

Chapter 78, Code of Ordinances, Buncombe County

The Zoning Ordinance of Buncombe County, North Carolina



Initially Adopted December 1, 2009

As Amended May 18, 2010

ARTICLE VI. BUNCOMBE COUNTY ZONING ORDINANCE

DIVISION 1. GENERALLY

Sec. 78-576. Title.

This article shall be known and may be cited as "The Zoning Ordinance of Buncombe County, North Carolina" and may be referred to as the "zoning ordinance".

Sec. 78-577. Authority.

In pursuance of the authority conferred by state law, the Buncombe County Board of Commissioners hereby ordain and enact into law this article.

Sec. 78-578. Purpose.

The purpose of this article is to ensure orderly, attractive, and economically sound development and to protect existing property values within Buncombe County.

Sec. 78-579. Jurisdiction.

The provisions of this article shall apply to the portion of Buncombe County specifically identified and delineated on the zoning map entitled "The Official Zoning Map of Buncombe County, North Carolina." Such map and all explanatory matter thereon accompany and are hereby made a part of this article by reference. The ordinance shall be on file in the office of the Buncombe County Board of Commissioners.

Sec. 78-580. Exemptions.

This article shall in no way regulate, prohibit, or otherwise deter any bona fide farm and its related uses, except that any use of such property for non-farm purposes shall be subject to the provisions of this article.

Sec. 78-581. Definitions.

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory use means a use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

Adult entertainment establishment means any establishment which would be considered an adult bookstore, adult motion-picture theater, adult mini-motion-picture theater, or adult live entertainment business as each is defined in G.S. 14-202.10. This definition does not include bona-fide massage parlors.

Alley means a public way which affords only a secondary means of access to abutting property.

Amusement park means establishments of the type known as "amusement parks," "theme parks," and "kiddie parks," which group together and operates in whole or in part a number of attractions, such as mechanical rides, amusement devices, refreshment stands, and picnic grounds and all associated activities. This definition specifically excludes camps, motion picture theaters, museums, art galleries, arboreta and botanical and zoological gardens.

Apartment means a part of a building consisting of rooms intended, designed or used as a residence by an individual or single family.

Apartment, garage means a part of a garage consisting of rooms intended, designed or used as a residence by an individual or a single family.

Applicant means the party applying for permits or other approval required by this article.

Asphalt plant means an establishment, whether portable or nonportable, engaged in petroleum refining, manufacturing asphalt-type roofing materials, asphalt and tar paving mixtures and paving block made of asphalt and various compositions of asphalt or tar with other materials; and the recycling of old asphalt into asphalt-type material.

Bed and breakfast inn means a private, owner-occupied business with 4 to 20 guests where overnight accommodations and a morning meal are provided to guests for compensation and where the bed and breakfast inn is operated primarily as a business.

Board of adjustment means a body composed of those appointed members whose duties, powers, and procedures are set forth in division 3 of this article.

Bona fide farm means all land on which agricultural operations are conducted as the principal use, to include cultivation of crops and the husbandry of livestock.

Buffer strip means vegetation consisting of evergreen trees or shrubs located along the side and rear lot lines.

Building means any structure having a roof supported by columns or by walls and intended for shelter, housing, or enclosure of persons, animals or chattels. The connection of two buildings by means of an open porch, breezeway, passageway, carport, or other such open structure, with or without a roof, shall not be deemed to make them one building. The word "building" includes the word "structure."

Building, accessory means a detached building subordinate to the main building on a lot and used for purposes customarily incidental to the main or principal building and located on the same lot.

Building height means the vertical distance of any building or structure, as measured from the highest ground level at the structure foundation to the uppermost point of the roof.

Building, principal means a building used for the same purpose as the principal use of the lot.

Building, setback line means a line delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided. Front setback lines shall be measured from the highway right-of-way. For purposes of the Beaverdam District only, front setback lines shall be measured from the edge of the road.

Campus office use means an office use located at a maximum density of one building per 2.5 acres with a building footprint not exceeding 5,000 square feet and not more than two stories in height.

Crematory shall mean any facility designed for the cremation of human or animal remains. A crematory shall be considered the principle use of the property and it shall be treated as the same zoning classification as an incinerator. A crematory may only be considered an accessory use if located on the same property as a funeral home and if the remains are prepared for cremation at the funeral home and not transferred from another operation.

Chip mill means any nonportable wood-chipping facility that stands alone and apart from a sawmill or a pulp mill, and whose purpose is to provide wood chips to an off-site fabricating facility including, but not limited to, a papermill or oriented strand board (OSB) mill.

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

Conditional use means a use which is permitted in specified zoning districts only after review by the board of adjustment and found to meet specific conditions and procedures as set forth in this article so as to maintain the safety and general welfare of the community.

Condominium means ownership of single units in a multiunit structure with common areas and facilities in accordance with G.S. Chapter 47C, North Carolina Condominium Act, and any other applicable state law.

DUA means dwelling units per acre.

Day nursery and private kindergarten means a use of land and buildings to provide group care for children.

Dwelling, single-family means a building arranged or designed to be occupied by one family.

Dwelling, two-family means a building arranged or designed to be occupied by two families living independently of each other.

Dwelling, multifamily means any building or buildings which contain more than one residential dwelling unit on a single lot including, but not limited to, apartment houses and condominiums. For purposes of the open use district only, multifamily dwelling means six or more units on a single lot.

Dwelling, single-family attached means townhouses, row houses, condominiums, or group houses for single-family dwellings, having or sharing one or more common walls or other parts of the structure, and whose ownership may be divided into lots for individual sales.

Dwelling unit means a building, or portion thereof, providing complete and permanent living facilities for one family.

Easement means a grant by a property owner of a strip of land for specified purpose and use by the public, a corporation or persons.

Family means one or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage, no such family shall contain over five persons, but further provided that domestic servants employed on the premises may be housed on the premises without being counted as a family.

Family care home means an adult care home having two to six residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story. A family care home shall be deemed a residential use of property for zoning purposes and shall be a permissible use in all residential districts. Family care homes shall not house residents who are dangerous to others as defined in G.S. 122C-3(11), as may be amended.

Gross floor area means the total floor area of all buildings in a project including the basements, mezzanines and upper floors, exclusive of stairways and elevator shafts. It excludes separate service facilities outside the main building such as boiler rooms and maintenance shops.

Gross residential density means the number of dwelling units proposed to be built, divided by the area of the tract being developed.

Group housing means a series of one or more buildings designed for multifamily use, including multifamily dwellings and single-family attached dwellings.

Group housing project means a project which proposes the construction and/or development of a tract or tracts of land and one or more buildings thereon for group housing, including but not limited to condominiums, townhouses, row houses, apartments and other forms of group housing.

Group housing project area means that area of land which comprises the total perimeter area of the contemplated group housing project inclusive of lot and open space.

Group housing project owner means any person which has an ownership interest in any group housing project.

Guest house and servant quarters means an attached or separate dwelling unit used for the residence of domestic servants or the temporary lodging of guests, not including dwelling units for which rent or other considerations are paid by the occupants.

Hazardous waste facility means any industrial facility that stores, handles, processes or manufactures any material, substance or product that is considered to be a Class 1 explosive; a Class 2, Division 2.3 gas (gases toxic by inhalation); a Class 6 toxic material or infectious substance; or a Class 7 radioactive substance or material, all as classified by the United States Department of Transportation Hazard Classification System. This term shall also mean any industry or facility that is a large quantity generator of hazardous waste as that term is defined by the North Carolina Department of Environment and Natural Resources.

Home occupation means an occupation conducted entirely within a dwelling or accessory structure and carried on by the occupants thereof, provided that: (1) the use of the dwelling unit for the home occupation shall be clearly incidental and secondary to the use of the dwelling for residential purposes, and such occupation shall not occupy more than 25 percent of the total floor space of the dwelling or the entire accessory structure; and (2) there shall be no display, no outside storage, no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than an unlighted sign located on the premises and not over two square feet in area; and (3) no more than two persons not in residence on the premises shall be employed in connection with the home occupation; and (4) no traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any needed parking must be off the street and other than in a required front yard; and (5) no equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the lot; and (6) in the case of electrical interference, no equipment or process shall be used which creates

visual or audible interference in any radio or television receivers off the premises, or causes fluctuations in line voltage off the premises.

Incinerator shall mean: (a) any enclosed device that burns material other than the classic boiler fossil fuels, such as natural gas, coal, unadulterated wood, or fuel oil, is a principal use on any lot or parcel, and uses controlled flame combustion and neither meets the criteria for classifications as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or (b) meets the definition of "infrared incinerator" or "plasma arc incinerator" or any other device meant to burn solid, liquid, or gaseous waste material. This definition does not apply to afterburners, flares, fume incinerators, and other similar devices used to reduce process emissions of air pollutants. Specifically excluded from this definition and any regulation under this chapter are those incinerators that are constructed and/or operated by or on behalf of any federal, state, or local governmental entity; provided, however, that this exclusion from regulation only applies to those incinerators not operating as a hazardous waste facility.

Individual sewer system means any septic tank, privy, or other facility serving a single source with a design capacity of 3,000 gallons per day or less.

Individual water system means any well, spring, stream, or other source used to supply a single connection.

Junk means old or scrapped copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, dismantled or wrecked automobiles, or parts thereof, iron, steel, and other old scrap ferrous or nonferrous material.

Junkyard means a parcel of land on which waste material or inoperative vehicles and other machinery are collected, stored, salvaged, or sold.

Kennel means an establishment licensed to house dogs, cats, or other household pets and where grooming, breeding, training, or selling of animals may be conducted.

Landfill means a site within which is deposited solid waste material including trash, construction debris, garbage, or industrial waste. The term "landfill" shall include a disposal facility or part of a disposal facility where solid waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility, or a surface storage facility.

Landing strips means aircraft landing strips without normal airport facilities including, but not limited to runways, landing fields, and heliports.

Lot means a parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the lot. The word "lot" includes the words "plot" or "parcel."

Lot depth means the mean horizontal distance between front and rear lot lines.

Lot of record means any lot for which a plat has been recorded in the office of the Buncombe County Register of Deeds, or described by metes and bounds, the description of which has been so recorded.

Manufactured/mobile home park means any premises where three or more mobile homes are parked for living and sleeping purposes, or any premises used or set apart for the purpose of supplying to the public parking space for three or more mobile homes for living and sleeping purposes, and which include any buildings, structures, vehicles, or enclosures used or intended for use as part of such mobile home park.

Manufactured/mobile home, residential means a structure which is transportable in one or more sections; designed to be used as a year-round, single-family residential unit; which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities; and which does not meet the standards established by the North Carolina Residential Building Code.

Materials recovery facility means an establishment primarily engaged in (1) operating facilities for separating and sorting recyclable materials from nonhazardous waste streams (i.e., garbage); and/or (2) operating facilities where commingled recyclable materials such as paper, plastics, used beverage cans, and metals are sorted into distinct categories.

Mining and extraction operation means any establishment or business primarily engaged in dressing and beneficiating of ores; the breaking, washing and grading of coal; the crushing and breaking of stone; and the crushing, grinding, or otherwise preparing of sand, gravel, and nonmetallic chemical and fertilizer minerals.

Modular home means a dwelling unit constructed in accordance with the standards set forth in the North Carolina State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a modular home may consist of two or more sections transported to the site in a manner similar to a manufactured home (except that the modular home meets state building codes) or may consist of a series of panels or room sections transported on a truck and erected or joined together on the site.

Motor sports facility means any facility, track, or course upon which racing or motor sporting events are conducted including, but not limited to vehicles, motorcycles, all-terrain vehicles, motor scooters, go-carts, etc.

Nonconforming use means any parcel of land, use of land, building, or structure existing at the time of adoption of this article, or any amendment thereto, that does not conform to the use or dimensional requirements of the district in which it is located.

Open space means a part or portion of the project area unoccupied and unobstructed from the ground upward.

Parking space means an area for parking a vehicle plus the necessary access space.

Parks means any public or private land managed primarily as vegetated open space for recreational, aesthetic, or educational use.

Planned unit development (PUD) means more than two principal buildings or uses proposed to be constructed on a single lot, any building with a gross floor area of 35,000 square feet or more, or any residential complex of five or more units. Residential units within a planned unit development may include single-family detached or attached units, townhouse developments, garden apartments, patio homes, and other types of residential units, excluding mobile homes and mobile home parks.

Planning board means a body composed of those members organized and appointed by the board of commissioners under the authority granted in G.S. 153A-321 and G.S. 153A-322. The power of the planning board to perform its duties is granted in chapter 58, article II, of this Code.

Property line means any boundary line of a lot or parcel of real property.

Pub means an eating and drinking establishment catering primarily to the surrounding neighborhood and having a seating capacity of not greater than 75 persons.

Public sewer system means any sewer system owned and operated by the county, the

Metropolitan Sewerage District, Avery's Creek Sanitary District, or other sewer treatment facility serving two or more connections, or the development of a community-type sewer system having a design capacity of greater than 3,000 gallons per day, or any wastewater treatment system having a discharge to surface waters when approved by the N.C. Department of Environment and Natural Resources, Division of Water Quality.

Public water system means water systems serving 15 or more residential connections or serving 25 or more year-round residents which are classified as public water supplies by state law, and which plans and specifications must be approved by the N.C. Department of Environment and Natural Resources, Public Water Supply Section. Also, water supply systems serving from two to 14 connections shall be regulated by the Buncombe County Board of Health, and plans shall be approved by the Buncombe County Health Center, Environmental Health Services.

Recreation use, nonprofit means an indoor or outdoor recreation facility operated on a nonprofit basis, according to the laws of the state.

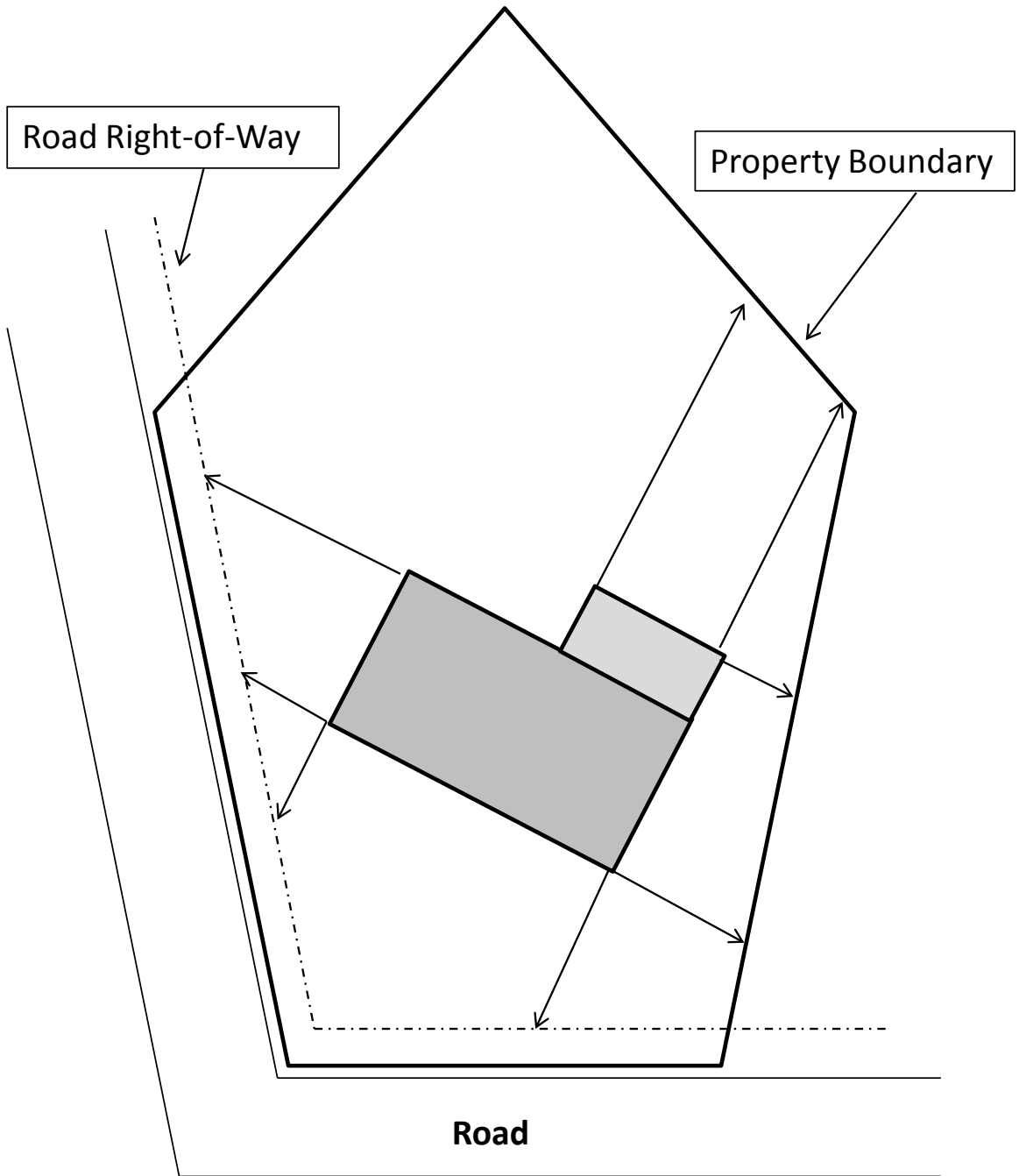
Recreation use, profit means an indoor or outdoor recreation facility operated on a profit basis.

Residence means any building, structure or portion thereof which is designed, arranged, or used for a residential occupancy, but shall not include a motel, hotel, rooming house, or vacation rental.

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

Rooming house means a house where lodgings are provided for rent by the week or month.

Setback means a continuous strip of land, measured perpendicular from the plane of the building or structure out to the closest property line or road right-of-way, except as otherwise provided in the Beaverdam Zoning District.



Shooting range, outdoor commercial means an improved area that is commercially operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, air guns, archery, or any other similar sport shooting in an outdoor environment.

Site specific development plan means a plan of land development submitted to the county for purposes of obtaining a zoning or land use permit or approval pursuant to division 6 of this article. Notwithstanding the foregoing, neither a variance, a sketch plan, nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

Slaughtering plant means an establishment primarily engaged in slaughtering animals or poultry/small game. For purposes of the open use district, this definition includes slaughtering plants that conduct processing of animals or poultry/small game, including dressing, packing, freezing, canning, cooking, and/or curing of animals or poultry/small game or their carcasses. This definition specifically excludes slaughtering and processing activities performed for personal use only.

Solid waste management facility means (1) land, personnel, and equipment in the management of solid waste including a transfer station, landfill, or materials recovery facility. Specifically excluded from this definition are incinerators and drop-off recycling centers; and those solid waste management facilities that are constructed and/or operated by or on behalf of any federal, state, or local governmental entity; provided, however, that this exclusion from regulation only applies to those solid waste management facilities not operating as a hazardous waste facility.

Street, road, or highway means a right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Structure means that which is built or constructed.

Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development, whether immediate or future, and includes all division of land involving the dedication of a new road or a change in existing roads.

Townhome means a single-family attached dwelling unit in which each unit has its own access to the outside, no unit is located over another unit, each unit is separated from any other unit by one or more vertical common fire-resistant walls, and where each individual unit is located on an individual lot of record.

Transfer station means a permanent structure with mechanical equipment used for the collection or compaction of solid waste prior to the transportation of solid waste for final disposal.

Travel trailer means a vehicle primarily designed as a temporary or seasonal dwelling for travel, recreation, or vacation uses, including park model homes, travel trailers, and similar transportable structures.

Travel trailer park means a parcel of land designed and equipped to accommodate travel trailers.

Vacation rental means a house(s) where lodgings are provided by the week or month.

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

Yard, front means an open, unoccupied space on the same lot with a principal building, extending the full width of the lot and situated between the street or property line and the front line

of the building, projected to the side lines of the lot.

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

Yard sale means a retail sale on residential property not to be conducted for more than two weeks per year.

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

Zoning administrator means an official of the county charged with enforcing and administering this article.

Zoning map means the official zoning map of Buncombe County.

Zoning vested right means a right pursuant to G.S. 153A-344.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

Sec. 78-582. Violations.

Whenever, by the provisions of this article, the performance of any act is prohibited, or whenever any regulation, dimension, or limitation is imposed on the use of any land, or on the erection or alterations or the use or change of use of a structure, or the uses within such structure, a failure to comply with such provisions of this article shall constitute a separate violation and a separate offense.

Sec. 78-583. Penalties for violations.

Any person adjudged in violation of this article shall be guilty of a misdemeanor and shall be subject to punishment as provided in G.S. 14-4.

Sec. 78-584. Remedies for violations of article.

If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained, or any building, structure, or land is used in violation of this article, the zoning administrator, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use; to restrain, correct or abate the violation; to prevent occupancy of the building, structure or land; or to prevent any illegal act, conduct of business or use in or about the premises.

Sec. 78-585. Abrogation or greater restrictions.

When provisions of this article require a greater width or size of yards or courts, or require a lower height of a building or fewer number stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local

ordinance or regulation, provisions of this article shall govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the provisions made by this article, the provisions of that statute or local ordinance or regulation shall govern.

Secs. 78-586--78-595. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT

Sec. 78-596. Enforcement generally; duties of enforcing officers and agencies.

All questions arising in connection with the enforcement of this article shall be presented first to the zoning administrator who shall be responsible for the day-to-day administration of this article. The board of adjustment shall have the authority to rule on matters of interpretation of this article, consider appeals from decisions of the zoning administrator, issue conditional use permits, and grant variances. Any appeal from a decision of the board of adjustment shall be to the courts as provided by law. The duties of the board of commissioners in connection with this article shall not include the hearing and passing upon of disputed questions that may arise in connection with the enforcement thereof, but the procedure for determining such questions shall be as set forth in this article. The duties of the board of commissioners in connection with this article shall be the duty of considering and passing upon the initial ordinance from which this article is derived and any proposed amendments or repeal of this article as provided by law, after receiving recommendations from the planning board.

Sec. 78-597. Zoning administrator; duties.

The board of commissioners shall appoint a zoning administrator. It shall be the duty of the duly appointed zoning administrator to administer and enforce the provisions of this article.

If the zoning administrator finds that any of the provisions of this article are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this article to ensure compliance with or to prevent violation of its provisions. If a ruling of the zoning administrator is questioned, the aggrieved party may appeal such ruling to the board of adjustment.

Sec. 78-598. Certificate of zoning compliance.

(a) *Required.* No building or other structures shall be erected, moved, added to or structurally altered, nor shall any building permit be issued, nor shall any change in the use of any building or land be made until a certificate of zoning compliance shall have been issued by the zoning administrator. All buildings, structures, and accessory uses shall meet the dimensional requirements, use requirements, and any other requirements, that are noted in this article. No certification of zoning compliance shall be issued except in conformity with the provisions of this article.

(b) *Applications; contents.* Applications for certificates of zoning compliance may be accompanied by plans showing the actual dimensions of the plot to be built upon, and the location on the lot of the building or structure proposed to be erected or altered, and such other information as may be necessary to provide for the enforcement of the provisions of this article.

Sec. 78-599. Building permit required.

Upon receiving a certificate of zoning compliance, a building permit shall be obtained from the Buncombe County Permits and Inspections Department for the construction or alteration of any building, structure or mobile home, pursuant to the section 10-66 et seq. herein.

Sec. 78-600. Certificate of occupancy required.

In conjunction with the final building inspection, the zoning administrator shall certify that all requirements of this article have been met. The applicant shall call the zoning administrator and apply for such certification coincident with the final building inspection or within ten days following completion. A certificate of occupancy, either for the whole or part of the building, shall be issued within 30 days after the erection or structural alterations of such building, or part, shall have been completed in conformity with the provisions of this article. A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this article. If the certificate of occupancy is denied, the zoning administrator shall state in writing the reasons for refusal, and the applicant shall be notified of the refusal. A record of all certificates shall be kept on file in the office of the zoning administrator, and copies shall be furnished on request to any person having a proprietary or tenancy interest in the building or land involved.

Sec. 78-601. Construction progress.

If no substantial construction progress has been made within one year of the date of the issuance of the zoning compliance certificate, the permit becomes invalid.

Sec. 78-602. Prevention of violation by legal procedure.

In case any building is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building or land is used in violation of this article, the zoning administrator or any other appropriate county authority, or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceedings to prevent such violation.

Sec. 78-603. Appeal from decision of the zoning administrator.

All questions arising in connection with the enforcement of this article shall be presented first to the zoning administrator, and such questions shall be presented to the board of adjustment only on appeal from a ruling of the zoning administrator. Any order, requirement, decision, or determination made by the zoning administrator may be appealed to the board of adjustment pursuant to the procedure found in section 78-623.

Secs. 78-604--78-615. Reserved.

DIVISION 3. BOARD OF ADJUSTMENT

Sec. 78-616. Establishment; composition; appointment of members.

(a) *Establishment and composition.* A board of adjustment is hereby established. Such board of adjustment shall consist of seven members and shall be appointed by the board of commissioners.

(b) *Term of office.* Each member shall serve a term of three years. Vacancies shall be appointed by the board of commissioners to fulfill an unexpired term.

Sec. 78-617. Selection of alternate members.

The board of commissioners shall also appoint alternate members who may be called in by the chairperson of the board of adjustment to serve in the absence of a regular board of adjustment member. Such alternate members shall also serve a three-year term. Such alternate members while attending any regular or special meeting of the board of adjustment and serving in the absence of any regular member shall have and exercise all powers and duties of such regular member so absent.

Sec. 78-618. Rules of conduct.

(a) Members of the board of adjustment may be removed by the board of commissioners for cause, including violation of the rules stated in this section.

(b) Faithful attendance at meetings of the board of adjustment and conscientious performance of the duties required of members of the board of adjustment shall be considered a prerequisite of continuing membership on the board of adjustment.

(c) A member of the board of adjustment shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed ex parte communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(d) No board of adjustment member shall discuss any case with any parties thereto prior to the public hearing on that case; provided however, that a member may receive and/or seek information pertaining to the case from the zoning administrator or any other member of the board of adjustment or its clerk prior to the hearing.

(e) Members of the board of adjustment shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(f) No board of adjustment member shall accept any gift, whether in the form of a service, a loan, a thing of value, or a promise, from any person, firm, or corporation that, in the member's knowledge, is interested directly or indirectly in any manner whatsoever in business dealings with the county.

(g) No board of adjustment member shall accept any gift, favor, or thing of value that may tend to influence that board member in the discharge of duties.

(h) No board of adjustment member shall grant any improper favor, service, or thing of value in the discharge of duties.

Sec. 78-619. General proceedings.

The board of adjustment shall annually elect a chairperson and a vice-chairperson from among its members. The chairperson, or in his absence the vice-chairperson, may administer oaths and request the attendance of witnesses in accordance with G.S. 153A-345. The board of adjustment shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and also keep records of its examinations and other official actions.

Sec. 78-620. Meetings.

(a) *Monthly; special; notice of meetings; according to state law.* The board of adjustment shall hold regular monthly meetings at a specified time and place. Special meetings of the board of adjustment may be called at any time by the chairperson or by request of three or more members of the board of adjustment. At least 48 hours' written notice of the time and place of meeting shall be given, by the chairperson, to each member of the board of adjustment. All board of adjustment meetings are to be held in accordance with G.S. 143-318.9 et seq., commonly referred to as the Open Meeting Law.

(b) *Cancellation of meetings.* Whenever there are no appeals, applications for conditional uses or variances, or other business for the board of adjustment, or whenever so many regular and alternate members notify the zoning administrator of their inability to attend that a quorum will not be available, the chairperson may dispense with a meeting by giving written or oral notice to all members.

(c) *Quorum.* A quorum shall consist of four members of the board of adjustment, but the board of adjustment shall not pass upon any questions relating to an appeal from a decision, order, requirement, or determination of the zoning administrator, or an application for a variance or conditional use permit when there are less than six members present.

(d) *Voting.* All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in section 78-618. The required vote to decide appeals and applications shall be as provided in subsection 78-623(d). In all other matters, the vote of a majority of the members present and voting shall decide issues before the board of adjustment. For purposes of this article, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(e) *Subpoenas.* The board of adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this article, the board of adjustment may apply to the general court of justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this article may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person, while under oath during a proceeding before the board of adjustment, who willfully swears falsely is guilty of

a Class 1 misdemeanor.

(f) *Application.* The applicant must file their application for a hearing with the zoning administrator, who shall act as clerk to the board of adjustment in receiving this notice. All applications shall be submitted at least thirty (30) days prior to the date the application is to be heard. All applications shall be made on the form specified for that purpose, and all information required on the form shall be complete before an application shall be considered as having been filed.

Sec. 78-621. Powers and duties.

The powers and duties of the board of adjustment shall be as follows:

- (1) *Interpretation.* The board of adjustment shall interpret zoning maps and pass upon disputed questions of lot lines or district boundary lines and any other questions of interpretation that may arise in the administration of this article.
- (2) *Administrative review.* The board of adjustment shall hear and decide appeals from any order, requirement, decision or determination made by the zoning administrator in the enforcement of this article, as provided in section 78-603 as well as appeals and requests for variances pursuant to any Chapter or Article of the Code of Ordinances for Buncombe County indicating that such appeals or requests for variances shall be heard by the board of adjustment. Such appeals and requests for variances shall be conducted in accordance with Sec. 78-623, Appeals and applications, below. Further, in all cases in which requests for variances are heard by the Board of Adjustment references to this article or chapter shall be deemed to be references to such Chapter or Article from which the appeal or request for variance is made, as appropriate, and references to appeals under this article or chapter shall be deemed to be references to requests for variances, as appropriate. The concurring vote of four-fifths of the members of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of the zoning administrator, or to decide in favor of the applicant any matter which it is required to pass under this article or to effect any variation in this article.
- (3) *Conditional uses.* The board of adjustment shall grant in particular cases and subject to appropriate conditions and safeguards, permits for conditional uses as authorized in division 6 of this article set forth as conditional uses under the various use districts. The board of adjustment shall follow the requirements and procedures outlined in division 6 prior to issuance of a conditional use permit.
- (4) *Variances.* The board of adjustment shall authorize upon appeal in specific cases such variance from the terms of this article as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this article will, in an individual case, result in practical difficulty or unnecessary hardship, and so that the spirit of this article shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the board of adjustment that the following conditions exist:
 - a. That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the article;
 - b. That if the applicant complies with the provisions of the article, the property owner seeking the variance can secure no reasonable return from, or make no reasonable use of his property;

- c. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings located in the same zoning district or area;
- d. That the special conditions and circumstances do not result from the action of the applicant;
- e. That the variance is in harmony with the general purpose and intent of this article and preserves its spirit;
- f. That the variance is the minimum necessary to afford relief; and
- g. That the public safety and welfare have been assured and substantial justice has been done.

A nonconforming use of neighboring land, structures or buildings in the same district, and permitted uses of land, structures or buildings in other districts will not be considered grounds for the issuance of a variance.

In granting a variance, the board of adjustment shall make findings that the requirements of this article have been met. The board of adjustment shall make a finding, and written notice of the decision shall be prepared as prescribed in subsection 78-623(d). In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this article. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article and punishable as described under section 78-583.

Sec. 78-622. Statutory vested rights provisions.

(a) *Purpose.* The purpose of this section is to implement the provisions of G.S. 153A-344.1 pursuant to which a statutory zoning vested right is established upon the approval of a site-specific development plan.

(b) *Establishment of a zoning vested right.*

- (1) A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the board of adjustment of a site specific development plan, following notice and public hearing.
- (2) The board of adjustment may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.
- (3) Notwithstanding subsections (1) and (2) of this section, approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.
- (4) A site specific development plan shall be deemed approved upon the effective date of the board of adjustment's action relating thereto.
- (5) The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulations by the county, including,

but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with subsection (e) below.

- (6) A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

(c) *Approval procedures and approval authority.*

- (1) Except as otherwise provided in this section, an application for site specific development plan approval shall be processed in accordance with the procedures established by ordinance and shall be considered by the board of adjustment for the specific type of zoning or land use permit or approval for which application is made.
- (2) Notwithstanding the provisions of subsection (1) above, if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to a board, committee or administrative official other than the board of commissioners, board of adjustment or other planning agency designated to perform any or all of the duties of a board of adjustment, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the approval authority, following notice and a public hearing as provided in G.S. 153A-323 and Chapter 160A, Article 19.
- (3) In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of application on a form to be provided by the county, that a zoning vested right is being sought.
- (4) Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under G.S. 153A-344.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."
- (5) Following approval or conditional approval of a site specific development plan, nothing in this article shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
- (6) Nothing in this article shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or this article.

(d) *Duration.*

- (1) A zoning vested right that has been vested as provided in this section shall remain vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to subsection (2) below. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the board of adjustment at the time the amendment or modification is approved.
- (2) Notwithstanding the provisions in subsection (1) above, the board of adjustment may

provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the board of adjustment at the time the site specific development plan is approved.

- (3) Upon issuance of a building permit, the expiration provisions of G.S. 153A-358 and the revocation provisions of G.S. 153A-362 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

(e) *Termination.* A zoning right that has been vested as provided in this article shall terminate:

- (1) At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
- (2) With the written consent of the affected landowner;
- (3) Upon findings by the county board of commissioners, by ordinance after notice and a public hearing, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;
- (4) Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the county, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;
- (5) Upon findings by the county board of commissioners, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the board of adjustment of the site specific development plan; or
- (6) Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the board of adjustment may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

(f) *Limitations.* Nothing in this article is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 154A-344.1.

(g) *Repealer.* In the event that G.S. 154A-344.1 is repealed, this section shall be deemed repealed and the provisions hereof no longer effective.

Sec. 78-623. Appeals and applications.

- (a) *Appeals and Hearings.* The board of adjustment shall hear and decide all appeals from

any order, requirement, decision, or determination made by the zoning administrator as well as appeals and requests for variances pursuant to any Chapter or Article of the Code of Ordinances for Buncombe County indicating that such appeals or requests for variances shall be heard by the board of adjustment, in which cases the requests for variances shall be treated as and may be referred to as appeals as set forth herein. In deciding appeals, it may hear both those based upon an allegedly improper or erroneous interpretation of this article and those based upon alleged hardship resulting from strict interpretation of this article.

(b) *Procedure for filing appeals.* No appeal shall be heard by the board of adjustment unless notice thereof is filed within 30 days after the interested party receives notice of the order, requirement, decision or determination by the zoning administrator. The applicant must file his application for a hearing with the zoning administrator, who shall act as clerk for the board of adjustment in receiving this notice. All applications shall be made upon the form specified for that purpose, and all information required thereon shall be complete before an appeal shall be considered as having been filed.

(c) *Hearings.* Hearings shall be conducted as follows:

- (1) *Time.* After receipt of notice of appeal, the board chairperson shall schedule the time for a hearing, which shall be at a regular or special meeting within 31 days from the filing of such notice of appeal.
- (2) *Notice of hearing.* The board of adjustment shall mail notices of the hearing to the affected parties to the action appealed from, and to such other persons as the zoning administrator shall direct, at least five days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved in the appeal, and the time and place of the hearing.
- (3) *Conduct of hearing.* Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows:
 - a. The chairperson, or such person as he shall direct, shall give a preliminary statement of the case.
 - b. The applicant shall present the argument in support of his application.
 - c. Persons opposed to granting the application shall present the argument against the application.
 - d. Both sides will be permitted to present rebuttals to opposing testimony.
 - e. The chairperson shall summarize the evidence, which has been presented, giving the parties opportunity to make objections or corrections.

Witnesses may be called and factual evidence may be submitted, but the board of adjustment shall not be limited to consideration of only such evidence as would be admissible in a court of law. The board of adjustment may view the premises before arriving at a decision. All witnesses before the board of adjustment shall be placed under oath and the opposing party may cross examine them.

- (4) *Rehearings.* An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the board of adjustment to determine whether there has been a substantial change in the facts, evidence, or conditions in the case. The application for rehearing shall be denied by the board of adjustment if,

from the record, it finds that there has been no substantial change in facts, evidence or conditions. If the board of adjustment finds that there has been a change, it shall thereupon treat the request in the same manner as any other application.

(d) *Decisions.* Decisions shall be made in the following manner:

- (1) *Time.* A decision by the board of adjustment shall be made within 30 days from the time of hearing.
- (2) *Form.* Written notice by certified or registered mail of the decision in a case shall be given to the applicant by the zoning administrator as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property, if not the applicant, and to other persons who have made written request for such notice. The final decision of the board of adjustment shall be shown in the record of the case as entered in the minutes of the board of adjustment and signed by the zoning administrator and the chairperson upon approval of the minutes of the board of adjustment. Such record shall show the reasons for the determination, with summary of the evidence introduced and the findings of fact made by the board of adjustment. Where a variance is granted, the record shall state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the board of adjustment finds to exist. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision or determination appealed from. The record shall state in detail what, if any, conditions and safeguards are imposed by the board of adjustment in connection with the granting of a variance.
- (3) *Expiration of permits.* Unless otherwise specified, any order or decision of the board of adjustment granting a conditional use or variance shall expire if a building permit or certificate of occupancy for such use is not obtained by the applicant within one year from the date of the decision.
- (4) *Voting.* The concurring vote of four-fifths of the members of the board of adjustment shall be necessary to reverse any order, requirement, decision or determination of the zoning administrator; to decide in favor of the applicant any matter upon which the board of adjustment is required by this article to pass; or to grant a variance from the provisions of this article.
- (5) *Public record of decisions.* The decisions of the board of adjustment, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.

Sec. 78-624. Appeals from decision of board of adjustment.

Appeals from the board of adjustment may be taken to the courts pursuant to G.S. 153A-345.

Secs. 78-625--78-635. Reserved.

DIVISION 4. ZONING DISTRICTS AND MAPS

Sec. 78-636. Use districts; enumeration.

For the purpose of this article, the zoning districts of Buncombe County as delineated on the official zoning map of Buncombe County, adopted by the board of commissioners, shall be divided into the following designated use districts:

R-LD	Low-Density Residential District
R-1	Single-Family Residential District
R-2	Residential District
R-3	Residential District
CS	Commercial Service District
EMP	Employment District
PS	Public Service District
NS	Neighborhood Service District
BDM	Beaverdam Low-Density Residential District
OU	Open Use District

Sec. 78-637. Establishment of district boundaries.

The boundaries of these districts are hereby established as shown on the Official Zoning Map of Buncombe County, North Carolina.

Sec. 78-638. Establishment of zoning map.

A zoning map entitled the "Official Zoning Map of Buncombe County, North Carolina," clearly setting forth all approved use districts and their respective boundaries, is hereby made a part of this article and shall be maintained in the office of the zoning administrator of the county. This map shall be available for inspection by interested persons during normal business hours of the zoning administrator. It shall be the duty of the zoning administrator to maintain the map and post any changes thereto as they may be made.

Sec. 78-639. Rules governing district boundaries.

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

- (1) Boundaries indicated as approximately following the centerlines of streets, highways, alleys, streams, rivers, other bodies of water, and/or other topographic features, shall be construed to follow such lines.
- (2) Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- (3) Where district boundaries are so indicated that they are approximately parallel to the centerlines of streets, highways or railroads, or rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance there from as indicated on the zoning map. If no distance is given, such dimension shall be determined by the use of the scale shown on the zoning map.

- (4) Where a district boundary line divides a lot of single ownership, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such lot more than 35 feet beyond the district boundary line.
- (5) Where physical features existing on the ground are at variance with those shown on the zoning map or in other circumstances not covered by subsections (1) through (4) of this section, the board of adjustment shall interpret the district boundaries.

Sec. 78-640. Statement of district intent.

(a) *Low-Density Residential District (R-LD)*. The R-LD Low-Density Residential District is primarily intended to provide locations for low-density residential and related-type development in areas where topographic or other constraints preclude intense urban development. These areas are not likely to have public water and sewer services available, and the minimum required lot area will be one acre unless additional land area is required for adequate sewage disposal. These are environmentally sensitive areas that are characterized by one or more of the following conditions: steep slopes, fragile soils, or flooding.

(b) *Single-Family Residential District (R-1)*. The R-1 Single-Family Residential District is primarily intended to provide locations for single-family residential development and supporting recreational, community service, and educational uses in areas where public water and sewer services are available or will likely be provided in the future. This district is further intended to protect existing single-family subdivisions from encroachment of incompatible land uses, and this district does not allow manufactured home parks.

(c) *Residential District (R-2)*. The R-2 Residential District is primarily intended to provide locations for residential development and supporting recreational, community service and educational uses in areas where public water and sewer services are available or will likely be provided in the future. These areas will usually be adjacent to R-1 Single-Family Residential Districts, will provide suitable areas for residential subdivisions requiring public water and sewer services, and in order to help maintain the present character of R-1 districts, will not allow manufactured home parks.

(d) *Residential District (R-3)*. The R-3 Residential District is primarily intended to provide locations for a variety of residential development depending upon the availability of public water and sewer services. Some areas within the R-3 Residential District will have no public water and sewer services available and will thus be suitable primarily for single-family residential units on individual lots and mobile homes on individual lots. Other areas within the district will have public water and/or sewer service available and will thus be suitable for higher density uses such as multifamily residential units, planned unit developments, and mobile home parks. The R-3 district also provides for various recreational, community service and educational uses that will complement the residential development.

(e) *Neighborhood Service District (NS)*. The NS Neighborhood Service District is primarily intended to provide suitable locations for limited, neighborhood-oriented, commercial, business, and service activities in close proximity to major residential neighborhoods. The NS Neighborhood Service District is designed to allow for a mix of residential, commercial, business and service uses in limited areas along major traffic arteries and at key intersections leading to residential neighborhoods in order to provide such service to the residents of that particular neighborhood. As such, the type of uses allowed and the standards established for development in this NS neighborhood service district should be compatible with the residential character of the area and should neither add to traffic

congestion; nor cause obnoxious noise, dust, odors, fire hazards, or lighting objectionable to surrounding residences; nor should they visually detract from the overall appearance of the neighborhood. The NS Neighborhood Service District should currently have water and sewer services or be expected to have such services in the foreseeable future.

(f) *Commercial Service District (CS)*. The CS Commercial Service District is primarily intended to provide suitable locations for clustered commercial development to encourage the concentration of commercial activity in those specified areas with access to major traffic arteries, to discourage strip commercial development, and to allow for suitable noncommercial land uses. Such locations should currently have water and sewer services or be expected to have such services available in the future. This CS Commercial Service District may be applied to suitable areas adjacent to existing commercial concentration to allow for their expansion.

(g) *Employment District (EMP)*. The EMP Employment District is primarily intended to provide appropriately located sites for employment concentrations primarily for office uses, industrial uses, storage and warehousing, and wholesale trade. Such locations should currently have public water and sewer services available or be expected to have these services in the future. Only those manufacturing uses will be allowed which meet all local, state and federal environmental standards, and do not involve obnoxious noise, vibrations, smoke, gas, fumes, odor, dust, fire hazards, or other objectionable conditions which would be detrimental to the health, safety, and general welfare of the community. These areas will also include sites suitable for supportive activities such as community service, commercial service, and residential uses.

(h) *Public Service District (PS)*. The PS Public Service District is intended to be a district that includes, but is not limited to, governmentally owned properties; schools and large college properties; recreation parks and facilities; emergency services; community clubs; and conference centers with mixed uses which may include housing, hotels, retail shops, religious or secular retreats, and associated accessory uses. Such uses should currently have public water and sewer services available or have a provision for internal supply of appropriate utilities.

(i) *Beaverdam Low-Density Residential District (BDM)*. It is the purpose and intent of the Beaverdam Low-Density Residential District to protect existing development in Beaverdam Valley from incompatible use; to provide for low-density residential and agricultural uses; and, to set certain standards for such uses based upon an analysis of existing and future conditions of topography, access, public water and sewer utilities, and community facilities, as well as health, safety and general welfare considerations.

(j) *Open Use District (OU)*. The OU Open Use District is established as a district in which all uses are allowed by right, except for certain uses that are regulated as conditional uses so as to ensure that neighborhood impact is mitigated. The neighborhood impact from conditional uses will be mitigated through the use of minimum specific site standards combined with general standards which provide the flexibility to impose a higher level of specific site standards dependent upon the degree of neighborhood impact. No zoning permit shall be required for permitted uses in the OU Open Use District.

Sec. 78-641. Permitted uses.

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

Table 1 – Permitted Use Table

Uses	P = Permitted C = Allowed as Conditional Use Blank Space = Not Permitted									
	Districts									
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	BDM	OU
Single-family residential dwelling, including modular	P	P	P	P	P	P	P	P	P	P
Duplex/Two-family residential dwelling			P	P	P	P	P	P		P
Multifamily residential dwelling units (only one building)			P	P	P	P	P	P		
Open-Use Multifamily dwelling (less than six units on single lot)										P
Open-Use Multifamily dwelling (six or more units on single lot)										C
Manufactured/mobile homes-Residential	P			P			P			P
Manufactured/mobile home parks				C						P
Planned unit developments			C	C	C	C	C	C		P
Subdivisions	P	P	P	P	P	P	P	P	P	P
Accessory buildings	P	P	P	P	P	P	P	P	P	P
Adult Entertainment Establishments						C	C			C
Amusement Parks						C	C	C		C
Animal hospitals and veterinarian clinics					P	P	P			P
Asphalt Plants										C
Banks and other financial institutions					P	P	P	C		P
Bed and breakfast inns	P		C	P	P	P	P	P		P
Campus office use			C		P			P		P
Cemetery	P		P	P		P		P		P
Chip Mills										C
Churches	P	P	P	P	P	P	P	P	P	P

Table 1 – Permitted Use Table

Uses	P = Permitted C = Allowed as Conditional Use Blank Space = Not Permitted									
	Districts									
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	BDM	OU
Clubs or lodges				P	C	P	P	P		P
Concrete Plants							C			C
Day nursery and private kindergarten	C	C	C	C	P	P	P	P		P
Family care home	P	P	P	P				P	P	P
Funeral homes						P	C	P		P
Government protective services			P	P	P	P	P	P		P
Greenhouses, commercial (nursery, lawn and garden products)					P	P	P	P		P
Hazardous Waste Facilities										C
Home occupations	P	P	P	P	P	P	P	P	P	P
Hospitals, nursing homes, assisted living facilities, retirement communities				C		P	P	P		P
Hotels and motels						P	C	P		P
Incinerators										C
Junkyards							C			C
Kennels				C	P	P	P			P
Landing Strips				C		C	C	C		C
Laundry and dry cleaning services					P	P	C	P		P
Libraries			P	P	P	P	P	P		P
Manufacturing and processing operations						P	P			P
Mining and Extraction Operations							C			C
Motor Sport Facilities										C
Motor vehicles maintenance and repair					C	P	P	P		P

Table 1 – Permitted Use Table

Uses	P = Permitted C = Allowed as Conditional Use Blank Space = Not Permitted									
	Districts									
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	BDM	OU
Motor vehicles sales and rental						P	P			P
Motor vehicles service stations (fueling stations)					P	P	P	P		P
National Guard and Reserve Armories						P	P	P		P
Nightclubs, bars and pubs					P	P	P			P
Physical fitness centers					P	P	C	P		P
Postal and parcel delivery services					C	P	P	P		P
Printing and lithography						P	P			P
Private recreation facilities profit (bowling alleys, skating rinks, country clubs, etc.)			C	C	C	P	C	P		P
Professional and business offices and services					P	P	P	P		P
Public or private nonprofit recreational facilities (parks, playgrounds, etc.)	C	C	C	C	P	P	P	P		P
Public utility stations and substations, pumping stations, water and sewer plants, water storage tanks	C	C	C	C	P	P	P	P		P
Radio and TV towers	C			C		C	C	C		P
Repair services (electrical and appliances)					P	P	P			P
Restaurants					P	P	P	P		P
Retail trade, commercial services, sales and rental of merchandise and equipment (inside building with no outside sales storage)					P	P	C	C		P
Retail trade, commercial services, sales and rental of merchandise and equipment						P	C			P

Table 1 – Permitted Use Table

Uses	P = Permitted C = Allowed as Conditional Use Blank Space = Not Permitted									
	Districts									
	R-LD	R-1	R-2	R-3	NS	CS	EMP	PS	BDM	OU
Rooming houses and Vacation rentals				P	P	P	C	P		P
Schools, public and private		C	C	C		P		P		P
Schools--Vocational, business and special schools						P	P	P		P
Shooting Ranges – Outdoor Commercial										C
Slaughtering Plants										C
Solid Waste Facilities – Landfills, Transfer Stations, Materials Recovery							C	C		C
Storage and warehousing					C	P	P	P		P
Theaters						P		P		P
Travel trailers				C						P
Travel trailer parks				C						P
Wholesale sales						P	P			P

(b) *Uses governed by other ordinances.* The following uses may be allowed but also will be governed by the specified ordinances adopted by the board of commissioners:

- (1) Adult entertainment establishments: Subject to compliance with section 14-121 et seq. of this Code, as may be amended;
- (2) Communication towers: Subject to compliance with chapter 72 of this Code, as may be amended;
- (3) Junkyards: Subject to compliance with chapter 26, article III of this Code, as may be amended;
- (4) Manufactured home parks: Subject to compliance with chapter 46, article III, of this Code, as may be amended;

- (5) Off-premise signs: Subject to compliance with chapter 78, article V, of this Code, as may be amended.
- (6) Subdivisions: Subject to compliance with chapter 70 of this Code, as may be amended.

Sec. 78-642. Dimensional requirements.

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

Table 2. Dimensional Requirements							
Districts	Minimum Lot Area (Square Feet)	Density		Minimum Yard Setback Requirements in Feet			Maximum Height (Feet)
		Minimum Land Area^{1,2} Per Dwelling Unit (Square Feet)	Maximum Number Dwelling Units Per Acre	Front Yard (From Right-of-Way)	Side Yard	Rear Yard	
R-LD Residential	43,560	43,560 Plus: 0 for one additional detached unit	2	10	10	20	35
R-1 Residential	30,000 (no water or sewer) 15,000 (water only) 10,000 (water and sewer)	30,000 (no water or sewer) 15,000 (water only) 10,000 (water and sewer) Plus: 0 for one additional detached unit	8	20	10	20	35
R-2 Residential	Same as R-1	Same as R-1 Plus: 0 for first additional unit Plus: 3,000 for each additional unit	12	20	10	20	35
R-3 Residential	Same as R-1	Same as R-2	12	20	10	20	35
NS Neighborhood Service	Same as R-1	Same as R-2	12	20	10	20	35
CS Commercial Service	30,000 (no water or sewer) 15,000 (water only) 5,000 (water and sewer)	Same as R-1, except 5,000 with water and sewer Plus: 0 for first additional unit Plus: 3,000 for each additional	13	10	10	10	50

Table 2. Dimensional Requirements							
Districts	Minimum Lot Area (Square Feet)	Density		Minimum Yard Setback Requirements in Feet			Maximum Height (Feet)
		Minimum Land Area ^{1,2} Per Dwelling Unit (Square Feet)	Maximum Number Dwelling Units Per Acre	Front Yard (From Right-of-Way)	Side Yard	Rear Yard	
		unit					
EMP Employment	Same as R-1	Same as R-2	12	20	10	20	90
PS Public Service	Same as R-1	Same as R-2	12	20	10	20	50
BDM Beaverdam	See Footnote 4 and 6	See Footnote 4 and 6	See Footnote 4 and 6	See Footnote 5 and 6	15	25	35
OU Open Use	No dimensional requirements except as applied to conditional uses.						

Footnote 1--The minimum land area for lots not served by public water and/or sewer shall be subject to approval by the county health department to ensure the proper operation of septic tanks and wells. In no case shall minimum lot areas be less than those specified in this table.

Footnote 2--The minimum land area shall be calculated based on that portion of the lot which is under control of and deeded to the property owner, exclusive of road rights-of-way.

Footnote 3--R-LD and R-1 Districts allow no more than two dwelling units per lot of record.

Footnote 4—All above ground portions of the structure, including but not limited to decks, stairs, overhangs which extend 24 inches or greater outside of the footprint of the structure, and other attached heated or unheated spaces must meet the dimensional requirements as set forth in this Chapter. Any structure abutting two or more highways, roads, or streets shall maintain minimum “front yard” setbacks on any side of the structure which abuts a street, road, or highway in accordance with the provisions of the district in which the property is situated. The location of the primary entrance of the structure, as determined by the Zoning Administrator, shall be considered the front, and shall also maintain minimum “front yard” setbacks.

Footnotes 5--7: *Applicable to Beaverdam Low-Density Residential District (BDM) Only*

Footnote 5--Beaverdam Only Development standards:

- (1) Single-family residential with public water and sewer:

% Natural Slope	Lot Frontage (Feet)*	Min. Lot Size (Acres)	Maximum Disturbed	Maximum Impervious Cover (Acres)
0-9.99	100	0.5 – 0.749	80%	0.375
0-9.99	100	0.75 - 1	75%	0.375
0-9.99	100	> 1	0.75 Acres	0.375
10-14.99	100	1.10	0.75 Acres	0.375
15-19.99	100	1.50	0.75 Acres	0.375
20-24.99	150	2.00	0.75 Acres	0.375

25-29.99	150	2.00	0.75 Acres	0.375
30-34.99	175	2.50	0.75 Acres	0.375
35-39.99	175	3.00	0.75 Acres	0.375
40+	200	5.00	0.75 Acres	0.375
*Minimum lot frontage shall be 75 feet where adjoining a cul-de-sac.				

(2) Single-family residential (no public water and sewer):

% Natural Slope	Lot Frontage (Feet)*	Min. Lot Size (Acres)	Maximum Disturbed (Acres)	Maximum Impervious Cover (Acres)
0-14.99	100	1.10	0.75	0.375
15-19.99	100	1.50	0.75	0.375
20-24.99	150	2.00	0.75	0.375
25-29.99	150	2.00	0.75	0.375
30-34.99	175	2.50	0.75	0.375
35-39.99	175	3.00	0.75	0.375
40+	200	5.00	0.75	0.375
*Minimum lot frontage shall be 75 feet where adjoining a cul-de-sac.				

Footnote 6--Beaverdam Only

% Natural Slope	Minimum Yard Setback Requirements		
	Front Yard From Edge of Road (Feet)	Side Yard (Feet)	Rear Yard (Feet)
0-39.99	35	15	25
40+	15	15	25

Footnote 7--Beaverdam Only

a. The natural slope is calculated using the following formula:

$$S\% = \frac{0.0023 \times I \times L}{A}$$

Where:

S = Average natural slope of parcel in percent

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

L = Total length of the contour lines within the parcel in feet

A = Area of the parcel in acres

0.0023 = Constant which converts square feet into acres

b. In addition, applicants may submit an alternate method of slope calculation for consideration.

These methods may include, but are not limited to, the following methods: weighted average, slope mapping, other field based techniques, etc.

Sec. 78-643. Blue Ridge Parkway Overlay District.

(a) *Purpose.* Realizing the importance of the Blue Ridge Parkway to the economy of Asheville, Buncombe County, and western North Carolina, the Blue Ridge Parkway Overlay District is created to protect and preserve the unique features of this asset to the city, the county, and the region. The standards established in this district will protect the scenic quality of the Blue Ridge Parkway and reduce encroachment on its rural setting.

(b) *Applicability.* The provisions set forth in this section for the Blue Ridge Parkway Overlay District shall apply to all properties within 1,320 feet of the centerline of the Blue Ridge Parkway located within Buncombe County's zoning jurisdiction. Both privately and publicly owned property shall be subject to the requirements set forth herein.

(c) *Development standards.*

(1) *Setback requirements.*

- a. *Principal buildings.* Principal buildings and structures to be located adjacent to the Blue Ridge Parkway shall have a minimum setback of 50 feet from the boundary of property owned by the United States government and designated as the Blue Ridge Parkway if the buildings and structures are visible from the Blue Ridge Parkway roadway.
- b. *Accessory buildings.* Accessory buildings and structures to be located adjacent to the Blue Ridge Parkway shall have a minimum setback of 30 feet from the boundary of property owned by the United States government and designated as the Blue Ridge Parkway if the buildings and structures are visible from the Blue Ridge Parkway roadway.

(2) *Building heights.* No building or structure shall be constructed with a height in excess of 40 feet within 1,000 feet of the centerline of the Blue Ridge Parkway, if visible from the centerline of the Blue Ridge Parkway roadway.

(3) *Buffering requirements.* A buffer for development of any type, other than single-family residential, which is to be located adjacent to the Blue Ridge Parkway within 1,000 feet of the centerline of the Blue Ridge Parkway and which will be visible between April and October from the Blue Ridge Parkway roadway, shall be provided according to the following specifications:

- a. A minimum bufferyard width of 30 feet measured from the property line is required and shall be located within the required setback.
- b. Total number of plants: Ten plants per 100 linear feet are required, of which five should be evergreen trees (min. six feet at planting), three should be large deciduous trees (min. two-inch caliper, ten to 12 feet at planting), and two should be small deciduous trees (min. 1.5-inch caliper, eight to ten feet at planting). The preservation of existing trees within the bufferyard is encouraged.

Sec. 78-644. Biltmore Estate Historic Property Overlay District.

(a) *Purpose.* The Biltmore Estate Historic Property Overlay District is established to provide an area for the development of the historic Biltmore Estate oriented uses and associated facilities. The creation of this special overlay district recognizes the significance of the estate and the National Historic Landmark status and historic boundary designations as being unique to the area. The Biltmore Estate Historic Property Overlay District shall provide additional regulations that take precedent over the underlying Commercial Service District (CS) zoning designation by Buncombe County.

Given this basis for establishment of a special overlay district, this district will apply only to the boundaries of the Biltmore Estate and to no other properties within the City of Asheville and will provide areas for the development and expansion of facilities which serve primarily tourists and vacationers, but also serve the necessary operational needs of the estate. Development standards are established to protect adjacent land uses from the adverse impacts of development within the boundaries of the Biltmore Estate while recognizing the existing development activities on the estate grounds and the needs of the estate to expand services to meet the needs of the local community.

(b) *Defined boundaries.* The Biltmore Estate Historic Property Overlay District shall encompass and apply to all lands identified to be within the jurisdiction of Buncombe County and specifically within the boundaries of the Historic Landmark Designation for Biltmore Estate, excluding those areas within the town boundaries of the Town of Biltmore Forest and any lands within the Biltmore Village Historic District.

(c) *Permitted uses.* In addition to including all existing uses at the time of acceptance of this Zoning Overlay District text, the following are permitted uses, by right:

Residential

- Dwellings, multi-family
- Dwellings, single-family detached

Recreational

- Camps, campgrounds
- Golf courses
- Passive parks, lakes and ponds

Public/semi-public

- Convention and conference centers
- Fire/police stations

Accessory uses

- Barber shops and salons when an accessory to the principal use
- Bed and breakfast inns
- Bookstores when an accessory to the permitted use
- Candy, pastry, ice cream and snack shops when an accessory to the principal use
- Florists when an accessory to the principal use
- Gift shops when an accessory to the principal use
- Health and fitness facilities when an accessory to the principal use

Restaurants and associated food services (including beverages)
Studios, galleries, and workshops for artists, craftspeople, designers, photographers
Equipment repair
Manufacturing when accessory to the principal use
Transportation systems operation and repair
Recycling collection centers

(d) *Conditional uses.* The following are conditional uses:

Fishing, including guided fishing and clinics
Shooting, skeet, clay, target, sporting clay/gun club facilities
Driving/training schools
Lodging facilities
Public utilities and related facilities
Antenna
Bars, nightclubs, brew pubs

(e) *Development standards.*

- (1) *Density standards.* The maximum average gross residential density per acre within a prescribed lot in the Biltmore Estate Historic Property Overlay District shall be 12 dwelling units for residential and 100 units per acre for lodging.
- (2) *Structure size standards.* None.
- (3) *Lot size standards.* The minimum lot size for all uses in the Biltmore Estate Historic Property Overlay District shall be 10,000 square feet.
- (4) *Yard setback requirements.* The following shall be the minimum yard requirements for uses in the Biltmore Estate Historic Property Overlay District.

Front: 35 feet, except that the minimum setback may be reduced to five feet in pedestrian-oriented areas where road widening is not anticipated provided that all parking is located to the side or rear and not closer to the street than the facade of the principal structure, and where pedestrian-oriented design features are incorporated in building and site design.

Side: Ten feet.

Rear: 20 feet.

The minimum spacing between structures shall, in addition, be as per the City of Asheville Fire Prevention Code.

- (5) *Impervious surface standards.* The maximum impervious surface coverage in the Biltmore Estate Historic Property Overlay District for any single, defined lot shall be 80 percent.

- (6) *Height standards.* The maximum height of structures in the Biltmore Estate Historic Property Overlay District shall be 35 feet for detached and attached residential structures, 80 feet for lodging uses, and 45 feet for all other uses, except in the transition area described below in subsection (8).

The permitted height of buildings and structures in the Biltmore Estate Historic Property Overlay District may be increased by one foot for each two feet of additional front, side, and rear setbacks up to a maximum height of 100 feet.

- (7) *Recreational/open space standards.* It is understood that any requisite open space and recreation standards imposed by the county are off-set by the amount of continuously preserved open space that makes up the larger portion of the existing estate. No other additional open space/recreational standards/requirements shall apply within the boundaries of the Biltmore Estate Historic Property Overlay District.

- (8) *Design and operation standards.*

Exterior lighting: All exterior lighting shall be shielded such that light is not directed toward adjacent residential property and such that no light sources are visible.

Outdoor sound systems: Outdoor sound systems shall be directed away from internal and adjacent residential areas and shall not operate between the hours of 11:00 p.m. and 9:00 a.m.

Transition area: Within 300 feet of an adjacent residentially zoned area, restrictions shall be placed on the height and location of uses other than those permitted in the adjacent residential zone. Height of buildings and structures located in this area shall be subject to the height limitations established in the least restrictive adjacent residential zone. Primary entrances of buildings and structures located in the transition area shall be directed away from residential uses. Restaurants, bars and nightclubs, facilities for animals (stables), mechanical equipment, and maintenance facilities shall not be located in the transition area.

Sec. 78-645. Multifamily Dwelling Overlay District.

(a) *Purpose.* The Multifamily Dwelling Overlay District is established to provide for orderly growth in a manner and under conditions that facilitate the adequate provision for streets, water, sewage disposal, and other considerations concerning fire and emergency apparatus which are essential to the public health, safety, and the general welfare of the citizens of Buncombe County. The Multifamily Dwelling Overlay District shall require greater restrictions for construction on or near the mountain ridges in Buncombe County.

(b) *Multifamily dwellings regulated.* This section is intended to limit density of development at elevations of 2,500 feet above sea level and higher, consistent with the recommendations of the 1998 Buncombe County Land Use Plan and consistent with the definition of mountain ridges in and supplemental to the provisions of the Mountain Ridge Protection Act of 1983 that prohibits the construction of tall buildings on high mountain ridges.

The following group housing project density limitations shall be applicable:

- (1) 2,500 to 2,999 feet above sea level. All land lying 2,500 to 2,999 feet above mean sea level shall be subject to the following density and height limitations:

Building height: Limited to 35 feet

Density: Limited to one dwelling unit per two acres (or .5 DUA)

- (2) *3,000 feet above sea level and higher.* Land lying 3,000 feet and higher above mean sea level shall be subject to the following density and height limitations:

Building height: Limited to 25 feet

Density: Limited one dwelling unit per four acres (or .25 DUA)

The minimum project area, in acres, is determined by dividing the number of dwelling units in the proposed project by the applicable DUA.

(c) *Road and design standards.* Group housing project roads may be designated public or private use as follows:

- (1) *Public use.* Group housing project roads to be dedicated to public use and to be maintained by N. C. Department of Transportation, after construction, shall conform in all respects to G.S. 136-102.6. The applicant shall furnish the zoning administrator with proof that the district engineer of the N.C. Department of Transportation has issued a design certificate of approval. Upon completion of roads to be dedicated to public use, the developer shall submit confirmation by the N.C. Department of Transportation or a registered engineer, land surveyor, or landscape architect, that the roads have been constructed to NCDOT standards.
- (2) *Private use.* Group housing project roads to be designated for private use shall conform to the following minimum design standards:
 - a. Minimum deeded and recorded access road right-of-way widths as follows:
 1. Group housing project, 20 feet; and
 2. If the access road right-of-way is less than the group housing project road right-of-way, then the maximum length of the access road between turn-outs will be 200 feet.
 - b. Access roads to group housing projects shall traverse a surveyed right-of-way centerline showing calls and distances and its beginning and ending points in relation to adjoining properties.
 - c. Minimum group housing project road rights-of-way are as follows:
 1. Collector or any residential lot frontage road, 45 feet;
 2. Service or utility access or alley not used as primary residential access, 20 feet; and
 3. Minimum cul-de-sac radius, 50 feet.
 - d. Horizontal centerline design standards are as follows:
 1. Minimum centerline radius, 35 feet; and
 2. T-turnarounds to allow a vehicle with a wheel base of at least 25 feet to complete a turning movement with a maximum of one backing movement.
 - e. All roads (i.e., including features such as streets, cul-de-sacs, and T- turnarounds) within a group housing project shall be paved in accordance with NCDOT

"Subdivision Road Minimum Construction Standards," Pavement Design 1(E), current edition. Specify soil conditions and which combination of base and pavement design (see DOT guidance) will be used. Use worst-case design criteria if soil testing is not provided. Final plans will include a statement by a licensed professional engineer that the road is in compliance with DOT standards. No base course shall be placed on muck, pipe clay, organic matter, or other unsuitable matter, and a minimum compaction rate of subgrade prior to paving shall not be less than 95 percent by standard proctor method, as appropriate, and certified by a licensed engineer. The following provisions shall also apply:

1. Minimum pavement width shall be in accordance with the referenced NCDOT standards.
 2. Minimum pavement radius for cul-de-sacs, 35 feet. A T-turnaround may be used in place of a cul-de-sac. The minimum paved length of the perpendicular chord will be 56 feet;
 3. The pavement width and base course shall be increased where the road centerline is less than a 90-foot radius. If radius is 70 to 90 feet, increase pavement width 25 percent; if radius is 60 to 70 feet, increase pavement width 35 percent; if radius is 50 to 60 feet, increase pavement width 45 percent; if radius is less than 50 feet, increase pavement width, 50 percent; and
 4. Finished grade, typical cross section, and profiles shall be prepared by a registered land surveyor or professional engineer, currently licensed in the state by the state board of registration for professional engineers and land surveyors.
- f. All access roads less than or equal to ten percent in grade within a group housing project shall have a six-inch minimum aggregated base course (ABC) No. 7 stone. Access road width shall be a minimum of 20 feet, subject to the Buncombe County Fire Prevention Ordinance.
- g. Minimum shoulder width on fill slopes shall not be less than two feet.
- h. Maximum grades shall be as follows:
1. Maximum centerline grade, 18 percent.
 2. Tangent grades in excess of 15 percent shall not exceed 200 feet in length and shall have a maximum entrance and exit grade of 15 percent for example:
 - Grade 1 = Maximum 15 percent; Grade 2 = 15.1 percent to 18 percent;
 - Grade 1 = 15.1 percent to 18 percent; Grade 2 = Maximum 15 percent.
 3. Maximum grade, 15 percent, where road centerline radius is less than 90 feet.
 4. Grades for 30 feet each way from an intersection shall not exceed ten percent.
 5. Grades for cul-de-sac and T-turnarounds shall not exceed ten percent.
- i. Cut and fill slopes shall be constructed to ensure adequate stability of the natural materials encountered.
- j. All storm drainage shall be adequate to facilitate the road maintenance

without excessive cost and shall not cause flooding on private property from storm runoff of the design frequency. All pipe culverts, storm sewers, and appurtenances shall be free of all debris and silt buildup and shall be structurally and hydraulically sound and functioning in a normal manner. All drainage ditches shall be of such a width and depth and with such a slope as to carry the anticipated discharges. Paved ditches or riprap shall be required where necessary. Culvert sizing and materials shall meet or exceed the requirements approved by the NCDOT in "Group Housing Project Roads Minimum Construction Standards," Utility Requirements, current edition. Any group housing project shall also comply with the Buncombe County Stormwater Ordinance as set forth in chapter 26, article VII of the Buncombe County Code of Ordinances, as may be amended.

- k. If right-of-way or road is indicated at boundary of development, then the master plan shall include a description of potential future development including, at a minimum, the acreage and anticipated density in houses per acre, if known.
- l. Use NCDOT "Subdivision Roads Minimum Construction Standards," Minimum Design and Construction Criteria (B) for Bridges and Dams, current edition.
- m. Retaining walls utilized to support a roadbed or the adjacent slope shall be designed and constructed under the supervision of a licensed professional engineer.
- n. Alternatives to conventional group housing project roads will be considered in the variance process that provide for safe and efficient transportation, while reducing disturbance and tree cutting. This could include, but is not limited to, one way or loop roads, steeper side slopes where soil stability will allow varying grades and those other means that reduce land disturbance, increase environmental protection, and maintain safe and efficient transportation. Trees should be protected within the development whenever possible using temporary fencing. Plant screening is recommended for all retaining walls and cut and fill slopes. These measures should be used in conjunction with required methods of stabilization. The density of new plant material should approximate the density of vegetation prior to development.

(d) *Hillside development standards.* Hillside development standards shall be as follows:

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

$$S\% = \frac{0.0023 \times I \times L}{A}$$

Where:

S = Average natural slope of parcel in percent

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

L = Total length of the contour lines within the parcel in feet

A = Area of the parcel in acres

0.0023 = Constant which converts square feet into acres

In addition, applicants may submit an alternate method of slope calculation for consideration. These methods may include, but are not limited to, the following methods: weighted average, slope mapping, other field based techniques, etc.

- (2) Limitations on disturbed and impervious surfaces:
 - a. 25--35 percent slopes:
 - Maximum gross site area disturbed = 30 percent
 - Maximum gross site area impervious = 15 percent
 - b. > 35 percent slope:
 - Maximum gross site area disturbed = 15 percent
 - Maximum gross site area impervious = 8 percent
- (3) Limited disturbance areas. No development or land disturbance activity may occur in the following areas of a parcel. These areas may be included in the area used to calculate compliance with the minimum standards shown in subsection (1) above regarding limitations on disturbed and impervious surfaces.
 - a. Rock cliffs;
 - b. Wetlands, buffer areas along streams or mapped floodways; and
 - c. Significant historical and archeological resource areas defined by the National Register of Historic Places or other federal or state agencies.

The provisions of this section shall not apply to the crossing of streams and creeks for utility corridors and roadways if construction is approved by all applicable agencies.

- (4) Any new development will create areas that will temporarily be deforested and/or unsightly. Every effort to reduce the length of time the development remains in this state should be taken. A minimum of the property, as specified in (1) above regarding limitations on disturbed and impervious surfaces, is required to remain in a natural state. A natural state is defined as the condition prior to development or other human activity. Clear cutting will be allowed only for the footprint of the group housing project, driveways, septic systems, and normal landscaping including yards, gardens and flowerbeds. Clear cutting for view will not be allowed. However, selective cutting that eliminates the tunnel effect caused by clear cutting will be allowed. Reducing clear cuttings reduces the potential for erosion, stormwater runoff, and landscaping and grading costs. Keeping mature greenery is recommended wherever possible to provide immediate aesthetic, environmental and potential monetary value.

(e) *Engineering standards for certain slopes.* Consultation with a geotechnical engineer shall be required for road construction in areas of a tract in excess of 30 percent natural slope, and an investigation for colluvial deposits shall be made. Recommendations of the geotechnical engineer shall be submitted with the application for review.

Areas with a natural slope over 30 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.

Global stability analysis shall be performed for sites on a 30 percent or greater slope.

(f) *Fire prevention ordinance applicable.* The standards and requirements set forth in this section are subject to the provisions of the Buncombe County Fire Prevention Ordinance. In the event of conflicts between the North Carolina Fire Prevention Code and this section, the more restrictive provisions shall prevail.

(g) *Section-declared minimum requirements.* The standards and requirements set forth in this section shall be held to be minimum requirements which are adopted for the promotion of the public health, safety or general welfare. Whenever the requirements of this section are at variance with the requirements of any other lawfully adopted regulations, the most restrictive or that imposing the highest standards shall govern and control.

Secs. 78-646--78-655. Reserved.

DIVISION 5. GENERAL PROVISIONS

Sec. 78-656. Applicability.

The provisions set forth in this division are not applicable to permitted uses in the Open Use District.

Sec. 78-657. Nonconforming uses.

Any parcel of land, use of land, building or structure existing at the time of the adoption of the ordinance from which this article is derived, or any amendment thereto, that does not conform to the use or dimension requirements of the district in which it is located may be continued and maintained subject to the provisions in this section.

- (1) *Nonconforming vacant lots.* This category of nonconformance consists of vacant lots for which plats or deeds have been recorded in the Buncombe County Register of Deeds Office, which at the time of the adoption of this article fails to comply with the minimum area requirements of the districts in which they are located. Any use allowed in the affected district may be erected, improved, or expanded on any single lot of record existing at the time of the adoption of the ordinance from which this article is derived. All dimensional requirements must be met to build any new residential use other than a single-family dwelling. This provision shall apply even though such lot fails to meet the requirements for lot area that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to the area of the lot shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the board of adjustment.
- (2) *Nonconforming lots of record.* If two or more lots or combinations of lots, or portions of lots, contiguous and in single ownership, are of record at the time of the adoption of the ordinance from which this article is derived, no portion of such parcel shall be subdivided, re-subdivided, used, or sold in a manner which diminishes compliance with lot area requirements established by this article, nor shall any division of any parcel be made which creates a lot with area below the requirements of this article.
- (3) *Nonconforming occupied lots.* This category of nonconformance consists of lots

occupied by buildings or structures at the time of the adoption of the ordinance from which this article is derived that fail to comply with the minimum requirements for area, yard, and setbacks for the district in which they are located. These lots may continue to be used.

- (4) *Nonconforming open uses of land.* This category of nonconformance consists of lots used for storage yards, used car lots, auto wrecking, junkyards, and similar open spaces where the only buildings on the lot are incidental and accessory to the open use of the lot and where such use of the land is not permitted to be established hereafter, under this article, in the district in which it is located. A legally established nonconforming open use of land may be continued except as follows:
- a. When a nonconforming open use of land has been changed to a conforming use, it shall not thereafter revert to any nonconforming use.
 - b. Nonconforming open use of land shall be changed only to conforming uses.
 - c. A nonconforming open use of land shall not be enlarged to cover more land than was occupied by that use when it became nonconforming.
 - d. When any nonconforming open use of land is discontinued for a period in excess of 180 days, any future use of the land shall be limited to those uses permitted in the district in which the land is located. Vacancy and/or nonuse of the land, regardless of the intent of the owner or tenant, shall constitute discontinuance under this section.
- (5) *Nonconforming uses or structures.* This category of nonconformance consists of buildings or structures used at the time of adoption of the ordinance from which this article is derived for purposes of use not permitted in the district in which they are located. Such uses may be continued as follows:
- a. An existing nonconforming use may be changed to another nonconforming use of the same or higher classification, provided that the other conditions in this section are complied with. For the purpose of this article, the rank order of uses from higher to lower shall be:
 1. Residential;
 2. Public;
 3. Commercial; and
 4. Industrial.
 - b. When a nonconforming use has been changed to a conforming use, it shall not thereafter be used for any nonconforming use.
 - c. A nonconforming use may not be extended or enlarged, nor shall a nonconforming structure be altered except as follows:
 1. Structural alterations as required by law or ordinance to secure the safety of the structure are permissible.
 2. Maintenance and repair necessary to keep a nonconforming structure in sound condition are permissible.
 3. Expansion of a nonconforming use of a building or structure into portions of the structure which, at the time the use became nonconforming, were already

erected and arranged or designed for such nonconforming use is permissible.

4. Alterations or expansions of an existing structure designed to improve the safety, function, or the appearance of the structure are permissible. The square footage of any expansion shall be no greater than the square footage of the existing structure.

d. When any nonconforming use of a building or structure is discontinued for a period in excess of 180 days, the building or structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.

(6) *Reconstruction of damaged buildings or structures.* Any nonconforming use, which has been damaged by fire, wind, flood, or other causes, may be repaired and used as before, provided:

a. Repairs are initiated within 12 months and completed within two years of such damage.

b. The total amount of space devoted to a nonconforming use may not be increased.

c. Reconstructed buildings may not be more nonconforming with respect to dimensional restrictions.

d. The use to which the building is put after repair does not result in a change from one nonconforming use to another nonconforming use.

(7) *Continuation of mobile home parks.* Mobile home parks that become nonconforming uses shall be permitted to continue operation, and existing spaces within the mobile home park may continue to be occupied by mobile homes even after a space has been vacated. However, these mobile home parks shall not be expanded or increased in size, and no additional spaces designed for occupancy by a mobile home shall be added to the site after the adoption of the ordinance from which this article is derived. A mobile home park that is discontinued for 180 days shall not be reestablished.

Sec. 78-658. Off-street parking.

(a) *Purpose.* Off-street automobile storage or parking space shall be provided on every lot on which any of the following uses are hereafter established. The number of parking spaces provided shall be at least as great as the number specified in this section for various uses. When application of such provision results in a fractional space requirement, the next larger requirement shall prevail. Each lot abutting a major thoroughfare, as determined by the zoning administrator, shall be provided with vehicular access thereto and shall be provided with adequate space for turning so that no vehicle shall be required to back into the street. A parking space shall consist of an improved hard-surfaced or crushed stone area not less than nine feet by 18 feet plus the necessary access space, unless otherwise authorized by the board of adjustment or zoning administrator. Such parking shall be provided within the setback lines set forth in this article. The zoning administrator may, however, reduce such setbacks for parking purposes, provided that natural vegetation, landscaping, or a buffer strip is provided as a buffer to surrounding uses.

(b) *Minimum parking requirements.* The required number of off-street parking spaces for each use shall be provided as specified in Table 3.

Table 3: Required Parking

Land Use	Required Parking
<i>Residential Uses</i>	
Mobile/manufactured home	Two spaces for each mobile/manufactured home.
Mobile/manufactured home parks	Two spaces for each mobile/manufactured space.
Residential dwellings, single-family and multifamily	Two spaces for each dwelling unit.
<i>Public and Semi-Public Uses</i>	
Hospitals and clinics	One space for each two beds, plus one space for each staff or visiting doctor, plus one for each two employees on shift of greatest employment.
Funeral parlors	One space for each four seats in a chapel or parlor.
Churches, religious institutions and places of public assembly	One space for each four seats in the principal assembly room.
Recreational facilities	Two spaces for every tennis, squash, or racquet ball court; skating rink, one space per 200 square feet; swimming pool, one space per 140 square feet; health exercise facility, one space per 50 square feet.
	Golf or country club, two spaces per tee.
	Athletic fields, ten spaces per field.
	Pitch and putt courses, one space per 50 square feet; bowling establishment, three spaces per lane; billiard hall or pool hall two spaces per table; shooting ranges, one space per target area.
	Other places of recreation and assembly without fixed seats shall have one space for each 200 square feet of gross floor space.
Schools, elementary and middle schools	One space for each classroom and administrative office.
Schools, senior high	One space for each classroom and administrative office, plus one space for each 20 seats or one space for each 400 square feet of area used for public assembly.
Public buildings	One space for each 200 square feet of gross floor space.
Sanitariums, rest and convalescent homes for the aged and similar institutions	One space for each six patient beds, plus one space for each staff or visiting doctor, plus one space for each two employees on shift of greatest employment.

Table 3: Required Parking

Land Use	Required Parking
<i>Business Uses</i>	
Doctors' and dentists' offices	Five spaces per doctor or dentist.
Professional and business offices	One space for each 300 square feet of gross floor space.
Banks and other financial institutions	One space for each 150 square feet of gross floor space.
Retail stores and shops of all kinds, including barber and shoe and similar service outlets	One space for each 200 square feet of gross floor space._____
Car sales, house and truck trailer sales, outdoor equipment and machinery sales, commercial nurseries	Four spaces for each salesperson, plus one space for each two employees.
Bed and breakfast inn	One space for each guest room, plus one additional space for each employee.
Hotels	One space for each two rooms, plus one additional space for each five employees.
Motels, tourist homes, and tourist courts, and rooming houses	One space for each accommodation, plus two additional spaces for employees.
Service stations	Two spaces for each gas pump, plus three spaces for each grease rack or similar facility.
Shopping centers	One space for each 300 square feet of gross floor space.
Restaurants	One space for each three seats or stools, plus one space for each two employees on the shift of the largest employment.
Day nursery and private kindergartens	One space for each staff member, plus one space for each five students.
Clubs and lodges	One space for each three members.
Vocational schools	One space for each two students.
Business and special schools	One space for each four students.
Nightclubs, bars and pubs	One space for each 200 square feet of gross floor area.
Animal hospitals and veterinarian clinics	One space for each 200 square feet of gross floor area.
Kennels	One space for each four pens.
Motor vehicle maintenance and repair	One space for each service bay and mechanic.

Table 3: Required Parking	
Land Use	Required Parking
Indoor theaters	One space for each four seats.
Parcel delivery services	One space for each employee on the shift of maximum employment, plus one space for each 800 square feet of gross floor area.
<i>Wholesale and Industrial Uses</i>	
Wholesale and industrial uses	One space for each two employees at maximum employment on a single shift, plus one space for each company vehicle operating from the premises.

(c) *Location of other property.* If the required automobile parking spaces cannot reasonably be provided on the same lot on which the principal use is conducted, such spaces may be provided on other off-street property, provided that such property lies within 400 feet of an entrance to such principal use. Such automobile parking shall be associated with the principal use and shall not thereafter be reduced or encroached upon in any manner.

(d) *Shared parking.* The zoning administrator may approve the joint use of up to 100 percent of the required parking spaces for two or more uses located on the same parcel or adjacent parcels, provided that the developer can demonstrate that the uses will not overlap in hours of operation or in demand for the shared spaces.

Any sharing of required parking spaces by uses located on different parcels shall be guaranteed by a written agreement between the owner of the parking area and the owner of any use located on a different parcel and served by the parking area.

Should the uses change such that the new uses overlap in hours of operation or in demand for the shared spaces, the shared parking approval shall become void. Parking meeting the requirements of this section shall then be provided for each use.

(e) *Extension of parking lot into a residential district.* Required parking may extend up to 120 feet into a residential zoning district, provided that:

- (1) The parking area adjoins a NS, CS, or EMP district;
- (2) It has its only access to or fronts upon the same street as the property in a NS, CS, or EMP district for which it provides the required parking; and
- (3) Is separated from abutting properties in the residential district by a buffer strip.

Sec. 78-659. Off-street loading and unloading space.

Every lot on which a business, trade or industry use is hereafter established shall provide space as indicated in this section for the loading and unloading of vehicles off the street. Such space shall have access to a street or alley. For the purpose of this section, an off-street loading space shall have minimum dimensions of 12 feet by 40 feet and an overhead clearance of 14 feet in

height above the alley or street grade. Spaces shall be provided as follows:

- (1) Retail business: One space for each 10,000 square feet of gross floor area.
- (2) Wholesale and industry: One space for each 25,000 square feet of gross floor area.
- (3) Truck terminals: Sufficient space to accommodate the maximum number of trucks to be stored or to be loading or unloading at the terminal at any one time.

Sec. 78-660. Required yards and other spaces.

No part of a yard or open space, or loading space required in this section or required in connection with any building for the purpose of complying with this article, shall be included as part of a yard, open space or loading space similarly required for any other building.

Sec. 78-661. Driveways and visibility at intersections.

Driveway standards shall be met when designing vehicular access points from public streets to individual properties, excluding single and two-family residential. All sight distances at intersections and all vehicular entrances on to state-maintained roads from nonresidential uses must meet the standards for secondary roads established by the N.C. Department of Transportation and must be approved by such department prior to receiving a zoning permit. On corner lots, no planting, structure, sign, fence, wall or other obstruction shall be erected so as to interfere with the sight distance. Unless the access point will be shared between two or more adjoining properties, all access points shall be located at least five feet from all property lines perpendicular to the street.

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

In no case, shall there be more than two principal buildings, in addition to any customary accessory buildings on a single lot, except in the case of a designated planned unit development, manufactured home park, or within the Open Use District.

Sec. 78-663. Accessory structures and buildings.

Accessory buildings shall not be erected in any front yard building setback; or side yard setback; within 20 feet of any side street or highway right-of-way line; or within ten feet of any rear lot line.

Accessory uses or structures shall not involve any use or structure otherwise prohibited by this division or requiring a conditional use permit. Accessory uses or structures shall meet the following standards:

- (1) Front yard set back, 20 feet;
- (2) Side yard set back, ten feet; and
- (3) Rear yard set back, ten feet.

Sec. 78-664. Travel trailers and recreational vehicles.

Travel trailers and/or recreational vehicles may be used as a temporary single-family dwelling only in those districts that permit travel trailers or travel trailer parks. In no case shall a travel trailer or recreational vehicle be used as a permanent single-family dwelling.

Sec. 78-665. Home occupations.

Standards pertaining to home occupations are contained within the definition of a home occupation as found in section 78-581.

Sec. 78-666. Vacant lots.

Vacant lots and open spaces located adjacent to major thoroughfares shall be maintained. Vegetation shall be neatly trimmed, and the accumulation of unsightly debris shall be prohibited.

Sec. 78-667. Buffering and parking lot landscaping.

(a) *Buffer strip.* A buffer strip shall be established along the side and rear lot lines of any nonresidential use adjoining a residential use. Said buffer shall not extend beyond the established setback line along any street. Said buffer strip shall not be less than 20 feet in width for uses where the lot with the nonresidential use is one acre or greater. In cases where the nonresidential lot requiring the buffering is less than one acre, the buffer strip shall be at least 15 feet wide.

(b) *Methods of buffering.* The required buffers shall be placed according to one or a combination of the following methods, as approved by the board of adjustment or zoning administrator as fitting for the use and surrounding areas:

- (1) At least two rows of evergreen trees, which shall be approved as to type by the board of adjustment, which at the time of planting shall be at least five feet in height, and which at maturity shall be at least ten feet in height. In each row the trees shall be spaced no more than eight feet apart (from base of tree to base of tree) at time of planting, with trees in adjacent rows offset (staggered) four feet. The rows shall be no more than eight feet apart in a 20-foot buffer strip and seven feet apart in a 15-foot buffer strip and centered within the buffer strip.
- (2) A solid visual barrier fence eight feet in height may be accepted as an alternative buffer by the board of adjustment or zoning administrator.
- (3) Earth mounding may be used in conjunction with planting or fencing to satisfy height requirements, but slopes shall not exceed one foot in height to two feet horizontal.

In the event that the height requirements provided herein do not provide a visual screen from the adjoining property, the board of adjustment or zoning administrator may require additional earth mounding, or other type of buffering, to attain the desired screening effect.

This buffering requirement may be modified by the zoning administrator where adequate buffering exists in the form of natural vegetation and/or terrain.

(c) *Maintenance of buffering.* The owner of the property on which the buffer is located shall be responsible for the maintenance of said buffering. Trees shall be carefully planted and maintained

and evergreen trees shall be maintained so that dense branching begins at ground level and continues to the top of the plant. Unhealthy or dead plants shall be promptly removed and replaced within one planting season. Each fence required by this section or by the board of adjustment shall be maintained in good repair, including periodic painting or refinishing where required. Failure to maintain any required vegetation, earth mounding, and fences in good condition shall constitute a violation of this section.

(d) *Parking lot landscaping.* Parking lots of 5,000 or more square feet in area shall have landscaped areas. The landscape area(s) shall be at least ten percent of the area of the parking lot. No individual landscaped area planted with a tree shall contain less than 100 square feet. All trees planted to conform to these landscape requirements shall be appropriately spaced to permit normal growth.

Secs. 78-668--78-675. Reserved.

DIVISION 6. CONDITIONAL USES

Sec. 78-676. Purpose.

The following conditional uses would not be appropriate without restriction throughout the zoning districts, but could be acceptable if controlled as to number, area, location or relation to the neighborhood. Such uses may be permitted in a zoning district as conditional uses if the provisions of this and all other divisions of this article have been met.

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

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

(b) *Conference with applicant.* After submission of an application for a conditional use permit, the zoning administrator shall arrange a conference with the applicant. At the conference the applicant shall submit a sketch development plan and a brief description of the proposed development strategy. The conference is designed to inform the applicant of the county's regulations and policies concerning development alternatives, as well as to inform the county of the applicant's intentions, so as to give the applicant some informal, nonbinding feedback on the acceptability of the applicant's plan. The greater the level of common understanding between the applicant and the county that can be achieved at the conference stage, the smoother the remaining steps of the review process will be. At the conference a date for a public hearing shall be determined.

(c) *Notice of hearing.* The board of adjustment shall give public notice of the hearing in a newspaper having general circulation in the county. Said notice shall be published at least five days prior to the date of the hearing. The board of adjustment shall mail notices of the hearing to the adjoining property owners, to members of the planning board, and to such other persons as the zoning administrator shall direct, at least ten days prior to the hearing. Notices shall state the location of the building or lot, the general nature of the applicant's request, and the time and place of the hearing.

(d) *Development plan; submission; contents.* At least thirty (30) days prior to the date

set for the public hearing, the applicant shall submit three copies of the final development plan to the zoning administrator. The development plan shall contain a map drawn to scale, with the date of preparation, and shall contain, where applicable, the following information:

- (1) Existing site conditions, including contours, watercourses identified flood hazard areas, and any unique natural or manmade features.
- (2) Boundary lines of the proposed development, proposed lot lines, and plot designs.
- (3) Proposed location and use of all existing and proposed structures.
- (4) Location and size of all areas to be conveyed, dedicated, or reserved as common open space, parks, recreational areas, school sites, and similar public and semipublic uses.
- (5) The existing and proposed street system, including the location and number of off-street parking spaces, service areas, loading areas, and major points of access to the public right-of-way. Notations shall be made of the proposed ownership of a street system, public or private. Documentation from the Fire Marshal shall be provided of the adequacy of the development's facilities for emergency medical and fire services.
- (6) Approximate location of proposed utility systems, including documentation approving the proposed water and sewer systems from the appropriate local and state agencies. Documentation of an application for a sedimentation and erosion control permit and stormwater management permit shall also be submitted, where required.
- (7) Location and/or notation of existing and proposed easements and rights-of-way.
- (8) The proposed treatment of the perimeter of the development including materials and/or techniques such as screens, fences, and walls.
- (9) Information on adjacent land areas, including land use, zoning classifications, public facilities, and any unique natural features.
- (10) Where applicable, the following written documentation shall be submitted:
 - a. A legal description of the total site proposed for development, including a statement of present and proposed ownership.
 - b. The zoning district in which the project is located.
 - c. A development schedule indicating approximate beginning and completion dates of the development, including any proposed stages.
 - d. A statement of the applicant's intentions with regard to the future selling and/or leasing of all or portions of the development.
 - e. Quantitative data for the following: proposed total number and type of residential dwelling units, parcel size, gross residential densities, and the total amount of open space.
 - f. Plan for maintenance of common areas, recreation areas, open spaces, streets and utilities.
- (11) Any additional information required by the board of adjustment in order to evaluate the impact of the proposed development. The zoning administrator or the board of

adjustment may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision of the project.

(e) *Conduct of hearing.* Any party may appear in person or by agent or by attorney at the hearing held by the board of adjustment. The order of business for such hearing shall be as follows:

- (1) The chairperson, or such person as he shall direct, shall give preliminary statement of the case.
- (2) The applicant shall present the argument in support of the application.
- (3) Persons opposed to granting the application shall present the argument against the application.
- (4) Both sides will be permitted to present rebuttals to opposing testimony.
- (5) The chairperson shall summarize the evidence, which has been presented, giving the parties opportunity to make objections and corrections.

Witnesses may be called and factual evidence may be submitted, but the board of adjustment shall not be limited to only such evidence as would be admissible in a court of law. The board of adjustment may view the premises before arriving at a decision. All witnesses before the board of adjustment shall be placed under oath and the opposing party may cross-examine them.

(f) *Rehearings.* An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the board of adjustment to determine whether there has been a substantial change in the facts, evidence or conditions in the case. The application for rehearing shall be denied by the board of adjustment if from the record it finds that there has been no substantial change in facts, evidence, or conditions. If the board of adjustment finds that there has been a change, it shall thereupon treat the request in the same manner as any other application.

(g) *Conditions for granting approval.* If the board of adjustment finds that, in the particular case in question, the use for which the conditional use permit is sought will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood, a permit may be granted. In granting such a permit, the board of adjustment may designate such conditions in connection therewith as will, in its opinion, ensure that the proposed use will conform to the requirements and spirit of this article. If at any time after a conditional use permit has been issued the board of adjustment finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a conditional use permit, the permit shall be terminated and the operation of such use discontinued. If a conditional use permit is terminated for any reason, it may be reinstated only after a public hearing is held. The board of adjustment may vary the minimum lot size requirement when issuing a conditional use permit. Before any conditional use permit is issued, the board of adjustment shall make written findings certifying compliance with the specific rules governing the individual conditional use and that satisfactory provision and arrangement has been made for at least the following, where applicable:

- (1) Satisfactory ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control.
- (2) Provision of off-street parking and loading areas where required, with particular

attention to the items in section 78-658, and the economic, noise, glare and odor effects of the conditional use on adjoining properties in the area.

- (3) Adequate and proper utilities, with reference to locations, availability, and compatibility.
- (4) Buffering, with reference to type, location, and dimensions.
- (5) Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.
- (6) Playgrounds, open spaces, yards, landscaping, access ways, and pedestrian ways, with reference to location, size, and suitability.
- (7) Buildings and structures, with reference to location, size, and use.
- (8) Hours of operation, with particular reference to protecting and maintaining the character of the neighborhood.

(h) *Decisions.* Decisions shall be made as follows:

- (1) *Time.* A decision by the board of adjustment shall be made within 30 days from the time of hearing.
- (2) *Form.* Written notice of the decision in a case shall be given by certified or registered mail to the applicant by the zoning administrator as soon as practicable after the case is decided. Also, written notice shall be given to owners of the subject property, if not the applicant, and to other persons who have made written request for such notice. The final decision of the board of adjustment shall be shown in the record of the case as entered in the minutes of the board of adjustment and signed by the zoning administrator and the chairperson upon approval of the minutes by the board of adjustment. Such record shall show the reasons for the determination, with a summary of evidence introduced and the findings of fact made by the board of adjustment. The record shall state in detail any facts supporting findings required to be made prior to the issuance of such permit. The record shall state in detail what, if any, conditions and safeguards are imposed by the board of adjustment in connection with the granting of a conditional use permit.
- (3) *Expiration of permits.* Unless otherwise specified, any order or decision of the board of adjustment granting a conditional use permit shall expire if a building permit or certificate of occupancy for such use is not obtained by the applicant within one year from the date of the decision.
- (4) *Voting.* The concurring vote of four-fifths of the members of the board of adjustment shall be necessary to grant a conditional use permit.
- (5) *Public record.* The decisions of the board of adjustment, as filed in its minutes, shall be a public record, available for inspection at all reasonable times.
- (6) *Copy to planning board.* The board of adjustment shall submit a copy of their decision on a specific development to the planning board.

(i) *Inspections.* The zoning administrator shall make periodic inspections during construction as well as a final inspection after construction is complete to determine whether the conditions imposed and agreements made in the issuance of the permit have been met as well as whether all other requirements of this article have been met.

(j) *Changes; limitations.* Minor changes in the location, siting or character of buildings and structures may be authorized by the zoning administrator, if required by engineering or other circumstances not foreseen at the time the final development program was approved; provided, however, that no change authorized by the zoning administrator under this section may increase the size of any building or structure by more than ten percent, nor change the location of any building or structure by more than ten feet in any direction, nor make any changes beyond the minimum or maximum requirements set forth in this article. All other changes, including changes in the site plan and in the development schedule, must be submitted to the board of adjustment. In no case shall the following changes be made without resubmission of the development plan according to the procedures in this section:

- (1) A change in the use or character of the development.
- (2) An increase in overall density.
- (3) An increase in intensity of use.
- (4) Alteration of the traffic circulation system.
- (5) A reduction in approved open space.
- (6) A reduction of off-street parking and loading space.

(k) *Lack of development; effect on permit.* If no development has occurred within one year after the issuance of a conditional use permit, the permit shall become null and void without written extension from the board of adjustment, and the procedures for application and review as outlined in this section shall be required for any development on subject property.

Sec. 78-678. Conditional use standards.

Before issuing a conditional use permit the board of adjustment shall find that all standards for specific uses listed in this section, as well as all procedures listed in section 78-677, have been met. The following standards are applied to specific conditional uses:

- (1) *Public and private schools, day nurseries, and private kindergartens.* Standards for public and private schools, day nurseries, and private kindergartens shall be as follows:
 - a. Off-street parking shall be sufficient to meet the requirements found in section 78-658.
 - b. The board of adjustment may require buffering consisting of evergreen trees or shrubs located along the side and rear lot lines, but shall not extend beyond the established setback line along any street. Such buffer strip shall not be less than four feet in width and shall be composed of trees or shrubs of a type which at maturity shall be not less than six feet in height. This planting requirement may be modified by the board of adjustment where adequate buffering exists in the form of vegetation and/or terrain.
- (2) *Private recreation facilities (for-profit).* Standards for private recreation facilities operated for profit shall be as follows:
 - a. Off-street parking shall be sufficient to meet the requirements found in section 78-658.
 - b. The board of adjustment may require buffering consisting of evergreen trees located

along the side and rear lot lines, but shall not extend beyond the established setback line along any street. Such buffer strip shall not be less than four feet in width and shall be composed of trees or shrubs of a type, which at maturity shall be not less than six feet in height. This planting requirement may be modified by the board of adjustment where adequate buffering exists in the form of vegetation and/or terrain.

- c. The proposed hours of operation shall not be detrimental to the surrounding property due to noise, flashing lights, traffic, etc.
 - d. All developments shall be compatible with surrounding residential uses. Therefore, no signs with flashing lights shall be allowed. All non-flashing illuminated signs shall be so placed so as not to cast light on adjoining residential uses.
- (3) *Public utility stations; radio and TV towers; water and sewer plants; water storage tanks.* Standards for public utility stations, radio and TV towers, water and sewer plants, and water storage tanks shall be as follows:
- a. Structures shall be enclosed by a woven wire fence at least eight feet high.
 - b. The lot shall be suitably landscaped, including a buffer strip at least four feet wide and planted with evergreen shrubs or trees which at maturity will be between eight and 12 feet high along the side and rear property lines. This planting requirement may be modified by the board of adjustment where adequate buffering exists in the form of vegetation and/or terrain.
 - c. Entrances and exits shall be designed so as to promote public safety.
- (4) *Kennels.* Standards for kennels are as follows:
- a. The animal kennel, including all structures and fencing, shall be set back at least 50 feet from all external property lines of the facility.
 - b. The kennel facility shall be enclosed within a security fence of at least six feet in height. The fence and facility may require a vegetation buffer along any part of the fenced areas where sufficient visual buffering does not exist. The board of adjustment shall determine the buffer requirements.
 - c. Provisions for daily removal and/or disposal of all animal waste shall be incorporated within the operation and maintenance of the animal kennel.
 - d. The design and operation of the facility shall be reviewed and approved by the state department of agriculture.
- (5) *Retail trade.* Standards for retail trade are as follows:
- a. Off street parking shall be sufficient to meet the requirements found in section 78-658.
 - b. The applicant shall submit a site plan drawn to scale showing the location of existing and proposed buildings and proposed vehicular entrances and exits. This is to ensure that congested traffic conditions do not occur in areas around employment centers.
 - c. The applicant also shall submit with the site plan a description or drawing, with dimensions, and locations of all proposed signs, to ensure that such uses will not infringe upon the character of the employment center district.
- (6) *Junkyards.* Standards for junkyards shall be as follows:

- a. Junkyards shall be surrounded by a fence at least eight feet in height. Vegetation shall be planted on at least one side of the fence and contiguous to the fence. The vegetation shall be of a type that will reach a minimum height of six feet at maturity and shall be planted at intervals evenly spaced and in close proximity to each other so that a continuous, unbroken hedgerow will exist to a height of at least six feet along the length of the fence surrounding the junkyard when the vegetation reaches maturity. Each owner, operator, or maintainer of a junkyard shall maintain the vegetation and fencing. Dead or diseased vegetation shall be replaced at the next appropriate planting time.
 - b. The fence shall have at least one and not more than two gates for purposes of ingress and egress. The gates shall be closed and securely locked at all times, except during business hours.
 - c. Junkyards shall also be subject to compliance with chapter 26, article III, of this Code, as may be amended.
- (7) *Solid waste management facilities.* All solid waste management facilities used for the disposal of solid waste shall meet the requirements and specifications of the N.C. Department of Environment and Natural Resources. A set of approved plans shall be submitted along with the application for the conditional use permit.
- (8) *Travel trailer parks.* Travel trailer park standards shall be as follows:
- a. The board of adjustment may require buffering consisting of evergreen trees or shrubs located along the side and rear lot lines, but shall not extend beyond the established setback line along any street. Such buffer strip shall not be less than four feet in width and shall be composed of trees or shrubs of a type, which at maturity shall be not less than six feet in height. This planting requirement may be modified by the board of adjustment where adequate buffering exists in the form of vegetation and/or terrain.
 - b. Plans and accompanying documentation to ensure that the water and sewer systems proposed for the travel trailer park have been approved by the appropriate local and state agencies.
 - c. Trailers shall be separated from each other and from other structures by at least ten feet.
- (9) *Planned unit developments.* Planned unit development standards shall be as follows:
- a. *Purpose.* The purpose of this section is to afford substantial advantages for greater flexibility and improved marketability through the benefits of efficiency which permit flexibility in building siting, mixtures of housing types, and land use. Residential densities are calculated on a project basis, thus allowing the clustering of buildings in order to create useful open spaces and preserve natural site features.
 - b. *Land development standards.* The following land development standards shall apply for all planned unit developments. Planned unit developments may be located in the R-2, R-3, NS, CS, EMP, and PS districts as conditional uses, subject to a finding by the board of adjustment that the following conditions are met:
 - 1. *Ownership control.* The land in a planned unit development shall be under single ownership or management by the applicant before final approval

and/or construction, or proper assurances (legal title or execution of a binding sales agreement) shall be provided that the development can be successfully completed by the applicant.

2. *Density requirements.* There are no density requirements for nonresidential uses as long as the proposed project does not violate the intent of the district in which it is located. The proposed residential density of the planned unit development (dwelling units per acre as shown in section 78-642) shall conform to that permitted in the district in which the development is located. If the planned unit development lies in more than one district, the number of allowable dwelling units must be separately calculated for each portion of the planned unit development that is in a separate district, and must then be combined to determine the number of dwelling units allowable in the entire planned unit development.
3. *Frontage requirements.* Planned unit developments shall have access to a highway or road suitable for the scale and density of development being proposed.
4. *Land uses.* A mixture of land uses shall be allowed in any planned unit development. However, within residential districts, nonresidential uses shall not constitute the primary use in the planned unit development, and nonresidential uses shall be carefully designed to compliment the residential uses within the planned unit development. All planned unit developments must be compatible with and not violate the intent of the zoning district.
5. *Minimum requirements.* Minimum requirements for land development are as follows:
 - The normal minimum lot size and requirements for interior setbacks are hereby waived for the planned unit development, provided that the spirit and intent of this section are complied with in a total development plan, as determined by the board of adjustment. The board of adjustment shall exercise ultimate discretion as to whether the total development plan does comply with the spirit and intent of this section.
 - Height limitations. No building or structure shall exceed the height limitations of the district in which it is located.
 - Required distance between buildings. The minimum distance between buildings shall be 20 feet or as otherwise specified by the board of adjustment to ensure adequate air, light, privacy, and space for emergency vehicles.
 - Every dwelling unit shall have access to a public or private street, walkway or other area dedicated to common use, and there shall be provision for adequate vehicular circulation to all development properties, in order to ensure acceptable levels of access for emergency vehicles.
6. *Privacy.* Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walks, barriers, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants, screening of objectionable views or uses, and reduction of noise. Multilevel buildings shall be located within a

planned unit development in such a way as to dissipate any adverse impact on adjoining low-rise buildings and shall not invade the privacy of the occupants of such low-rise buildings.

7. *Perimeter requirements.* Perimeter requirements are as follows:

- Structures located on the perimeter of the development must be set back from property lines and rights-of-way of abutting streets in accordance with the provisions of the zoning ordinance controlling the district within which the property is situated.
- Structures other than single-family detached units located on the perimeter of the development may require screening in a manner which is approved by the board of adjustment.

8. *Water and sewer systems.* Plans and accompanying documentation to ensure that the water and sewer systems proposed for the planned unit development have been approved by the appropriate local and state agencies and submitted as part of the application.

9. *Parking.* Preliminary plans shall include parking provisions for all proposed uses within the planned unit development in accordance with section 78-658. When more than one use is located in the planned unit development, the minimum required parking shall be the sum of the required parking for each use within the development.

10. *Pedestrians and bicycles.* Any pedestrian and bicycle path circulation system and its related walkways shall be designed to minimize conflicts between vehicle and pedestrian traffic.

11. *Layout.* Layout of parking areas, service areas, entrances, exits, yards, courts and landscaping, and control of signs, lighting, noise or other potentially adverse influences shall be such as to protect the residential character within the PUD district and desirable character in any adjoining district.

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

(10) *Manufactured home parks.* Refer to chapter 46, article III, of this Code.

(11) *Campus office use.* Standards for campus office use as a conditional use shall be as follows:

- a. *Purpose.* The purpose of this conditional use is to allow very low-density, low-impact office use on larger tracts of land in R-2 zoned areas that will preserve rural or residential type settings with minimal impact on adjacent R-2 uses.
- b. *Building size.* No single building shall have a footprint in excess of either 5,000 square feet or more than two stories in height.
- c. *Density.* No more than one building per 2.5 acres shall be permitted.
- d. *Parking.* All parking closer than 200 feet to the edge of a public street shall be

screened from public roads by a 15-foot buffer meeting the requirements of section 78-667. No parking shall be allowed within 100 feet of any residence located on adjacent property. Off-street parking shall comply with the required parking for professional and business offices set forth in section 78-658.

- e. *Remaining space.* Space in any campus office use area not used for buildings or parking may be wooded, landscaped or mowed areas or used for roads and utilities.
- f. *Service equipment.* All service equipment such as dumpsters shall be located on the rear or side of a building and shall be screened and enclosed by a 15-foot buffer in accordance with the methods for buffering in section 78-667.
- g. *Exception.* Subsection 78-678(9) (planned unit developments) shall not apply to property subject to this conditional use.

Secs. 78-679--78-695. Reserved.

DIVISION 7. EXCEPTIONS AND MODIFICATIONS

Sec. 78-696. Compliance with article mandatory; generally.

Compliance with the requirements of this article is mandatory; however, under specific conditions enumerated in the following sections, the requirements may be waived or modified as so stated.

Sec. 78-697. Front yard setback for dwellings.

The front yard setback requirements of this article for dwellings shall not apply on any lot where the average setback of existing buildings located wholly or in part within 100 feet on each side of such lot within the same block and zoning district and fronting on the same side of the street is less than the minimum required setback. In such cases, the setback may be less than the required setback, but not less than the average of the setback of the aforementioned existing buildings.

Sec. 78-698. Completion of building under construction.

Nothing in this article shall require any change in the plans, construction or designated use of a building under construction at the date of the passage of the ordinance from which this article is derived. A building shall be deemed to be under construction upon the effective date of the ordinance from which this article is derived if a building permit has been issued or if the zoning administrator determines that significant construction was completed prior to the effective date of the ordinance from which this article is derived.

Sec. 78-699. Height limitations.

The height limitations of this article shall not apply to church spires except as otherwise provided in the vicinity of airports. Maximum height limitations as defined in section 78-642 shall be reduced in those areas affected by the Asheville Regional Airport in compliance with the Federal Aviation Administration regulations.

Sec. 78-700. Temporary uses.

Temporary uses such as real estate sales field offices or shelter for materials and equipment being used in the construction of a permanent structure, may be permitted by the zoning administrator, provided they do not create health, safety or nuisance hazards.

Secs. 78-701--78-715. Reserved.

DIVISION 8. AMENDMENTS

Sec. 78-716. Board of commissioners to amend article.

This article, including the zoning map, may be amended by action of the Buncombe County Board of Commissioners in accordance with the provisions of this division.

Sec. 78-717. Initiation of amendments.

Proposed changes or amendments to this article may be initiated by the Buncombe County Board of Commissioners, Buncombe County Planning Board, board of adjustment, or one or more owners of property within the area proposed to be changed. The board of commissioners, the planning board, and the board of adjustment shall not be required to make application to the zoning administrator in order to initiate a change or amendment to this article. All proposed amendments to this Article or zoning map shall be submitted to the planning board for review and comment; however, neither the planning board nor the board of commissioners will consider a proposed change or amendment initiated by one or more property owners that was denied within the preceding 12 months by the board of commissioners.

Sec. 78-718. Application and Planning Board Notice and Hearing.

(a) Before any action on a proposed change or amendment initiated by one or more property owners within the area proposed to be changed, an application shall be submitted to the office of the zoning administrator at least 30 days prior to the planning board's meeting at which the application is to be considered. The application shall contain the name(s) and address(es) of the owner (s) of the property in question, the location of the property, and a description and/or statement of the present and proposed zoning regulation or district. All applications requesting a change in the zoning map shall include a description of the property in question.

(b) Before taking any action to recommend a change or amend this Article, the planning board shall hold a public hearing on the proposed change or amendment. The county shall cause

notice of the hearing to be published once not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(c) Whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the planning board that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(d) The first class mail notice required under the preceding paragraph of this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, the county may elect to either make the mailed notice provided for in the preceding paragraph or may as an alternative elect to publish notice of the hearing as required by 78-718(b), but provided that such advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of Sec. 78-718(c) above.

(e) When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons.

Sec. 78-719. Purposes in view.

The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the board of county commissioners that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the board of commissioners.

If no written report is received from the planning board within 30 days of referral of the amendment to that board, the board of county commissioners may proceed in its consideration of the amendment without the planning board report at a public hearing as provided below. The board of commissioners is not bound by the recommendations, if any, of the planning board.

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

Sec. 78-720. Public hearing before the board of commissioners.

(a) Before taking any action to adopt, amend, or repeal any part or portion of this Article, the board of commissioners shall hold a public hearing on the proposed adoption, amendment or repeal of any part or portion of this Article. The board of commissioners shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included. Further, before taking any action on a proposed adoption, amendment, or repeal of this Article, the board of commissioners shall consider the planning board's recommendations, if any, on each such proposed action.

(b) Whenever there is a zoning map amendment, the owner of that parcel of land as shown on the county tax listing, and the owners of all parcels of land abutting that parcel of land as shown on the county tax listing, shall be mailed a notice of a public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the Board of Commissioners that fact, and such certificate shall be deemed conclusive in the absence of fraud.

(c) The first class mail notice required under the preceding paragraph shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, the county may elect to either make the mailed notice provided for in the preceding paragraph of this section or may as an alternative elect to publish notice of the hearing required by Sec. 78-720(a), but provided that each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of Sec. 78-720(b) above.

(d) When a zoning map amendment is proposed, the county shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right-of-way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons.

-End-