing appeals of administrative decisions, and G.S. 160D-406 and Code Sec. 20-1309 governing quasi-judicial procedure are applicable to these appeals.

(c) **Special Use Permits** – The board of adjustment shall hear and decide special use permits in accordance with principles, conditions, safeguards, and procedures specified in Code Sec. 20-3204. A majority vote of the members shall be required to issue a special use permit.

(d) **Variances** – When unnecessary hardships would result from carrying out the strict letter of a zoning regulation, the board of adjustment shall vary any of the provisions of the zoning regulation when, based on competent, material, and substantial evidence, it finds all of the following:

(1) Unnecessary hardship would result from the strict application of the regulation. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made on the property;

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability;

(3) The hardship did not result from the actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance is not a self-created hardship;

(4) The requested variance is consistent with the spirit, purpose, and intent of the regulation, such that public safety is secured and substantial justice is achieved;

(5) The requested variance is not a request to permit a use of land, building, or structure which is not permitted in the zoning district in which the property is located; and

(6) The requested variance is not a request to permit a prohibited sign.

Appropriate conditions may be imposed on any variance, provided the conditions are reasonably related to the variance. Other development regulations that regulate land use or development, including the subdivision regulations, may provide for variances from the provisions of those ordinances consistent with the provision of this section. The concurring vote of four-fifths (4/5) of the board of adjustment shall be necessary to grant a variance. Approved variances are required to be recorded with the Buncombe County Register of Deeds upon approval.

(e) **Sidewalk Waivers** – The board of adjustment shall hear and decide all requests for waivers of sidewalk requirements, with a majority vote of the members based on competent, material, and substantial evidence. Limitations and standards applicable to sidewalk waivers are as follows:

(1) Sidewalk requirements imposed by a conditional district or special use permit are not eligible for a waiver of such sidewalk requirements.

(2) Major subdivisions are not eligible for a waiver of the sidewalk requirement for sidewalks on new streets proposed for construction within the major subdivision. Major subdivisions may, however, be granted a sidewalk waiver of the sidewalk requirements along existing streets upon the finding that:

(a) The construction of the sidewalk is proposed to be constructed within an existing right-of-way where sufficient right-of-way or easement width does not exist or cannot be dedicated to build the sidewalk; or

(b) The construction of the sidewalk is not feasible due to special circumstances including but not limited to impending road widening or improvements or severe roadside conditions or slope which would prohibit sidewalk construct.

(3) Minor subdivisions may be granted a sidewalk waiver upon the finding that:

(a) The construction of the sidewalk is proposed to be constructed within an existing right-of-way where sufficient right-of-way or easement width does not exist or cannot be dedicated to build the sidewalk; or

(b) The construction of the sidewalk is not feasible due to special circumstances including but not limited to impending road widening or improvements or severe roadside conditions or slope which would prohibit sidewalk construction.

(f) **Vegetative Screening and/or Buffer Waivers** - The board of adjustment shall have the authority to alter or eliminate the required vegetative screening or buffering requirement where the lot requiring the vegetative 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 chapter, between the owner of the lot requiring the vegetative screen and the owner of the adjacent lot zoned residential. These waivers may be granted by the board upon a majority vote of the members based on competent, material, and substantial evidence and any such agreements shall be attached to the approved waiver.

Sec. 20-3109. Zoning Conflicts with Other Development Standards.

(a) When regulations made under authority of Article 7 of G.S. Chapter 160D require a greater width or size of yards or courts, or require a lower height of a building of fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under authority of Article 7 of G.S. Chapter 160D shall govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stores, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of Article 7 of G.S. Chapter 160D, the provisions of that statute or local ordinance

or regulation shall govern. If there are conflicting provisions within this article then the more restrictive provisions apply.

(b) When adopting regulations under Article 7 of G.S. Chapter 160D, a local government may not use a definition of building, dwelling, dwelling unit, bedroom, or sleeping unit that is inconsistent with any definition of those terms in another statute or in a rule adopted by a State agency, including the State Building Code Council.

Sec. 20-3110. Zoning Permit 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 such information as the zoning administrator determines as needed for a full review of the request. The zoning administrator shall ensure that all applications are compliant with the applicable sections of this chapter prior to issuance of permit or transmittal to the decision-making board.

(2) Issuance of zoning permit. Prior to issuing a zoning permit the zoning administrator shall first review the application and supporting documentation 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. When reviewing proposed uses of land related to new commercial, industrial or multi-family residential development, or uses which require the issuance of or an amendment to a special use permit or the adoption of a conditional zoning district, the planning director shall coordinate an evaluation of the proposed development with a technical review committee consisting of members of individual municipal departments, including but not limited to the fire marshal and public works director or their designees, who may offer expertise on the proposed development. The technical review committee shall offer an opinion on the proposed development to the planning and zoning board and town council based upon the committee's findings or compliance with various sections of municipal ordinance and relevant federal and state laws, rules and regulations.

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 permits required. After the zoning permit is approved and issued, the applicant shall apply to the Buncombe County Permits and Inspections Department, or any successor thereto, for building, plumbing, electrical or other 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 districts, which shall be governed by Code Sec. 3203 or special use permits, which shall be governed by Code Sec. 20-3204.

ARTICLE II. CONVENTIONAL DISTRICTS, OVERLAY DISTRICTS, CONDITIONAL DISTRICTS, TABLE OF USES, TABLE OF DIMENSIONAL REQUIREMENTS, ZONING MAP AND DISTRICT BOUNDARIES, AND MISCELLANEOUS

Sec. 20-3201. Conventional Districts.

The following conventional districts are hereby established:

(a) **R-1 District**. The primary residential district is established in which the principal use of the land is for single family residential purposes and the regulations for the R-1 district are established in order to protect the existing residential development and promote a suitable environment for residential life in a low density community.

(b) **R-2 District**. The transitional residential district is established in which the principal use of the land is for residential purposes and the regulations for the R-2 district are established in order to protect the existing residential development and protect and promote a suitable environment for residential life in a moderate density community.

(c) **R-3 District**. The general residential district is established in in which the principal use of the land is for residential purposes and the regulations for the R-3 district are established in order to protect the existing residential development and protect and promote a suitable environment for residential life with a higher allowable density than the R-1 and R-2 districts.

(d) **R-12 District**. The multi-unit residential district is established in which the principal use of the land is for residential purposes and the regulations for the R-12 district are established in order to provide a location for multi-unit residential development such as apartments and to provide regulations to minimize the effects of higher density residential uses.

(e) **C-1 District**. The central business district is established in which the principal use of the land is for retail and food service businesses and the regulations for the C-1 district are established in order to protect the present retail businesses and service development within the district and promote future development within the district of businesses compatible with a vibrant, walkable main street.

(f) **C-2 District**. The general business district is established in which the principal use of the land is for commercial development and the regulations for the C-2 district are established in order to promote current and future development of businesses which are required to serve the needs of residents of the town with convenience shopping, goods and services.

(g) **I-1 District**. The light industrial district is established in which the principal use of the land is for light industrial development and the regulations for the I-1 district are established in order to promote industrial development but provide that the noise, dust, glare, and odor of each such industrial operation be kept to a minimum.

Sec. 20-3202. Overlay Districts.

The following overlay districts are hereby established:

(a) **MHO District**. The manufactured home overlay district is established and intended for application to those areas of the zoning jurisdiction where the use or development of manufactured homes

on individual lots is consistent with the character of the area and compatible with surrounding developed properties.

Sec. 20-3203. Conditional Districts.

(a) **Intent**. It is expected that, in most cases, a conventional district will appropriately regulate site-specific impacts of permitted uses and structures on surrounding areas, however conditional districts provide for those situations where a particular use, properly planned, may be appropriate for a particular site, but where the underlying conventional district has insufficient standards to mitigate the site-specific impact on surrounding area.

(b) **Consideration for any use**. Any use may be considered for a conditional district and shall be established on an individual basis, upon petition of the property owner.

(c) **Conditions**. Specific conditions may be proposed by the petitioner or by the town, but only those conditions approved by the town and consented to by the petitioner in writing may be incorporated into the zoning regulations. Unless consented to by the petitioner in writing, in the exercise of the authority granted by G.S. 160D-703(b) and this section, the town may not require, enforce, or incorporate into the zoning regulations any condition or requirement not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. Conditions and site-specific standards imposed in a conditional district must be limited to those that address the conformance of the development and use of the site to town ordinances, plans adopted pursuant to G.S. 160D-501, or the impacts reasonably expected to be generated by the development or use of the site.

(d) **Petition**. Property may be placed in a conditional district only in response to a petition by all owners of the property to be included. The petition must be signed by all property owners, or agents of the owners, of all of the property to be included in the district and shall be accompanied by 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 preliminary plan or site plan that is substantially in compliance with the mapping standards set out in Code Sec. 20-2504 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) The number and general location of all proposed structures;

(3) The proposed use of all land and structures, including the number of residential units or the total square footage of any nonresidential development;

(4) All yards, buffers, screening, landscaping, and sidewalks required by ordinance, and notations of any deviation from requirements;

(5) Proposed number and location of the signs;

(6) Proposed phasing, if any, and the approximate completion time for the project;

(7) Traffic, parking, and circulation plans, showing the proposed location and arrangement of parking spaces and ingress and egress to adjacent streets, existing and proposed;

(8) Information on the height of all proposed structures;

(9) Exterior features of all of the proposed development including but not limited to construction and finishing materials.

(e) **Approval procedure**. Except as specifically modified by this section, the procedures to be followed by the planning board and town council in reviewing, granting, or denying any petition for a conditional district shall be the same as those established for zoning map amendments (see Code Sec. 20-1504). The following additional procedures shall also apply for the approval of conditional districts:

(1) *Initial consideration by town council*. Petitions for conditional districts shall be initially reviewed by town council. After its initial consideration of a petition for a conditional district, town council shall refer the request to the planning board for the full review process as required by G.S. Chapter 160D. Initial consideration of such petitions are intended to provide town council with the opportunity to express their preliminary thoughts related to the petition but shall not serve as a final determination on same.

(2) *Community meeting*. Before a public hearing may be held by the town council on a petition for a conditional district the petitioner must file in the office of the town clerk a written report of 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 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 the community meeting shall be posted on the property and mailed to all the property owners within 200 feet of the property boundaries not more than 25 days nor less than 10 days prior to the meeting.

(f) **Approval and ordinance***.* If a petition for a conditional district is approved, the development and use of the property shall be governed by the ordinance establishing the conditional district, 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 conditional district. Each conditional district will be given a special number, distinguishing such conditional district from another zoning district. Each ordinance adopted by town council which establishes a conditional district within the town is hereby incorporated into this chapter as a separate and unique zoning district and shall be reflected on the town's zoning map. Copies of such ordinances shall be kept on file with the town clerk and may be reviewed upon request.

(g) **Time limits***.* Time limits for the completion of the project's infrastructure and completion of construction may be established as conditions of the conditional district, subject to consent of the property owner. Extensions to established time frames shall be subject to the approval of town council.

(h) **Phasing of projects***.* Project phasing must be reviewed and approved with the conditional district. Phases must be shown on the site plan that is adopted in conjunction with the ordinance approving the conditional district and the time periods related to the phasing must also be addressed in said ordinance.

(i) **Performance guarantees***.* At the discretion of the town council, the property owner may be required to post performance guarantees to guarantee the successful completion of required improvements included in the approved conditional district. Such performance guarantees are subject to the provisions of G.S. 160D-804.1.

(j) **Judicial review***.* Conditional district decisions under this section are legislative decisions that are presumed valid if there is a reasonable basis for the decision.

(k) **Future variance request***.* Properties subject to a conditional district are not eligible for variances on the approved project.

(l) **Maintaining the conditional district***.* A conditional district is a rezoning which represents both a text and map amendment and as such is must be maintained after the sale of the property. district.

(m) **Modifications***.* Minor modifications and major amendments to approved conditional districts shall be in accordance with Code Sec. 20-1303.

(n) **Final plat approval process.** All water, sewer, stormwater infrastructure, and all street, sidewalk, and similar improvements must be installed and verified as complete by the appropriate authority

prior to final plat review. Once the required infrastructure is complete, the final plat is to be reviewed by the zoning administrator and the technical review committee for compliance with the relevant portions of the ordinance approving the conditional district for the project. Upon finding that the required infrastructure is complete and the final plat is in compliance with the ordinance, the planning director, or their designee, shall approve the final plat and authorize the recordation of same. Final plats must contain all applicable information as set out in Code Sec. 20-2504 and Code Sec. 20-2505.

(o) **Issuance of zoning permits***.* The zoning administrator shall not issue a zoning permit until a final plat has been approved and recorded.

Sec. 20-3204. Special Use Permits.

(a) **Applicability**. This section is applicable to the issuance of any special use permit required by this chapter and for any amendment to an existing special use permit.

(b) **Intent***.* The purpose of this section is to ensure adequate review and control of various specific uses or development proposals which may have a direct influence or impact upon neighboring or contiguous land uses. The review is intended to aid in protecting the private and public values and interests in such land uses, whether residential or commercial in nature.

(c) **Standards***.* Special use permits may not be issued or amended unless the board of adjustment finds, based on competent, material and substantial evidence, all of the following:

(1) The establishment, maintenance, or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort, or general welfare;

(2) The special use 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 use 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; and

(7) The special use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as to such regulations as may, in each instance, be modified by the board of adjustment.

(d) **Conditions**. Reasonable and appropriate conditions and safeguards may be imposed upon these permits. Where appropriate, such conditions made include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this section shall not include requirements for which local government does not have authority under statute to regular nor requirements for which the courts have held to be unenforceable if imposed by the local government, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land. The owner must indicate in writing their consent to the reasonable and appropriate conditions and safeguards made a part of the special use permit either prior to or with the issuance of the permit.

(e) **Petition**. A special use permit may only be issued in response to a petition by all owners of the property to be included. The petition must be signed by all property owners, or agents of the owners, of all of the property to be included in the permit and shall be accompanied by the established fee, and documentation as required by the following:

(1) A preliminary plan or site plan that is substantially in compliance with the mapping standards set out in Code Sec. 20-2504 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) The number and general location of all proposed structures;

(3) The proposed use of all land and structures, including the number of residential units or the total square footage of any nonresidential development;

(4) All yards, buffers, screening, landscaping, and sidewalks required by ordinance, and notations of any deviation from requirements;

(5) Proposed number and location of the signs;

(6) Proposed phasing, if any, and the approximate completion time for the project;

(7) Traffic, parking, and circulation plans, showing the proposed location and arrangement of parking spaces and ingress and egress to adjacent streets, existing and proposed;

(8) Information on the height of all proposed structures;

(9) Exterior features of all of the proposed development including but not limited to construction and finishing materials.

(f) **Quasi-judicial approval procedure**. All special use permit applications shall be submitted to the zoning administrator. The zoning administrator will forward the application to the board of adjustment in accordance with Code Sec. 20-1309(c) and the board of adjustment shall review and decide the matter in strict conformity with quasi-judicial procedures set out in Code Sec. 20-1309. Special use permits may not be issued or amended unless the board of adjustment finds, based on competent, material and substantial evidence, that all of the standards set out in subparagraph (f) above have been met. Special use permits are required to be recorded with the Buncombe County Register of Deeds upon issuance.

(g) **Time limits**. Time limits for the completion of the project's infrastructure and completion of construction may be established as conditions of the special use permit, subject to consent of the property owner. Extensions to established time frames shall be subject to the approval of the board of adjustment.

(h) **Phasing of projects**. Project phasing must be reviewed and approved with the special use permit. Phases must be shown on the site plan that is adopted in conjunction with the special use permit and the time periods related to the phasing must also be addressed in said ordinance.

(i) **Judicial review**. The issuance or denial of a special use permit is a quasi-judicial decision that is subject to judicial review in the nature of certiorari as set out in G.S. 160D-1402 and Code Sec. 20-1311.

(j) **Future variance request**. Properties subject to a special use permit are not eligible for variances on the approved project.

(k) **Maintaining the special use permit**. A special use permit must be maintained during and after the sale of the property.

(l) **Modifications**. Minor modifications and major amendments to approved special use permits shall be in accordance with Code Sec. 20-1303.

(m) **Final plat approval process.** All water, sewer, stormwater infrastructure, and all street, sidewalk, and similar improvements must be installed and verified as complete by the appropriate authority prior to final plat review. Once the required infrastructure is complete, the final plat is to be reviewed by the zoning administrator and the technical review committee for compliance with the special use

permit and all conditions therein. Upon finding that the required infrastructure is complete and the final plat is in compliance with the special use permit, the planning director, or their designee, shall approve the final plat and authorize the recordation of same. Final plats must contain all applicable information as set out in Code Sec. 20-2504 and Code Sec. 20-2505.

(n) **Issuance of zoning permits**. The zoning administrator shall not issue a zoning permit until a final plat has been approved and recorded.

Sec. 20-3205. Table of Uses.

The following notes shall be applicable to the Table of Uses established herein.

(1) Additional standards for those uses identified on the Table of Uses as "permitted with standards" are found in Article III of Part III of this chapter.

(2) If a proposed use can't be found on the table of uses herein established or is not specifically defined herein, then the zoning administrator shall make a determination on which use most closely resembles the proposed use and shall apply those regulations and restrictions. Such determination may be made as a formal interpretation, or as part of an issuance or denial of a zoning permit or a notice of violation. The zoning administrator's determination is subject to an appeal of an interpretation which shall be heard by the board of adjustment.

(3) The abbreviations and symbols shown in the Table of Uses have the following meanings:

"C" = Conditional District required

"P" = Permitted

"PS" = Permitted with Standards

"-" = Not Permitted

USES	R-1	R-2	R-3	R-12	C-1	C-2	I-1	MHO
RESIDENTIAL								
Dwelling - Single Family	P	P	P	-	-	-	-	-
Dwelling - Duplex	-	P	P	P	-	-	-	-
Dwelling - Multifamily (4 or fewer units/building)	-	P	P	P	-	-	-	-
Dwelling - Multifamily (more than 4 units/building)	-	-	PS	PS	-	-	-	-
Dwelling - Secondary	PS	PS	PS	-	-	-	-	-
Family Care Home (6 or fewer residents)	PS	PS	PS	-	-	-	-	-
Child Care Home (6 or fewer children)	PS	PS	PS	-	-	-	-	-
Home Occupation	PS	PS	PS	PS	-	-	-	-

Manufactured Home	-	-	-	-	-	-	-	PS
Manufactured Home Park	-	-	-	-	-	-	-	-
Recreational Vehicle	-	-	-	-	-	-	-	-
Recreational Vehicle Park, Campground	-	-	-	-	-	C	C	-
Bed & Breakfast	P	P	P	-	-	-	-	-
Hotel, Motel, Inn	-	-	-	-	C	C	C	-
OFFICE / SERVICE								
Animal Services, Veterinary Clinic	-	-	-	-	P	P	P	-
Automated Teller Machines	-	-	-	P	P	P	P	-
Automobile Services, Gas Station	-	-	-	-	P	P	P	-
Automobile Services, Repair	-	-	-	-	PS	PS	PS	-
Banks, Credit Unions, Financial Services	-	-	-	-	PS	P	P	-
Child Care Center (more than 6)	-	-	-	-	C	PS	PS	-
Community Service Organization	-	-	-	-	-	P	P	-
Equipment Rental (Exterior Storage)	-	-	-	-	-	-	P	-
Equipment Rental (Interior Storage)	-	-	-	-	-	P	P	-
Funeral Home	-	-	-	-	P	P	P	-
Group Care Facility (more than 6 residents)	-	-	-	-	C	P	P	-
Government Services	C	C	C	C	C	P	P	-
Kennels	-	-	-	-	-	PS	PS	-

Medical Services - Clinic, Urgent Care Center, Hospital	-	-	-	-	-	P	P	-
Medical Services - Doctor Office	-	-	-	-	P	P	P	-
Personal Services	-	-	-	-	P	P	P	-
Post Office	-	-	-	-	-	P	P	-
Professional Services	-	-	-	-	P	P	P	-
Studio - Art, Dance Martial Arts, Music	-	-	-	-	P	P	P	-
RETAIL / RESTAURANTS								
Accessory Retail	-	-	-	-	P	P	P	-
Alcoholic Beverage Sales Store	-	-	-	-	P	P	P	-
Auto / Mechanical Parts Store	-	-	-	-	P	P	P	-
Bar / Tavern / Night Club	-	-	-	-	P	P	P	-
Drive-Thru Retail / Restaurant	-	-	-	-	-	P	P	-
General Retail (Under 10,000 sq. ft.)	-	-	-	-	P	P	P	-
General Retail (10,000 - 24,999 sq. ft.)	-	-	-	-	PS	PS	PS	-
General Retail (25,000 sq. ft. or more)	-	-	-	-	C	C	C	-
Multi-tenant Development (Under 25,000 sq. ft.)	-	-	-	-	C	PS	PS	-
Multi-tenant Development (25,000 sq. ft. or more)	-	-	-	-	C	C	C	-
Pawn Shop	-	-	-	-	-	P	P	-
Restaurant	-	-	-	-	P	P	P	-
Vehicle / Heavy Equipment Sales - Indoor	-	-	-	-	P	P	P	-

Vehicle / Heavy Equipment Sales - Outdoor	-	-	-	-	-	P	P	-
ENTERTAINMENT / RECREATION								
Amusements - Indoor	-	-	-	-	P	P	P	-
Amusements - Outdoor	-	-	-	-	-	P	P	-
Cultural or Community Facility	PS	PS	PS	PS	P	P	P	-
Recreation Facilities - Indoor	PS	PS	PS	PS	P	P	P	-
Recreation Facilities - Outdoor	PS	PS	PS	PS	PS	PS	PS	-
Theater - Motion Picture	-	-	-	-	-	P	P	-
MANUFACTURING / WHOLESALE / STORAGE								
Manufacturing, Heavy	-	-	-	-	-	-	C	-
Manufacturing, Light	-	-	-	-	-	P	P	-
Manufacturing, Neighborhood	-	-	-	-	P	P	P	-
Metal Product Fabrication, Machine or Welding Shop, Auto Body Shop	-	-	-	-	-	-	P	-
Mini-Warehouses	-	-	-	-	-	-	P	-
Outdoor Storage Yard	-	-	-	-	-	-	C	-
Warehousing and Distribution - Exterior Storage	-	-	-	-	-	-	P	-
Warehousing and Distribution - Interior Storage	-	-	-	-	-	P	P	-
CIVIC / INSTITUTIONAL								
Cemeteries	-	-	-	-	-	-	C	-
Public Safety Facilities	C	C	C	C	C	P	P	-

Religious Institutions	C	C	C	C	C	C	C	-
Schools	C	C	C	C	C	C	C	-
UTILITIES								
Wireless Telecommunication Facility - Stealth	PS	PS	PS	PS	PS	PS	PS	-
Wireless Telecommunication Facility - Tower	-	-	-	-	-	PS	PS	-
MISCELLANEOUS USES								
Accessory Structures	PS	PS	PS	PS	P	P	P	-
Adult Establishment	-	-	-	-	-	C	C	-
Agriculture - Commercial	-	-	-	-	PS	PS	PS	-
Agriculture - Neighborhood	PS	PS	PS	PS	PS	PS	PS	-
Crematories	-	-	-	-	-	-	C	-
Event Center	-	-	-	-	C	C	C	-
Gaming Terminals	-	-	-	-	-	PS	PS	-
Mixed-Use Building or Structure	-	-	-	PS	PS	PS	-	-
Noxious Uses	-	-	-	-	-	-	C	-
Tattoo Parlors	-	-	-	-	-	P	P	-
TEMPORARY USES								
Farmers Market	PS	PS	PS	PS	PS	PS	PS	-
Mobile Food Vendor	-	-	-	-	PS	PS	PS	-
Temporary Use	PS	PS	PS	PS	PS	PS	PS	-

ATTACHMENT B

Sec. 20-3206. Table of Dimensional Requirements.

Zoning District	R-1	R-2	R-3	R-12	C-1	C-2	I-1	MHO[11]
Minimum Lot Area (sq. Ft.)	10,000 [2,7]	7,500 [1, 2,3,4,7]	5,445 [1,2,3,4,7]	7,500 [4,7, 8]	0	0	0	5,445 [1,2,3,4,7]
Minimum Lot Width(ft.)	100	75	75	75	0	50	0	75
Minimum Front Yard (ft.)	30	30	30	30	0	0	0	30
Major Thoroughfare	30	30	30	30 [5]	0	60	35 [5]	30
Minor Thoroughfare	30	30	30	30 [5]	0	25 [5]	35 [5]	30
With Parking in Front	-	-	-	-	-	60	-	-
Without Parking in Front	-	-	-	-	-	40	-	-
Minimum Side Yard (ft.) Abutting Residential District	10	10 [6]	10 [6]	10 [6]	0	30	40	10 [6]
Minimum Side Yard (ft.) Abutting Commercial or Industrial District	10	10 [6]	10 [6]	10 [6]	0	0	40	10 [6]
Minimum Rear Yard (ft.) Abutting Residential District	10	10 [6]	10 [6]	10 [6]	0	30	40	10 [6]
Minimum Rear Yard (ft.) Abutting Commercial or Industrial District	10	10 [6]	10 [6]	10 [6]	0	0	40	10 [6]
Height Limit (ft.)	35	35	35	45 and no more than 3 stories	Note 10	75	75	18
Buffer if Abutting a Residential District (ft.)	0	0	0	20	Note 9	20	20	0

The following notes apply to the Table of Dimensional Requirements set out above:

See sections on dwelling setbacks (Code Sec. 20-3208(h) and (i)), nonconforming lots (Code Sec. 20-1602); and right-of-way (Code Sec. 20-3208(b)).

Additional Notes corresponding to the table:

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 duplexes; 25 feet for all other multi-family dwelling units.
7. Additional square footage may be required by the authority having jurisdiction over private water and/or sewerage systems located on individual lots.
8. 3,280 additional square feet for each additional dwelling unit when public water and/or sewer is available.
9. Where a lot in the C-1 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 on the side of the building or lot facing the residential lot shall require screening. Exceptions to this buffering requirement in C-1 are as follows:
   (a) These provisions shall not apply to any lot which is used for a use which would be permitted in the adjacent residentially zoned district.
   (b) The vegetative screen required shall be omitted along the street where the C-1 lot fronts.
   (c) The board of adjustment shall have the authority to alter or eliminate the required vegetative screen where the lot requiring the vegetative 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.
10. In the C-1 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 height be greater than 57 feet (which would require a setback of 11 feet).

    Where more than one-half of the street frontage in a particular street block is zoned residential and the remaining frontage on the same side of that street block is zoned C-1, the height regulations for the residential district shall apply to the lots zoned for commercial uses on that side of the street block.

11. The dimensional standards for the MHO district only apply to manufactured homes. To the extent that a dimensional requirement for a manufactured home in the MHO district is inconsistent with the corresponding dimensional requirement of the underlying use district, the more restrictive dimensional requirement shall apply to that manufacture home.

Sec. 20-3207. Zoning Map and District boundaries.

(a) **Zoning map**. Zoning district boundaries adopted pursuant to this chapter and G.S. Chapter 160D shall be drawn on the map entitled "Official Zoning Map of the Town of Weaverville, North Carolina." Said map, and all explanatory matter thereon, is hereby incorporated into and made part of this chapter as if fully written herein. Said map shall be in paper or digital format and shall be maintained for public inspection in the office of the town clerk and zoning administrator. Copies of the zoning map may be reproduced by any method of reproduction that gives legible

and permanent copies and, when certified by the town clerk in accordance with G.S. 160A-79 shall be admissible into evidence and shall have the same force and effect as would the original map.

(b) **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.

(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.

Sec. 20-3208. Miscellaneous Provisions.

(a) **Height, Buffering, 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 (minimum lot area) of this chapter for the district in which it is located. Height limits and densities are shown on the Table of Dimensional Requirements found at Code Sec. 20-3206. For lots abutting a residential district, buffering requirements are set forth on the Table of Dimensional Requirements found at Code Sec. 20-3206.

(b) **Effect of Street and Highway Rights-of-Way on Calculations** – Street and highway rights-of-way shall not be included in determining the size of a lot.

(c) **Setback Calculations** – All setbacks shall be calculated from the property line.

(d) **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 dwelling, 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.

(e) **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.

(f) **Limit of One Principal Building** – Only one principal building and its customary accessory building(s) may hereafter be erected on any lot, except as authorized by a special use permit or a conditional district, except for multi-unit residential development.

(g) **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. Any lot in the C-2 district used for commercial purposes shall have its primary access upon the street on which it fronts.

(h) **Alternate Setbacks for Some 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 and on the same side of the street and within the same zoning district, 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.

(i) **Front Yard Setbacks for Corner Lots and Double Fronted Lots** – For properties having frontage on two streets, the minimum front yard setbacks shall be provided for each street.

(j) **Projections into Open Space and Required Yards** – Every part of a required yard, established by setbacks or otherwise, 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.

(k) **Visibility at Intersections** – In all use districts except the C-1 district, no fence, wall, shrubbery or other landscaping, gutter or other obstruction to vision over the height of 2½ feet shall be permitted to exist within 20 feet of the intersection of the right-of-way lines of streets.

(l) **Fences** – 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. Fencing shall not be erected in such a fashion as to obstruct visibility at intersections.

(m) **Conflict with other laws** – Whenever the regulations of this article 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, code chapter, or article, the requirements of this article 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. If there are conflicting provisions within this chapter then the more restrictive provisions apply.

(n) **Traffic Impact Study** –

(1) *Purpose.* The purpose of this section is to ensure that applicants for new development and redevelopment consider and mitigate the impact of the development on the existing and/or proposed roadway systems. While the town acknowledges responsibility to build and maintain a public transportation system, the project applicants may need to assist in improving transportation facilities in order to maintain an acceptable level of service by accommodating additional traffic generated by the development. These transportation facilities involve pedestrian, non-motorized vehicular traffic and motorized vehicular traffic.

(2) *Applicability.* A traffic impact analysis (also known as a traffic impact study) is required for all proposals for new construction, additions and/or expansions to existing structures, and/or changes of use located on town streets or NCDOT maintained roadways, which will result in trips equal to or greater than 750 daily trips, using the trip generation rates from the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers. The following table provides average daily trips for various types of developments and is provided for guidance purposes only:

Type of Development	Average Daily Trips
Single Family Residential Subdivision with 70 lots	750
Multi-Family Residential Apartment with 105 units	750

(3) *Format, review and recommendation*. Any traffic impact analysis required by this section shall follow the guidelines of NCDOT's "Policy on Street and Driveway Access to North Carolina Highways" for traffic impact studies. All traffic impact analyses shall be

submitted to the planning director, who shall forward it to the town's technical review committee, and NCDOT for review and comment. All recommendations prepared or received, including a staff recommendation reflecting comments from the town's technical review committee, which involve town public streets shall be submitted to town council.

(4) *Improvements required.*

(i) NCDOT will determine what improvements are required to NCDOT maintained roads to accommodate the additional traffic generated by the proposed development.

(ii) Town council will determine what improvements are required to the town public street system to accommodate the additional traffic generated by the proposed development.

(iii) Required improvements must be funded and/or constructed by the project developer in accordance with the standards and direction provided by NCDOT and/or the town.

ARTICLE III. ADDITIONAL STANDARDS FOR CERTAIN USES

Sec. 20-3301. Intent.

This article sets forth standards for those uses that have been identified as "permitted with standards" in the Table of Uses set forth in Code Sec. 20-3205. All generally applicable regulations (including but not limited to sidewalks, traffic analysis, street lighting, off-street parking and loading, etc.) shall apply to the uses set out in the sections of this article unless provided otherwise by the specific provisions within this article.

Sec. 20-3302. Child Care Center.

(a) Child care centers shall provide for 100 square feet of outdoor play area for each child.
(b) The outdoor play area shall be surrounded by a sturdy fence of not less than four feet in height.
(c) The child care center shall meet all state requirements for day care centers.
(d) Child care centers shall provide locations for pick-up and drop-off for safe access to the center for children, parents and which do not impede traffic on public or private streets.

Sec. 20-3303. Automobile Services, Repair.

(a) All buildings shall be located at least 40 feet from any street right-of-way line.
(b) Gasoline pumps and other appliances, where permitted, shall be located at least 15 feet from any street right-of-way.
(c) All service, storage or similar activities shall be conducted entirely on the premises.
(d) All repair work, if any, shall be conducted within a completely enclosed building.
(e) Open storage of wrecked or inoperable cars, discarded tires, auto parts, or similar material shall not be permitted.

Sec. 20-3304. Gaming Terminals.

(a) There is a limit of two gaming terminals per business location.
(b) No persons under the age of 18 shall be allowed to use the gaming terminals.
(c) 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.
(d) 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.

ATTACHMENT B

Sec. 20-3305. Agriculture – Commercial.

(a) This section does not limit regulation under this chapter with respect to the use of a farm property for non-farm purposes.

(b) Livestock and fowl or poultry operations shall meet the following requirements:

(1) Enclosures shall be maintained such that the animals are prohibited from exiting the property on which the animals are kept.

(2) Composting or animal feeding areas shall be located at least 50 feet from any property line or stream or river as identified on the Buncombe County geographic information system.

(3) A minimum setback of 50 feet shall be established for any structure used for agriculture - commercial purposes where abutting a residential zoning district. Fencing shall not be included as an agriculture - commercial structure for this requirement.

(4) Any lot used to maintain livestock shall be a minimum of five acres of usable livestock area which excludes all impervious surfaces. Livestock does not include fowl for this requirement.

(5) On lots greater than five acres in size use to maintain livestock, no more than two animals per acre shall be allowed.

(c) The keeping of swine is expressly prohibited.

(d) All uses must be maintained in a clean and sanitary manner in order to protect the public health. This includes, but is not limited to, the proper management of livestock and fowl waste runoff and pesticide runoff.

Sec. 20-3306. Agriculture – Neighborhood.

(a) The keeping of livestock shall meet the following requirements:

(1) Enclosures shall be maintained such that the animals are prohibited from exiting the property on which the animals are kept.

(2) Animal feeding areas shall be located at least 50 feet from any property line or stream or river as identified on the Buncombe County geographic information system.

(3) A minimum setback of 50 feet shall be established for any structure used for agriculture - neighborhood purposes where abutting a residential zoning district. Fencing shall not be included as an agriculture - neighborhood structure for this requirement.

(4) Any lot used to maintain livestock shall be a minimum of two acres of usable livestock area which excludes all impervious surfaces and on such lot no more than one animal per acre shall be allowed. Livestock does not include fowl for this requirement.

(b) The keeping of fowl, including but not limited to chickens, shall meet the following requirements:

(1) Enclosures and coops shall be maintained such that the animals are prohibited from exiting the property on which the animals are kept and may only be placed in the side or rear yard of a primary residence. Said enclosures and coops shall be kept in a clean condition.

(2) The keeping of fowl shall not be permitted on any parcel of land which does not meet the minimum lot area required by the table of dimensional standards for the zoning district in which the property is located.

(3) No more than two fowl may be kept per 1/8 acre should the minimum lot area be found in compliance.

(4) The keeping of fowl shall not be permitted on any parcel of land on which there exists a dwelling - multifamily residential use as defined herein.

(5) The keeping of roosters is expressly prohibited.

(c) This section shall not apply to domesticated animals, including but not limited to, dogs and cats.

(d) Neighborhood agricultural uses shall be clearly incidental to an existing primary structure used for residential purposes.

(e) The keeping of swine is expressly prohibited.

(f) All uses must be maintained in a clean and sanitary manner in order to protect the public health. This includes, but is not limited to, the proper management of livestock and fowl waste runoff and pesticide runoff.

Sec. 20-3307. Banks, Credit Unions, Financial Services.

(a) Drive-through stacking lanes, windows, and associated equipment shall not be permitted within 50 feet of a residential district or residential use.

(b) Drive-through windows and services shall be located and accessed only at the rear or side of the building and shall not be located between the principal structure and a public or private street. Service lanes shall not be located between the building and the street.

(c) Drive-through service lanes shall provide a minimum of six stacking spaces per lane on site for banking with drive-through facilities. Each stacking space shall be a minimum of nine feet by 18 feet.

(d) The drive-through shall be limited to a maximum of two service lanes and one additional lane for an automated teller machine (ATM).

(e) Speaker box sounds from the drive-through lane shall not unreasonably disturb the peace and quiet of abutting residential property.

Sec. 20-3308. Cultural or Community Facility.

(a) Off-street parking shall be provided at one space for each two hundred square feet within the principal assembly space.

(b) Where the lot abuts a residential district, a ten-foot buffer shall be provided as defined in Code Sec. 20-1202 of this chapter and said buffer may be placed within the setbacks established by the zoning district applicable to the property.

(c) Signage shall be limited to one wall mounted or attached sign and shall not exceed ten percent of the total surface area on which the sign is located. Said signage may be illuminated but must be shielded in a fashion to prevent light trespass and to brighten only the surface of the sign.

Sec. 20-3309. Dwelling – Secondary.

(a) Secondary dwelling units shall be accessory and subordinate to the primary living quarters.

(b) No more than one secondary dwelling unit is permitted on any lot.

(c) A secondary dwelling unit may only be located within a side or rear yard and within the setback established by the applicable zoning district.

(d) No secondary structure shall exceed two stories in height.

(e) Secondary dwelling units may be created as an independent structure, an addition to an existing primary structure, or a second story within detached garages.

(f) The gross floor space of a secondary dwelling unit shall not exceed 800 square feet. The ground floor area of an attached garage shall not be calculated as part of the total square footage of any secondary dwelling that is built as the second story of a detached garage; provided, such ground floor garage area shall not be converted into a dwelling space.

(g) At least one off-street parking space shall be provided.

(h) Properties with multifamily dwellings as defined herein shall not be permitted a secondary dwelling.

Sec. 20-3310. Farmers Market.

(a) Vendors may offer seasonal horticultural, agricultural, aquacultural or forest products, including but not limited to raw fruits, vegetable, perennials, annuals bulbs, dried flowers, Christmas trees, and similar products.

(b) Vendors may offer value-added horticultural, agricultural, aquacultural or forest products which were produced by the vendor, including but not limited to baked goods, meat, dairy, honey, cider, preserves, relishes, jams, jellies and similar products.

(c) Vendors may offer hand-made crafts and works of art which were produced by the vendor; provided, however, that such products shall not exceed 25 percent of all products sold within the venue on any given day of operation.

(d) Vendors may offer food items prepared by the vendor; provided, however, that such products shall not exceed 25 percent of all products sold within the venue on any given day of operation, and provided that the vendor shall comply with all applicable requirements of the director of public health and the North Carolina Department of Agriculture.

(e) The sale of live animals is prohibited.

(f) Off-street parking shall be provided in order to maintain the safe flow of traffic in the immediate vicinity.

(g) Farmers markets operating within the R-1, R-2, R-3, or R-12 districts shall only be conducted on property owned by the town. Additionally, these farmers markets may not operate more than one day per week and for no longer than eight hours on such day.

Sec. 20-3311. General Retail (10,000 – 24,999 sq. ft.).

(a) Such a development shall abut an existing major thoroughfare maintained by the North Carolina Department of Transportation or the town and shall have direct access thereto.

(b) Points of ingress and egress shall be located a sufficient distance from road intersections to minimize traffic hazard, inconvenience and congestion. Additionally, each development shall have a minimum of two such points of ingress and egress to facilitate the safe flow of traffic.

(c) Parking and loading spaces shall be provided as established by Article V of this Part III.

(d) Such facilities with a drive-thru window are subject to additional regulations as defined by drive-thru retail/restaurant.

Sec. 20-3312. Home Occupation.

(a) Home occupations shall be clearly incidental to the residential use of a dwelling and shall not change the residential character of the dwelling or the neighborhood.

(b) Home occupations shall be contained entirely within the interior of the dwelling or accessory structure. Home occupations within a dwelling shall not occupy more than 25 percent of the gross floor area of the dwelling. Should a home occupation occur within an accessory structure, said use shall not exceed 25 percent of the aggregate square footage of both the dwelling unit and accessory structure.

(c) Only noncommercial vehicles are permitted in conjunction with a home occupation.

(d) Business or product identification signs shall not be permitted.

(e) Commercial sale of merchandise shall not be permitted in conjunction with a home occupation.

Sec. 20-3313. Kennels.

(a) Outside runs, holding pens, exercise areas or other open-air type enclosures or shelters, which are maintained in order to prevent the escape of animals, shall be located at least 200 feet from any dwelling, other than the property of the owner on which the structure is located, and at least 50 feet from adjoining property lines.

(b) Kennels shall be located in the side or rear yard area of any principal structure and must be on the same parcel of land.

ATTACHMENT B

Sec. 20-3314. Manufactured Homes.

(a) No new manufactured home shall be permitted within floodways and non-encroachment areas as determined by the Floodplain Administrator of Buncombe County.

(b) Each new manufactured home shall be placed on an individual lot.

(c) A manufactured home must be built to or exceed the Manufactured Home Construction Safety Standards as developed by the Housing and Urban Development Code of June 15, 1976.

(d) Manufactured homes must not be more than a single story measured from front ground level and may not be stacked.

(e) Manufactured homes must either be properly tied down and underpinning/skirting installed and maintained or must be placed on a permanent foundation. If piers are used they must be engineered and skirting must be installed.

(f) The age of the manufactured home shall not be a basis for exclusion from the district.

Sec. 20-3315. Mobile Food Vendors.

(a) No waste, wastewater or grease shall be distributed into the sanitary sewer system, stormwater system, or other public spaces.

(b) Mobile food vendors:

(1) Shall be situated at least ten feet from all property lines, excepting those separating contiguous parcels under common ownership, and

(2) Shall not encroach onto any street or sidewalk, and

(3) Shall not obstruct any loading zone or parking space required by this chapter, and

(4) Shall not create a sight line obstruction.

(c) Mobile food vendors shall be located at least 150 feet from any primary residential structure located within the R-1, R-2, or R-3 district.

(d) Mobile food vendors shall not be located within ten feet of any fire hydrant.

(e) Hours on site shall be consistent with the hours of operation of the principal building or use of the property on which the mobile food vendor is located but in no instance shall such hours exceed 7:00 a.m. to 11:00 p.m.

(f) Each mobile food vendor shall supply at least one receptacle for waste which must be emptied regularly and removed upon conclusion of hours of operation. Town waste receptacles shall not be used.

(g) In addition to signage displayed directly on the vehicle, one sign attached to the ground, or menu board sign, which shall not exceed four feet in height or eight square feet of surface area, is permitted. Such a sign shall be placed within ten feet of the mobile food unit or vehicle and shall only be displayed during hours of operation.

(h) The sale of alcoholic beverages shall not be permitted by any mobile food vender absent the issuance of the requisite special event permit.

(i) Mobile food vendors are only permitted on public property, including but not limited to any real property, parking spot or lot, or road or right-of-way under municipal or state control and ownership, in conjunction with the issuance of a special event permit. Mobile food vendors operating in conjunction with a special event permit issued by the town are not subject to these regulations but are governed by the conditions placed upon the permit for approval.

(j) Mobile food vendors are also subject to standards of the Buncombe County Health Department as it relates to the permitting, inspection and grading of all regulated food service establishments.

(k) In no instance shall a mobile food vendor be permitted to be the primary or principal use of a parcel of land.

(l) A zoning permit is required for each parcel which proposes to establish a mobile food vendor. The fee for said permit may be found within the schedule of fees.

Sec. 20-3316. Multi-Tenant Development (under 25,000 sq. ft.).

(a) Such a development shall abut an existing major thoroughfare maintained by the North Carolina Department of Transportation or the Town of Weaverville and shall have direct access thereto.

(b) Points of ingress and egress shall be located a sufficient distance from road intersections to minimize traffic hazard, inconvenience and congestion. Additionally, each development shall have a minimum of two such points of ingress and egress to facilitate the safe flow of traffic.

(c) Parking and loading spaces shall be provided as established by Article V of this Part III.

(d) Such facilities with a drive-thru window are subject to additional regulations as defined by drive-thru retail/restaurant.

Sec. 20-3317. Recreational Facilities – Indoor.

(a) Such facilities operating in conjunction with a single family dwelling 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 shall be permitted as an accessory use or structure of the dwelling unit.

(b) Such facilities operating in conjunction with a school or religious institution as defined herein shall be permitted as an accessory use operating in conjunction with same.

(c) Such facilities operating in conjunction with a conditional zoning district, special use permit, major subdivision or any other residential development within a residentially zoned district shall be allowed if presently in use or approved with the adoption process for each of the aforementioned forms of development.

Sec. 20-3318. Recreational Facilities – Outdoor.

(a) Lighting fixtures for outdoor recreational facilities shall be mounted and aimed so that the illumination falls within the primary playing area and immediate surroundings so that no direct light illumination is directed off site. Lights shall be turned off at the conclusion of any activity.

(b) Such facilities operating in conjunction with a single family dwelling 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 shall be permitted as an accessory use or structure of the dwelling unit.

(c) Such facilities operating in conjunction with a school or religious institution as defined herein shall be permitted as an accessory use operating in conjunction with same.

(d) Such facilities operating in conjunction with a conditional district, special use permit, major subdivision or any other residential development within a residentially zoned district shall be allowed if presently in use at the adoption of this chapter or approved with the adoption process for each of the aforementioned forms of development.

Sec. 20-3319. Temporary Use.

(a) Temporary uses or structures may be permitted summarily in conjunction with a special event permit issued by the town manager pursuant to Code Sec. 16-6 governing special events.

(b) When utilized in conjunction with any construction or renovation on the same parcel of land, storage containers shall only remain on the property for the duration of construction.

(c) Temporary vendors may be permitted only one structure which may not exceed 1,500 square feet. Temporary vendors operating in the parking lot associated with a primary use must not cause nonconformity with the parking requirements of this chapter. Temporary vendors may only operate in

zoning districts in which general retail is also permitted. Those conducting yard sales on a property where they currently reside shall not be considered temporary vendors.

(d) Portable and on-demand storage containers located within residential zoning districts are permissible for a period of up to 14 consecutive days not to exceed two occurrences per calendar year. Said containers are exempt from zoning permit requirement.

(e) Portable and on-demand storage containers located within commercial or industrial zoning districts are permissible for a period of up to 60 consecutive days not to exceed two occurrences per calendar year. Said containers are exempt from zoning permit requirement.

Sec. 20-3320. Wireless Communication Facility – Stealth

(a) Stealth wireless communication facilities shall be designed and installed in a manner to make them unobtrusive. All facilities shall be mounted so that the wireless service facilities do not extend beyond the top of the building or structure on which they are mounted.

(b) Facilities shall be designed to blend in with the existing structure or buildings with similar colors or other techniques as appropriate.

(c) Wireless communication towers as defined herein are subject to the requirements of Article II of Part IV of this chapter governing wireless telecommunication facilities.

Sec. 20-3321. Wireless Communication Facility – Tower

(a) Wireless communication towers as defined herein are subject to the requirements of Article II of Part IV of this chapter governing wireless telecommunication facilities.

Sec. 20-3322. Child Care Homes.

(a) Child care homes shall provide location for pickup/drop-off area for safe access to the home for children and parents and which do not impede traffic on public or private roads.

(b) Child care homes shall be clearly incidental to the residential use of the dwelling and shall not change the residential character of the dwelling or neighborhood.

(c) Business or product identification signs shall not be permitted.

Sec. 20-3323. Accessory Structures.

(a) The footprint of accessory structures within any residential zoning district shall not exceed the following maximum footprint(s).

Lot Size	***One Structure***	***All Structures***
Less than 1 acre	800 square feet	1,000 square feet
1 to 3 acres	1,200 square feet	1,600 square feet
More than 3 acres	No limit	No Limit

(1) The footprint of any structure defined as "*dwelling - secondary"* shall not be included in the calculation of footprint for accessory structures but such structures shall meet the additional standards established by Code Sec. 20-3309.

(2) The footprint of any accessory structure implemented with any use defined as "*agriculture - commercial"* or "*agriculture - neighborhood"* shall not be included in the calculation of foot print for accessory structures but such structures shall meet the additional standards established by Code Sec. 20-3305 and Code Sec. 20-3306.

(b) Accessory structures shall not exceed the height of the primary structure and in no event exceed 25 feet.

(c) Accessory structures shall only be located within the side or rear yard of the primary structure and shall only be permitted within the setbacks established by the applicable zoning district.

(d) Accessory structures providing common facilities for residential developments, including but not limited to a clubhouse, mail receptacle facilities, pool house, rental or property management office, shall not be subject to the footprint limits or location requirements established in this section.

Sec. 20-3324. Dwelling – Multifamily (more than 4 units/building).

(a) Street lighting requirements made necessary by Article VI of this Part III are fully applicable to the use of Dwelling - Multifamily (more than 4 units/building) as defined in Code Sec. 20-1202 except that such requirements are hereby modified to provide the following:

(1) All lighting on the property shall be mounted on posts no more than 16 feet tall.

(2) Blocking, shielding and aiming of all exterior lighting shall be used to minimize light trespass on to adjoining residential properties.

(3) The exterior lighting plan shall be subject to review and approval by the town's zoning administrator prior to installation.

(b) All containment devices for trash and recyclables (including but not limited to compactors, dumpsters, roll-out bins, and areas for storing cardboard) shall be placed in the side or rear yards only and located and designed so as not to be visible from the view of adjacent streets and properties. All containment areas shall meet the following standards:

(1) All containment areas shall be enclosed to contain windblown litter.

(2) Enclosures shall be at least as high as the highest point of the compactor or dumpster.

(3) Enclosures shall be made of materials that are opaque at the time of installation (such as a fence, wall, or mature opaque vegetation) and compatible with and/or similar to the design and materials of the principal building.

(4) Compactors and dumpsters shall be placed on a concrete pad that is large enough to provide adequate support and allow for positive drainage, and conform to the Buncombe County Health Department regulations governing compactor pads. A concrete apron shall also extend from the pad for support and access.

(5) Enclosures shall contain gates to allow for access and security.

(6) Dumpsters and compactors shall be located within the side or rear yard behind buildings and away from sidewalks or pedestrian circulation. Such locations should be accessible to service vehicles.

(7) Enclosures shall be landscaped in accordance with Article IV of this Part III.

(c) Maximum Number of Units per Building - No more than 24 units per building are permitted.

Sec. 20-3325. Mixed-Use Building or Structure.

(a) Additional standards applicable only within the R-12 district for uses defined mixed use building or structure.

(1) Dwelling units are only permissible on the second or higher floor of any structure where the ground floor or street level floor is occupied by a use or uses otherwise permitted by right or with additional standards or by a conditional district in the C-1 or C-2 district.

(2) The dimensional requirements for the R-12 district and additional standards for the use defined as dwelling-multifamily (more than four units/per building are also fully applicable to the use defined mixed-use building or structure.

(3) In no case shall the number of dwelling units exceed 12 units per acre.

(4) Street lighting requirements made necessary by Article VI of this Part III are fully applicable to the use of mixed use building or structure except that such requirements are hereby modified to provide the following:

a. All lighting on the property shall be mounted on posts no more than 16 feet tall.

b. Blocking, shielding and aiming of all exterior lighting shall be used to minimize light trespass on to adjoining residential properties.

c. The exterior lighting plan shall be subject to review and approval by the town's zoning administrator prior to installation.

(5) The collection and disposal of garbage and household trash accumulated at mixed use buildings or structures shall be the responsibility of the owner of the land on which the building is located. Likewise, yard trash, tree and shrubbery trimmings and household appliances shall be collected and disposed of by the owner of the land.

(6) All containment devices for trash and recyclables, including compactors, dumpsters, commercial roll-out bins, and areas for storing cardboard shall be placed in the side or rear yards only and located and designed so as not to be visible from the view of adjacent streets and properties. All containment areas shall meet the following standards:

a. All containment areas shall be enclosed to contain windblown litter.

b. Enclosures shall be at least as high as the highest point of the compactor or dumpster.

c. Enclosures shall be made of materials that are opaque at the time of installation (such as a fence, wall or mature opaque vegetation) and compatible with and/or similar to the design and materials of the principal building.

d. Compactors and dumpsters shall be placed on a concrete pad that is large enough to provide adequate support and allow for positive drainage, and conform to the Buncombe County Health Department regulations governing compactor pads. A concrete apron shall also extend from the pad for support and access.

e. Enclosures shall contain gates to allow for access and security.

f. Dumpsters and compactors shall be located within the side or rear yard behind buildings and away from sidewalks or pedestrian circulation. Such locations should be accessible to service vehicles.

g. Enclosures shall be landscaped in accordance with Article IV of this Part III.

(b) Additional standards applicable only within the C-1 district for uses defined as mixed use building or structure.

(1) Dwelling units are only permissible on the second or higher floor of any structure where the ground floor or street level floor is occupied by a use or uses otherwise permitted by right or with additional standards or by a conditional district in the C-1 district.

(2) In no case shall the number of dwelling units exceed four units per building notwithstanding the latter permissible density bonus for additional off street parking places provided.

(3) Street lighting requirements made necessary by Article VI of this Part III are fully applicable to the use of mixed use building or structure except that such requirements are hereby modified to provide the following:

a. All lighting on the property shall be mounted on posts no more than 16 feet tall.

b. Blocking, shielding and aiming of all exterior lighting shall be used to minimize light trespass on to adjoining residential properties.

c. The exterior lighting plan shall be subject to review and approval by the town's zoning administrator prior to installation.

(4) The collection and disposal of garbage and household trash accumulated at mixed use buildings or structures shall be the responsibility of the owner of the land on which the building is located. Likewise, yard trash, tree and shrubbery trimmings and household appliances shall be collected and disposed of by the owner of the land.

a. A waiver of the foregoing requirement may be achieved in writing from the town manager or their designee upon showing of good cause. Factors for consideration include but are not limited to available space on the subject property, or any variable related to the public health or safety.

(5) All containment devices for trash and recyclables, including compactors, dumpsters, commercial roll-out bins, and areas for storing cardboard shall be placed in the side or rear yards only and located and designed so as not to be visible from the view of adjacent streets and properties. All containment areas shall meet the following standards:

a. All containment areas shall be enclosed to contain windblown litter.

b. Enclosures shall be at least as high as the highest point of the compactor or dumpster.

c. Enclosures shall be made of materials that are opaque at the time of installation (such as a fence, wall or mature opaque vegetation) and compatible with and/or similar to the design and materials of the principal building.

d. Compactors and dumpsters shall be placed on a concrete pad that is large enough to provide adequate support and allow for positive drainage, and conform to the Buncombe County Health Department regulations governing compactor pads. A concrete apron shall also extend from the pad for support and access. Enclosures shall contain gates to allow for access and security.

e. Enclosures shall contain gates to allow for access and security.

f. Dumpsters and compactors shall be located within the side or rear yard behind buildings and away from sidewalks or pedestrian circulation. Such locations should be accessible to service vehicles.

g. Enclosures shall be landscaped in accordance with Article IV of this Part III.

(6) Within the C-1 district additional dwelling units may be permitted up to a maximum of eight dwelling units per building provided the property owner provide off street parking in addition to those spaces required by Article V of this Part III at a ratio of two spaces per additional dwelling unit.

(c) Additional standards applicable only within the C-2 district for uses defined as mixed use building or structure.

(1) Dwelling units are only permissible on the second or higher floor of any structure where the ground floor or street level floor is occupied by a use or uses otherwise permitted by right or with additional standards or by a conditional district in the C-1 or C-2 district.

(2) The dimensional requirements for the C-2 district and additional standards for the use defined as dwelling-multifamily (more than four units/per building are also fully applicable to the use defined mixed-use building or structure.

(3) In no case shall the number of dwelling units exceed eight units per acre.

(4) Street lighting requirements made necessary by Article VI of this Part III are fully applicable to the use of mixed use building or structure except that such requirements are hereby modified to provide the following:

a. All lighting on the property shall be mounted on posts no more than 16 feet tall.

b. Blocking, shielding and aiming of all exterior lighting shall be used to minimize light trespass on to adjoining residential properties.

c. The exterior lighting plan shall be subject to review and approval by the town's zoning administrator prior to installation.

(5) The collection and disposal of garbage and household trash accumulated at mixed use buildings or structures shall be the responsibility of the owner of the land on which the building is located. Likewise, yard trash, tree and shrubbery trimmings and household appliances shall be collected and disposed of by the owner of the land.

(6) All containment devices for trash and recyclables, including compactors, dumpsters, commercial roll-out bins, and areas for storing cardboard shall be placed in the side or rear yards only and located and designed so as not to be visible from the view of adjacent streets and properties. All containment areas shall meet the following standards:

a. All containment areas shall be enclosed to contain windblown litter.

b. Enclosures shall be at least as high as the highest point of the compactor or dumpster.

c. Enclosures shall be made of materials that are opaque at the time of installation (such as a fence, wall or mature opaque vegetation) and compatible with and/or similar to the design and materials of the principal building.

d. Compactors and dumpsters shall be placed on a concrete pad that is large enough to provide adequate support and allow for positive drainage, and conform to the Buncombe County Health Department regulations governing compactor pads. A concrete apron shall also extend from the pad for support and access. Enclosures shall contain gates to allow for access and security.

e. Enclosures shall contain gates to allow for access and security.

f. Dumpsters and compactors shall be located within the side or rear yard behind buildings and away from sidewalks or pedestrian circulation. Such locations should be accessible to service vehicles.

g. Enclosures shall be landscaped in accordance with Article IV of this Part III.

Sec. 20-3326. Family Care Homes

Family care homes may not be located within a one-half mile radius of an existing family care home.

ARTICLE IV. LANDSCAPE REGULATIONS

Sec. 20-3401. 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 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.

Sec. 20-3402. 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.

(3) Properties located within the C-1 central business district.

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

Sec. 20-3403. Landscape Plan.

For uses which require landscaping, the zoning permit application for such use must be accompanied by a landscaping plan. The landscape plan may be combined with a site plan, but must 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;

(6) Any barriers proposed to protect vegetation during or after construction;

(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.

Sec. 20-3404. General Provisions.

(a) All plant materials used to comply with the requirements of this article shall be selected from a list of recommended species maintained by the zoning administrator unless otherwise approved by the zoning administrator.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

Sec. 20-3405. Landscaping Requirements.

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. Through the adoption of a conditional district, town council may require landscaping consistent with this article or waive or alter such requirements.

Sec. 20-3406. Street Tree Requirements.

Landscaping shall be required on any portion of a lot adjacent to a public road or street 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 at planting. 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.

The following exemptions to this section shall apply:

(1) Land uses exempted from the application of this article.

(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 this chapter.

(3) Where a buffer strip or other screening is required along the property line adjacent to the right-of-way by another section of this chapter.

Sec. 20-3407. Landscaping Requirements in 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%

(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.

Sec. 20-3408. 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.

Sec. 20-3409. Effect of Project Phasing.

(a) 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) If a proposed development is subject to the landscaping guarantee provided for in Code Sec. 20-3410 below, such guarantee shall be provided as follows:

(1) The requirements related to street trees and any required buffering or screening requirements shall be met and guaranteed as provided for in Code Sec. 20-3410 for the current phase of the project prior to the issuance of any zoning permit for the current phase of the project.

(2) The landscaping requirements related to general landscaping and off-street parking and loading shall be met and guaranteed as provided for in Code Sec. 20-3410 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.

Sec. 20-3410. Performance Guarantees for Landscaping Requirements.

The provisions set forth in this section shall apply to all development that is subject to landscaping requirements where the total lot area is two acres or more in size. If the landscaping and buffering requirements, as shown on the approved landscaping plan, cannot be totally completed prior to issuance of the zoning 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, accept a performance guarantee in accordance with and subject to the provisions of G.S. 160D-804.1.

Sec. 20-3411. List of Recommended Species.

All landscape plantings materials required by this article shall be selected from the list of recommended species maintained by the zoning administrator or as otherwise approved on a case by case basis by the zoning administrator.

ARTICLE V. OFF-STREET PARKING, LOADING AND UNLOADING AREAS, AND SIDEWALK REGULATIONS

Sec. 20-3501. 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.

Uses	***Required Parking***
Residential	
Dwelling - Single Family	Two spaces
Dwelling - Duplex	Two spaces for each dwelling unit

Dwelling - Multifamily (four or less units/building)	Two spaces for each dwelling unit
Dwelling - Multifamily (more than four units/building)	Two spaces for each dwelling unit
Dwelling - Secondary	One space
Family Care Home (6 or fewer residents)	Two spaces
Child Care Home (6 or fewer children)	-
Home Occupation	-
Manufactured Home	Two spaces
Manufactured Home Park	-
Recreational Vehicle	-
Recreational Vehicle Park, Campground	One space for each RV/camp site
Bed & Breakfast	One space for each bedroom
Hotel, Motel, Inn	One space for each room plus one space for each employee working on the shift of greatest employment
Office / Service	
Animal Services, Veterinary Clinic	One space for each 200 square feet of gross floor space
Automated Teller Machines	Two spaces
Automobile Services, Gas Station	One space for each 300 feet of gross floor space
Automobile Services, Repair	Five spaces for each service bay
Banks, Credit Unions, Financial Services	Five spaces for each employee
Child Care Center (more than 6 children)	One space for each room plus one space for each employee working on the shift of greatest employment
Community Service Organization	One space for each 200 square feet of gross floor space
Equipment Rental (Exterior Storage)	One space for each 300 feet of gross floor space
Equipment Rental (Interior Storage)	One space for each 300 feet of gross floor space
Funeral Home	One space for each four seats in the principal assembly room
Group Care Facility (more than 6 residents)	One space for each room plus one space for each employee working on the shift of greatest employment
Government Services	One space for each room plus one space for each employee working on the shift of greatest employment
Kennels	One space for each 200 square feet of gross floor space

Medical Services - Clinic, Urgent Care Center, Hospital	One space for each 200 square feet of gross floor space
Medical Services - Doctor Office	Five spaces for each office
Personal Services	One space for each 200 square feet of gross floor space
Post Office	One space for each 200 square feet of gross floor space
Professional Services	One space for each 200 square feet of gross floor space
Studio - Art, Dance Martial Arts, Music	One space for each 200 square feet of gross floor space
Retail / Restaurants	
Accessory Retail	One space for each 300 feet of gross floor space
Alcoholic Beverage Sales Store	One space for each 300 feet of gross floor space
Auto / Mechanical Parts Store	One space for each 300 feet of gross floor space
Bar / Tavern / Night Club	One space for each 300 feet of gross floor space
Drive-Thru Retail / Restaurant	One space for each 200 square feet of gross floor space
General Retail (Under 10,000 sq. ft.)	One space for each 300 feet of gross floor space
General Retail (10,000 - 24,999 sq. ft.)	One space for each 300 feet of gross floor space
General Retail (25,000 sq. ft. or more)	One space for each 300 feet of gross floor space
Multi-tenant Development (Under 25,000 sq. ft.)	One space for each 300 feet of gross floor space
Multi-tenant Development (25,000 sq. ft. or more)	One space for each 300 feet of gross floor space for the entire facility
Pawn Shop	One space for each 300 feet of gross floor space
Restaurant	One space for each three seats plus one space for each employee working on the shift of greatest employment
Vehicle / Heavy Equipment Sales - Indoor	One space for each 300 feet of gross floor space
Vehicle / Heavy Equipment Sales - Outdoor	One space for each 300 feet of gross floor space
Entertainment / Recreation	
Amusements - Indoor	One space for each 200 square feet of gross floor space
Amusements - Outdoor	One space for each 200 square feet of gross floor space
Cultural or Community Facility	One space for each two hundred square feet within the principal assembly room
Recreation Facilities - Indoor	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

Recreation Facilities - Outdoor	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
Theater - Motion Picture	One space for each four seats in the principal assembly room
Manufacturing / Wholesale / Storage	
Manufacturing, Heavy	One space for each 200 square feet of gross floor space
Manufacturing, Light	One space for each 200 square feet of gross floor space
Manufacturing, Neighborhood	One space for each 200 square feet of gross floor space
Metal Product Fabrication, Machine or Welding Shop, Auto Body Shop	One space for each 200 square feet of gross floor space
Mini-Warehouses	One space for each 300 square feet of gross floor space
Outdoor Storage Yard	One space for each 200 square feet of gross floor space
Warehousing and Distribution - Exterior Storage	One space for each 300 feet of gross floor space
Warehousing and Distribution - Interior Storage	One space for each 300 feet of gross floor space
Civic / Institutional	
Cemeteries	-
Public Safety Facilities	One space for each 200 square feet of gross floor space
Religious Institutions	One space for each four seats in the principal assembly room
Schools	Two spaces for each classroom and for each administrative office or one space for each four pupils for high schools or higher.
Utilities	
Wireless Telecommunication Facility - Stealth	-
Wireless Telecommunication Facility - Tower	-
Miscellaneous Uses	
Adult Establishment	One space for each 200 square feet of gross floor space
Agriculture - Commercial	One space for each 200 square feet of gross floor space
Agriculture - Neighborhood	-
Crematories	One space for each 200 square feet of gross floor space
Event Center	One space for each four seats in the principal assembly room
Gaming Terminals	-
Tattoo Parlors	One space for each 200 square feet of gross floor space

Mixed-Use Building or Structure	Match parking requirements with closest uses
Noxious Uses	One space for each 200 square feet of gross floor space
Temporary Uses	
Farmers Market	-
Mobile Food Vendor	-
Temporary Use	-

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

(c) Notwithstanding the foregoing, no additional off-street parking other than the parking currently available in the C-1 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 this section shall be fully applicable to said property.

(d) *Joint use of parking lots.* The required parking space for any number of separate uses may be combined in one lot, but the required number of spaces assigned to one use may not be assigned to another for use during the same hours.

(e) *Remote parking.* For any use except residential, if the off-street parking spaces required by this division cannot be reasonably provided on the same lot on which the use is located, such spaces may be provided on any land within 800 feet walking distance of any entrance to such use, provided that the district use regulations for the district in which the remote parking spaces are located permit the use which the parking space serves.

Sec. 20-3502. Loading and unloading areas.

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.

Sec. 20-3503. Sidewalks.

(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 commercial construction and development, multi-family residential development, all major subdivision development, and certain minor subdivision development.

Sidewalks shall be constructed along all street frontages of the property for which the development is proposed and least one side of new streets constructed as a part of the development. Curbs and sidewalks shall be constructed in accordance with the Town of Weaverville Street Standard Specifications and Details Manual applicable to sidewalks and in full compliance with ADA accessibility standards, including specifically but not limited to width, ramp and crosswalk construction.

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.

(c) **Waiver of sidewalk requirement**. Sidewalk requirements may only be waived as allowed by Code Sec. 20-3108(e).

ARTICLE VI. OUTDOOR LIGHTING

Sec. 20-3601. 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.

Sec. 20-3602. IESNA Cutoff Classifications.

IESNA Cutoff Classifications (translated into laymen's terms). See the appendix (on file with the zoning administrator) 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.

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

Sec. 20-3603. Definitions.

The definitions found in Code Chapter 20, Part I, Article II shall apply.

As used in this article, unless the context clearly indicates otherwise, the following definitions, expressed in layman's terms, also apply:

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

Glare. 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. 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. The amount of light falling on a surface measured in lux or footcandles.

Internal refractive lens. 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. The element of a lighting fixture that is the point of origin of the lumens emitted by the fixture.

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

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

Maintained footcandles. 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. The size of lamp socket designed to accept a medium or Edison base lamp.

Outdoor performance area. 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.

Vehicular canopy. 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. A type of light fixture typically flush-mounted on a vertical wall surface.

Wide-body refractive globe. 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.

Sec. 20-3604. 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.

Sec. 20-3605. General Standards for Outdoor Lighting.

(a) 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.

(b) 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.

(c) 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.

(d) All wall pack fixtures shall be cutoff fixtures.

(e) All fixtures installed by public agencies, their agents, or contractors for the purpose of illuminating public streets are otherwise exempt from this regulation.

Sec. 20-3606. Lighting in Parking Lots and Outdoor Areas.

(a) 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 (d) below.

(b) 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.

(c) 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 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 (Source: IESNA 8 th Edition Lighting Handbook)			
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

(d) Notes pertaining to the table are as follows:

(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.

(e) Exceptions:

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

(2) 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.

(3) 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.

Sec. 20-3607. Lighting in 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.

Sec. 20-3608. Lighting of Outdoor Display Areas.

(a) Parking lot outdoor areas shall be illuminated in accordance with the requirements of Code Sec. 20-3606 above. Outdoor display areas shall have a maximum average of illuminance of 24 maintained footcandles.

(b) 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 the general standards for outdoor lighting set out in this article.

(c) 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.

Sec. 20-3609. Lighting of Buildings and Landscaping.

(a) 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.

(b) Minimum illumination on any vertical surface or angular roof shall not exceed 5.0 FC average maintained.

(c) To the extent practical and where possible, lighting fixtures shall be directed downward rather than upward.

(d) 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.

Sec. 20-3610. Permits.

The applicant for any permit required for work involving outdoor lighting shall submit documentation at time of site plan or other development approval that the proposed lighting plan complies with the provisions of this article. 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 chapter:

(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 article.

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

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

Sec. 20-3611. Nonconformities.

(a) Any lighting fixture lawfully in place or approved by the town prior to the adoption of this chapter 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 chapter. Routine maintenance, including changing the lamp, ballast, starter, photo control, lens, and other required components, is permitted for all existing fixtures.

(b) 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.

(c) Should the property owner fail to bring the lighting system into compliance, the owner shall be subject to a civil penalty for the violation as provided in Code Sec. 1-6. 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.

ARTICLE VII. HILLSIDE DEVELOPMENT REGULATIONS

Sec. 20-3701. Authority.

The town hereby enacts and enforces the following hillside development regulations.

Sec. 20-3702. Definitions.

The definitions found in Code Chapter 20, Part I, Article II shall apply.
As used in this article, unless the context clearly indicates otherwise, the following definitions also apply:

Hillside area. Any lot, parcel, or tract of land which meets all of the following standards:

(1) Is located within the planning and development regulation jurisdiction of the town.

(2) Is defined as a minor or major subdivision.

(3) Has an average slope of its natural terrain of 15 percent or greater.

Sec. 20-3703. Exemptions.

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.

Sec. 20-3704. 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 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 slope calculator tool on the Buncombe County GIS system can be used to calculate the natural average slope on any parcel. In the alternate, the following formula can be used:

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

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.

Sec. 20-3705. 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.

Sec. 20-3706. 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.

Sec. 20-3707. 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.

Sec. 20-3708. Soil maps.

Soils maps shall be submitted if available from the Natural Resources Conservation Service (NRCS).

Sec. 20-3709. Global stability analysis.

Global stability analysis should be performed for home sites on a greater than 40 percent or greater slope.

Sec. 20-3710. 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, but in no event can the density be higher than that allowed in the applicable zoning district.

(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 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.

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
54%—65%	0	1

Sec. 20-3711. Development review process.

(1) *Information required.* Compliance with this section shall be evaluated as part of the subdivision review process set forth in Article 2 of Code Chapter 20. 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.

ATTACHMENT B

PART IV – REGULATIONS REQUIRING SEPARATE PERMITS

ARTICLE I. SIGN REGULATIONS

Sec. 20-4101. Purpose.

The purpose of this article is to regulate and control signs and their placement throughout the town's planning and development regulation jurisdiction. 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.

Sec. 20-4102. Signs Exempt from Regulation.

(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 as necessary.

(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).

(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.

(p) Fence wraps – see Code Sec. 20-4114.

Sec. 20-4103. 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 (Future I-26) and U.S. 25-70, which permitted signs must, nevertheless, comply with all DOT 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.

Sec. 20-4104. Signs – Generally.

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.

Sec. 20-4105. Temporary Signs.

Temporary signs shall be allowable in all zoning districts, but are subject to the following regulations:

(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 are temporary signs and the regulations of subsections (b) through (e) of N.C.G.S. § 136-32, which are incorporated herein by reference, apply to all political signs within all rights-of-way for North Carolina's highway system and within all rights-of-way for town streets.

(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.

(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. Concerning the length of time a temporary sign may be displayed, the applicant must choose between the following options within a calendar year: (a) up to four 15-day periods, (b) up to two 30-day periods; or (c) one 60-day period. In no event may a temporary sign be displayed for more than 60 days within any given calendar year.

Sec. 20-4106. Sign Restrictions for R-1, R-2, and R-3 Districts.

In addition to the sign regulations contained in Code Sec. 20-4104, the following restrictions apply within R-1, R-2 and R-3 districts:

(a) Professional services, medical services-doctor offices, personal services, and bed and breakfast establishments 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.

(c) Each residential development approved under a special use permit or conditional district, or as a major subdivision, shall be allowed one freestanding sign per entrance. Said sign 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.

Sec. 20-4107. Sign Restrictions for C-1, C-2, I-1, and R-12 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. Within the R-12 district, excluding signs which show the address or building number of residential units, such attached signage shall only be permissible on common buildings which are not primarily used for residential purposes within the development.

(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 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. Signage within the R-12 district is not permitted under this subsection.

(i) The proper installation and/or secure attachment of any sign permitted under this chapter is the responsibility of the owner of the building, the tenant and/or the person installing/securing the same. A Buncombe County building permit may be required in addition to the requisite sign permit from the Town of Weaverville.

Sec. 20-4108. 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 Code Sec. 20-4103(6). The lights of indirectly illuminated signs shall be shielded in such a manner so as to illuminate only the face of the sign.

Sec. 20-4109. 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.

Sec. 20-4110. 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 in accordance with the schedule of fees established by town council.

(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 article. 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 article 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 article 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 article. 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.

Sec. 20-4111. 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 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 or 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.

Sec. 20-4112. 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.

Sec. 20-4113. Violation of Article.

(a) *Notice of violation.* The code enforcement officer 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 code enforcement officer 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 code enforcement officer 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 code enforcement officer 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 code enforcement officer 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 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 code enforcement officer 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 code enforcement officer 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 planning director 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 planning director or his designee shall have the authority to remove summarily any signs prohibited under Code Sec. 20-4103 of this article.

(h) *Stay upon appeal.* In the event of a timely appeal of a decision of the code enforcement officer or his designee to the board of adjustment, enforcement of all proceedings and the furtherance of the action appealed from shall be stayed, unless the code enforcement officer or his designee certifies to the board of adjustment that a stay would cause imminent peril to life or property.

Sec. 20-4114. Fence Wraps.

Pursuant to G.S. 160D-908, fence wraps displaying signage when affixed to perimeter fencing at a construction site are exempt from zoning regulation pertaining to signage until the certificate of occupancy is issued for the final portion of any construction at that site or 24 months from the time the fence wrap was installed, whichever is shorter. If construction is not completed at the end of 24 months from the time the fence wrap was installed, the town may regulate the signage but shall continue to allow fence wrapping materials to be affixed to the perimeter fencing. No fence wrap affixed pursuant to this section or G.S. 160D-908 may display any advertising other than advertising sponsored by a person directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required.

Sec. 20-4115. Outdoor Advertising

Notwithstanding any of the foregoing, the mandatory provisions of G.S. 160D-912 shall apply.

ARTICLE II. WIRELESS TELECOMMUNICATION FACILITY REGULATIONS

Sec. 20-4201. Title.

This article contains the development regulations pertaining to wireless telecommunication facilities within the planning and development regulation jurisdiction of the Town of Weaverville and shall be known and cited as the wireless telecommunication facility regulations of the Town of Weaverville, North Carolina, and may be referred to as the “wireless telecommunication facility ordinance.”

Sec. 20-4202. Authority.

The wireless telecommunication facility regulations contained in this article are adopted under the authority and provisions of Part 3 of Article 9 of G.S. Chapter 160D, and specifically G.S. 160D-932, in order to plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with G.S. Chapter 160D, Article 9, Part 3. This article may include regulations pertaining to applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, fall zones, or State and local building code requirements, consistent with the provisions of

federal law and G.S. 160D-930. For purposes of this article public safety includes, without limitation, federal, state, and local safety regulations but does not include requirements relating to radio frequency emissions of wireless facilities.

Sec. 20-4203. Applicability.

The regulations contained in this article shall be applicable to the development, installation, or use of all wireless telecommunication facilities within the town's planning and development regulation jurisdiction.

Sec. 20-4204. Purpose and Compliance with Federal Law.

(a) The purpose of this article is to ensure the safe and efficient integration of facilities necessary for the provision of advanced mobile broadband and wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless service to the public, government agencies, and first responders, with the intention of furthering the public safety and general welfare.

(b) The town understands that the deployment of wireless infrastructure is critical to ensuring that first responders can provide for the health and safety of the residents of the town and the surrounding areas and that the creation of a broad wireless emergency communications network for use by first responders that in large measure will be dependent on facilities placed on existing wireless communications support structures. Therefore, the town wishes to facilitate the placement of wireless communications support structures within the town's planning and development regulation jurisdiction by adopting regulations on the placement, construction, or modification of a wireless communications facilty as provided in this article.

(c) The placement, construction, or modification of wireless communications facilities shall be in conformity with federal laws and regulations including the Federal Communications Act, 47 USC § 332, as amended, section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 USC § 1455(a), and in accordance with the rules promulgated by the Federal Communications Commission.

(d) Nothing in this article should be construed as requiring the construction or installation of wireless facilities and these regulations are adopted consistent with G.S. Chapter 160D, Article 9, Part 3, and represent the only regulations of wireless services within the town.

Sec. 20-4205. Definitions.

The definitions found in Code Chapter 20, Part I, Article II shall apply.

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

Alternative structure. 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 and includes, but is not limited to, buildings, silos, water tanks, pole signs, lighting standards, steeples, and electric transmission towers.

Antenna. Communications equipment that transmits, receives, or transmits and receives, electromagnetic radio signals used in the provision of all types of wireless communications services.

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

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

Antenna, concealed. 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 façade and/or is located such that it is not readily visible to an individual at adjacent street level; may also be called "stealth."

Applicable codes. The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

Application. A request submitted by an applicant to the town for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, town utility pole, or a wireless support structure.

Base station. A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

Building permit. An official administrative authorization issued by Buncombe County prior to beginning construction consistent with the provisions of G.S. 160D-1110.

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

Collocation. The placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, town utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term does not include the installation of new utility poles, town utility poles, or wireless support structures.

Combiner. 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.

Communication facility. The set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communication service.

Communications service. Cable service as defined in 47 USC § 522(6), information service as defined in 47 USC § 153(24), telecommunications service as defined in 47 USC § 153(53), or wireless services.

Communications service provider. A cable operator as defined in 47 USC §522(5), a provider of information service as defined in 47 USC § 153(24), a telecommunications carrier as defined in 47 USC §153(51), or a wireless provider.

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

Electric distribution towers. 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. 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.

Eligible facilities request. A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

Equipment compound. An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

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

FAA. The Federal Aviation Administration.

Façade, RF-transparent. A façade 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.

Fall zone. The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

FCC. The Federal Communications Commission.

Functionally equivalent service. 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. 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.

Land development regulation. Any ordinance enacted pursuant to G.S. Chapter 160D.

Microcell. 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.

Micro wireless facility. A small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Modification. 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. An 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. 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. 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. 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. A ridge whose elevation is 500 or more feet above the elevation of an adjacent valley floor.

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.

Search ring. The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

Small wireless facility. A wireless facility that meets the following qualifications:

(a) Each antenna is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than 6 cubic feet; and

(b) All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For the purposes of subsection (b) of this definition, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters,

concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.

Substantial modification. The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure. A mounting is presumed to be substantial modification if it meets any one or more of the following criteria:

(a) Increasing the existing vertical height of the structure by the greater of (i) more than 10% or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

(b) Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wire support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

(c) Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

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. 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. 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. 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. The land area that contains, or will contain, a proposed telecommunication tower, and related equipment enclosures and other improvements.

Town right-of-way. A right-of-way owned, leased, or operated by the town, including any public street or alley that is not a part of the State highway system.

Town utility pole. A pole owned by the town in the town right-of-way that provides lighting, traffic control, or a similar function.

Utility pole. A structure that is designed for and used to carry lines, cables, wires, lighting facilities, or small wireless facilities for telephone, cable television, electricity, lighting, or wireless services.

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.

Water tower. A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

Wireless facility or *wireless telecommunications facility*. Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial

or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technical configuration. The term includes small wireless facilities. The term does not include any of the following:

(a) The structure or improvements on, under, within, or adjacent to which the equipment is collocated.

(b) Wireline backhaul facilities.

(c) Coaxial or fiber-optic cable that is between wireless structures or utility poles or town utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider. Any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.

Wireless provider. A wireless infrastructure provider or a wireless services provider.

Wireless services. Any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

Wireless services provider. A person who provides wireless services.

Wireless support structure. A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a town utility pole is not a wireless support structure.

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.

Sec. 20-4206. Conflict

The regulations contained within this article shall be administered and enforced to the greatest extent possible but not in conflict with the mandatory provisions of Part 3 of Article 9 of G.S. Chapter 160D which governs wireless telecommunications facilities, or any other applicable federal, state, or local law, rule, or regulations. To the extent that there is a conflict then the federal and/or state law, rule, or regulation shall control.

Sec. 20-4207. 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 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(her) in reviewing any technical requirements.

(e) **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 setbacks from all property lines must be one half the total height of the proposed tower.

(f) **Preliminary Tower Design Plan** –The preliminary tower design plan shall be prepared by a N.C. Registered Professional Engineer and contain the following:

(4) The tower permit applicant's name and address, scale, north arrow, vicinity map and tax parcel identification number.
(5) The name, address, signature and seal of the engineer preparing the preliminary tower design plan.
(6) 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.
(7) A tower elevation showing the proposed lighting, tower color and all proposed antennas.
(8) An elevation of each proposed set of guy line anchors.
(9) The proposed tower design loads.
(10) A map or description showing the service area(s) for the proposed tower's antenna(s).
(11) 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.

(12) 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).

(13) 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 effects of the proposed variance(s). All variances must be approved by the Weaverville Zoning Board of Adjustments.

(14) 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.

Sec. 20-4208. 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.

Sec. 20-4209. 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 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. 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 it 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'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 this Code. 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.

Sec. 20-4210. Wireless Telecommunication Facilities - 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 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 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, 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 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. 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 it full force and effect.

(6) That it has not constructed, maintained, modified or operated any wireless telecommunication facilities in the town without the town'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 this Code. The town 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.

Sec. 20-4211. Wireless Telecommunication Facilities - 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:

i. Compact dual-polarized antennas in a cylindrical unicell arrangement extending less than two feet from the structure, and mounted atop the tower;

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 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.

(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:

i. 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.

ii. Equipment hazard warning and informational signs are permitted.

iii. 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 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, 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 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. 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) 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 without the town'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 this Code. The town 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.

Sec. 20-4212. Wireless Telecommunication Facilities – 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 unicell arrangement extending less than two feet from the structure, and mounted atop the tower;

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:

i. 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.

ii. Equipment hazard warning and informational signs are permitted.

iii. 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 this 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.

(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, 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 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 this Code 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. 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 it full force and effect.

(6) It has not constructed, maintained, modified or operated any wireless telecommunication facilities in the town without the town'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 this Code. The town 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.

Sec. 20-4213. Construction of New Wireless Support Structures or Substantial Modifications of Wireless Support Structures.

As required by G.S. 160D-933:

(a) Any person that proposes to construct a new wireless support structure or substantially modify a wireless support structure within the planning and development regulation jurisdiction of the town must do both of the following:

(1) Submit a completed application with the necessary copies and attachments to the appropriate planning authority.

(2) Comply with the town’s ordinances concerning land use and applicable permitting processes.

(b) The town’s review of an application for the placement or construction of a new wireless support structure or substantial modification of a wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application the town may not require information on or evaluate an applicant’s business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site. The town may not require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. The town may not require proprietary, confidential, or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunication traffic studies. In reviewing an application, the town may review the following:

(1) Applicable public safety, land-use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.

(2) Information or materials directly related to an identified public safety, land development, or zoning issues including evidence that no existing or previously approved wireless support structure can reasonably be used for the wireless facility placement instead of the construction of a new wireless support structure that residential, historic, and designated scenic areas cannot be served from outside the area or that the proposed height of a new wireless support structure or initial wireless support structure or replacement wireless support structure is necessary to provide the applicant’s designed service.

(3) The town requires applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on existing wireless support structures within the applicant’s search ring, and to provide the town with information necessary to determine whether collocation on existing wireless support structures is reasonably feasible. Collocation on an existing wireless support structure is not reasonable feasible if collocation is technically or commercially impractical or the owner of the existing wireless support structure is unwilling to enter into a contract for such use at fair market value.

(c) The town shall issue a written decision approving or denying an application under this section and G.S. 160D-933 within a reasonable period of time consistent with the issuance of other

development approvals in the case of other applications, each as measured from the time the application is deemed complete.

(d) Applicants must pay any and all fees established on a duly adopted fee schedule associated with the submission, review, processing, and approval of an application to site new wireless support structures or to substantially modify wireless support structures or wireless facilities. Such fees must be based on the costs of the services provided and does not exceed what is usual and customary for such service. Any charges or fees assessed by the town on account of an outside consultant shall be fixed in advance and incorporated into a permit or application fee and shall be based on the reasonable costs to be incurred by the town in connection with the regulatory review authorized by G.S. 160D-933. Additional reasonable and costs-based fees for costs incurred should an applicant amend its application may be assessed. On request, the amount of the consultant charges incorporated into the permit or application fee shall be separately identified and disclosed to the applicant. The fee imposed by the town for review of the application may not be used for either of the following: (1) travel time and expenses, meals, or overnight accommodations incurred in the review of an application by a consultant or other third party; or (2) reimbursements for a consultation or other third party based on a contingent fee basis or a results-based arrangement.

(e) A building permit shall not be issued for a new wireless support structure prior to approval under this article. Approval of an application for a new wireless support structure shall be conditioned upon a requirement to construct facilities within a reasonable period of time, which shall be no longer than 24 months.

Sec. 20-4214. Collocation and Eligible Facilities Requests for Wireless Support Structures.

As required by G.S. 160D-934:

(a) In accordance with G.S. 160D-934 and applicable federal law, the town may not deny and shall approve any eligible facilities request as provided in this section.

(b) A collocation or eligible facilities request application is deemed complete unless the town provides notice that the application is incomplete in writing to the applicant within 45 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The town may deem an application incomplete if there is insufficient evidence provided to show that the proposed collocation or eligible facilities request will comply with federal, state or local safety requirements. The town may not deem an application incomplete for any issue not directly related to the actual content of the application and subject matter of the collocation or eligible facilities request. An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.

(c) The town shall issue a written decision approving an eligible facilities request application within 45 days of such application being deemed complete. For a collocation application that is not an eligible facilities request, the town shall issue its written decision to approve or deny the application within 45 days of the application being deemed complete.

(d) The town may impose a fee not to exceed $1,000.00 for technical consultation and the review of a collocation or eligible facilities request application. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of a collocation application. The fee imposed by the town for the review of the application may not be used for either of the following: (1) travel expenses incurred by a third-party review of collocation application; or (2) reimbursement for a consultation or other third party based on a contingent fee basis or a results-based arrangement.

Sec. 20-4215. Collocation of Small Wireless Facilities.

As required by G.S. 160D-935:

(a) Except as provided in this article and G.S. Chapter 20, Article 9, Part 3, the town shall not prohibit, regulate, or charge for the collocation of small wireless facilities.

(b) The town may not establish a moratorium on (i) filing, receiving, or processing applications or (ii) issuing permits or any other approvals for the collocation of small wireless facilities.

(c) Small wireless facilities that meet the height requirements of G.S. 160D-936(b)(2) shall only be subject to administrative review and approval under subsection (d) below if they are collocated (i) in a town right-of-way within any zoning district or (ii) outside of town rights-of-way on property other than single-family residential property.

(d) A permit is required to collocate a small wireless facility. The town shall receive applications for, process, and issue such permits subject to the following requirements:

(1) The town may not, directly or indirectly, require an applicant to perform services unrelated to the collocation for which approval is sought. For purposes of this subdivision, "services unrelated to the collocation," includes in-kind contribution to the town such as the reservation of fiber, conduit, or pole space for the town.

(2) The wireless provider shall complete an application as specified in form and content by the town. A wireless provider shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers.

(3) A permit application shall be deemed complete unless the town provides notice otherwise in writing to the applicant within 30 days of submission or within some other mutually agreed-upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

(4) The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the town fails to approve or deny the application within 45 days from the time the application is deemed complete or a mutually agreed upon time frame between the town and the applicant.

(5) The town may deny an application only on the basis that it does not meet any of the following: (i) the town's applicable codes; (ii) local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, town utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment; (iii) public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way; or (iv) the historic preservation requirements in G.S. 160D-936(i). The city must (i) document the basis for a denial, including the specific code provisions on which the denial was based and (ii) send he documentation to the applicant on or before the day the town denies an application. The applicant may cure the deficiencies identified by the town and resubmit the application within 30 days of the denial without paying an additional application fee. The town shall approve or deny the revised application within 30 days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.

(6) An application shall include an attestation that the small wireless facilities must be collocated on the utility pole, town utility pole, or wireless support structures and that the small wireless facilities must be activated for use by a wireless services provider to provider services no later than one year from the permit issuance date, unless the town and the wireless provider agree to extend this period or a delay is caused by lack of commercial power at the site.

(7) An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of the town shall be allowed, at the applicant's discretion, to file a consolidated application for no more than 25 separate facilities and receive a permit for the collocation of all the small wireless facilities meeting the requirements of this section. The town may remove small wireless facility collocations from the consolidated application and treat separately small wireless facility collocations (i) for which incomplete information has been provided or (ii) that are denied. The town may issue a separate permit for each collocation that is approved.

(8) The permit must specify that collocation of the small wireless facility shall commence within six months of approval and shall be activated for use not later than one year from

the permit issuance date, unless the town and the wireless provider agree to extend this period or a delay is caused by lack of commercial power at the site.

(e) Subject to the limitations provided in G.S. 160A-296(a)(6), the town may charge an application fee that shall not exceed the lesser of (i) the actual, direct, and reasonable costs to process and review applications for collocated small wireless facilities, (ii) the amount charged by the town for permitting of any similar activity, or (iii) $100.00 per facility for the first five small wireless facilities addressed in an application. In any dispute concerning the appropriateness of a fee, the town has the burden of proving that the fee meets the requirements of G.S. 160D-935.

(f) Subject to the limitations provided in G.S. 160A-296(a)(6), the town may impose a technical consulting fee for each application, not to exceed $500.00, to offset the cost of reviewing and processing applications required by this section. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. The town may engage an outside consultant for technical consultation and the review of an application. The fee imposed by the town for the review of the application shall not be used for either of the following: (1) travel expenses incurred in the review of a collocation application by an outside consultant or other third party; or (2) direct payment or reimbursement for an outside consultant or other third party based on a contingent fee basis or results-based arrangement. In any dispute concerning the appropriateness of a fee, the town has the burden of proving that the fee meets the requirements of this subsection.

(g) The town requires all wireless services providers to remove abandoned wireless facilities within 180 days of abandonment. Should a wireless services provider fail to timely remove the abandoned wireless facility, the town may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is 180 days after the date that such wireless facility ceases to transmit the signal, unless the wireless services provider gives the town reasonable evidence that it is diligently working to place such wireless facility back in service.

(h) The town shall not require an application or permit or charge fees for (i) routine maintenance, (ii) the replacement of small wireless facilities with small wireless facilities that are the same size or smaller, or (iii) installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or town utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the town rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(4c) or G.S. 105-164.4(a)(6).

(i) Nothing in this section shall prevent the town from requiring a work permit for work that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the town right-of-way.

Sec. 20-4216. Use of Public Right-of-Way.

As required by G.S. 160D-936:

(a) The town shall not enter into an exclusive arrangement with any person for use of town rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or wireless support structures or the collocation of small wireless facilities.

(b) Subject to the requirements of G.S. 160D-935 for collocation of small wireless facilities and as set forth in Code Sec. 20-4215 above, a wireless provider may collocate small wireless facilities along, across, upon, or under any town right-of-way. Subject to the requirements of this section, a wireless provider may place, maintain, modify, operate, or replace associated utility poles, town utility poles, conduit, cable, or related appurtenances and facilities along, across, upon, and under any town right-of-way. The placement, maintenance, modification, operation, or replacement of utility poles and town utility poles associated with the collocation of small wireless facilities, along, across, upon, or under any town right-of-way shall be subject only to review or approval under G.S. 160D-935(d) if the wireless provider meetings all of the following requirements:

(1) Each new utility pole and each modified or replacement utility pole or town utility pole installed in the right-of-way shall not exceed 50 feet above ground level.

(2) Each new small wireless facility in the right-of-way shall not extend more than 10 feet above the utility pole, town utility pole, or wireless support structure on which it is collocated.

(c) Nothing in this section shall be construed to prohibit the town from allowing utility poles, town utility poles, or wireless facilities that exceed the limits set forth in subdivision (1) of subsection (b) of this section.

(d) Applicants for use of the town right-of-way shall comply with the town's undergrounding requirements prohibiting the installation of above-ground structures in the town's rights-of-way without prior zoning approval, if those requirements (i) are nondiscriminatory with respect to type of utility, (ii) do not prohibit the replacement of structures at the time of adoption of the requirements, and (iii) have a waiver process.

(e) Notwithstanding subsection (d) above, in no instance in an area zoned single-family residential where the existing utilities are installed underground may a utility pole, town utility pole, or wireless support structure exceed 40 feet above ground level, unless the town grants a waiver or variance approving a taller utility pole, town utility pole, or wireless support structure.

(f) Except as provided in G.S. Chapter 20, Article 9, Part 3, and in this article, the town may assess a right-of-way charge under G.S. 160D-936(f) for use or occupation of the right-of-way by a wireless provider, subject to the restrictions set forth under G.S. 160A-296(a)(6). In addition, charges authorized by this section shall meet all of the following requirements:

(1) The right-of-way charge shall not exceed the direct and actual cost of managing the town rights-of-way and shall not be based on the wireless provider's revenue or customer counts.

(2) The right-of-way charge shall not exceed that imposed on other users of the right-of-way, including publicly, cooperatively, or municipally owned utilities.

(3) The right-of-way charge shall be reasonable and nondiscriminatory.

Nothing in this subsection is intended to establish or otherwise affect rates charged for attachments to utility poles, town utility poles, or wireless support structures. At its discretion, the town may provide free access to town rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the deployment of wireless services.

(g) Nothing in this section is intended to authorize a person to place, maintain, modify, operate, or replace a privately owned utility pole or wireless support structure or to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.

(h) All wireless providers are required to repair all damage to a town right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, town utility poles, or utility poles and to return the rights-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the town within a reasonable time after written notice, the town may undertake those repairs and charge the applicable party the reasonable and documented costs of the repair. The town may maintain an action to recover the costs of the repairs.

(i) This section shall not be construed to limit the town's authority to enforce historic preservation zoning regulations as set out in G.S. 160D-936(i).

(j) A wireless provider may apply to the town to place utility poles in the town right-of-way, or to replace or modify utility poles or town utility poles in the public rights-of-way, to support the collocation of small wireless facilities. The town shall accept and process the application in accordance with the provisions of G.S. 160D-935(d) and Code Sec. 20-4215 above, applicable codes, and other local codes governing the placement of utility poles or town utility poles in the town rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or town utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including those relating to screening or landscaping, or public safety and reasonable spacing requirements. The application may be submitted in conjunction with the associated small wireless facility application.

ATTACHMENT B

Sec. 20-4217. Access to Town Utility Poles to Install Small Wireless Facilities.

As required by G.S. 160D-937:

(a) The town may not enter into an exclusive arrangement with any person for the right to collocate small wireless facilities on town utility poles. The town shall allow any wireless provider to collocate small wireless facilities on its town utility poles at just, reasonable, and nondiscriminatory rates, terms, and conditions, but in no instance may the rate exceed $50.00 per town utility pole per year.

(b) A request to collocate under this section may be denied only if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the town to be reimbursed by the wireless provider. In granting a request under this section, the town shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration.

(c) Following receipt of the first request from a wireless provider to collocate on a town utility pole, the town shall, within 60 days, establish the rates, terms, and conditions for the use of or attachment to the town utility poles that it owns or controls. Upon request, a party shall state in writing its objections to any proposed rate, terms, and conditions of the other party.

(d) In any controversy concerning the appropriateness of a rate for a collocation attachment to a town utility pole, the town has the burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the pole for such period.

(e) The town shall provide a good-faith estimate for any make-ready work necessary to enable the town utility pole to support the requested collocation, including pole replacement, if necessary, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good-faith estimate by the applicant. For purposes of this section, the term “make-ready work” means any modification or replacement of a town utility pole necessary for the town utility pole to support a small wireless facilities in compliance with applicable safety requirements, including the National Electrical Safety Code, that is performed in preparation for a collocation installation.

(f) The town shall not require more make-ready work than that required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to preexisting or prior damage or noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other communications service providers for similar work and shall not include any consultant fees or expenses.

(g) Nothing in this section or this article shall be construed to apply to an entity whose poles, ducts, and conduits are subject to regulation under section 224 of the Communications Act of 1934, 47 USC §151, et seq., as amended, or under G.S. 62-350.

(h) This section shall not apply to an excluded entity. Nothing in this section shall be construed to affect the authority of an excluded entity to deny, limit, restrict, or determine the rates, fees, terms, and conditions for the use of or attachment to its utility poles, town utility poles, or wireless support structures by a wireless provider. This section shall not be construed to alter or affect the provisions of G.S. 62-350, and the rates, terms, or conditions for the use of poles, ducts, or conduits by communications service providers, as defined in G.S. 62-350, are governed solely by G.S. 62-350. For purposes of this section, “excluded entity” means (i) a town that owns or operates a public enterprise pursuant to Article 16 of G.S. Chapter 160A consisting of an electric power generation, transmission, or distribution system or (ii) an electric membership corporation organized under G.S. Chapter 117 that owns or controls poles, ducts, or conduits, but which is exempt from regulation under section 224 of the Communications Act of 1934, 47 USC § 151, et seq., as amended.

Sec. 20-4218. Limits on Applicability.

As required by G.S. 160D-938:

(a) In accordance with G.S. 160D-938 these regulations do not regulate the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any stadium or athletic facility. This subsection does not apply to a stadium or athletic facility owned or operated by the town. This subsection does not prohibit the enforcement of applicable codes.

(b) Nothing contained in G.S. Chapter 160D, Article 9, Part 3, or this article, shall amend, modify, or otherwise affect any easement between private parties. Any and all rights for the use of a right-of-way are subject to the rights granted pursuant to an easement between private parties.

(c) Except as provided in G.S. Chapter 160D, Article 9, Part 3, and this article, or otherwise specifically authorized by the General Statutes, the town may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way of State-maintained highways or town rights-of-way by a provider authorized by State law to operate in the rights-of-way of State-maintained rights-of-way or town rights-of-way by a provider authorized by State law to operate in the rights-of-way of State-maintained highways or town rights-of-way and may not regulate any communications service.

(d) Except as provided in G.S. Chapter 160D, Article 9, Part 3, and this article, or specifically authorized by the General Statutes, the town may not impose or collect any tax, fee, or charge to provide a communications service over a communications facility in the right-of-way.

(e) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to G.S. Chapter 160D, Article 9, Part 3, and this article, does not authorize the provisions of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the right-of-way.