

**Town of Weaverville
Planning Board
Regular Monthly Meeting
Tuesday, December 5, 2023, 6:00pm
Agenda**

		Pg#	
1.	Call to Order		Chairman Pace
2.	Adoption of Agenda	1	Chairman Pace
3.	Adoption of 2024 Meeting Schedule Calendar	2	Chairman Pace
4.	Approval of the Minutes – 10/3/2023 Regular Meeting	3	Chairman Pace
5.	Fee in Lieu of Sidewalk Construction	6	Planning Director Eller
6.	Conservation Subdivision	15	Planning Director Eller
7.	Facilitated Listening Session: Let's Talk About Short-term Rentals	29	Kayla DiCristina, AICP Land of Sky Regional Council
8.	Adjournment		Chairman Pace

TOWN of WEAVERVILLE

2024 Planning Board meeting schedule

Meeting Type	recurring day	Time	January	February	March	April	May	June
Town Council Workshop	3rd Tuesday	6:00 PM	1/16/24	2/20/24	3/19/24	4/16/24	5/14/24	6/18/24
Town Council Meetings	4th Monday	6:00 PM	1/22/24	2/26/24	3/25/24	4/22/24	*5/20/24	6/24/24
Planning Board	1st Tuesday	6:00 PM	1/2/24	2/6/24	*3/7/2024	4/2/24	5/7/24	6/4/24
Meeting Type	recurring day	Time	July	August	September	October	November	December
Town Council Workshop	3rd Tuesday	6:00 PM	7/16/24	8/20/24	9/17/24	10/15/24	*11/11/2024	*12/10/2024
Town Council Meetings	4th Monday	6:00 PM	7/22/24	8/26/24	9/23/24	10/28/24	*11/18/2024	*12/16/2024
Planning Board	1st Tuesday	6:00 PM	7/2/24	8/6/24	9/3/24	10/1/24	*11/7/2024	12/3/24
Town Council Workshops are generally held the 3rd Tues. of month at 6:00 p.m.								
Town Council Regular Meetings are generally held the 4th Mon. of month at 6:00 p.m.								
Planning Board Meetings are generally held the 1st Tues. of month at 6:00 p.m.								
* Adjusted date due to holiday or other conflict								
Election Day- March 5, 2024 & November 5, 2024								

**Town of Weaverville
Planning Board
Meeting Minutes – Tuesday, October 3, 2023**

The Planning Board of the Town of Weaverville met for a regularly scheduled monthly meeting at 6:00pm on Tuesday, October 3, 2023.

Present:, Board Members Mark Endries, Donna Mann Belt, Stefanie Pupkiewicz Busch, and alternate members Ryan Gagliardi and Michelle Rippon attended as voting members. Town Manager Selena Coffey, Town Attorney Jennifer Jackson, and Planning Director James Eller. Via remote electronic streaming attended Town Clerk Tamara Mercer.

Chair Bob Pace, Vice Chair Jane Kelley were absent.

1. Call to order Attorney Jackson

2. Election of Meeting Chair due to absence of Chair & Vice Chair

Ms. Mann nominated Mark Endries as Chairman. Carried unanimously 5-0.

3. Adoption of Agenda

Upon consensus, Mr. Endries declared the agenda approved.

4. Approval of the Regular Meeting Minutes September 5, 2023

Upon consensus, Mr. Endries declared the minutes approved.

Item 9 Short-term rentals

Planning Director Eller reviewed the steps taken so far regarding the topic of short-term rentals. The Town of Weaverville has contracted with Land of Sky Regional Council and their staff, Mary Roderick and Kayla DiCristina, who will spearhead the community engagement aspect. They will facilitate the conversion with the stakeholders and the community as well as moderate and schedule future meetings on the topic for the town.

5. Reems Creek Village Recombination Areas – Initial Zoning Request

Planning Director Eller reviewed the Reems Creek Village recombination area and initial zoning request. He provided the site map explaining how the parcels were acquired and recombined with their previous existing lots adding acreage from the county to the subject lots.

The drafted recommendation was presented by Attorney Jackson. There were questions regarding the R-2 zoning, the four parcels, and the annexation process.

Mr. Gagliardi made a motion that upon review of the request at Reems Creek Village Recombination Areas the Planning Board found a recommendation for R-2 zoning which is reasonable for these properties and is consistent with Town's Comprehensive Land Use Plan (CLUP). Carried unanimously 5-0.

6. 300 Hamburg Mountain Road – Initial Zoning Request

Planning Director Eller presented the 300 Hamburg Mountain Road initial zoning request as submitted by the pending voluntary annexation petition. Discussion ensued regarding the proposed R-3 density, surrounding area zoning, water utility that would be requested for 35 lots, and whether R-3 is reasonably appropriate and consistent with the CLUP. Mr. Eller reviewed the zoning map. He noted the scenario for subdividing the existing parcel for a satellite portion if it were not to be annexed.

Mr. Endries said R-2 zoning surrounds the subject area so he is comfortable with R-2 zoning. Attorney Jackson noted that this is the first single family subdivision annexation request, and it would be consistent with the zoning code and the draft recommendation is provided.

The agent for the applicant and Windsor Built Homes, Mr. Scott Street answered questions and he reviewed the previous building development and explained the proposed lot size.

Mr. Endries made a motion to approve as proposed for 300 Hamburg Mountain Road for R-3 zoning for the subject properties as it is consistent with the Town's Comprehensive Land Use Plan and reasonable with the code with Mr. Gagliardi, Ms. Pukiewicz Busch, Ms. Mann Belt, and Ms. Rippon who voted 'aye' and Mr. Endries who voted 'nay', Carried 4-1.

7. Northridge Farms – Initial Zoning Request

Planning Director Eller presented the Northridge Farms development project and stated the initial zoning request for the properties are claiming vested rights. Attorney Jackson presented the tax map and site plan and explained the claimed vested rights and how the master plan was approved by Buncombe County, which will consist of approximately 568 dwelling units for a total of 88 acres.

Mr. Eller answered questions regarding the county zoning, density, plan design, the southwest border on Reems Creek, and the developer's plans. Attorney Jackson said the Town Council has addressed the Town's needs for interconnection with the Reems Creek greenway plan and the developer. It is the goal to add walkable and multimodal public access through the development commons, the greenway, and to Lake Louise. This is in the planning stage.

Ms. Rippon added if it were annexed, the Town then would have some input and opportunity to negotiate the trail connections. Attorney Jackson agreed and explained that the emergency services ingress and egress access points are for those services only. She further explained the procedures for including a Weaverville zoning amendment with proscribed conditions such as going before the Board of Adjustment and that process or through the traditional legislative process and assigning zoning. Attorney Jackson pointed out the drafted recommendations have two options.

Mr. Beau Carpenter, Attorney for the Developer said that they agree to the walking paths. There was further discussion on the option choices for traditional zoning and conditional zoning.

Mr. Travis Fowler, Owner/developer reviewed the 15-year history of the family firm as developers. He agreed to build open spaces for the community and access points to the greenspaces. Project emphasis will be on vegetation, bike paths, sidewalks, and access to Lake Louise will be included in the plan said Mr. Fowler.

There was unanimous consensus among the Planning Board members reviewing this matter that they would like for the Town to make some effort towards securing developer agreement to: (1) preserve or create open spaces within the development, and (2) construct a publicly accessible walking/biking trail through the development that will serve as a connector between the Northridge Commons commercial area and the Reems Creek Greenway that is expected to be constructed along Reems Creek and provide access to Lake Louise.

Mr. Gagliardi made a motion to include both options for traditional district zoning and conditional district as the findings are compliant with the Town's Comprehensive Land Use Plan (CLUP) and is reasonable with the code. Carried unanimously 5-0.

8. Comprehensive Land Use Plan (CLUP) Update – Formal Recommendation

Attorney Jackson noted that the inclusion of the Town Council adopted Active Weaverville Pedestrian and Bicycle Plan for 2023 encourages walking and biking and with an implementation plan, shall meet the overall goal for connectivity. Town Manager Coffey noted that Black Mountain has development incentives to promote open spaces and tree planting programs which the Planning Board is working on an incentive conservation regulation.

The Planning Board members discussed their priorities and goals including the Bike Ped Plan, Park-n-Ride to Asheville, bus routes, and that the previous 2021 updated projects completed will be removed.

Mr. Gagliardi moved to accept the updated goals and revised Comprehensive Land Use Plan. Carried unanimously 5-0.

9. Short-Term Rental – previously addressed

10. Other Business

Mr. Eller pointed out the updated Planning Board Roster as Town Council has removed the Planning Board liaison position.

Without objection, Mr. Endries adjourned the meeting at 7:25 p.m.

ATTEST:

Tamara Mercer, Town Clerk

TOWN OF WEAVERVILLE
PLANNING BOARD AGENDA ITEM

Date of Meeting: Tuesday, December 5, 2023
Subject: Fee In Lieu of Sidewalk Construction
Presenter: Planning Director and Town Attorney
Attachments: Fee in lieu page from Active Weaverville Plan; Proposed Ordinance Revisions to Establish a Fee In Lieu Program

Description:

One of the recommendations of the recently adopted Active Weaverville Plan is the establishment of a fee in lieu sidewalk program. From the Active Weaverville Plan:

"A fee in lieu sidewalk program allows for developers to pay a fee in lieu of building sidewalks if the project meets a certain criterion defined in the Town of Weaverville's Code of Ordinances. Should the criteria be met, the developer pays the fee. The money collected, is then set aside in a fund for future sidewalk construction in the area or in according to standards defined in the ordinance. Fee in lieu is generally approved as part of a new subdivision, site plan, or building permit."

Over the previous years the current sidewalk waiver system has been rarely used, both near the intersection of Garrison Road and Merrimon Avenue, where new sidewalk construction would not have meaningfully added to the current pedestrian network. However, the current waiver system generated no revenue for the Town for sidewalk construction in other areas once the waiver was granted in the way that a fee in lieu system would.

Action Requested:

A motion establishing a recommendation to Town Council on the implementation of a fee in lieu of sidewalk construction program and the necessary ordinance revisions.



ACTIVE WEAVERVILLE

Town of Weaverville, NC

2023 Pedestrian and Bicycle Plan *Town of Weaverville, NC*

- Consider adding language to state that rehabbed sidewalks shall be reconstructed to be ADA compliant.

Recommendations - Appeal Process?

Remove/Replace:

- Remove the standard that sends appeals to the Board of Adjustment and replace with a Town of Weaverville Fee in Lieu of Sidewalks program.

ADA Compliance - What the UDO Encourages or Requires

The Code's Sec. 20-2403. – Streets (d) states that “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.” The Town’s focus on improving ADA compliant compliance is essential to developing an accessible community. However, in an area with challenging terrain, like Weaverville, it can be difficult to develop fully ADA complaint facilities. Many communities use a technically infeasible process or form to handle these types of situations. It is recommended that the Town of Weaverville ensure that developers aim to achieve full compliance and have a policy and process to address situations when full compliance is not feasible. This can be done through a technical infeasibility process that requires developers to document why compliance is technically infeasible and the efforts they took to be as compliant as possible.

Recommendations

- Consider revising Sec. 20-2403. – Streets (d) to read, “shall be in full compliance with ADA accessibility standards to the *maximum extent feasible*.”
- Develop a Technical Infeasibility Form (TIF) and process for developers to complete if it is not feasible to develop a fully compliant facility. See Appendix F for TIF examples.

WHAT IS A FEE IN LIEU PROGRAM?

A fee in lieu sidewalk program allows for developers to pay a fee in lieu of building sidewalks if the project meets a certain criterion defined in the Town of Weaverville’s Code of Ordinances. Should the criteria be met, the developer pays the fee. The money collected, is then set-aside in a fund for future sidewalk construction in the area or according to standards defined in the ordinance. Fee in lieu is generally approved as part of a new subdivision, site plan, or building permit.

CONSIDERATIONS IN DEVELOPING A FEE IN LIEU SIDEWALK PROGRAM:

- Determine when fee and lieu can / cannot be used.
- Define program use and approval process.
- Assess if program can be used for other amenities (greenways/trails, bike lanes, etc.).
- Identify the fee schedule or fee in lieu estimate.
- Set up an account for the funds.
- Assign a department to administer (e.g. public works / planning).
- Maintain record of how funds were used.

Chapter 20 – Planning and Development
Part I. General Provisions
Article VII. Fee in Lieu of Sidewalk Construction

Section 20-1701. Purpose

In general, the Weaverville Town Council supports the installation of sidewalks by the development community at the time of development. However, there are circumstances when current site conditions or other considerations justify the acceptance of a fee in lieu of sidewalk construction.

It is the purpose of this ordinance, and the rules and regulations set forth, to establish clear, equitable, and consistent standards for carrying out the fee in lieu of construction alternative provided for in Section 20-2404 and 20-3503 of the town's code of ordinances, as it pertains to sidewalks and related pedestrian facilities. This objective shall be achieved by establishing defined standards related to project eligibility, prioritization, and implementation.

Section 20-1702. Discretionary Power

Nothing in this policy shall be construed to limit Town Council's authority to deny a fee in lieu of sidewalk construction request or credit for off-site sidewalk construction. The standards and material contained herein are meant to guide and support any decision made by Council regarding fee in lieu of sidewalk construction.

Section 20-1703. Fee in lieu of Sidewalk Construction Requests

Any project required to install sidewalk per the standards of this Chapter 20 may request to pay a fee in lieu of said physical improvements. All requests to pay a fee in lieu of sidewalk construction shall be reviewed and decided upon by Weaverville Town Council.

Section 20-1704. Evaluation Criteria

While any project may submit a request to pay a fee in lieu of sidewalk construction, it is the Town's intention to limit the approval of such requests to those projects which merit serious consideration. The following list of criteria shall be used by Town Council for the purpose of evaluating a payment in lieu of construction request. A request is not required to meet all of the following criteria to be considered eligible:

- (1) The applicable property will be developed for residential purposes with a density of less than 1 dwelling unit per acre.
- (2) There are no sidewalks in the vicinity of the project, and it is unlikely that there will be development nearby that would require the installation of sidewalks in the future.
- (3) A stormwater drainage ditch or similar public utility facility prevents the installation of

the sidewalk, and neither the sidewalk nor the facility can be reasonably relocated to accommodate both the sidewalk and the facility.

- (4) The topography would require the construction of a retaining wall more than 6 feet in height to accommodate the sidewalk.
- (5) There is a planned roadway or infrastructure improvement scheduled to be implemented within the next 5 years which would require the removal or relocation of the required sidewalk.
- (6) Other unusual circumstances make the sidewalk installation requirement unreasonable or inappropriate.

Section 20-1705. Fee Calculation

The Town may request a cost estimate of required sidewalk construction from a civil engineering firm to assist in the fee calculation for approved payments in lieu. Cost estimates and fee calculations are subject to review and recommendation by the Town's Public Works Department.

The fee calculation for approved payments in lieu of sidewalk shall be based on the cost estimate as approved by Town Council and shall be due prior to (1) final plat approval, or (2) issuance of a Zoning Permit for any projects requiring sidewalk construction in which final plat approval would not apply.

Section 20-1706. Credits for off-site sidewalk construction

A fee in lieu of sidewalk construction may be credited by an equivalent amount of sidewalk construction in another location, based on estimated cost, subject to review and approval of Weaverville Town Council. The selected location for off-site sidewalk construction must be approved by the Zoning Administrator, as well as inspected by the Public Works department prior to pouring. Additionally, the developer must obtain all necessary encroachments and/or easements and provide copies of said agreements to the Town of Weaverville prior to commencement of work. Unless otherwise approved by the Zoning Administrator, off-site sidewalk construction permitted by this ordinance shall be due prior to (1) final plat approval or (2) issuance of a Zoning Permit for any projects requiring sidewalk construction in which final plat approval would not apply.

Section 20-1707. Use of Funds

Fees deposited with the Town in lieu of sidewalk construction shall only be used to install new sidewalks or new pedestrian facilities (such as curb ramps or crosswalks). Costs associated with sidewalk repairs shall be otherwise budgeted for by the town, and shall not come out of the fees in lieu of sidewalks.

Section 20-1708. Prioritization of New Sidewalk Installation

The Town shall periodically compile a priority listing for the installation of paved sidewalk improvements, giving full consideration to the following criteria:

- (1) Paved sidewalks along one side of the streets that constitute major walking routes to a public school shall normally be given first priority in an order established by the town after consideration of the service area.
- (2) Sidewalks along one side of the streets that constitute a major walking route to some public facility or along streets designated as a major or minor thoroughfare shall normally be given second priority in an order established by the town.
- (3) Sidewalks along a second side of the streets that constitute a major walking route to public schools, other public facilities, or along major or minor thoroughfares, where sidewalks already exist on one side, shall be given third priority.
- (4) Paved sidewalks in locations other than those described above shall normally be given fourth priority in an order established by the town.

Section 20-1709. Future Site Improvements or Changes

Any fee in lieu of sidewalk installation request approved by Town Council shall only apply to those requirements in place at the time of development. This ordinance shall not be construed to grant exceptions to sidewalk installation related to any future building or parking lot expansions, redevelopment, or changes in use which would require sidewalk installation per the standards of Chapter 20.

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 section 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 section 20-1308 governing appeals of administrative decisions, and G.S. 160D-406 and Code section 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 section 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 construction; or~~
 - ~~(c) The construction of the sidewalk will not meaningfully provide for better pedestrian access and/or connectivity to the existing or proposed pedestrian network or sidewalk system.~~
- ~~(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; or~~
 - ~~(c) The construction of the sidewalk will not meaningfully provide for better pedestrian access and/or connectivity to the existing or proposed pedestrian network or sidewalk system.~~
- (e) *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. 20-2404. Sidewalks.

- (a) 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.
- (b) Sidewalks shall be provided on at least one side of new streets constructed within major subdivisions.
- (c) 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.
- ~~(d) Subdivisions may apply to the board of adjustment for a sidewalk waiver in accordance with Code section 20-3108(e).~~ Subdivisions may apply to Town Council for a fee in lieu of sidewalk construction or credit for off-site sidewalk construction in accordance with Sec. 20-1701 through Sec. 20-1709.

(Ord. of 5-24-2021(1) , § 5)

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 section 20-3108(e).*~~ Developments may apply to Town Council for a fee in lieu of sidewalk construction or credit for off-site sidewalk construction in accordance with Sec. 20-1701 through Sec. 20-1709.

(Ord. of 5-24-2021(1) , § 5)

TOWN OF WEAVERVILLE
PLANNING BOARD AGENDA ITEM

Date of Meeting: Tuesday, December 5, 2023
Subject: Conservation Subdivision
Presenter: Planning Director and Town Attorney
Attachments: Proposed Conservation Subdivision Ordinances

Description:

The current goals of the Comprehensive Land Use Plan (CLUP), last updated in November 2023, call for the consideration of regulations which encourage open space, greenway dedication and conservation measures. This goal retained the language of the stated goal and number 1 (highest) priority within the CLUP from the previous year and previous conversations with the Planning Board. Number 1 priorities within the CLUP give staff the direction to accomplish or address the stated goal within 12 months. This goal has now exceeded this time expectation.

The Board discussed this issue on two previous occasions in May and July, 2023. During the July, 2023 meeting the Board requested additional guidance from Council on the issue. Staff addressed Council regarding this request but unfortunately no additional guidance was provided.

In these previous conversations, the issue of tree conservation was also discussed in detail. Tree preservation was incorporated into the update of the CLUP and will be treated as a separate issue moving forward accordingly.

Action Requested:

A motion establishing a recommendation to Town Council on the implementation of a conservation subdivision concept and the necessary ordinance revisions.

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:

Conservation Area, Primary. Consists of:

1. Floodplains (100-year and 500-year) and hydric soils identified as part of a Flood Insurance Study prepared by the Federal Emergency Management Agency (FEMA), or the County Soil Survey prepared by the USDA Natural Resources Conservation Service;
2. Land located within 50 feet of the bank of any perennial stream; and
3. Slopes greater than 30 percent (greater than 13.5 degrees) identified as part of a County Soil Survey prepared by the USDA Natural Resources Conservation Service, or a site analysis conducted by a registered professional engineer, professional land surveyor, landscape architect, architect or land planner and calculated using topographic maps from an actual survey or from the US Geological Society.

Conservation Area, Secondary. Consists of:

1. Farmland (whether actively used or not) including cropland, fields, pastures, and meadows;
2. Natural areas, wildlife habitats and corridors identified as part of: (1) an Inventory of Natural Areas and Wildlife Habitats as prepared by a State agency, the Natural Conservancy, or a local land trust; (2) a required Environmental Assessment or Environmental Impact Statement; or (3) an independent site study conducted by a trained botanist or biologist;
3. Slopes of 20 to 30 percent (9 to 13.5 degrees) which require special site planning due to their erosion potential, limitations for septic tank nitrification fields and terrain or elevation changes;
4. Historic or archeological sites including, but not limited to, sites listed on the National Register of Historic Places or included on the State's National Register study list, designated as a local historic landmark or district and/or designated as having a high potential for archaeological remains generally identified as part of a local architectural survey, local archaeological survey, required Environmental Assessment or Environmental Impact Statement, or independent site study conducted by a trained architectural historian or archaeologist;
5. Non-commercial cemeteries; and
6. Viewsheds (scenic views, especially of natural and cultural features from designated scenic road corridors, including "views from the road" as well as views outward from potential home sites).

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."

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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 pursuant 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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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 by 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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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 section 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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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 section 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 section 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 a subdivision only if all of the conditions stated herein can be met and only if authorized by Code section 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) Reserved;
 - (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 [subsection] (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 section 20-1303.

(Ord. of 5-24-2021(1) , § 5; Ord. of 11-22-2021(1) , § 6)

Sec. 20-2116. Conservation Subdivision

The conservation subdivision standards found at Sec. 20-2309 are additional standards which shall apply to all subdivisions proposing 30 lots or more.

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 section 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.

(Ord. of 5-24-2021(1) , § 5)

Sec. 20-2202. Process of review of minor subdivisions.

- (a) *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.
- (b) *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.
- (c) *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.
- (d) *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.
- (e) *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.

(Ord. of 5-24-2021(1) , § 5)

Sec. 20-2203. Process of review of major subdivisions and conservation subdivisions.

- (a) *Submission of application and preliminary plan.* All applications for development of a major subdivision and conservation 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.
- (b) *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 conservation 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.
- (c) *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.
- (d) *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 and conservation subdivision application and the preliminary plan.
- (e) *Review of preliminary plan by the planning board.* The planning board shall review all major subdivisions and conservation subdivisions and preliminary plans for compliance with planning and development regulations applicable to major subdivisions.
- (f) *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 and/or conservation 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.
- (g) *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.
- (h) *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.

- (i) *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.
- (j) *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 and/or conservation subdivisions.
- (k) *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.
- (l) *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.
- (m) *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.
- (n) *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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

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.

(Ord. of 5-24-2021(1) , § 5)

Sec. 20-2307. Sight distance.

No planting, structure, sign, fence, wall, or obstruction greater than 2½ 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.

(Ord. of 5-24-2021(1) , § 5)

Sec. 20-2308. Flag lots.

The following subdivision design standards are applicable for flag lots and related driveways and street access.

- (1) The minimum street frontage for a flag lot shall be 35 feet in accordance with [section] 20-3208(g).
- (2) The minimum width of the entire flagpole portion of a lot shall be 35 feet.
- (3) The flagpole portion of a lot shall not be included in the calculation of minimum lot area.
- (4) The maximum length of a flagpole portion of a lot shall be 200 feet.
- (5) No more than two lots or ten percent of the total lots in a subdivision, whichever is greater, shall be permitted as flag lots.
- (6) The number and location of curb cuts shall be designed to minimize traffic and pedestrian hazards.
- (7) Use of a shared driveway to serve flag lots and/or an adjoining lot is permitted and encouraged.

Sec. 20-2309. Conservation subdivision standards.

The following additional standards shall apply to all subdivisions proposing 30 lots or more:

(a) Open space shall:

- (1) Comprise a minimum of 25 percent of the project area. Floodplain areas are allowed to be calculated for both density and open space requirements.
 - (2) Be composed of (in order of which lands should be designated as open space first): primary conservation area, secondary conservation area, and any remaining lands necessary.
 - (3) Be designated so that a minimum of 50 percent of the proposed open space is contiguous and, where possible, adjoins open space or other protected areas (including protected forests or wildlife areas) outside the project area.
 - (4) Be designated so that, where possible, a majority of the lots directly abut open space to provide residents with direct views and access.
 - (5) Be accessible by safe and convenient pedestrian access from all adjoining lots (except in the case of farmland or other resource areas vulnerable to trampling damage or human disturbance).
 - (6) Be used as follows:
 - i. Conservation of natural resources, archaeological resources or historical resources;
 - ii. Agriculture, horticulture or silviculture, provided all applicable best management practices are used to minimize environmental impacts;
 - iii. Passive recreation
 - iv. Active recreation provided impervious surfaces are limited to a maximum of 12 percent of the total open space area;
 - v. Nonstructural stormwater management practices;
 - vi. Easements for drainage, access, and utility lines; and
 - vii. Water, septic and sewer systems.
 - (7) Be accessible by safe and convenient pedestrian access from all adjoining lots (except in the case of farmland or other resource areas vulnerable to trampling damage or human disturbance).
- (b) Open space ownership. The applicant must identify current and future owners of open space responsible for maintaining the area and/or facilities. The responsibility for maintaining the open space and its facilities shall be borne by the owner. If a homeowners' association is the owner:

- (1) Membership in the association shall be mandatory and automatic for all homeowners in the subdivision and their successors; and
- (2) The association shall have lien authority to ensure the collection of dues from all members.
- (c) Open space management. The applicant shall submit an open space management plan which includes:
- (1) A statement allocating maintenance responsibilities and establishing guidelines for the upkeep of open space and its facilities.
- (2) Cost estimates for maintenance, operation and insurance needs for the open space.
- (3) A means by which funds will be obtained for all management expenses.
- (4) A provision allowing the subdivision administrator to approve plan change; and
- (5) Criteria for plan enforcement.
- (d) Legal instrument for permanent protection. Open space shall be protected in perpetuity by a binding legal document recorded with the deed. The document shall be one of the following:
- (1) Permanent conservation easement in favor of either:
- (i) A land trust or similar conservation oriented non-profit organization with legal authority to accept such easements. The organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer in the event the organization becomes unable to carry out its functions; or
- (ii) A governmental entity with an interest in pursuing goals consistent with the intentions of this section.
- (2) Permanent restrictive covenant for conservation purposes.
- (3) Equivalent legal tool providing permanent protection, subject to approval by the Town Attorney. The instrument shall include all restrictions contained in Section 20-2309 conservation subdivision standards and any further restrictions the applicant chooses to place on the use of the open space.
- (e) Open space density bonus. Base density is determined by the zoning district in which the subdivision is located. Conservation subdivisions proposing more than the minimum required open space may be eligible for increased densities. The following table outlines the criteria for density bonuses. Lands under conservation easement shall not be counted when determining density bonuses.
- Open Space Density Bonuses:
- | | | | | |
|--|--------------|--------------|--------------|---------------|
| <u>Percent Open Space (%)</u> | <u>25-30</u> | <u>31-40</u> | <u>41-50</u> | <u>>50</u> |
| <u>Percent Housing Density Increases (%)</u> | <u>N/A</u> | <u>10</u> | <u>15</u> | <u>20</u> |
- (f) Structure Placement. Structures should be placed as closely to internal roads as permitted. Structures may be:
- (1) Located in the side yard setback of other structures within the development required by the zoning district; and
- (2) Placed as closely together as permitted by the North Carolina State Building Code.

Ord. of 11-22-2021(1) , § 3)

Ord. of 11-22-2021(1) , § 3, set out provisions intended for use as § 20-2307. Inasmuch as there were already provisions so designated, said section has been codified herein as § 20-2308 at the discretion of the editor.



TOWN OF WEAVERVILLE

Let's Talk About Short Term Rentals

Facilitated Listening Session

AT WEAVERVILLE TOWN HALL
FOLLOWING REGULAR
PLANNING BOARD MEETING



1 Hour

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