

imagine
MILLS RIVER

UNIFIED DEVELOPMENT ORDINANCE

Annotated Outline

November 2025



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Below is a sample table showing a possible method for the Town to record amendments to the Unified Development Ordinance ('UDO') text following adoption. The table lists amending ordinance numbers and adoption dates. It also provides a short description of each amendment. This table, if included, is updated as part of any proposed Ordinance text amendment. In addition to this table, amended sections of the Ordinance text are appended with an editor's note indicating the date the section was amended and the applicable ordinance number. The Town should also make historical text amendment ordinances available for public review so readers can easily see how the Unified Development Ordinance language has evolved over time. One other important aspect is the "last updated" date at the bottom of each page (to be included in the UDO version, not this Annotated Outline). This is the control method the Town and applicants can use to ensure they are using the latest version of the UDO.

UNIFIED DEVELOPMENT ORDINANCE AMENDMENT RECORD		
AMENDING ORDINANCE NUMBER	ADOPTION DATE	DESCRIPTION
2028-00	12-20-28	A short description listing the main sections modified and an abbreviated summary of the changes Section 1.1: added language Section 3.5: section deleted Section 4.2: Some other change, etc.
2029-100	08-01-29	Another description and summary from a subsequent round of text amendments



ABOUT THIS ANNOTATED OUTLINE

This document is an Annotated Outline of the Mills River draft Unified Development Ordinance (or “UDO”), which is being developed as part of the Town’s Imagine Mills River Process (www.imaginemillsriver.com).

A Unified Development Ordinance is the legal document the Town uses to protect public’s health, safety, and welfare with respect to the use of land and the establishment of development in Town. A UDO establishes what kinds of land uses may be permitted in which locations, the process the Town will use to consider applications for the establishment of new land uses, and how land uses/sites should be operated to protect public safety and support the Town’s adopted goals for its future.

This Annotated Outline is an abbreviated or summary version of the proposed Unified Development Ordinance. It identifies the “look and feel” of the forthcoming UDO document. It illustrates the proposed numbering scheme, text attributes, and page layout. It also identifies the chapter names and their sequence. It lists the main sections and sub-sections within each chapter and the appendix. In addition, it provides a brief summary of the contents of each main section and sub-section in the document.

The contents of this Annotated Outline will be modified and expanded during the Imagine Mills River process to become the Town’s new Unified Development Ordinance. The new UDO, if adopted by the Town Council, will replace the Town’s current development regulations found in various chapters of the Town Code of Ordinances – https://codelibrary.amlegal.com/codes/millsriver/latest/millsriver_nc/0-0-0-1. The new UDO may consolidate other chapters or sections of the Code of Ordinances as well.

This Annotated Outline proposes nine chapters that are listed in alphabetic order. Each chapter is designed to consolidate similar kinds of standards, like review procedures, zoning district requirements, use standards, and so forth. The first page of each chapter includes a table of contents of sections and sub-sections within each chapter (which is also organized in alphabetic sequence to the degree possible).

The top of almost every page of this Annotated Outline identifies the chapter name and number, the main section name and number, and the sub-section found on that particular page. This allows readers to quickly thumb through the document using only the page tops as navigation aids. Page numbers are included on the bottom of each page. Each page footer also bears the date that the document was last updated.

The material included in this Annotated Outline is based upon the Code Diagnosis, which was the end product of Task 2 of the Imagine Mills River project. The Code Diagnosis may be reviewed on the project website at www.imaginemillsriver.com.

The goals or guiding principles for Imagine Mills River and the new UDO are as follows:

1. Create a UDO Document that is easy to use and understand
2. Design zoning districts to reflect rural character
3. Implement the Town’s adopted land use policy guidance
4. Modernize and expand land uses
5. Protect environmental and natural features
6. Provide more housing choices
7. Promote higher quality development

Questions about this Annotated Outline, the new Unified Development Ordinance, or any part of the Imagine Mills River project may be entered on the project website, or applicants may contact the Town’s Planning Department at 828-890-2901 or at planning@millsriver.gov.



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CHAPTER 1.

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§ 1.1 APPLICABILITY¹

1.1.1. ABROGATION

This section clarifies that the UDO does not repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or private agreements. It also clarifies that the Town does not enforce any of private agreements to which the Town is not a party.

1.1.2. APPLICATION TO GOVERNMENTAL UNITS

Clarifies that the UDO applies to lands and development owned or operated by the Town of Mills River, Henderson County, the State of North Carolina, public subdivisions of the State, public colleges, or universities in accordance with NCGS§160D-913. The section also encourages development and activities undertaken by the federal government to comply with the UDO.

1.1.3. COMPLIANCE REQUIRED

Clarifies that development and development related activities may not be undertaken except in compliance with the applicable provisions of the UDO, including: grading, excavation, filling, tree removal, building occupancy, construction, transfer of lots, or double-counting of required areas. Compliance with the Henderson County Property Address Ordinance and any other officially adopted plans, maps or ordinances approved by any governmental body or agency having proper jurisdiction is also required. The standards also clarify that development may not be served by public services unless configured in accordance with the UDO. Plats may not be recorded until they have been reviewed for compliance with the standards in this Ordinance, including compliance with NCGS§47-30. Use-specific standards apply when a new use is started, even when a new use type replaces an existing use within an existing building (for example, a new restaurant moves into a building formerly occupied by a gas station – the new restaurant must comply with the use-specific standards).

1.1.4. EXEMPTIONS²

Clarifies the forms of development that are generally exempted from the UDO, including: court-ordered subdivisions and division of land as part of a will or NC intestate succession laws. A dedicated subsection will be added to carry forward Agricultural exemptions from existing Section 154.005 of the existing zoning ordinance and Section 150.01 from the Town's Building Regulations. This section is intended to clarify the myriad of rules pertaining to agricultural, agritourism, and forestry activities, such as exemptions from zoning-related provisions. The standards clarify that activities are not exempted from zoning when:

- A.** The activities are non-farm activities, even when taking place on a bona fide farm or land taxed under the present use value standard; and
- B.** Development includes or is subject to subdivision, flood hazard prevention, water supply watershed, and stormwater requirements, regardless of location.

1.1.5. JURISDICTION

This section establishes that the development provisions of the UDO apply to all lands within the Town's corporate limits, and any lots subject to development agreements outside of these areas but that stipulate UDO applicability.

A. ANNEXATION

¹ NOTE: Chapter 5, Nonconformities, includes a new section that addresses the strategy for dealing with SL 2024-57, the "Downzoning" Bill. It may be that this material should be relocated to a new section here in Chapter 1.

² Note that agricultural uses and bona-fide farms are still subject to subdivision and water supply watershed regulations. Will need to ensure there are strong criteria for exemptions so not to circumvent regulations. Some Steering Committee members have expressed some reservations with outright exemption of agricultural activity given the evolving more industrial nature of this kind of use in Mills River. Specifically, there have been comments about limiting lighting inside greenhouses 24 hours a day. If the Town opts to exempt agriculture, then it is exempted. If the Town wants to have some standards, then the UDO needs to apply to agriculture and bona fide farms (which is permitted under State law).



Clarifies that the provisions of the UDO are made applicable at the time of annexation or at some other date certain as specified by the Town Council.

1.1.6. MINIMUM REQUIREMENTS

Clarifies that the standards in the UDO are minimum standards, unless otherwise noted or subject to a Town-approved reduction.

§ 1.2 AUTHORITY**1.2.1. NORTH CAROLINA GENERAL STATUTES**

Enumerates the various NCGS provisions that enable the Town to implement the UDO, including: Ch. 160A, Art. 8 (police powers); Ch. 160A, Art. 15 (streets, traffic, & parking); Ch. 160D (local planning and development); Ch. 143, Art. 21 (water and air resources); and others.

1.2.1. OTHER RELEVANT LAWS

Specifically addresses the Mills River UDO exemption from the State down-zoning prohibition contained in State Law 2024-57. Identifies the Town's Charter, other relevant laws of the State, and any special legislation³ granted to the Town as other sources of authority for the regulation of development.

§ 1.3 CONFLICT

This section covers the variety of potential conflicts between the UDO provisions, conflicts with other Town laws, and conflicts with State laws or private agreements. It also recognizes that the most restrictive standard does not always control (such as in the case of administrative adjustments, variances, incentives, and some rezoning conditions). The language pertaining to promotion of health, safety, and general welfare is relocated to the section on purpose and intent, and the abrogation provisions are addressed under the new authority section.

1.3.1. CONFLICT BETWEEN STANDARDS IN THIS ORDINANCE**A. GENERALLY**

Clarifies that generally speaking, when two standards in the UDO conflict with one another, the more restrictive standard controls unless indicated otherwise in this section.

B. ALTERNATIVES**01. AUTHORIZED DEVIATIONS**

Clarifies that authorized deviations, such as an approved administrative adjustment, approved conditional rezoning concept plan, or alternative plan for development standards (parking, landscaping, signage, lighting, etc.) shall control and are not considered to conflict with other more restrictive standards.

02. INCENTIVES

Incentives, like density incentives associated with a residential subdivision, conservation subdivision, or sustainable development feature shall control and are not considered to conflict with other more restrictive standards.

C. DEVELOPMENT STANDARDS AND DISTRICTS STANDARDS

In cases where a development standard conflicts with a zoning district standard, the zoning district standard shall control.

D. DEVELOPMENT STANDARDS AND USE STANDARDS

In cases where a development standard conflicts with a use standard, the use standard shall control.

E. OVERLAY DISTRICT STANDARDS

³ NOTE TO STAFF – please forward any special legislation for identification in this section.



In cases where an overlay zoning district standard conflicts with another standard in this Ordinance, the overlay district standard shall control (even in cases where the overlay district standard is less restrictive).

F. TEXT AND ILLUSTRATIONS

In cases where the text in the UDO differs from an illustration, the text controls. Illustrations are provided solely for informational purposes only.

G. TEXT AND MAPS

In cases where the text in the UDO differs from a Town-adopted map, the text controls. In cases where requirements are based upon a map provided by the State or the federal government, and there is a conflict between the map and the text of this Ordinance, the State or federal map shall control.

1.3.2. CONFLICT WITH A CONDITION OF APPROVAL

In cases where a standard conflicts with an authorized and legally-established condition of approval that has not expired, the condition of approval controls.

1.3.3. CONFLICT WITH PRIVATE AGREEMENTS AND COVENANTS

In cases where a standard conflicts with a private agreement, covenant, or deed restriction, and the standards in this Ordinance are more restrictive, the standards in this Ordinance shall control. In cases where a private agreement or covenant conflicts with State or federal law, it shall no longer apply.

1.3.4. CONFLICT WITH STATE OR FEDERAL LAW

If a provision of this Ordinance is inconsistent with State or federal law, the more restrictive provision controls, to the extent permitted by law.

1.3.5. CONFLICT WITH OTHER TOWN CODE OR POLICY

If a provision of the UDO is inconsistent with another provision found in other adopted ordinances of the Town, the more restrictive provision shall govern, unless the terms of the more restrictive provision specify otherwise. Apart from application submittal policy, Town policy is advisory only.

1.3.6. DETERMINATION OF MOST RESTRICTIVE STANDARD

The more restrictive provision is the one that imposes greater restrictions, burdens, or more stringent controls.

1.3.7. CONFLICT OF INTEREST

Conflicts of interest for review authorities under this Ordinance shall be addressed in accordance with Section <>, General Requirements for All Authorities.

§ 1.4 CONSISTENCY WITH ADOPTED POLICY GUIDANCE**1.4.1. ADVISORY IN NATURE**

This section clarifies that policy, like Making Mills River, is advisory and that the Town Council may take action that differs from the adopted policy guidance as permitted under State law.

1.4.2. CONFORMANCE

Confirms that conformance with policy guidance is desirable, but legally required.

1.4.3. CONSISTENCY

Clarifies that consistency with adopted policy guidance is not a requirement for the continuing validity of any provision of this Ordinance, except as provided in NCGS§160D-604 and NCGS§160D-605. Consistency with adopted policy guidance is not a prerequisite for approval of a rezoning, and the future land use map portion of the Comprehensive Plan shall be



deemed amended when the Town Council approves a rezoning application that is inconsistent with the future land use map in accordance with NCGS§160D-605.

1.4.4. INCONSISTENCY

To the extent the UDO or the Official Zoning Map is or becomes inconsistent with the adopted policy guidance, it may be amended to remain consistent.

1.4.5. POLICY DOCUMENTS IDENTIFIED

Enumerates the Town's adopted policy guidance applicable to development and development-related activity.

§ 1.5 DOCUMENT TITLE

Establishes the title of the Unified Development Ordinance and establishes the title of the Official Zoning Map. The section establishes the shorthand references to this document, such as "this Ordinance."

1.5.1. ORDINANCE TEXT

1.5.2. ZONING MAP

§ 1.6 EFFECTIVE DATE

Establishes the effective date of the new UDO on or before July 1, 2026. The section also notes that prior ordinances are repealed and replaced by the new UDO with the most recent effective date.

§ 1.7 INCENTIVES AND ALTERNATIVES

This is a new section that identifies the range of allowable flexibility mechanisms (like Conditional Rezonings or Administrative Adjustments), incentives (like Sustainability Incentives) for preferred forms of development, and alternatives (like the Alternative Plan procedure) that allow applicants to propose practical alternatives to strict compliance with development standards on some challenging sites, subject to strict review criteria. The section describes the various mechanisms, when they are used, and provides cross references to their locations in the UDO.

1.7.1. PURPOSE AND INTENT

This section describes the reasons for inclusion of incentives and flexibility in the UDO, including:

- A.** Protection of the public's health, safety, or welfare;
- B.** Promotion of preferred uses or forms of development as identified by Town Council or Town Administration;
- C.** Creating necessary flexibility to permit the beneficial development of land in accordance with reasonable investment-backed expectations;
- D.** Protecting the environment or sensitive environmental resources on a lot or site;
- E.** Allowing for development or redevelopment that is consistent with the Town's adopted policy guidance; or
- F.** Permitting development that is consistent with applicable State or federal law.

1.7.2. APPLICABILITY



1.7.3. RELATIONSHIP TO NONCONFORMITIES

Clarifies that development subject to a Town-approved incentive or alternative in accordance with the provisions of this Ordinance shall not be considered nonconforming.

1.7.4. PROCEDURAL FLEXIBILITY

This section describes and includes cross references to the procedural flexibility mechanisms in the UDO.

A. ADMINISTRATIVE ADJUSTMENT**B. CONDITIONAL REZONING****C. DEVELOPMENT AGREEMENT****D. FEE-IN-LIEU****E. PERFORMANCE GUARANTEES****F. VARIANCE****1.7.5. DIMENSIONAL FLEXIBILITY**

This section identifies the provisions in the UDO that permit flexibility in terms of allowable densities or dimensional requirements.

A. ALLOWABLE ENCROACHMENTS INTO REQUIRED SETBACKS

Includes a cross reference to Table <>, Table of Allowable Encroachments.

B. COMPLIANCE WITH RESIDENTIAL DESIGN GUIDELINES

Clarifies that principal uses or structures within single-family residential subdivisions, single-family attached developments, duplex, triplex, and quadplex developments that comply with the provisions in Section <>, Residential Design Guidelines, may be developed with slightly elevated maximum residential densities in accordance with the standards in this Ordinance without need for a Conventional or Conditional Rezoning approval.

C. CONSERVATION SUBDIVISIONS

Clarifies that single-family detached developments configured in accordance with Section <>, Conservation Subdivision, are permitted to maintain lot sizes, setbacks, and maximum residential densities in accordance with the allowable standards for the zoning district where located.

D. PROVISION OF ATTAINABLE HOUSING

Clarifies that dwelling units that are subject to mandatory deed restrictions limiting the sales prices to those affordable for persons of low income and located in a residential development that also includes market-rate housing units are not counted towards maximum density limitations for the zoning district where located. Maximum sales process for low income units must be priced in accordance with the low income mortgage payment affordable to a household earning the US Department of HUD's determination of low income for the Town.

E. HEIGHT LIMIT EXEMPTIONS

Includes a cross reference of the provisions for determination of height in Section <>, Rules of Measurement.

1.7.6. ALTERNATIVE EQUIVALENT COMPLIANCE**A. ALTERNATIVE PLANS**

Allows applicants to provide alternatives for certain site design standards such as landscaping, parking, and lighting when particular site considerations do not allow for the placement or use in the ordinance. Applicant can provide more parking than is permitted or fewer parking spaces than are required based on a parking study or other site features. Also allows for alternative forms of parking lot surfacing. It allows applicants to deviate from required landscaping stocking or placement requirements based on site conditions, subject to some form of mitigation. And it also may allow an applicant to deviate from maximum lighting heights or maximum illumination values at lot lines based on site conditions or mitigation.

B. STORMWATER CONTROL MEASURES AS SITE AMENITIES

Allows certain stormwater control measures to be credited towards mandatory open space set-aside requirements in cases where such measures are configured as site amenities instead of as simply utility features.

C. RETENTION OF EXISTING TREES

Includes standards that provide accelerated credit towards required landscaping material stocking provisions in cases where existing trees are retained during and after construction.

D. MURALS AS WALL SIGNAGE

Encourages the use of murals as allowable forms of wall signs by permitting a mural to convey a commercial message provided it is included within the context of public art, as determined by Town Council.

E. PROVISION OF GATHERING SPACE

Allows certain forms of gathering space, like roof gardens, rooftop seating, sidewalk dining or seating areas, atriums open to the public, public art, and similar features to be credited towards open space set-aside requirements.

1.7.7. SUSTAINABLE DEVELOPMENT INCENTIVES

This is a voluntary approach to incorporating more sustainable development approaches such as low impact development configurations where not already required, avoidance of mass grading, inclusion of elevators serving multi-family structures, and similar approaches by incorporating incentives (like density bonuses and dimensional reductions for doing so). The section includes a cross reference to the summary table of allowable incentives and the associated minimum number of sustainable development features that must be integrated into the development in order to take advantage of allowable incentives located in new Chapter 6, Standards. Sustainable development features are organized into a series of two different schedules, based on type of feature and approximate cost, and include details on how the Town will determine compliance with required provision. While voluntary, failure to provide sustainable development features after having taken advantage of all allowable incentives shall be a violation of this Ordinance.

§ 1.8 PURPOSE AND INTENT OF ORDINANCE

This section establishes a set of purpose and intent statements inclusive of those in the General Statutes as well as language from the current Code (Section 153, Subdivisions and Section 154 Zoning), and the Comprehensive Plan and other applicable adopted policy guidance. Most typical purpose and intent statements address protection of health, safety, and welfare, as well as preserving light and air, and so forth, along with provisions related to growth, environmental protection, promoting beneficial employment, addressing nonconforming development, ensuring user-friendly review procedures, and why flexibility is incorporated into the Ordinance.

§ 1.9 SEVERABILITY

Clarifies that in the event one or more sections of the UDO is repealed by a court of competent jurisdiction, the balance of the UDO is severed and shall remain in effect.

§ 1.10 TRANSITIONAL PROVISIONS⁴

⁴ This is a new section that clarifies how applications and other kinds of development already in progress upon the effective date of the new UDO are addressed.



This is section that clarifies how applications, approvals, nonconformities, and similar aspects in place at the time of adoption of the new UDO are addressed. Based on Session Law 2024-57, the recommended approach is to consider any existing nonconformities in place prior to the effective date to be conforming (so these do not have to be tracked separately from nonconformities that may only be established via landowner consent after adoption).

1.10.1. APPLICATIONS

A. PRIOR APPROVAL

Describes how applications approved prior to adoption of the UDO are handled in accordance with permit choice provisions in NCGS§160D-108. Clarifies that applicants seeking to proceed under the UDO must file a written notice of intent to do so with the Town.

B. PENDING APPROVAL

01. COMPLETE APPLICATIONS

Clarifies that these kinds of applications are treated the same as approved applications.

02. FILED, BUT NOT COMPLETE

These applications are not treated as complete applications and are not eligible for permit choice provisions extended to approved or complete applications.

C. EXISTING NONCONFORMITIES

Existing nonconformities in place prior to the effective date of the new UDO become conforming upon adoption of the new UDO.

D. EXISTING USES NOW REQUIRING A SPECIAL USE PERMIT

Clarifies that use types that were formerly permitted by right but that now require approval of a special use permit under the UDO shall be considered as having special use permit approval, but that any changes to the existing use, structure, or lot after the effective date of the UDO shall require approval of a special use permit and full compliance with the UDO provisions in place at the time.

E. VIOLATIONS

Prior violations shall continue to be violations (unless the rules have changed in ways that render violation lawful). Note that some local governments also anticipate amnesty for existing violations not under active enforcement so that such violations do not have to be tracked after adoption. One reason for this approach is to avoid concerns over nonconformance following correction of an enforcement action and consent.

§ 1.11 VESTED RIGHTS

This section carries forward Chapter 155 of the Mills River Code of Ordinances and aligns with NCGS §160D-108.

1.11.1. INTENT

This section is intended to implement NCGS§160D-108 with respect to the establishment of common law, statutory, and zoning vested rights for landowners or applicants who have received a development approval from the Town.

1.11.2. DEFINITION OF VESTED RIGHTS

As used in this Ordinance, a vested right is defined as the right to undertake and complete the development and use of land under the terms and conditions of a development approval issued by the Town.

1.11.3. EFFECT OF A VESTED RIGHT

A. Development approvals that have an established vested right in accordance with NCGS§160D-108 and this section shall preclude any action by the Town that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property authorized by the development approval, except where a change in State or federal law occurs and has a retroactive effect on the development or use.



B. Except when subject to sub-section (C) below, amendments to this Ordinance shall not be applicable to any of the following development approvals after they are vested:

- 01.** Building or uses of land for which a development permit application has been submitted and approved in accordance with this Ordinance and NCGS§143-755;
- 02.** Subdivisions of land for which a subdivision application has been submitted and approved in accordance with this Ordinance and NCGS§143-755;
- 03.** A site-specific vesting plan approved in accordance with this Ordinance and NCGS§160D-108.1;
- 04.** A multi-phase development approved in accordance with this Ordinance and NCGS§160D-108; and
- 05.** A vested right established by the terms of an approved development agreement in accordance with this Ordinance and Article 10 of Chapter 160D of the North Carolina General Statutes.

C. Amendments to this Ordinance shall apply to vested development approvals if:

- 01.** A change to State or federal law occurs and has a retroactive effect on the development or use;
- 02.** There is written consent to be subject to the amendment by the landowner;
- 03.** The development approval expires; or
- 04.** The development is not undertaken or completed in accordance with the approval.

1.11.4. ESTABLISHMENT OF A VESTED RIGHT

A vested right may only be established following an approval of a development application in accordance with this section and the applicable requirements in the North Carolina General Statutes. The following sub-sections detail the ways in which a vested right may be established.

A. COMMON LAW VESTED RIGHTS

01. DEFINED

A common law vested right establishes the right to undertake and complete the development and use of property on substantial expenditures in good faith reliance on a valid governmental approval. Such approvals include, but are not limited to:

- a.** Zoning Compliance Permits;
- b.** Sign Permits;
- c.** Building Permits;
- d.** Special Use Permits; and
- e.** Preliminary Plats.

02. ESTABLISHMENT

A request for a determination of a common law vested right will be reviewed and acted upon by the Planning Director in accordance with Section <>, Determination.

03. APPLICATION

The applicant shall provide satisfactory proof that each of the following standards are met in order to establish a common law vested right:

- a.** The applicant has, prior to the adoption or amendment of an ordinance, made expenditures or incurred contractual obligations amounting to 25 percent or more of the total project cost not including any land costs; and
- b.** The obligations and/or expenditures were incurred in good faith; and
- c.** The obligations and/or expenditures were made in reasonable reliance on and after the issuance of a valid governmental permit, if such permit is required, provided however, that a mistakenly-issued governmental permit shall not give rise to a common law vested right; and
- d.** The amended or newly adopted ordinance is a substantial detriment to the applicant.

04. RELATIONSHIP TO OTHER VESTING FORMS OF VESTING

Development subject to other forms of vesting as authorized in this Ordinance shall not also be subject to common law vesting.



B. ISSUANCE OF A BUILDING PERMIT⁵

Issuance of a Building Permit by Henderson County in accordance with the applicable standards in this Ordinance and applicable State law shall entitle the Building Permit holder to vested rights to develop the proposal as identified in the approved Building Permit, subject to the following standards:

- 01.** The applicant shall not be required to file for a determination to establish common law vested rights or maintain vested status during the time period for which the Building Permit remains valid.
- 02.** The owner has a vested right only as long as the Building Permit remains valid and only for the work approved by the Building Permit.
- 03.** The Building Permit shall expire six months after issuance if work has not substantially commenced.
- 04.** The Building Permit shall expire after work commences if there is a 12-month discontinuance of work.
- 05.** The Building Permit may be revoked for any substantial departure from the approved plans, failure to comply with any applicable local or State law (not just the building code and UDO), and any misrepresentations made in securing the permit.
- 06.** Building Permits mistakenly issued may be revoked.
- 07.** If the Building Permit expires or is revoked, the vested right based on it is also lost.

C. STATUTORY VESTED RIGHTS

01. DEFINED

Approval of a development permit, other than a Building Permit, for a building, use of a building, use of land, or subdivision of land shall establish a statutory vested right that entitles the permit holder to develop the proposal as identified in the approved permit. Such approvals shall include, but not be limited to:

- a.** A Site Plan that does not qualify as a site-specific vesting or multi-phase development plan;
- b.** A Subdivision that does not qualify as a site-specific vesting or multi-phase development plan;
- c.** A Zoning Compliance Permit; or
- d.** A Sign Permit.

02. STANDARDS

Statutory vested rights are established subject to the following standards:

- a.** Issuance of a Building Permit is not considered a development permit, and the vesting term shall only continue in accordance with Section **<>**, Issuance of a Building Permit.
- b.** A development permit is valid for one year after issuance, unless otherwise specified by statute, and the applicant is vested in that permit for the term of validity.
- c.** If the applicant fails to substantially commence authorized work within one year, then the development permit and vesting expire.
- d.** Vesting shall continue provided there is a substantial commencement of authorized work under a valid development permit.
- e.** The development permit and vesting shall expire after substantial work commences if there is a 12-month period of intentional and voluntary discontinuance of work, unless otherwise specified by statute.

D. SITE-SPECIFIC VESTING PLAN

01. DEFINED

- a.** For the purposes of this section, a Site-Specific Vesting Plan is defined as a plan of land development submitted to the Town for purposes of obtaining approval.
- b.** A Site-Specific Vesting Plan must provide, with reasonable certainty, all of the following:
 - i.** The boundaries of the development;
 - ii.** Topographic and natural features affecting the site;
 - iii.** The approximate location of proposed buildings, structures, and other improvements;
 - iv.** The approximate dimensions, including height, of proposed buildings and other structures;
 - v.** The approximate location of all existing and proposed infrastructure on the site, including water, sewer, streets, and pedestrian ways;

⁵ NOTE: All terminology used in this section is defined in Ch.8, Word Usage.



- vi. The type or types of proposed land uses; and
- vii. The density or intensity of development.

c. A Variance, Sketch Plan, Concept Plan, or any other document that fails to describe with reasonable certainty the type and intensity of use for a specific lot or lots of property shall not constitute a Site-Specific Vesting Plan.

d. The following development approvals constitute a Site-Specific Vesting Plan:

- i. A Concept Plan associated with a Conditional Rezoning application;
- ii. A Preliminary Plat for a Major Subdivision;
- iii. Site Plans; and
- iv. A Concept Plan associated with a Special Use Permit

02. ESTABLISHMENT

- a. Development approvals identified by this Ordinance as Site-Specific Vesting Plans shall be granted a vested right to develop for a maximum period of two years from the date of the approval, provided the applicant has requested, in writing, that a vested right is sought, and provided the development subject to the approval complies with all applicable terms and conditions.
- b. In cases where a Concept Plan is associated with an approved Conditional Rezoning, the conditional zoning designation shall run with the land but the vesting status of the associated Concept Plan shall be in accordance with the standards for any other Site-Specific Vesting Plan or Multi-Phase Vesting Plan, as appropriate.

03. EXTENSION

- a. The two-year vesting duration of a Site-Specific Vesting Plan may be extended up to five years from the date of the approval only in accordance with Section <>, Vested Rights Certificate.
- b. Site-Specific Vesting Plans meeting the definition of a Multi-Phase Development shall be vested in accordance with Section <>, Multi-Phase Development Plan.

E. MULTI-PHASE DEVELOPMENT PLAN

- 01. A Multi-Phase Development Plan that occupies at least 25 acres of land area, is subject to a master plan that depicts the types and intensities of all uses as part of the approval and includes more than one phase shall be considered as a Multi-Phase Development Plan that is granted a vested right to develop for a period of seven years from the date of approval of the first Site Plan associated with the development.
- 02. Vesting shall commence upon approval of the Site Plan for the first phase of the development.
- 03. The vested right shall remain in effect provided the development does not expire and provided it complies with all the applicable terms and conditions of the approval.

F. DEVELOPMENT AGREEMENT

A Development Agreement shall be vested in accordance with the vesting term identified in the Development Agreement.

G. VOLUNTARY ANNEXATION

- 01. Any petition for Annexation filed with the Town in accordance with Section <>, Annexation, shall contain a signed statement from the applicant indicating if vested rights on the properties subject to the petition have been established in accordance with NCGS§160D-108.
- 02. A statement that declares that no zoning vested right has been established or the failure to provide a statement declaring whether or not vested rights have been established, shall result in a termination of any vested rights established prior to Annexation.

1.11.5. TERMINATION OF A VESTED RIGHT

A. GENERALLY

- 01. Vested rights established in accordance with this Ordinance shall run with the land.
- 02. In no instance shall vesting status extend beyond the maximum duration for the type of development application approval.
- 03. In no instance shall the vesting status of a development approval continue after the development approval expires or if the development approval is revoked for failure to comply with the terms of the approval or of this Ordinance.
- 04. In no instance shall the vesting status of a development approval continue after it is determined that the development approval was based upon intentional inaccurate information or material misrepresentations.



- 05.** In no instance shall vested rights continue if the Town Council makes a formal determination, after a duly noticed public hearing, that natural or man-made hazards resulting from the development would result in a serious threat to public health, safety, or welfare if the development were to be continued or completed.
- 06.** In the event of commenced but uncompleted work associated with a development approval, vested rights shall expire within 24 months of the discontinuance of work. This 24-month period shall not include the time associated with work stoppage resulting from an appeal or litigation.

B. LIMITATIONS

- 01.** The establishment of a vested right does not preclude the Town's application of overlay zoning district requirements or other development regulations that do not affect the type of land use, its density, or intensity.
- 02.** A vested right shall not preclude the application of changes to building, fire, plumbing, electrical, or mechanical codes made after the development approval where a vested right was established.



CHAPTER 2.

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TOC/Key changes



§ 2.1 CHAPTER INTRODUCTION

This section outlines how the Applications chapter is organized into a summary table, a complete listing of the review authorities, a set of basic or standardized review procedures the Town will follow when processing applications, and the specific application procedures themselves. It also explains the uniform structure of each application procedure and provides a key to the symbols and colors in each application's procedural flow chart.

§ 2.2 APPLICATION SUMMARY TABLE⁶

The application summary table identifies the 32 different development applications in the UDO, review authorities for each application type, a cross-reference to the relevant UDO section, and whether a pre-application conference is required or optional. This table clarifies who hears appeals of decisions and indicates which decisions require a public hearing and the type of hearing, whether legislative or evidentiary.

TABLE 6: APPLICATION SUMMARY TABLE

Type of Action: C=Comment; R=Recommendation; D=Decision; “-”=Not Applicable

Pre-Application Conference: M=Mandatory; O=Optional; “-” =Not Applicable

Type of Hearing: L=Legislative; E=Evidentiary; “-” =Not Applicable

Appeal Authority: BOA=Board of Adjustment; SC=Superior Court for Henderson County; NC=NC Dept of Insurance or Residential Code Council

[#] = Table Note (see end of table)

APPLICATION TYPE ⁷	PRE-APPLICATION CONFERENCE	REQUIRED PUBLIC HEARING TYPE	REVIEW AUTHORITY					APPEAL AUTHORITY	UDO REFERENCE
			TECHNICAL REVIEW COMMITTEE	PLANNING DIRECTOR	PLANNING BOARD	TOWN COUNCIL	BOARD OF ADJUSTMENT		
Administrative Adjustment	-	-	-	D	-	-	-	BOA	<>
Alternative Plan	O	-	C	D	-	-	-	BOA	<>
Annexation	O	L	-	C	-	D	-	SC	<>
Appeal	-	E	-	-	-	-	D	SC	<>
Building Permit	Decided by Henderson County Building Department								
Certificate of Compliance	-	-	-	D	-	-	-	BOA	<>
Certificate of Occupancy [1]	Issued by Henderson County Building Department – CO Release Decided by TOMR								
Conditional Rezoning [2]	M	L	C	-	R	D	-	SC	<>
Conservation Subdivision [3]	M	-	C	D	-	-	-	BOA	<>
Construction Drawings	O	-	D	-	-	-	-	BOA	<>
Conventional Rezoning	O	L	-	C	R	D	-	SC	<>
Determination	-	-	-	D	-	-	-	BOA	<>
Development Agreement	M	L	-	R	-	D	-	SC	<>

⁶ NOTE: Additional discussion is necessary regarding Stormwater Permits, Grading Permits, Watershed Permits, and whether or not the Town wishes to have a “Water-related Variance” procedure to address variances related to watershed rules floodplain rules, and stormwater rules.

⁷ NOTE: The Town will likely need to prepare new or updated application forms for each procedure.



TABLE <>: APPLICATION SUMMARY TABLE

Type of Action: C=Comment; R=Recommendation; D=Decision; “.”=Not Applicable

Pre-Application Conference: M=Mandatory; O=Optional; “.” =Not Applicable

Type of Hearing: L=Legislative; E=Evidentiary; “.”=Not Applicable

Appeal Authority: BOA=Board of Adjustment; SC=Superior Court for Henderson County; NC=NC Dept of Insurance or Residential Code Council

[#] = Table Note (see end of table)

APPLICATION TYPE ⁷	PRE-APPLICATION CONFERENCE	REQUIRED PUBLIC HEARING TYPE	REVIEW AUTHORITY					APPEAL AUTHORITY	UDO REFERENCE
			TECHNICAL REVIEW COMMITTEE	PLANNING DIRECTOR	PLANNING BOARD	TOWN COUNCIL	BOARD OF ADJUSTMENT		
Driveway Permit [4]	.	.	.	D	.	.	.	BOA	<>
Exempt Subdivision	.	.	.	D	.	.	.	BOA	<>
Fee-in-Lieu	O	.	C	D	.	.	.	BOA	<>
Final Plat	.	.	C	D	.	.	.	BOA	<>
Floodplain Hazard Permit	O	.	.	D	.	.	.	BOA	<>
Limited Subdivision	.	.	.	D	.	.	.	BOA	<>
Minor Subdivision	M	.	.	D	.	.	.	BOA	<>
Performance Guarantee	O	.	.	D	.	.	.	BOA	<>
Preliminary Plat	M	.	R	D	.	.	.	BOA	<>
Sign Permit	.	.	.	D	.	.	.	BOA	<>
Site Plan	O	.	R	D	.	.	.	BOA	<>
Special Use Permit [2]	M	E	C	.	.	.	D	BOA	<>
Temporary Use Permit	.	.	.	D	.	.	.	BOA	<>
Text Amendment	.	L	.	C	R	D	.	SC	<>
Traffic Impact Analysis [5]	M	.	C	D	.	.	.	BOA	<>
Transfer Plat	O	.	.	D	.	.	.	BOA	<>
Tree Clearing Certificate	O	.	.	D	.	.	.	BOA	<>
Variance	O	E	D	SC	<>
Vested Rights Certificate	O	E	.	.	.	D	.	SC	<>
Zoning Compliance Permit	.	.	.	D	.	.	.	BOA	<>

NOTES:

[1] This includes temporary Certificates of Occupancy.

[2] Required Concept Plans must first be reviewed by TRC prior to consideration by another review authority.

[3] Approval of a Conservation Subdivision entitles the applicant to submit a Preliminary Plat.

[4] The Planning Director shall review and comment on driveway permits associated with NCDOT streets.

[5] The Planning Director either accepts or does not accept a TIA; these types of applications are neither approved nor denied.



§ 2.3 REVIEW AUTHORITIES

This section identifies each review authority, their composition, and powers and duties. There is also a section dealing with general requirements for all review authorities.

2.3.1. AUTHORITIES ESTABLISHED

This section enumerates all of the review authorities with decision-making responsibilities under the UDO.

2.3.2. GENERAL REQUIREMENTS FOR ALL AUTHORITIES

A. OATH OF OFFICE

Sets out the oath of office each review authority member must take (Art. 6 Sec. 7 of the NC Constitution).

B. CONFLICT OF INTEREST

Sets down the range of conflict-of-interest provisions for legislative and evidentiary decision-making, as well as the conflict statements applied to administrative decision makers.

C. MEETINGS

01. ADVERTISING

This section clarifies that all meetings of the Town Council, Planning Board, and Board of Adjustment shall be subject to the advertising requirements for adjacent landowners and the general public in NCGS §§ 160D-406, 160D-601, 160D-602, 160D-1005, as well as the standards NCGS §143-318.12 pertaining to open meeting laws, where appropriate.

02. MINUTES AND RECORDS

Requires accurate minutes of all meetings (even those with closed meetings).

03. OPEN TO PUBLIC

All meetings of review authorities shall be open to the public except for closed or executive sessions conducted by the Town Council in accordance with NCGS §143-318.11.

D. RULES OF PROCEDURE

Clarifies that review authority rules of procedure, if adopted, shall be maintained on the Town's web site, and identifies the Town staff member responsible for their maintenance.

2.3.3. TOWN COUNCIL

This section recognizes the Town Council, who is established in accordance with the Town Charter, sets out their powers and duties, and clarifies how appeals of their decisions are considered. Carry forward from Section 154-180 through 182 of the current Zoning Ordinance. As stated in the Code Diagnosis, remove Planning Board from the Special Use Permit review process.

A. POWERS AND DUTIES

Sets out the powers and duties of the Town Council under the UDO via cross reference to the Application Summary Table, including removal of the Town Council from Variances.

B. LEGISLATIVE CHALLENGE TO COURTS

Sets out the process for a person with standing to challenge a legislative decision of the Town Council (like a rezoning) with the Superior Court for Henderson County. The section differentiates the process and timelines for appeals of decisions on zoning map amendments and development agreements or text amendments.

C. QUASI-JUDICIAL APPEAL TO COURTS (IF NEEDED)

Sets out the process for a person with standing to challenge a quasi-judicial decision of the Town Council (such as Vested Rights Certificates) with the Superior Court for Henderson County.

2.3.4. BOARD OF ADJUSTMENT

This section carries forward Section 154-175 through 179 of the current Zoning Ordinance.

A. AUTHORITY



Sets out the statutory authority for the Board of Adjustment (NCGS§160D-302).

B. COMPOSITION

Sets out the composition of the Board.

C. POWERS AND DUTIES

Sets out the powers and duties of the Board of Adjustment under the UDO via cross reference to the Application Summary Table. As mentioned in the Code Diagnosis, this Annotated Outline suggests the removal of Minor Special Use Permits. The Board of Adjustment will hear all quasi-judicial matters (such as Variances and Special Use Permits). In addition, the Board of Adjustment also hears Reasonable Accommodation requests under the U.S. Fair Housing Act and serves as the Watershed Review Board.

D. QUASI-JUDICIAL APPEAL TO COURTS

Sets out the process for a person with standing to challenge a quasi-judicial decision of the Board of Adjustment with the Superior Court for Henderson County. The section differentiates the process and timelines for filing an appeal.

E. RULES OF PROCEDURE⁸

01. TERMS

Sets out member terms, leadership, and provisions for termination.

02. RULES

References to the BOA's adopted rules of procedure, where they may be obtained, and which Town staff member is responsible for maintaining them.

03. QUORUM

Clarifies quorum requirements (at least four members).

04. VOTING

Sets out the voting requirements in accordance with State statute. The conflict-of-interest provisions are relocated to the General Requirements for All Review Authorities section.

2.3.5. PLANNING BOARD

This section carries forward portions of Chapter 30 from the Town Code. Planning Board attendance requirements are relocated to the Rules of Procedure.

A. AUTHORITY

Sets out the statutory authority for the establishment of a Planning Board (NCGS§ 160D-361).

B. COMPOSITION

This section sets out the composition of the Board, which is seven members.

C. POWERS AND DUTIES

Sets out the powers and duties of the Planning Board under the UDO via cross reference to the Application Summary Table, as well as responsibility for preparation and update of the Town's Comprehensive Plan.

D. RULES OF PROCEDURE⁹

01. TERMS

Sets out terms, leadership, and provisions for termination.

02. RULES

References the Planning Board's adopted rules of procedure, where they may be obtained, and which Town staff member is responsible for maintaining them.

03. QUORUM

Clarifies quorum requirements (at least four members).

⁸ NOTE: Other operational and internal procedural provisions should be in the Rules of Procedure document.

⁹ May need to update Chapter 30 of Town Code as well as Planning Board Charter and Rules of Procedures for consistency.



04. VOTING

Sets out the voting requirements. The conflict-of-interest provisions are relocated to the General Requirements for All Review Authorities section.

2.3.6. TECHNICAL REVIEW COMMITTEE

This is a new group established in accordance with NCGS§160D-306. The Technical Review Committee (TRC) is a group of Town staff members, public utility partners, and public safety partners responsible for review of Site Plans, Construction Drawings, Preliminary Plats, and similar technical applications that is chaired by the Planning Director. The TRC should meet either on a regular schedule, or as needed at the discretion of the Planning Director.

A. COMPOSITION

This section describes the composition of the TRC, which will include the Planning Director, utility representative, public safety representative, and other technical staff appointed by the Town Manager. It could also include representatives from outside agencies (like NCDOT or NCDCR). Inclusion of an MPO representative is a common best practice.

B. POWERS AND DUTIES

Sets out the powers and duties of the Technical Review Committee under the UDO via cross reference to the Application Summary Table. The TRC also conducts pre-application conferences.

C. RULES OF PROCEDURE

Clarifies the rules of procedure for the TRC, including the ability of the public to attend their meetings. The Statutes do not require the Town to permit the public's attendance at a TRC meeting, though allowing it is a best practice. TRC meetings are not subject to the open meeting laws in NCGS§143-318.12. TRC meetings could be conducted on a regular schedule or on an as-needed basis, as determined by the Chair.

2.3.7. TOWN STAFF

A. PLANNING DIRECTOR

01. DELEGATION

The Planning Director shall serve as the Zoning Administrator, Subdivision Administrator, Flood Hazard Administrator, and as the Watershed Administrator, unless delegated to another staff member.

02. POWERS AND DUTIES

The Planning Director shall have the responsibilities for decision making, recommendations, and comments on applications in accordance with the Application Summary Table, as well as the following other powers and duties:

- a. Preside over the Technical Review Committee;
- b. Conduct pre-application conferences;
- c. Enforce the provisions of this Ordinance, including entering any building, structure, or premises, as provided by law, to perform any duty imposed by this Ordinance;
- d. Review and interpret Zoning Map boundaries;
- e. Apply remedies for violations of this Ordinance;
- f. Maintain the Official Zoning Map and related materials;
- g. Process development applications and prepare staff reports as indicated in this Ordinance;
- h. Maintain public records pertaining to this Ordinance and to make those records available to members of the public upon request;
- i. Maintain rules of procedures for each review authority in this Ordinance;
- j. Provide technical assistance to review authorities, upon request; and
- k. Carry out any other powers and duties delegated by the Town Council that are consistent with this Ordinance and State law.



§ 2.4 REVIEW PROCESSES

This section includes the basic steps that the Town will use to process all application types under the UDO. The subsequent section sets out each of the 32 specific application procedures.

2.4.1. OVERVIEW

- A.** This section describes the standard procedural steps and rules generally applicable to every development application reviewed under this Ordinance, except where identified in the particular application type in Section <>, Specific Application Procedures.
- B.** Sub-sections are listed in chronological or sequential order as they relate to the application process rather than being listed in alphabetical order.

2.4.2. PURPOSE AND INTENT

It is the intent of this section to establish a uniform set of processes to foster greater efficiency and predictability for applicants, residents, staff, and elected and appointed officials. The standards in this section are not intended as a substitute for the application of judgement or discretion by a review authority when necessary.

2.4.3. PRE-APPLICATION CONFERENCE¹⁰

A. PURPOSE

The purpose of a pre-application conference is to provide an opportunity for the applicant to learn about the submittal requirements, procedures, and standards applicable to a particular development application. A pre-application conference is also an opportunity for Town staff to become familiar with, and offer preliminary comments about the scope, features, and impacts of the proposed development, as it relates to the standards in this Ordinance.

B. APPLICABILITY

01. REQUIRED, OPTIONAL, OR NOT APPLICABLE

- a.** A pre-application conference is required before submittal of some applications, in accordance with Table <>, Application Summary Table.
- b.** Pre-application conferences are optional for other applications, while others do not have a pre-application conference associated with them, as identified in Table <>, Application Summary Table.
- c.** When a pre-application conference is not required, applicants may contact Town staff with questions about any development application procedure.
- d.** There are no limits on the number of pre-application conferences that may be conducted, though the Town may charge a pre-application conference fee for the third or any subsequent pre-application conference regarding the same project or development site.

C. DISCUSSIONS NON-BINDING

Discussions at a pre-application conference are not binding on the Town and do not constitute filing or review of an application.

D. SCHEDULING

Applicants for a pre-application conference may schedule the conference by contacting the Planning Department by email or phone.

E. SUBMITTAL REQUIREMENTS

- 01.** Pre-application conferences for development applications that include a Conservation Subdivision, Preliminary Plat, or Site Plan shall require the applicant to provide a generalized sketch of the development as part of the request to schedule a pre-application conference. Generalized site sketches do not need to be professionally prepared, and are not required to be to scale.
- 02.** For other types of development applications, the applicant may submit supplemental information regarding their application, as appropriate, with their request for a pre-application conference, though there is no requirement to submit any material in advance of the conference.

¹⁰ This section includes a complete version of the Pre-Application Conference section as it would appear in the new UDO.



03. Material submitted during a pre-application conference is a matter of public record but is not binding on the Town or the applicant.

F. PROCEDURE

- 01.** Based upon the scope and complexity of the proposal, a pre-application conference may take the form of a telephone call, video conference call, or in-person meeting at Town Hall, as determined by the Planning Director.
- 02.** The pre-application conference shall include a presentation of the proposal by the potential applicant, including an overview of any submitted materials.
- 03.** Town staff or other TRC members, as appropriate, will identify the relevant Town standards and applicable policy guidance and will provide an overview of the appropriate application submittal and review process.
- 04.** Pre-application conferences are conducted with some or all members of the Technical Review Committee, as determined by the Planning Director.

G. EXPIRATION

Applications subject to a mandatory pre-application conference shall be filed and accepted for review with the Town within six months of the conclusion of the pre-application conference or an additional pre-application conference shall be conducted.

H. EFFECT

- 01.** When required, completion of a pre-application conference entitles an applicant to take the next step in the application process.
- 02.** In cases where multi-part applications require more than one pre-application conference, an applicant may choose to conduct a single pre-application conference for all portions of a multi-part application or may choose to conduct individual pre-application conferences prior to filing of individual portions of the multi-part application.
- 03.** Applications subject to a mandatory pre-application conference may not be filed until after the pre-application conference has been conducted.

2.4.4. NEIGHBORHOOD INFORMATION MEETINGS

This section sets out the requirements for how neighborhood meetings are to be conducted in cases where an applicant decides to conduct one or when directed to do so by the Town Council. Neighborhood meetings are mandatory prior to the filing of an Unlimited Conditional Rezoning application, and are optional for other types of applications. The standards clarify the required notice, timing, location, content, and disposition elements. The standards clarify that neighborhood information meetings are the responsibility of an applicant, and that Town staff may attend as observers or in order to answer questions about the UDO or Town policy only.

2.4.5. APPLICATION FILING¹¹

A. AUTHORITY TO FILE APPLICATIONS¹²

- 01.** Unless expressly stated otherwise in this Ordinance, development applications associated with a particular lot or site reviewed under this Ordinance shall be filed by the landowner, a contract purchaser with the owner's consent, or other person having a recognized property interest in the land on which development is proposed with the owner's consent.
- 02.** Third-party applications to downzone land shall be prohibited.
- 03.** Applications for a Conditional Rezoning must be signed by all landowners.
- 04.** Applications for development on land owned by a corporate entity must include the signer's title and company name.
- 05.** Applications for amendments to the text of this Ordinance shall only be initiated in accordance with Section <>, Text Amendment.
- 06.** Nothing shall limit the ability of an applicant to digitally complete and sign any development application provided in a digital format by the Town.

B. APPLICATION CONTENT

¹¹ This section sets out the application filing section as it will appear in the UDO.

¹² Add in language from existing Section 115 of the zoning ordinance to address applicants assigning of agents for procedural matters.



The Town shall establish development application content and forms, which shall be maintained by the Planning Director. Applications may only be completed on the forms provided by the Town.

C. APPLICATION FEES

- 01.** Review of development applications in accordance with this section shall require the payment of the application fees upon submittal of an application.
- 02.** The Town Council shall establish application fees and may amend and update those fees as necessary.
- 03.** Application fees shall be published by the Town in a fee schedule.
- 04.** Fees shall cover the costs of review, including public notification, as required.
- 05.** No action shall be taken on an application and no application approval shall be issued until all required application fees are paid in full.

D. APPLICATION FILING

- 01.** An application shall not be considered to be submitted until determined to be complete in accordance with Section <>, Determination of Application Completeness.
- 02.** No application shall be reviewed or decided until after it is determined to be complete.
- 03.** The provisions in Section <>, Permit Choice, shall only apply to applications that are submitted, not just filed.
- 04.** Multiple concurrent applications may be filed and reviewed in accordance with Section <>, Simultaneous Processing.

E. BURDEN OF PRESENTING COMPLETE APPLICATION

The burden of presenting and maintaining a complete application shall be solely upon the applicant.

F. DETERMINATION OF APPLICATION COMPLETENESS

Upon development application filing, the Planning Director shall determine, within a reasonable period of time, whether the application is complete or incomplete. A complete application is one that:

- 01.** Contains all information and materials identified in this Ordinance and all supporting documentation, as required for submittal of the particular type of application;
- 02.** Is in the form and number of copies required by the Town;
- 03.** Is legible and printed to scale, where appropriate;
- 04.** Is signed by the person(s) with the authority to file the application;
- 05.** Includes information in sufficient detail to evaluate whether or not the application complies with the applicable review standards in this Ordinance;
- 06.** Is accompanied by the fee established for the particular type of application, when applicable;
- 07.** Includes material associated with a pre-application conference, if one is required; and
- 08.** Occurs only after conduct of a neighborhood information meeting, if one is required.

G. APPLICATION INCOMPLETE

- 01.** If the application is incomplete, the Planning Director shall notify the applicant of the deficiencies in writing. The applicant may correct the deficiencies and resubmit the application for completeness determination in accordance with Section <>, Application Filing.
- 02.** Following receipt of a notice of application deficiency by the Planning Director, an applicant may revise and resubmit the application or the applicant may file a written request to process the incomplete application.
- 03.** Failure of an applicant to submit missing or deficient portions of an application or file a written request to process the incomplete application within 60 days of delivery of a written notice of application deficiency shall render the application abandoned. Application fees associated with an abandoned application are nonrefundable.
- 04.** In no instance shall an application that is abandoned or subject to a written request to process an incomplete application be considered a complete application subject to the protections described in Section <>, Permit Choice.

H. APPLICATION COMPLETE

- 01.** On determining that the application is complete, it shall be considered as submitted, and the Town shall notify the applicant and commence review in accordance with the procedures and standards of this Ordinance.
- 02.** Nothing shall preclude the Planning Director or a review authority from re-evaluating an application for completeness in the event application inadequacies are revealed at a date subsequent to an application being declared complete. Such re-review shall not invalidate options or protections to a complete application extended under Section <>, Permit Choice.



I. TIMING

Applications indicated for review by the Planning Board, Board of Adjustment, or Town Council shall only be considered in accordance with the Town's adopted application review schedule.

2.4.6. PERMIT CHOICE

This section sets out the rules to follow in cases where the text of the UDO or another Town requirement changes after an application has been submitted (deemed complete) but before a decision has been made.

2.4.7. STAFF REVIEW AND ACTION

This section describes the steps taken by Town staff after an application has been deemed complete. It includes distribution of application materials to appropriate personnel, initial staff review and notification to the applicant of deficiencies, preparation of a staff report if the application is to be heard by another review authority (though a staff report may be prepared for applications decided by Town staff, at the discretion of the Town), provision of a recommendation (as appropriate), clarification of why a proposed application may not comply with the UDO and the changes that would help it comply, discussion of fiscal aspects of the proposed development, as appropriate, and distribution of the staff report and application materials to the applicant and all other appropriate persons. In cases where the application is one decided by Town staff, the decision shall be made to approve the application, disapprove the application, or remand the application to the applicant for further revision.

2.4.8. PUBLIC NOTICE¹³

This section sets out the basic rules for the provision of required public notice with respect to a legislative or evidentiary public hearing (whether published, mailed, or posted). It includes a summary table of the types of applications requiring notice and the types of notice to be provided. It also includes details on required notice content and that minor defects in provided notice shall not impair the notice or invalidate the proceedings.

2.4.9. PUBLIC HEARINGS AND MEETINGS

This section explains the distinctions between public meetings, legislative hearings, and evidentiary (quasi-judicial) hearings. It covers the rules of procedure, voting, application revision, and remand with regard to legislative hearings. It also covers the rules of evidence, ex parte communication, voting, and application revision associated with evidentiary hearings. The section also describes the process followed during public meetings (which do not require notice to adjacent landowners under NCGS Chapter 160D, but are subject to the general public notification rules under the "open meetings law" in NCGS§143-318.12).

2.4.10. CONDITIONS OF APPROVAL

This section clarifies the instances when conditions of approval may be applied (conditional zoning and quasi-judicial applications). It sets out the range of things a condition of approval may not incorporate (such as ownership status based on race or religion, minimum size of a dwelling unit, minimum value of buildings, exclusions based on race or income, etc.), and clarifies that conditions must be in writing and agreed to in writing by the applicant to be binding. Conditions must also be commensurate or proportional to the anticipated impacts of the proposed development they are applied to.

2.4.11. WRITTEN NOTICE OF DECISION

This section clarifies that a notice of any decision on an application under the UDO shall be provided to the applicant in writing, along with the basic contents of the approval, its timing, and how copies may be obtained.

¹³ As a matter of best practice, we suggest the UDO provide required public notice only in accordance with the North Carolina General Statutes, and it clarify that the Town may, as a matter of policy, on a case-by-case basis, and in its sole discretion, provide additional public notice beyond that required by the General Statutes. Policy guidance regarding provision of notice beyond State minimums should not be listed in the UDO. In addition, we recommend removing the requirement for notice of Major Subdivision applications to adjacent landowners since these are ministerial application types that are either approved or denied based on consistency with the codified standards, and application of discretion regarding appropriateness or compatibility are discretionary and inappropriate as part of subdivision review. If the Town wishes to apply discretion to subdivision applications then they should be considered in accordance with a quasi-judicial procedure.



2.4.12. SIMULTANEOUS PROCESSING

- A.** Whenever possible, the Town shall process related development applications (e.g., a Site Plan and a Zoning Compliance Permit) simultaneously or concurrently where possible, subject to applicable sequency provisions in Section <>, Application Types.
- B.** In the event a permit or development approval is a prerequisite to another permit or development approval (e.g., Administrative Adjustment or Variance approval prior to a Site Plan approval), applications may not be filed until all prerequisite approvals are obtained.
- C.** Approval of one development application does not guarantee approval of any subsequent required development application.

2.4.13. EFFECT OF DEVELOPMENT APPROVAL

This section addresses assignment of a development application approval, clarifies that an approval is limited in scope to only the particular use, plan, or activity approved in the notice of decision, and that all prerequisite permits must be obtained before development may take place.

2.4.14. PHASED DEVELOPMENT

Nothing shall prohibit the construction of development in phases, sections, or portions, provided the development complies with the following:

- A.** Applications associated with phased development shall include plans that clearly identify each phase or stage, the location and extent of each phase or stage boundary, and the anticipated schedule of development (e.g., first stage, second stage, third stage, etc.).
- B.** Phased development may provide only the required public infrastructure or other required site features concurrently with the active phase(s) of the development.
- C.** Nothing shall limit the Town from requiring the establishment of public infrastructure or required site features in a physical location outside of the active phase(s) of development if such provision is necessary, in the sole discretion of the review authority, for the development to function as required.
- D.** Provision of a performance guarantee (see Section <>, Performance Guarantee) shall not be sufficient in cases where a review authority determines that required public infrastructure or required site features outside an active phase must be provided to ensure development functionality and/or public safety.

2.4.15. ABANDONMENT, CONTINUANCE, OR WITHDRAWAL

This section clarifies the rules pertaining to applicant requests for application abandonment, continuance or withdrawal, including how application fees are handled. The section also sets down the process for the Town to determine if an application has been abandoned, and the actions the Town will take on abandoned applications. While an applicant is free to withdraw their application at any time, the withdrawal provisions will differ based upon whether or not public notice has or has not been provided. The continuance provisions will detail how applicants may request delays in application consideration provided required public notice has not been provided. Requests for continuance after required public notice shall be decided by the applicable review authority.

2.4.16. APPLICATION AMENDMENT

This section clarifies that any application may only be amended in accordance with the procedure used for its establishment.

2.4.17. EXPIRATION OF APPROVAL

This section sets down the general rules for expiration of a development approval, including expiration within two years for failure of an applicant to achieve substantial commencement of work identified in the permit or maintain substantial progress towards completion of the work allowed under the permit. The section also clarifies that the maximum time period between approval and expiration is halted during appeals of the approval or litigation associated with the approval. Zoning Compliance Permits have an expiration of one year and shall be an exception to expirations and noted on the Application Summary Table.



§ 2.5 SPECIFIC APPLICATION PROCEDURES

This section of the UDO includes each of the 30+ different specific application types included in the Ordinance. Each application has a standardized structure with specified review criteria and a procedural flow chart. The Administrative Adjustment procedure below provides an example of how the review procedures will be organized. While there is discussion of each procedure included here, completion of the other application subsections will take place during the code drafting effort.

2.5.1. ADMINISTRATIVE ADJUSTMENT

A. PURPOSE AND INTENT

The purpose for this section is to establish a clear procedure and measurable review criteria for the administrative consideration of requests for minor deviations to certain numeric standards in this Ordinance (like zoning district dimensional standards, but not density). The intent of the procedure is to provide relief from practical difficulties in complying with the standards of this Ordinance. Administrative Adjustments shall only be granted when the proposed development complies with all applicable requirements, including advancement of the purposes of this Ordinance as described in Section <>, Purpose and Intent of Ordinance.

B. APPLICABILITY

- 01.** Except where otherwise prohibited, an Administrative Adjustment may be requested for a modification or deviation to any of the following:
 - a. A zoning district dimensional standard in Chapter 3, Districts;
 - b. A numeric use-specific standard in Chapter 5, Land Uses; and
 - c. A numeric requirement in Chapter 7, Standards.
- 02.** In no instance shall an Administrative Adjustment application seek to reduce any of the following:
 - a. The maximum allowable residential density on a lot;
 - b. The minimum required separation distance between two use types;
 - c. The requirements specified in a transportation impact analysis;
 - d. Reductions to the standards pertaining to flood hazard prevention; or
 - e. Reductions to required infrastructure standards, including streets, potable water, or wastewater system requirements.
- 03.** Applications seeking a Variance shall not also be subject to a simultaneous Administrative Adjustment application.

FIGURE <>: ADMINISTRATIVE ADJUSTMENT PROCEDURE	
Step	Action
1	Pre-Application Conference (optional)
2	File Application (may be filed alone or with another application)
3	Completeness Determination
4	Staff Review
5	Decision by Planning Director (if submitted with another application, decision on Administrative Adjustment is rendered first)
6	Written Notice of Decision
7	Review of Associated Applications (if applicable)

C. AMOUNT OF ADJUSTMENT

An Administrative Adjustment may allow a deviation from a numeric standard in this Ordinance in accordance with the amount specified in Table <>, Maximum Adjustment Amount.

TABLE <>: MAXIMUM ADJUSTMENT AMOUNT

LOCATION AND/OR TYPE OF DEVELOPMENT	MAXIMUM AMOUNT OF ADJUSTMENT
Any proposed development in the Town Center (TNC) District	15%
Redevelopment in all zoning districts except the Town Center (TNC) District	10%
New development within all zoning districts except the Town Center (TNC) District	5%

D. APPLICATION FILING

See Section <>, Application Filing.

E. PROCEDURE



The review procedure for an Administrative Adjustment shall be in accordance with Section <>, Application Summary Table, and Figure <>, Administrative Adjustment Procedure.

F. REVIEW CRITERIA

An Administrative Adjustment shall be approved by the Planning Director if the applicant demonstrates all of the following:

- 01.** The Administrative Adjustment is consistent with the type and maximum thresholds for an Administrative Adjustment established in this section;
- 02.** The Administrative Adjustment:
 - a.** Is required to compensate for some unusual aspect of the site or the proposed development that is not shared by landowners in general; or
 - b.** Is necessary to allow for proper functioning and placement of public or private infrastructure; or
 - c.** Saves healthy existing trees; or
 - d.** Helps limit the need for site grading or revision to existing drainage patterns;
- 03.** Approval of the Administrative Adjustment is not expected to pose a danger to the public health or safety;
- 04.** The Administrative Adjustment will not negatively impact the function or performance of on-site wastewater or stormwater management devices;
- 05.** Potentially adverse impacts resulting from the Administrative Adjustment will be fully mitigated;
- 06.** The development requirement being adjusted is not the subject of a previously approved Administrative Adjustment, condition of approval, or Variance on the same site.

G. EFFECTIVE DATE

The Administrative Adjustment is effective on the date that the Adjustment is granted.

H. SEQUENCE

- 01.** An Administrative Adjustment may be requested either as a stand-alone application, or in combination with another application for development review, like a Site Plan.
- 02.** In cases when submitted with another application, the Administrative Adjustment application shall be decided prior to the other associated application(s).
- 03.** Applications for Conditional Rezonings or Variances shall not include requests for Administrative Adjustments.

I. EFFECT

Approval of an Administrative Adjustment allows the approved form of modification, deviation, reduction, or adjustment; the approval of which shall not be considered to be in conflict with the applicable provisions of this Ordinance.

J. AMENDMENT

Amendment of an Administrative Adjustment approval may only be reviewed and considered in accordance with the procedures and standards established for its original approval.

K. EXPIRATION

- 01.** If an Administrative Adjustment is submitted with another development application, the expiration of the Administrative Adjustment shall be the same as the associated development application.
- 02.** See Section <>, Expiration, in cases where an Administrative Adjustment is submitted as a stand-alone application.

L. VESTING

- 01.** If an Administrative Adjustment is submitted with another development application, the vesting term of the Administrative Adjustment shall be the same as the associated development application.
- 02.** In cases where an Administrative Adjustment is submitted as a stand-alone application, see Section <>, Statutory Vested Rights.

M. APPEAL

Appeals of decisions on Administrative Adjustments shall be in accordance with NCGS§160D-405, and Section <>, Appeal.

2.5.2. ALTERNATIVE PLAN

The alternative plan procedure allows for creativity of site design and configuration in ways that do not otherwise comply with the applicable standards of this Ordinance, but that are found to be in closer alignment with the Town's Adopted Policy Guidance or the provisions in the purpose and intent of Ordinance. Generally speaking, the Alternative Plan procedure is intended to address difficult site conditions or other unforeseen issues related to various development standards such as



parking, landscaping, lighting, signage, and similar aspects that may be beyond the scope of Administrative Adjustment, but unable to meet the hardship requirements of a Variance. Examples of the kinds of situations addressed via an Alternative Plan could be provision of more parking spaces than are allowed; deviations from maximum on-center spacing requirements for plantings due to shade conditions; use of alternative surface materials for parking lots; allowance for alternative recreation features due to steep slopes, and similar site-related aspects. The procedure is also included to help address difficult or challenging sites or instances when strict compliance with the applicable ordinance requirements is impractical or impossible. The procedure provides a uniform means of considering site-specific deviations beyond the applicant's control.

2.5.3. ANNEXATION

This is a new procedure that sets out the process and criteria for consideration of a voluntary annexation petition submitted by a landowner. It clarifies that a rezoning or other application may be filed concurrently with an annexation application, but the annexation petition must be considered and approved prior to any other application.

2.5.4. APPEAL

This section clarifies that some administrative decisions are heard by the BOA while others are heard by the courts (like decisions related to subdivisions – see NCGS§1403) or other bodies (like the North Carolina Residential Building Code Council). The section clarifies that decisions by the BOA are appealed to the Superior Court for Henderson County. Original civil actions are made directly to Superior Court. The procedure also identifies review criteria for Appeals.

2.5.5. AS-BUILTS

This is a new procedure in the UDO to require and provide standards for the submission of As-Builts to ensure the location of utilities, infrastructure, and specifically stormwater infrastructure that may be subject to regular inspections under the local water supply watershed program.

2.5.6. BUILDING PERMIT

This is a newly codified procedure that identifies the kinds of development subject to building permit requirements (as well as the kinds of development that are exempted from building permit review) of the Henderson County Permits and Inspections Department.

2.5.7. CERTIFICATE OF COMPLIANCE

This is a currently existing procedure in Mills River for watershed permits. In the new UDO, the Certificate of Compliance is intended to ensure that new development that is approved subject to alternatives, incentives, or conditions of approval is properly configured in accordance with those requirements. In communities like Mills River where inspections and permit issuance is conducted by a separate agency (Henderson County) it is very common for such conditions of approval or other application-specific standards to be missed during inspection (since these requirements are often unique and not necessarily codified in the UDO). Certificate of Compliance review and issuance by the Town as a precondition of release of a Certificate of Occupancy (a "CO") by the County helps ensure conditions of approval or other site-specific requirements were not overlooked. A copy of the Certificate of Compliance shall be forwarded to Henderson County indicating that the CO may be issued.

2.5.8. CERTIFICATE OF OCCUPANCY

This is a newly codified procedure that identifies the kinds of development subject to the requirements to obtain a Certificate of Occupancy ("CO") from the Henderson County Permits and Inspections Department.

2.5.9. CONDITIONAL REZONING

A. This section replaces several sections in current Section 154.067 of the zoning ordinance and makes several notable changes to the current conditional rezoning process, including a series of four conditional districts (instead of parallel conditional districts that line up to each conventional district). The UDO also anticipates a two-tiered approach to conditional rezoning applications, each with a specific purpose:

01. LIMITED REZONINGS



Limited conditional rezonings that seek to limit the range of uses that are otherwise allowable in the district, or that seek to apply a more restrictive standard than already required (for example, a wider landscaping buffer, more open space set-aside than is required, smaller signage than is otherwise allowed, etc.). A limited conditional rezoning application may only seek to place additional limitations or more restrictive standards on development included in the application. A Concept Plan may not be submitted as part of a limited standard rezoning, and conditions must be submitted in a narrative form (because Concept Plans are considered as site-specific vesting plans that do not run with the land, but more restrictive conditions should be applied in perpetuity or until revised via a subsequent rezoning application).

02. UNLIMITED REZONINGS

- a. Unlimited conditional rezoning applications are intended to replace planned unit developments that seek to deviate from or reduce one or more otherwise applicable UDO standards, including subdivision standards (though such applications may also include other conditions that exceed current minimum requirements). This kind of application requires preparation of a Concept Plan and a textual description of the proposed development (including all applicant-sponsored conditions of approval, whether more restrictive or less restrictive than the current UDO standards). The unlimited conditional rezoning process is a means for an applicant to negotiate with Town review authorities about how a proposed development may be configured. While it permits the applicant to propose or request reductions or deviations from applicable standards, it also requires the applicant to demonstrate the ways in which the proposed development is superior to the kind of development that would result from a strict application of the standards. Since the rezoning process is legislative, the Town Council has considerable legislative discretion in approving or denying such applications, including compatibility or harmony with surroundings, consistency with community character, and other discretionary aspects like appropriateness or community need.
- b. In addition, this procedure will be revised to reflect that all landowners must sign the application, any current size thresholds on development are removed, that any Concept Plans must be reviewed by the TRC prior to consideration by the Planning Board, the modification provisions are modified to remove density adjustments (density adjustment is prohibited by State law), and further clarification that all subsequent plats, plans, and permits must be consistent with an approved Concept Plan. The standards will also clarify that while a zoning district designation runs with the land, approval of a Concept Plan (a site-specific vesting or multi-phase development plan) does not and is subject to the vesting provisions in NCGS§160D-108.

B. The Conditional Rezoning procedure clarifies that approval of a Concept Plan does not constitute approval of a Subdivision or a Site Plan, and these steps are required after approval of a conditional rezoning (and that the Site Plan and/or Subdivision must be in substantial conformance with the approved Concept Plan). The section also includes detail about major and minor amendments to a Concept Plan associated with a Conditional Rezoning. Finally, the procedure clarifies that failure to commence the development activity anticipated by a Conditional Rezoning within three years may result in the Town initiating a reversion application to return the land to its prior (or most closely corresponding) conventional zoning district designation. The procedure also carries forward the requirement that conditional rezoning approvals (and all associated materials) must be recorded by the applicant, and may not result in a nonconforming use being located on the lot. In no instance may a single lot be bifurcated by conditional and conventional districts.

2.5.10. CONSERVATION SUBDIVISION¹⁴

This is a newly revised procedure that allows for the configuration of single-family residential subdivisions (served by public or private wastewater system) as conservation subdivisions (incorporating and replacing the standards in Section 154.080, Single-family Residential Cluster Developments, in the current zoning ordinance). A conservation subdivision is one where lot size and other dimensional standards are reduced to allow dwelling units to be clustered on portions of the site outside sensitive environmental or highly-visible areas. The process requires at least 50% of the subdivision to be configured as permanently protected open space or agricultural land, and that all dwelling units be fully screened and not visible from adjacent roadways, neighborhoods outside the development, and from adjacent waterbodies available for use by the public. The conservation subdivision procedure is an iterative process where an applicant works with Town staff to prepare a conservation and development areas map. The map is then used to guide the review of the proposed development through the Preliminary and Final Plat procedures.

¹⁴ NOTE: Additional discussion is necessary regarding the Town's desire to consider conservation subdivisions with lots that rely on on-site wastewater treatment. In these instances, small lots may have off-site septic systems, or lots may be configured in complex ways that permit extension of septic lines to surrounding drain fields. Some refer to these developments as "farmhouse clusters" since they are common on lands formerly used for agriculture where former farm fields are converted to drain fields.



2.5.11. CONSTRUCTION DRAWINGS¹⁵

This is a newly codified procedure that sets out the process and requirements for construction of public infrastructure (like streets, water, sewer, drainage, sidewalks, etc.) associated with a new Subdivision or Site Plan. It clarifies that an application for a Final Plat or CO may not be filed until the Construction Drawing process is complete, the infrastructure is installed, and the Town has inspected it, or a Performance Guarantee has been submitted and accepted by the Town in accordance with all applicable procedures.

2.5.12. CONVENTIONAL REZONING¹⁶

This section replaces the Zoning Map portions of Section 154.196 through 199 of the current zoning ordinance and is used for the establishment of a conventional zoning district. The section clarifies that only the Town or a current landowner may initiate an application and that 3rd party downzonings are prohibited. Additionally, it clarifies that an applicant may not modify an application for a conventional rezoning to a conditional rezoning though the Town Council may approve a less-intensive district. Conventional rezoning applications may not seek to establish a district where an existing land use is rendered nonconforming as part of the application – such uses must be removed prior to the approval of the application. Rezoning applications that seek to establish or permit a bifurcated zoning district situation to remain shall be prohibited. The text amendment portion of Article 24 is proposed for relocation to its own application procedure.

2.5.13. DETERMINATION

A. This is a new procedure that sets out the process used by the Town when an applicant requests that Town staff explain a particular development regulation, condition of approval, how land is zoned, or other similar question. The determination procedure includes questions pertaining to five different aspects:

- 01.** Determinations of how to classify unlisted uses;
- 02.** Definitions of undefined terms;
- 03.** Interpretation of UDO text provisions, development approvals, or conditions of approval;
- 04.** Official Zoning Map boundary determination, or the zoning designation of a particular property; and
- 05.** Vested rights status.

B. The procedure also recognizes two different types of determination: advisory (non-binding) and formal (written and appealable). The procedure will also include review criteria for each type of Determination.

2.5.14. DEVELOPMENT AGREEMENT

This is a new procedure that describes the process for an applicant to enter into a development agreement with the Town (in accordance with NCGS Art. 10 of Chapter 160D). The procedure follows the standardized language found in the other procedures in new Chapter 2.

2.5.15. DRIVEWAY PERMIT¹⁷

This section includes a newly codified Driveway Permit procedure required when an individual lot seeks to gain access to a NCDOT-maintained street. The procedure clarifies that NCDOT decides the application, but it must also be signed by the Planning Director.

2.5.16. EXEMPT SUBDIVISION

This is a new procedure that includes courtesy review by Town staff of a proposed subdivision that is exempted from Town-review by NCGS§160D-802. The Town may not require a plat review for an exempt subdivision, but may verify water supply watershed requirements related to lot size and density. The Town may provide for voluntary plat review upon request of a subdivider. The procedure identifies the types of exempt subdivisions and provides details on the review criteria and

¹⁵ NOTE: Additional discussion is necessary regarding the Town's desire to require Construction Drawing review of private infrastructure. The new UDO will require private roads to meet public street standards, and stormwater control measures must be properly engineered, but the degree of review for these private infrastructure aspects is not yet clarified.

¹⁶ Recent changes to State law require local governments to delay consideration of any rezoning of land in a Voluntary Agricultural District for 120 days after consideration of the rezoning proposal by the appropriate Agricultural Advisory Board.

¹⁷ NOTE: This procedure is included despite the lack of Town-maintained roads in Mills River because NCDOT requires the Planning Director's authorization to be included on any driveway permit application submitted to NCDOT. Driveway Permits are not required for new driveways on private roadways.



certification process. The provisions will note that some applicants may have to provide evidence that proposed development can comply with the zoning district dimensional requirements as part of a Zoning Compliance Permit or Building Permit in cases where land has been subdivided, but no plat is on file with the Town.

2.5.17. FEE-IN-LIEU

This is a newly codified procedure that sets out the process for payment of a fee in-lieu of provision of one or more required site features (land dedication, infrastructure, landscaping, etc.). Payment of a fee in-lieu is typically at the request of the applicant, though it may also be mandated by the Town in some instances. The procedure sets down the features that may be the subject of a fee payment, such as land dedication, some forms of public infrastructure, and some types of private site features (like landscaping, tree retention/replacement, or open space set-aside). The procedure sets down a series of review criteria based on the type of fee in-lieu being requested. The Planning Director decides whether to mandate or accept an applicant-requested fee in-lieu as well as if the proposed amount is consistent with the standards. The standards also include details regarding the process for determination of the fee amount based upon the type of feature involved, assessed values of land, and other site-specific conditions.

2.5.18. FINAL PLAT

This section relocates the major subdivision final plat process from current Chapter 153, Subdivision. Final plats are required for development subject to a Preliminary Plat. The Code Diagnosis suggests that Final Plats be reviewed and approved administratively rather than by the Planning Board since it is a very technical ministerial review with no discretion. In addition to clarity regarding the approval criteria for a Final Plat, the procedure includes sections for recordation, the acceptance of public infrastructure, and expiration. The standards include details on the requirements for the preparation and delivery of as-built plans for public infrastructure developed as part of the site. Required certificates and subdivider declarations are proposed to be relocated to the Appendix along with a summary table of features to include on different kinds of plats.

2.5.19. FLOODPLAIN DEVELOPMENT PERMIT

Details on all flood hazard prevention-related procedures, that are being developed by the Town at this time. It is anticipated that these will be incorporated herein.

2.5.20. LIMITED SUBDIVISION

This section establishes the limited subdivision review procedure for subdivisions of three or fewer lots as identified in NCGS§160D-802(c). This kind of subdivision differs from a minor subdivision in terms of allowances for access to lots and the Town's ability to require aspects like dedication of land. The Access and Circulation provisions in new Chapter 6, Standards, set out provisions for shared accessways in instances where lots in a limited subdivision do not have direct access to a public roadway.

2.5.21. MINOR SUBDIVISION¹⁸

The Town's current subdivision ordinance (Section 153.046) classify minor subdivisions as 10 or fewer lots. The new UDO reduces this to five or fewer lots that do not include extension of existing or new public infrastructure (subdivisions of six or more lots are reviewed as Preliminary and Final Plats). The new provisions also clarify that once land (including the parent tract) has been subdivided via a minor subdivision any subsequent minor subdivision of the same land shall be treated as a Preliminary Plat (as a means of preventing subdivider from avoiding the subdivision review process). The Minor Subdivision process is an administrative review completed in one step, eliminating the need for referral to Planning Board. The standards establish the review criteria and the requirement for recording. In most cases, these kinds of developments are exempted from open space set-aside requirements (but establishment of an owners' association is required if there is private infrastructure like a road or stormwater control measure). Required certificates and subdivider declarations are proposed to be relocated to the Appendix along with a summary table of features to include on different kinds of plats.

¹⁸ NOTE: Suggest moving minor to five or fewer lots and removal of Nonstandard subdivisions.



2.5.22. PERFORMANCE GUARANTEE¹⁹

This is a new procedure that carries forward and builds on the performance guarantee provisions scattered throughout the existing subdivision ordinance (Sections 153.100 through 101) and zoning ordinance. The procedure identifies site features that are or are not eligible for Performance Guarantees. The procedure provides more detail the range of possible forms of Performance Guarantee (the applicant may choose which), as well as the review criteria to be used in determining if a Performance Guarantee should be granted (approval of a Performance Guarantee rests solely with the Town and there is no requirement to approve such requests). The Planning Director decides a Performance Guarantee application. There are also additional provisions for term, amount, administration, extension, release, and forfeiture that are consistent with changes in State law.

2.5.23. PRELIMINARY PLAT²⁰

This procedure carries forward and modifies the major subdivision review process in Chapter 153, Subdivisions, but renames it to the Preliminary Plat procedure and requires it for subdivisions of more than five lots or for any subdivision or that includes extension of existing or new public infrastructure. The procedure suggests removal of the sketch plan process in favor of a mandatory pre-application conference and a decision by professional staff and experts on the TRC. There is also a new Construction Drawing review step associated with installation of public infrastructure between the Preliminary Plat and Final Plat procedures. Clearing and grading are prohibited until after a Construction Drawing has been approved. In addition to details on the review criteria, the process sets out details on the sequencing of other related permits and activities, erosion control, Stormwater Permits, and Performance Guarantees. The standards establish maximum timeframes within which an applicant must apply for a Final Plat or risk having the approval lapse (which is proposed to increase from 90 to at least two years to follow statutory vesting provisions). The standards require formation of an owner's association to maintain required open space set-aside, stormwater control measures, and any private utility features. Appeals of decisions on Preliminary Plats are made to Henderson County Superior Court instead of the Town Council. Required certificates and subdivider declarations are proposed to be relocated to the Appendix along with a summary table of features to include on different kinds of plats.

2.5.24. SIGN PERMIT

This is a new section that establishes a Sign Permit procedure based on the standards in the new UDO developed with consideration of current Sections 154.250 through 268 in the existing zoning ordinance. The procedure clarifies that sign permits are decided administratively. The standards also include review criteria for uniform sign plans required for multi-building developments on one or more parcels.

2.5.25. SITE PLAN

The section clarifies Site Plan-related provisions, including the ability for the Planning Director to approve site plans following review and comment by the TRC. The procedure provides clarity regarding development that is subject to Site Plan review versus development that is exempted. In addition to detail on review criteria, the procedure describes sequencing with other procedures like Fee in-Lieu, Performance Guarantees, and stormwater requirements. Site Plans that include the installation or extension of public infrastructure are also required to undergo Construction Drawing review (similar to Preliminary Plats). The procedure also provides additional detail on which forms of development require submittal of as-built plans prior to final approval.

2.5.26. SPECIAL USE PERMIT

This section replaces the Special Use Permit provisions in Sections 154.137 and 138. Special Use Permits are the review procedure used for some uses that are generally permitted within a zoning district but which require additional scrutiny to ensure any negative impacts from the proposed development can be adequately mitigated. One key change in the UDO is a delegation of Special Use Permit review authority to the Town Council and elimination of the minor special use. In addition, the procedure calls for the applicant to submit a Concept Plan with a Special Use Permit application (instead of a full-blown site plan, which can be expensive). Review criteria are supplemented with additional factors to address compatibility and harmony with surroundings and there is a detailed section on conditions of approval which may be attached to the decision.

¹⁹ NOTE: The General Statutes do not (yet) require local governments to offer performance guarantees. Some local governments do not offer them. If such a procedure is included in the UDO, it should be clear regarding aspects which may not be made subject to such a guarantee (like functional fire protection or erosion control measures).

²⁰ The subdivision process needs to account for Voluntary Agricultural Districts and provide notice to purchasers. Can be incorporated here and in Section 6.17, Subdivision Design.



Generally speaking, the UDO also seeks to reduce the range of uses requiring Special Use Permits through inclusion of more use-specific standards. The procedure includes details regarding major and minor amendments to a Concept Plan, and the clarification that a Site Plan (and potentially a subdivision) are also still required. The requirement for recordation of a Special Use Permit approval is carried forward.

2.5.27. TEMPORARY USE PERMIT

This section establishes the review and permitting of temporary uses and structures (including temporary signs) as well as special events. The procedure relies on duration limits set down in the temporary use portion of new Chapter 4, Land Uses.

2.5.28. TEXT AMENDMENT

This section carries forward and enhances the procedure for amendment to the text of the new UDO from existing zoning ordinance sections 154.195 through 199. The procedure is separated from the process for amending the Official Zoning Map. The standards are structured to permit only Town staff, Town Council, or a Town board to sponsor an amendment to the UDO (based on new prohibitions in State law regarding initiating a text amendment that results in a downzoning without first obtaining landowner consent from all affected parties). The process reflects a new step associated with a prior downzoning review and the need for a written statement of consistency by the Planning Board and the Town Council.

2.5.29. TRAFFIC IMPACT ANALYSIS

This is an updated procedure that outlines the process to follow when proposed development is anticipated to generate more than a particular number of vehicular trips per day (750) or over 75 in a peak hour period. The traffic impact analysis ("TIA") procedure includes the preparation of a study of a proposed development's impacts on the surrounding street network, and includes recommendations for changes to the transportation system, whether adjacent to the development or in its general vicinity. Participation by NCDOT is required for all State-maintained roadways. The procedure includes a TIA screening process for all new non-residential developments and large residential subdivisions to determine if a TIA is warranted. It also provides provisions for a Trip Generation Letter when a development does not trigger the TIA trip thresholds or in cases where the trip counts may not be known (such as in a Conventional Rezoning). This letter helps Town staff and residents understand the potential transportation impacts from a development proposal in cases where a TIA is not triggered. The Town may still require a TIA to be prepared in cases where anticipated development is likely to have significant impacts on existing traffic congestion (in the opinion of the Planning Director) but is not expected to generate the minimum number of trips necessary to require a TIA. The process also includes the option for the Town to require 3rd party independent peer review of a submitted TIA by a licensed traffic engineer at the applicant's expense. TIAs are not "approved," but rather "accepted" or "not accepted" by the Town.

2.5.30. TRANSFER PLAT

A Transfer Plat is a review procedure for the consideration of a so-called "family subdivision" where land is deeded or given to immediate family members. It involves a cursory review of proposed lots for compliance with applicable zoning district dimensional standards, access requirements, and applicable environmental provisions. Transfer plats do not include extension of existing or new public infrastructure (that would be treated as a Preliminary Plat). Open space set-aside and other exactions like public parkland dedication are not required, nor is a plat required (though one may be prepared). Some local governments limit the re-sale of lots created via a Transfer Plat to non-family members for a period of five to ten years.

2.5.31. TREE CLEARING CERTIFICATE

This is a new procedure used in cases when an applicant seeks to remove all or substantially all trees from a lot or site of ten acres or more in size that is not a bona fide farm, not subject to a forestry management plan, or part of a development application (when tree removal would be reviewed as part of a Site Plan). The procedure requires a portion of existing trees around the perimeter of the site to be retained during and after clearing activities (for use as part of future perimeter buffers or as a means of limiting visibility of the cleared site to those passing by). Failure to obtain a required Tree Clearing Certificate or retain the required trees is a violation of the UDO that subjects the landowner to a delay in review of development applications (for up to five years) from the date the land was cleared in violation. This section will also reference a federal requirement limiting tree removal on sites of any size and clearing during certain periods of the year due to bat protection.

2.5.32. VARIANCE

This section carries forward and builds on provisions in Section 154.097 of the current Zoning Ordinance. The procedure is used for typical variance applications from zoning and subdivision requirements as well as for applications for reasonable



accommodation (under the federal Fair Housing Act). The requirement for recordation of a Variance approval is carried forward.

2.5.33. VESTED RIGHTS CERTIFICATE

This is a new procedure that does two things: it helps development proposals that constitute site-specific vesting plans to establish vested rights in cases when such plans are decided without the benefit of a publicly noticed hearing and decision by the elected officials. The procedure also allows applicants with approved site-specific vesting plans to request extension of the vesting term to up to five years.

2.5.34. ZONING COMPLIANCE PERMIT

This section carries forward and modifies Section 154.156 of the current Zoning Ordinance under the name "Zoning Compliance Permit." This section expands the provisions to include all uses. It is most often used in cases when proposed development does not require a Site Plan (like when a new business moves into an existing building) or a Building Permit. It is a means for the Town to ensure proposed development complies with all applicable requirements. This procedure includes details on review criteria, vesting, and expiration. This procedure is also proposed to be required as documentation for the development of structures on agricultural sites or bona-fide farms, which would otherwise be exempt, with no fees or applicable standards. At the staff's discretion, this procedure could be supplemented with a conditional option that permits the conditional issuance of a Zoning Compliance Permit subject to additional requirements for completion.



CHAPTER 3.

DISTRICTS

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TOC/Key Changes



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§ 3.1 CHAPTER INTRODUCTION

3.1.1. CHAPTER ORGANIZATION

This section sets out the sequence of sections and sub-sections in the Chapter and explains how each works with the others. It explains how the information in the conventional and conditional zoning district sub-sections are organized.

3.1.2. DISTRICTS DISTINGUISHED

This section describes the relationships and differences between conventional districts and conditional districts (including the different types) and overlay districts. It also clarifies that all land within the Town's planning jurisdiction is assigned a zoning district, previously referred to as a "Use District".

3.1.3. DISTRICTS ESTABLISHED

- A.** This section replaces the introduction provisions of Sections 154.045 in the current zoning ordinance and enumerates the zoning districts with several notable changes, including consolidations, new names and abbreviations, and new conditional zoning districts.
- B.** This is a summary table that formally establishes the conventional and conditional zoning districts in the UDO by name and abbreviation. Districts in the table below are organized by updated zoning district type into five groups: Conservation, Conventional Residential, Conventional Non-Residential, Conditional, and Overlay and are generally organized from the lowest intensity or development potential to the highest intensity development potential.
- C.** On the effective date of this Ordinance, land zoned with a zoning district classification from the previous zoning ordinance shall be translated or reclassified to one of the zoning districts set forth in **Table <>**, Zoning Districts Established.
- D.** The following table summarizes the translation or reclassification of the zoning districts in the prior ordinance to the corresponding one in this Ordinance. For example, the table shows that all lands classified as MR-30 in the previous ordinance under the column named "Former Zoning Districts" are now classified LDR Low Density Residential in this Ordinance as shown under the column titled "Zoning Districts in this Ordinance."



CHAPTER 3. DISTRICTS

§ 3.1 Chapter Introduction

Subsection 3.1.3. Districts Established

TABLE ↔: ZONING DISTRICTS ESTABLISHED

FORMER ZONING DISTRICTS		ZONING DISTRICTS IN THIS ORDINANCE	
CONSERVATION			
(New)		CON	Conservation
CONVENTIONAL RESIDENTIAL			
(New)		AGR	Agricultural Residential
MR-RR	Rural Residential [1]	RUR	Rural Residential
MR-30	Low Density District	LDR	Low Density Residential
(New)		MXR	Mixed Residential
CONVENTIONAL NON-RESIDENTIAL			
MR-NC	Neighborhood Commercial [2]	(Delete)	
MR-GB	General Business	GLC	General Commercial
MR-MU	Mixed-Use [3]	(Delete)	
(New)		TNC	Town Center
MR-LI	Light Industrial	IND	Industrial
CONDITIONAL [4]			
MR-R-CD	Residential Conditional [5]	RCZ	Residential Conditional
MR-M-CD	Mixed-Use Conditional [5]	MCZ	Mixed-Use Conditional
MR-C-CD	Commercial Conditional [5]	CCZ	Commercial Conditional
MR-I-CD	Industrial Conditional [5]	ICZ	Industrial Conditional
OVERLAY			
Corridor Overlay District		(Delete) [6]	
Water Supply Watershed Protection District		WSWO	Water Supply Watershed Overlay
(New)		FDPO	Floodplain Overlay [7]

NOTES:

- [1] The Rural Residential District has been adopted and codified, but no land has this zoning designation.
- [2] Some existing MR-NC will be translated into MXR.
- [3] The current MR-MU Mixed-Use district is being abolished and land currently designated as MR-MU will be reclassified into a variety of residential districts as well as a new Town Center (TNC) district that is applied to a much smaller area.
- [4] A conditional district may be either Type 1, Limited or Type 2, Unlimited, as requested by the applicant.
- [5] No land has any conditional zoning district designation.
- [6] The Corridor Overlay district standards are being integrated into a series of design and development standards applied to all forms of non-residential development within a specified distance from a highway right-of-way.
- [7] This is not a FEMA flood damage prevention ordinance, but rather a Town hazard prevention ordinance that addresses flooding hazards.



§ 3.2 CONVENTIONAL ZONING DISTRICTS

The updated UDO includes eight conventional base zoning districts as described in the Zoning Districts Established Table in Section 3.1. This section sets down the provisions for each conventional zoning district. The image below sets out a proposed depiction of the tabular format for the conventional zoning districts as translated in the above table. Each district has its own table which identifies the purpose for the district, provides one or more photographic examples of the preferred forms of development and its configuration within the district, the dimensional standards (including additional dimensional requirements for lots with average slopes in excess of 25 percent), and maximum residential density standards (if applicable). The dimensional standards are organized into each individual district table. Some districts can also include district-specific standards. In these cases, the district standards are also included with the district table provisions. The dimensional standard schematics will be made more generic based on the type of use and are located in the Rules of Measurement portion of Chapter 8, Word Usage. An example of the tabular district layout for the new Conservation (CON) district is provided below.

EXAMPLE ZONING DISTRICT LAYOUT

CHAPTER 3. § 3.2 Districts: Conventional DISTRICTS Subsection 3.2.1. Conservation (CON)

§ 3.2 DISTRICTS: CONVENTIONAL

3.2.1. CONSERVATION (CON)

A. CONSERVATION DISTRICT (CON) PURPOSE STATEMENT

The Conservation (CON) District is established to preserve and protect sensitive natural resources and areas of environmental concern. The district is intended to protect areas with steep slopes, floodplain, wetlands, riparian corridors, and ridge lines and ridgetops. The purpose for the CON district is to limit development potential to help minimize danger to public health and safety from erosion and sedimentation; to retain and protect environmentally-sensitive areas from the potentially damaging impacts of development; to protect wildlife corridors and scenic vistas from disturbance; and to preserve and maintain the aesthetic and rural qualities and appearance of the Town. The district allows gardens, community centers, public recreation uses, parks, and some very low intensity utility uses like small wireless or minor antenna collocations.

B. CONSERVATION DISTRICT (CON) PREFERRED DEVELOPMENT TYPES

The following images are provided as example forms of allowable development and site configuration. These are provided for informational purposes only, and do not constitute a standard or requirement under this Ordinance. Conflicts between images and the text of this Ordinance are addressed in accordance with Section 4.1, Conflict.

GARDENS 

PLAYGROUNDS 

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CHAPTER 3. § 3.2 Districts: Conventional DISTRICTS Subsection 3.2.1. Conservation (CON)

BOARDWALKS 

COMMUNITY CENTERS 

C. CONSERVATION DISTRICT (CON) DIMENSIONAL STANDARDS

DIMENSIONAL PROVISION	STANDARD	DIMENSIONAL PROVISION	STANDARD
Max. Residential Density (du/ac)	N/A	Min. Street Setback (ft)[1]	10
Min. Lot Area (sf)	N/A	Min. Side Setback (ft)	10
Min. Lot Width (ft)	N/A	Min. Rear Setback (ft)	20
Max. Lot Coverage (% of Lot Area)	10	Min. Spacing btw Buildings (ft)	
Min. Open Space Set Aside (% of Lot Area)	N/A	Principal	20
Max. Building Height (ft)	15	Secondary	10
		Min. Perimeter for Multi-Building & Unified Developments (ft)[2]	30

[1] Applied from the edge of the public right-of-way. Setbacks from private streets shall be at least five feet from the edge of pavement or sidewalk, if provided.
 [2] Unified developments meeting the definitions in this Ordinance are exempted from side and rear setbacks along internal lot lines. Perimeter setbacks shall apply along all perimeter property lines and street rights-of-way.

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3.2.1. CONSERVATION (CON)

This section sets out the new summary table for a new zoning designation for Conservation areas. It is intended that this district, at the onset, contain some Town-owned properties or Town-designated properties. This may include properties containing conservations easements or natural resources, properties owned by the State or other government agency for the protection of natural resources, etc. The intent is to provide protection of contiguous corridors for wildlife, scenic vistas, natural resources, and open space.

3.2.2. AGRICULTURAL RESIDENTIAL (AGR)

This section outlines the regulations for a new zoning designation intended to encourage and preserve agricultural uses and large-lot single-family residential properties. The Agricultural Residential (AGR) district will provide for a mix of agricultural, low-density residential, and associated agricultural commercial uses (such as farm stands, commercial greenhouses, etc.). Minimum lot size will be greater than three acres with the option for conservation subdivisions on smaller lots where agricultural lands are preserved and the visibility of the development from off-site areas is strictly limited.

3.2.3. RURAL RESIDENTIAL (RUR)

This section sets out the new summary table for the former MR-RR, Rural Residential zoning district. It carries forward the intent and language from the current zoning ordinance in Section 154.065. The purpose of the district is to facilitate orderly development in rural areas not well served by public utilities where the primary uses of land are single family detached residential on large lots of between 1.5 to 3 acres in size, agriculture, and limited low-intensity commercial uses.

3.2.4. LOW DENSITY RESIDENTIAL (LDR)

This section sets out the new summary table for the former MR-30, Low Density Residential zoning district. The new LDR is a low density residential district that permits development of single-family detached residential dwellings, duplexes, and a series of smaller-sized/smaller-lot residential development (like pocket neighborhoods and bungalow courts) subject to applicable compatibility controls. The minimum lot size is less than 1.5 acres in area, though some developments, like bungalow courts will have maximum development sizes. The district also permits conservation subdivisions, minor utilities, assembly and educational uses, government uses and recreational/open space uses. Dimensional standards are maintained as close as possible to the current standards, and if changed, revised in ways that minimize the creation of nonconformities.

3.2.5. MIXED RESIDENTIAL (MXR)

This section sets out the new summary table for a new zoning district. The table includes a detailed purpose statement for the district and a set of dimensional standards organized by the type of permitted development (non-residential, other). This is a medium-intensity residential district designed to contain a mix of medium density, single family housing and low-intensity, non-residential uses that support and are proximate to residential neighborhoods. Dimensional standards are maintained as close as possible to the current standards, and if changed, revised in ways that do not create nonconformities. The dimensional standards are supplemented with a series of precedent image of preferred development formats. Lot sizes are variable, but there are additional compatibility provisions that require minimum lot sizes to be comparable to abutting existing residential development in a different zoning district as well as requirements for minimum lot area when lots are in a water supply watershed or subject to on-site wastewater service.

3.2.6. GENERAL COMMERCIAL(GLC)

This section sets out the new General Commercial (GLC) district replacing the former MR-GB General Business zoning district. This is the Town's most intense commercial district typically found in linear stretches along major roadways and at major highway intersections. In addition to the wide range of commercial uses, the district also permits a limited variety of residential uses such as live/work and upper-story residential uses (provided in a mixed-use development context). The table includes a detailed purpose statement for the district and a set of dimensional standards organized by the type of permitted development (non-residential, other). Dimensional standards are maintained as close as possible to the current standards, and if changed, revised in ways that do not create nonconformities. The appearance and configuration of development in this district is important to maintaining development quality and community character. The intent of the GLC district is to promote and protect community character by requiring new development to be subject to basic design controls that support established small-town/small-scale rural character, or be configured in ways that limit the visibility of



the use from the roadway (the applicant may decide which strategy to use – follow the architectural controls or screen the development from view). The architectural controls address building footprint size, height, roof form, exterior materials, parking location, signage, and transparency. Screening provisions may be addressed via placement away from the right-of-way, or utilization of vegetation or other screening devices. Special consideration will be included on lands along a highway corridor where there are expansive or scenic views across the landscape in front of, beside, or behind potential development.

3.2.7. TOWN CENTER (TNC)

This section sets out the new Town Center (TNC) zoning district, the Town's new zoning district that encourages a mix of residential and non-residential uses in the same buildings, on the same lots, or in close proximity to one another to support increased residential densities and a more walkable environment. The table includes a detailed purpose statement for the district and a set of dimensional standards organized by the type of permitted development. The draft Zoning Map anticipates two areas with the TNC designation, centered on the Town's current commercial core areas along Boylston Highway. These areas are intended to serve as the "downtown" portions of Mills River where residents and visitors may travel for shopping, dining, and recreation in a more walkable, small town atmosphere. Buildings should be close to the street or organized around gathering areas with the prominence of off-street parking reduced. Signage should be small in scale and more pedestrian oriented (with the exception of a single directory sign oriented to passing motorists). Emphasis is placed on walking and pedestrian-scale development that is subject to a series of basic building design/appearance standards to promote development quality and a "sense of place."

3.2.8. INDUSTRIAL (IND)

This section carries forward the standards from the existing Light Industrial (MR-LI) into a new summary table as IND, Industrial. The table includes a detailed purpose statement for the district and a set of dimensional standards organized by the type of permitted development (industrial, commercial, other). Residential uses are prohibited. Dimensional standards are maintained as close as possible to the current standards, and if changed, revised in ways that do not create nonconformities. The dimensional standards are supplemented with a series of precedent images of preferred development formats. Where possible, these developments should be located and oriented in ways that are not visible from nearby roadways in order to maintain the Town's agricultural community character. Screening could also be accomplished with landscaping provisions, berms, building placement, and retention of existing vegetation.

§ 3.3 CONDITIONAL ZONING DISTRICTS

3.3.1. INTRODUCTION

- A.** This section establishes four new, generic conditional zoning districts established based upon the type of development they are intended to accommodate (residential, nonresidential, mixed-use, and industrial) rather than as parallel conditional zoning districts that correspond to other conventional zoning districts. The procedure for establishment of a conditional zoning district is described in Chapter 2, Applications, and similar to the process used to modify the Zoning Map to establish a conventional zoning district except that conditions of approval are included in the process.
- B.** The conditional zoning districts offer ways to accommodate use types that require additional consideration or to provide a "safety valve" to landowners looking to accommodate a specific type of use not generally permitted in a corresponding conventional zoning district but still appropriate for the residential, commercial, or industrial nature of the area. Each conditional district sets out a unique range of dimensional standards which may be used under the limited conditional rezoning options, or may serve as a "starting point" for applicants seeking to use the unlimited conditional zoning option.



- C.** The listing of common principal use types in new Chapter 4, Land Uses, includes each of the four conditional zoning districts and identifies instances where a particular use type could or could not be accommodated in a conditional zoning district. In cases where a particular use type includes a "C" in a cell beneath a particular conditional district column heading, then that use may be allowed in that conditional use district, subject to all applicable standards. In cases where a use type does not have a "C" under a particular zoning district, that use type is not permitted within the particular conditional zoning district. The use-specific standards associated with a particular use type remain applicable when proposed within a conditional zoning district unless subject to a modifying condition proposed as a part of a unlimited conditional rezoning option.
- D.** As explained in the Zoning Districts Established table, each of the four conditional zoning districts may be established as either a limited conditional district or as a unlimited conditional district.
- E.** In the case of "limited" districts, the applicant may choose to voluntarily limit the range of uses to one or a handful of uses. In addition, an applicant may also propose other conditions that apply more restrictive standards or greater limitations than are depicted in the UDO text. In the limited option, the applicant is voluntarily seeking to apply more restrictive standards to their application. A limited request may not include a concept plan and is limited to conditions provided in written form.
- F.** The concept unlimited conditional zoning district may include a blend of more restrictive conditions and less-restrictive conditions (or so-called deviations) from otherwise applicable standards. In cases where an applicant seeks waiver or relief from basic standards the application must be supplemented by a Concept Plan that depicts the proposed development. The application must also include justification for the Town's consideration as to why the proposed development should be approved, and the ways in which the proposed development, if permitted to be established, would exceed the level of quality or be in closer alignment with the Town's adopted policy guidance than would a development established in strict compliance with all UDO provisions. It is the applicant's responsibility to demonstrate how and in what ways the development is of higher quality or in closer alignment with policy guidance.

3.3.2. RESIDENTIAL CONDITIONAL (RCZ)

- A.** The RCZ district is intended to provide greater flexibility in terms of the range of allowed uses or applicable development standards that are permitted within the conventional residential zoning districts. The RCZ district revises / replaces the current residential conditional zoning district.
- B.** The RCZ district creates a means for an applicant to voluntarily restrict a proposed development in order to protect community character or seek relief from otherwise applicable standards in order to produce a development that is in closer alignment with the Town's goals. The dimensional standards for the RCZ district shall be based on the standards in the LDR district, and may be further modified as explained in the section above.

3.3.3. COMMERCIAL CONDITIONAL (CCZ)

- A.** The CCZ district is intended to provide greater flexibility in terms of the range of allowed uses or applicable development standards that are permitted within the commercial conventional zoning districts. The CCZ district revises / replaces the current commercial conditional district.
- B.** The dimensional standards for the CCZ district shall be based on the corresponding standards in the GLC district. Note that an applicant could seek to deviate from the GLC district dimensional standards in a more restricted way via the limited option, or in a less restricted way via the unlimited option.

3.3.4. INDUSTRIAL CONDITIONAL (ICZ)

The ICZ district carries forward the MR-I-CD conditional zoning district with the intent to provide greater flexibility in terms of the range of allowed uses or applicable development standards that are permitted within the IND zoning district. The ICZ district creates a means for an applicant to voluntarily restrict a proposed development in order to protect community character or seek relief from otherwise applicable standards in order to produce a development that is in closer alignment with the Town's goals. The dimensional standards for the ICZ district shall be based on the standards in the IND district, and may be modified as indicated in prior sections. The goals of protecting community character may not be reduced or waived via the unlimited option.



3.3.5. MIXED-USE CONDITIONAL (MCZ)

The MCZ district carries forward the MR-M-CD conditional zoning district as a new district that allows additional flexibility for accommodating mixed uses. The dimensional standards for the MCZ district shall be based on the standards in the TNC district. Note that an applicant could seek to deviate from the TNC district dimensional standards in a more restricted way via the limited option, or in a less restricted way via the concept plan option. The goals of creating a small-scale, pedestrian-oriented area may not be waived or reduced via the unlimited option.

§ 3.4 GENERAL LOT STANDARDS

This section sets out the range of generally applicable dimensional standards and “rules of thumb” with respect to aspects such as maximum number of principal uses per lot, unique lot types such as flag, double frontage, waterfront, and special purpose lots. In cases where a residential lot has two or more separate principal dwellings, only one of the dwellings (the largest, oldest, etc.) may be considered as the principal use; all others must be considered as secondary. The section includes cross references to the Rules of Measurement portion of Chapter 8, Word Usage.

3.4.1. MULTIPLE BUILDINGS OR STRUCTURES ON A LOT

This section sets out the standards for how multiple buildings are addressed when located on a single lot or within a single unified development.

3.4.2. REQUIRED LOT CONFIGURATION**A. DIMENSIONAL REQUIREMENTS****B. DOUBLE FRONTAGE LOTS****C. FLAG LOTS****D. MINIMUM LOT SIZE****E. MINIMUM LOT FRONTAGE****F. MINIMUM LOT WIDTH****G. SIDE LOT LINES****3.4.3. REQUIRED YARDS****3.4.4. SPECIAL PURPOSE LOTS**

Zoning district requirements related to street frontage, lot width, minimum lot area, and minimum lot dimensions shall not apply to special purpose lots, and sets out the standards for these lots.

3.4.5. SPLIT ZONING

Wherever a single lot is located within two or more different zoning districts, each portion of the lot shall be subject to all the regulations applicable to the zoning district where it is located.



3.4.6. STREAM SETBACKS

This section carries forward the stream setback requirements in existing Subdivision Ordinance Section 153.085.A but applies them to all developments, not just subdivisions.

3.4.7. UNIFIED DEVELOPMENT

A unified development is a residential, non-residential, or mixed-use development like a shopping or a lifestyle center consisting of at least two buildings located on one or more lots that are planned, permitted, and/or developed as a single unit. This section sets out how the UDO standard are applied to unified developments.

§ 3.5 OVERLAY ZONING DISTRICTS

This section sets out the applicable provisions for the Town's two overlay zoning districts, the Floodplain Overlay District (FDPO) and the Water Supply Watershed (WSWO) Overlay District. The initial section explains the relationship of these districts to the other standards in the Ordinance. The subsequent sections set out the details of each overlay.

3.5.1. GENERALLY**A. PURPOSE****B. ESTABLISHMENT****C. CLASSIFICATION****D. RELATIONSHIP TO UNDERLYING BASE ZONING DISTRICTS****3.5.2. SPECIAL HAZARD AREA OVERLAY DISTRICT (SHAO)**

This section carries forward and reformats the Flood Hazard Prevention Ordinance adopted by the Town in October 2025. These are not typical flood damage prevention standards as the Town does not participate in the National Flood Insurance Program. Rather, these standards are in response to recent flooding events (like Hurricane Helene) and potential future flooding. While there are no changes to the substantive aspects of the standards, the new UDO will reformat the material from its current "stand-Alone" ordinance format into a series of sections embedded into the new UDO. Definitions will be relocated with other definitions, procedures with other procedures, and so forth.

3.5.3. WATERSHED PROTECTION OVERLAY DISTRICT (WSWO)²¹

This section carries forward the provisions of Chapter 156, Natural Resources as it applies to the Water Supply Watershed Protection Areas and updates based on newest State model ordinances.

§ 3.6 ZONING MAP

This section establishes the basic provisions related to the Official Zoning Map.

3.6.1. GENERALLY

This section explains where the Map is maintained, its format, its relationship to other maps, how people can access the map, and obtain copies.

²¹ NOTE: Some Sterring Committee members have raised the issue about review and consideration of new impervious surface limitations outside the WSPO.



3.6.2. INCORPORATED BY REFERENCE

This section incorporates the Official Zoning Map and other regulatory maps into the UDO. The Official copy of the Zoning Map will be the digital version maintained on the Town's GIS system. Historic copies of the Zoning Map are maintained in the offices of the Planning Department and are available for public inspection. Copies of the Zoning Map are available for the fee established in the Town's annual fee ordinance.

3.6.3. INTERPRETATION

This section clarifies that the rules to be used for interpreting the boundaries on the Official Zoning Map are found in the section on Rules of Measurement in new Chapter 8, Word Usage.

3.6.4. MAINTENANCE OF MAP

This section explains the duties and functions related to maintenance of the Official Zoning Map following approval of map amendments, street closures, and similar applications. Technical errors and minor non-substantive corrections to the official Zoning Map may be made without need for conducting a public hearing.



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LAND USES

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TOC/Key Changes



§ 4.1 CHAPTER INTRODUCTION

4.1.1. CHAPTER ORGANIZATION

This section identifies the six main sections in the Land Uses Chapter and how they relate to one another.

4.1.2. LAND USES DISTINGUISHED

This section explains the distinctions between principal, secondary (accessory), prohibited, and temporary uses.

§ 4.2 PRINCIPAL USES

4.2.1. APPLICABILITY

This section explains what constitutes a principal use of a lot.

4.2.2. ESTABLISHMENT OF A PRINCIPAL USE

This section explains the process to follow in establishing a principal use.

4.2.3. CHANGE OF PRINCIPAL USE

This section explains what constitutes a change in use type (as many of the UDO standards are applied at the time of a change in use).

4.2.4. COMBINATION PRINCIPAL USES

This section describes how lots with more than one different principal uses or combination principal uses are addressed.

4.2.5. LISTING OF COMMON PRINCIPAL USES

This section replaces current organizational structure contained in the zoning ordinance by providing an easy-to-use summary table of common (or typical) principal uses, and introduces and explains the listing of common principal uses and the organizational approach to distinguishing between different uses.

A. GENERALLY

Table <>, Listing of Common Principal Uses, lists use classifications, use categories, principal use types, and indicates whether the principal use type is permitted subject to a Zoning Compliance Permit, by a Special Use Permit, in a conditional zoning district, or is not permitted in a particular zoning district. It also includes a reference to any applicable use standards that apply to a particular principal use (the right-most column will include a cross reference to any applicable use standards in the UDO).

01. USE CLASSIFICATIONS

- a. Individual principal uses in the principal use listing are organized into one of the following five different use classifications, based upon their characteristics: Agricultural; Commercial; Industrial; Institutional; and Residential.
- b. Use classifications are more generally described in Section <>, Unlisted Uses.
- c. The common principal use table includes only principal uses; secondary use types are relocated to their own section.

02. USE CATEGORIES

- a. Each of the five use classifications includes a series of use categories (identified by the black rows in the summary table of common principal uses). Use categories are groupings of similar use types that are grouped based on similar purposes or functional characteristics.
- b. Individual use types listed in the table of principal use types are listed in alphabetical order by use category.
- c. Use categories and their characteristics are more generally described in Section <>, Unlisted Uses.

03. USE TYPES



Use types are the individual principal use types and each is defined in Section <>, Terms Defined, in new Chapter 8, Word Usage.

04. USE PERMITTED BY RIGHT

- a. A "P" in a cell of the principal use table indicates that the specific use type is permitted by-right in the corresponding zoning district, subject to compliance with all referenced use standards and any other applicable standards in this Ordinance.
- b. By-right uses require issuance of a Zoning Compliance Permit (see Section <>, Zoning Compliance Permit) prior to establishment and may also require approval of a Site Plan (see Section <>, Site Plan).

05. USE PERMITTED BY SPECIAL USE PERMIT

An "S" in a cell of the principal use table indicates that the specific use type is permitted in the corresponding zoning district pursuant to the issuance of a Special Use Permit in accordance with Section <>, Special Use Permit. Special uses must comply with all referenced use standards, other applicable standards in this Ordinance, and conditions imposed by the approval authority that are accepted by applicant.

06. USE PERMITTED IN CONDITIONAL DISTRICT

- a. A "C" in a cell of the principal use table indicates that the specific use type is allowable in a conditional zoning district, subject to any referenced use standards.
- b. Establishment of a conditional use requires approval of a conditional rezoning (see Section <>, Conditional Rezoning).

07. USE PROHIBITED

A "•" symbol in a cell of the summary use table indicates that the specific use type is not permitted in the corresponding zoning district.

08. USE STANDARD APPLIES

The right-most column of the table includes a reference to any applicable use standards associated with a particular use type. Unless otherwise stated in the standards, a use standard applies to a particular use regardless of the zoning district where it is located.



CHAPTER 4.

LAND USES

§ 4.2 Principal Uses

Subsection 4.2.5. Listing of Common Principal Uses

TABLE ↔: LISTING OF COMMON PRINCIPAL USES

P=Permitted by right, subject to a Zoning Compliance Permit & all applicable use standards

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“=Prohibited

[#]=See Note at end of table

USE CATEGORY	CON	CONVENTIONAL RESIDENTIAL DISTRICTS				CONVENTIONAL NONRESIDENTIAL DISTRICTS				CONDITIONAL DISTRICTS				USE STANDARDS	
		AGR	RUR	LDR	MXR	MR-NC	MR-GB	MR-MU	TNC	IND	RCZ	MCZ	CCZ	ICZ	
USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
AGRICULTURAL USE CLASSIFICATION															
<i>Agricultural Production</i>															
Agricultural Processing	•	•	•	•	•		•		•	P	•	•	•	C	<>
Agricultural Products	•	P	P	•	•		•		•	•	•	•	•	C	<>
Commercial Greenhouse	•	P	P	•	•		•		•	P	•	•	C	•	<>
Farm and Produce Stands			P												
Horticulture	•	P	P	•	•		•		•	•	•	•	C	•	<>
Nursery (retail or wholesale)	•	P	P	•	•		•		•	•	•	•	C	•	<>
Viticulture (including winery or vineyard, but excluding event venues)	•	P	P	•	•		•		•	•	•	•	C	•	
<i>Livestock Related</i>															
Animal Husbandry	•	P	P	•	•		•	•	•	P	•	•	•	C	<>
Animal Processing	•	•	•	•	•		•	•	•	S	•	•	•	C	<>
Equestrian Facility	•	P	P	•	•		•	•	•	•	C	C	C	•	<>
Riding Stables			P												
COMMERCIAL USE CLASSIFICATION															
<i>Animal Related</i>															
Animal Boarding, Indoor and/or Outdoor	•	P	S	•	•		•		•	P	•	•	C	C	<>
Animal Boarding, Indoor Only	•	P	•	•	•		P		P	P	C	C	C	C	<>
Animal Grooming	•	P	P	•	•		P		P	P	C	C	C	C	<>
Animal Shelter	•	•	•	•	•		•		•	P	•	•	C	C	<>
Animal Hospitals / Kennels							P	P							
Dog Training Facility	•	P	P	•	•		P		•	P	•	•	C	C	<>
Kennel and Animal Boarding			S												
Veterinary Service	•	P	P	•	P		P		•	•	•	C	C	C	<>
Veterinary Clinic						S	P								
<i>Eating and Drinking</i>															
Bar, Cocktail Lounge, or Private Club	•	•	•	•	P		P		P	•	•	C	C	•	<>



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[#]=See Note at end of table

USE CATEGORY	CON	CONVENTIONAL RESIDENTIAL DISTRICTS				CONVENTIONAL NONRESIDENTIAL DISTRICTS				CONDITIONAL DISTRICTS				USE STANDARDS	
		AGR	RUR	LDR	MXR	MR-NC	MR-GB	MR-MU	TNC	IND	RCZ	MCZ	CCZ	ICZ	
USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
Bakery						P	P								
Bottle Shop (on-premise consumption)	•	•	•	•	P		P		P	•	•	C	C	•	<>
Catering Establishment	•	•	•	•	P		P		P	P	•	C	C	C	<>
Coffee Shop or Retail Bakery	•	•	•	•	P		P		P	P	•	C	C	C	<>
Dairy bars and ice cream manufacturing w/ retail							P	P							
Microbrewery, Distillery, or Winery	•	P	•	•	P		P		P	P	•	C	C	•	<>
Restaurant, High Intensity	•	•	•	•	•		P		P	•	•	C	C	•	<>
Restaurant, Low Intensity	•	•	•	•	P		P		P	•	•	C	C	•	<>
Restaurant, Mobile Related	•	P	•	•	•		P		•	P	•	C	C	C	<>
Restaurant, Drive-in							S	P							
Restaurants						S	P	P							
Equipment Related															
Heavy Equipment Sales, Rental, & Repair	•	•	•	•	•		•		•	P	•	•	•	C	<>
Light Equipment Sales, Rental, & Repair	•	P	•	•	•		P		•	•	•	•	C	C	<>
Event Venue															
Event Venue, Indoor Only	•	•	•	•	•		P		P	P	•	C	C	C	<>
Event Venue, Indoor & Outdoor	•	•	•	•	•		P		•	P	•	C	C	C	<>
Financial Services															
Bank or Credit Union	•	•	•	•	P		P		P	•	•	C	C	•	<>
Banks, Loan Offices and agencies							P	P							
Check Cashing / Pay Day Lending	•	•	•	•	•		•		•	•	•	•	C	•	<>
Financial Services	•	•	•	•	P		P		P	•	•	C	C	•	<>
Pawn Shop	•	•	•	•	•		•		•	•	•	•	C	•	<>
Lodging															



CHAPTER 4.

LAND USES

§ 4.2 Principal Uses

Subsection 4.2.5. Listing of Common Principal Uses

TABLE ↔: LISTING OF COMMON PRINCIPAL USES

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		AGR	RUR	LDR	MXR	MR-NC	MR-GB	MR-MU	TNC	IND	RCZ	MCZ	CCZ	ICZ	
USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
Bed and Breakfast	•	P	P	P	•	P	•	•	P	•	C	C	C	•	<>
Bed and Breakfast Inns			S		S		P								
Campground / Recreational Vehicle (RV) Park	•	•	•	•	•		•	•	•	•	•	C	•		<>
Hotel / Motel	•	•	•	•	P		P	•	P	•	•	•	C	C	<>
Hotels, inns, motels						S	P								
<i>Office Related</i>															
Coworking	•	•	•	•	P		P		P	•	•	C	C	•	<>
Office, High Intensity	•	•	•	•	•		P		P	P	•	C	C	C	<>
Office, Low Intensity	•	•	•	•	P		P		P	•	•	C	C	C	<>
Offices, public or private, medical and dental						P	P	P							
Office, newspaper						P	P								
Offices (business, professional, Government, religious, charitable agencies)			S			P	P	P							
Opticians						P	P								
<i>Parking Related</i>															
Parking Lot (principal use)	P	•	•	•	•	P		P	P	•	•	C	C	C	<>
Parking Structure	•	•	•	•	•	•		•	P	•	•	C	C	C	<>
<i>Personal Services</i>															
Barbershops and Beauty shops							P	P							
Computer Related Services	•	•	•	•	P		P		P	•	•	C	C	•	<>
Computer Sales and Services							P	P							
Day Spa (medial or nonmedical)	•	•	•	•	P		P		P	•	•	C	C	•	<>
Fitness Centers	•	•	•	•	P		P		P	•	•	C	C	•	<>
Florist							P	P							
Funeral Related Services	•	•	•	•	•		P		•	P	•	•	C	C	<>
Funeral Homes or Mortuaries							P	P							
Hair, Nail, and Skin Related Services	•	•	•	•	P		P		P	•	•	C	C	•	<>
Instructional Services	•	•	•	•	P		P		P	•	•	C	C	C	<>



CHAPTER 4. LAND USES

§ 4.2 Principal Uses

Subsection 4.2.5. Listing of Common Principal Uses

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		AGR	RUR	LDR	MXR	MR-NC	MR-GB	MR-MU	TNC	IND	RCZ	MCZ	CCZ	ICZ	
USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
Laundry and Cleaning Services	•	•	•	•	P		P		P	•	•	C	C	C	<>
Dry Cleaning / Laundry Pickup Stations							P	P							
Laundromats							P	P							
Locksmiths and gunsmiths							P	P							
Packaging and Shipping Services	•	•	•	•	P		P		P	P	•	C	C	C	<>
Printing Services	•	•	•	•	P		P		P	P	•	C	C	C	<>
Printing, publishing, and reproducing							P	P							
Physical Fitness Centers							P	P							
Repair Shops	•	•	•	•	•		P		•	P	•	C	C	C	<>
Electric Repair Shop							P	P							
Radio and Television Repair Shop							P	P							
Shoe Repair Shop							P	P							
Tailor and Dressmaking Shops							P	P							
Tanning Salon	•	•	•	•	P		P		P	•	•	C	C	•	<>
Tattoo & Body Piercing	•	•	•	•	•		P		•	•	•	C	C	•	<>
<i>Recreation Related</i>															
Amusement Parks								P							
Electronic Gaming Operation or Games of Skill	•	•	•	•	•		•		•	•	•	•	C	•	<>
Indoor Commercial Recreation	•	•	•	•	•		P		P	P	•	•	C	C	<>
Indoor Shooting Range	•	•	•	•	•		•		•	•	•	•	•	C	<>
Indoor Shooting Range			P												
Motor Sports Facility							S								
Nightclub or Dance Hall	•	•	•	•	•		P		•	•	•	C	C	•	<>
Outdoor Commercial Recreation	•	P	P	•	•		P		•	P	•	•	C	C	<>
Recreation facilities (public or private)							S	P							
Theatre, Indoor	•	•	•	•	•		P		P	•	•	C	C	•	<>
Theatre, Outdoor	•	•	•	•	•		P		•	P	•	•	C	C	<>
<i>Retail Sales</i>															



CHAPTER 4.

LAND USES

§ 4.2 Principal Uses

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		AGR	RUR	LDR	MXR	MR-NC	MR-GB	MR-MU	TNC	IND	RCZ	MCZ	CCZ	ICZ	
USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
Building supply and equipment sales							P	P							
Bulky Item Sales	•	•	•	•	•		P		•	P	•	•	C	C	<>
Convenience Store (with gasoline sales)	•	•	•	•	•		P		P	P	•	C	C	C	<>
Convenience store with gas pumps							P	P							
Drug Stores							P	P							
Electrical and electronic product retail							P	P							
Farmer's Market	•	P	P	•	•		P		P	•	•	C	C	C	<>
Flea Market	•	•	•	•	•		P		•	•	•	•	C	C	<>
Furniture and household appliance store							P	P							
Gift Shop							P	P							
Greenhouses or horticultural nurseries							P	P							
Grocery Store	•	•	•	•	P		P		P	•	C	C	C	•	<>
Grocery, food, fruit, and meat stores							P	P							
Hardware Store							P	P							
Jewelry Shops							P								
Office supplies and equipment, sales and services							P	P							
Pharmacy	•	•	•	•	P		P		P	•	•	C	C	•	<>
Photographic studios and camera sales							P	P							
Plumbing Supply							P	P							
Retail, High Intensity	•	•	•	•	•		P		P	•	•	C	C	•	<>
Retail, Large Format	•	•	•	•	•		P		•	•	•	C	C	•	<>
Retail, Low Intensity	•	•	•	•	P		P		P	•	•	C	C	•	<>
Retail, Micro	•	•	•	•	P		P		P	P	C	C	C	C	<>
Retail establishments (department stores, clothing, fabric, variety, floor covering, paint, antiques, art goods, gift, music, sporting goods, book and stationery, magazine, candy, tobacco, pet, hobby and craft stores)							P	P							
Retail business or service							P		P						
Shopping Center							S	P							
Sign making and painting shops							P	P							



CHAPTER 4.

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§ 4.2 Principal Uses

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		AGR	RUR	LDR	MXR	MR-NC	MR-GB	MR-MU	TNC	IND	RCZ	MCZ	CCZ	ICZ	
USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
Tobacco/Vape Shops	•	•	•	•	•	S	•		•	•	•	•	C	•	<>
<i>Sexually-Oriented Businesses</i>															
All types	•	•	•	•	•	•	•	•	S	•	•	•	C	•	<>
Adult Establishments								•							
<i>Storage Related</i>															
Landscaping materials sales and storage			S												
Outdoor Storage	•	•	•	•	•	P		•	P	•	•	•	C	C	<>
Self-Storage, Indoor Only	•	•	•	•	•	P		P	•	•	C	C	C	C	<>
Self-Storage, Indoor and Outdoor	•	•	•	•	•	P		•	P	•	•	•	C	C	<>
<i>Vehicle Related</i>															
Automobile parts and suppliers, repair garages						P	P								
Automobile Sales (new and used)						P	P								
Boat Sales and Rental	•	•	•	•	•	P		•	P	•	•	•	C	C	<>
Service Station (with or without gasoline sales)						P	P								
Vehicle Graveyard						P									
Vehicle Parts and Accessory Sales	•	•	•	•	•	P		P	P	•	C	C	C	C	<>
Vehicle Painting/Bodywork	•	•	•	•	•	P		•	P	•	•	•	C	C	<>
Vehicle Repair and Service (no painting/body work)	•	•	•	•	•	P		P	P	•	•	•	C	C	<>
Vehicle Sales and Rental	•	•	•	•	•	P		P	•	•	C	C	C	C	<>
Vehicle Towing or Storage	•	•	•	•	•	P		•	P	•	•	•	C	C	<>
Automobile Washing						P	P								
Vehicle Washing and Detailing	•	•	•	•	•	P		P	•	•	•	•	C	C	<>
INDUSTRIAL USE CLASSIFICATION															
Energy Related															



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		AGR	RUR	LDR	MXR	MR-NC	MR-GB	MR-MU	TNC	IND	RCZ	MCZ	CCZ	ICZ	
USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
Fuel Oil/Bottled Gas Distribution	•	•	•	•	•		•		•	S	•	•	•	C	<>
Gas and Petroleum Distribution	•	•	•	•	•		•		•	S	•	•	•	C	<>
Gas, oil, or fuel products							P		S						
Propane, sales and storage						S	P								
Solar Energy System, Level 2	•	•	•	•	•		•		•	P	•	•	•	C	<>
Solar Energy System, Level 3	•	•	•	•	•		•		•	•	•	•	•	C	<>
Solar Energy Generation Facilities							P		P						
Wind Energy Conversion	•	•	•	•	•		•		•	P	•	•	•	C	<>
Wind Turbines		S	S		S	S	S		S	S	S	S	S	S	
<i>Extractive Industry</i>															
All Types	•	•	•	•	•		•		•	S	•	•	•	C	<>
Mining and Extraction Operations							S								
<i>Flex Space</i>															
Business Incubator	•	•	•	•	P		P		P	P	•	C	C	C	<>
Data Center/Crypto Mining	•	•	•	•	•		•		•	•	•	•	•	C	<>
Maker Space	•	•	•	•	P		P		P	P	•	C	C	C	<>
Printing, Publishing, Reproducing							P		P						
Research and Development	•	•	•	•	•		•		•	P	•	C	C	C	<>
<i>Industrial Services</i>															
Asphalt or Concrete Plants	•	•	•	•	•		•		•	S	•	•	•	C	<>
Asphalt Plants							S								
Concrete Plants							S								
Chip Mills							S								
Contractor's Services Office/Yard	•	•	•	•	•		•		•	P	•	•	C	C	<>
Electrical, HVAC, or Plumbing Fabrication	•	•	•	•	•		•		•	P	•	•	C	C	<>
Farm Machinery Assembly							P		P						



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		AGR	RUR	LDR	MXR	MR-NC	MR-GB	MR-MU	TNC	IND	RCZ	MCZ	CCZ	ICZ	
USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
General Industrial Services	•	•	•	•	•		•		•	P	•	•	C	<>	
Industrial Equipment, Sales, and Repairs							P		P						
Incinerators							S								
Machine and welding shops						P		P							
Machining, assembly, and service operations		S													
Metal Fabrication	•	•	•	•	•	•	•		•	P	•	•	•	C	<>
Slaughtering Plants							S								
Manufacturing															
Animal Feeds							P		P						
Automotive Components and Parts							P		P						
Bedding, carpets and pillows							P		P						
Clothing, including hosiery						P		P							
Electrical and electronic products						P		P							
Fiber-optic cable						P		P							
Foods, food products, beverages and beverage products, including bottling of beverages and beverage products						P		P							
Furniture industries						P		P							
Glass						P		P							
Heavy Manufacturing	•	•	•	•	•	•	•		•	P	•	•	•	C	<>
Heavy Industry							S								
Household Appliances						P		P							
Ice						P		P							
Leather Goods						P		P							
Light Manufacturing	•	•	•	•	•	S		•	P	•	•	•	•	C	<>
Machine Tools						P		P							
Metal and Metal Products						P		P							
Micro Manufacturing	•	P	•	•	S	P		•	P	•	C	C	C	<>	
Paints						P		P							
Paper products, not including the manufacturing or processing of paper;						P		P							
Pharmaceutical Manufacturing						P		P							
Plastics						P		P							
Pottery, porcelain and vitreous china						P		P							



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§ 4.2 Principal Uses

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		AGR	RUR	LDR	MXR	MR-NC	MR-GB	MR-MU	TNC	IND	RCZ	MCZ	CCZ	ICZ	
USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
Rubber products, not to include the processing or manufacture of rubber								P		P					
Soap, detergent and washing compounds								P		P					
Textiles								P		P					
<i>Utility Related</i>															
Major Utility	•	P	•	•	•		P		•	P	C	C	C	C	<>
Minor Utility	P	P	P	P	P		P		P	P	C	C	C	C	<>
Transformer and Public Stations			S	S				P							
Public Utilities						P		P							
<i>Warehouse Related</i>															
Freight Terminal	•	•	•	•	•		•		•	P	•	•	C	C	<>
Milk Distribution Facilities								P		P					
Trucking Terminals							P		P						
Warehouse, Distribution	•	•	•	•	•		•		•	P	•	•	•	C	<>
Warehouse, Storage Only	•	•	•	•	•		P		•	P	•	C	C	C	<>
Warehouses						P	P		P						
<i>Waste Related</i>															
Recycling Center	•	•	•	•	•		•		•	P	•	•	•	C	<>
Salvage and Junkyard	•	•	•	•	•		•		•	S	•	•	•	C	<>
Junkyards							S								
Solid Waste Management Facilities							S								
Transfer Station	•	•	•	•	•		•		•	S	•	•	•	C	<>
<i>Wholesale Sales</i>															
Wholesale establishments						P	P								
Indoor Only	•	•	•	•	•	P		•	P	•	•	•	C	C	<>
Indoor and Outdoor	•	•	•	•	•	•		•	P	•	•	•	•	C	<>
INSTITUTIONAL USE CLASSIFICATIONS															
<i>Assembly</i>															
Assembly venues							S	P		P					
Auditorium, Coliseum, Convention Center	•	•	•	•	•	•	P		P	P	•	C	C	C	<>
Community Center	P	P	•	P	P	P		P	•	C	C	C	•	<>	
Community Building			P												



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USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
Fraternal Club or Lodge	•	P	P	P	P		P		P	•	C	C	C	•	<>
Club or Lodge			P												
Religious Institution, High Intensity	•	P	•	•	•		P		•	•	C	C	C	•	<>
Religious Institution, Low Intensity	•	P	P	P	P		P•		P	•	C	C	C	•	<>
Churches			P	P		S	P	P							
<i>Cultural Facility</i>															
Art Gallery, Library, Museum	P	P	•	P	P		P		P	•	C	C	C	•	<>
Art Galleries							P	P							
Museums							P	P							
Music or Dance Institutions							P	P							
Civic and Cultural Buildings				S		S		P							
Libraries				S		S	P	P							
<i>Day Care</i>															
Adult Day Care	•	•	•	•	P		P		P	•	•	C	C	•	<>
Child Day Care	•	•	•	•	P		P		P	P	C	C	C	C	<>
Adult Day Care Centers and Adult Day Health Centers			P	S		P	P	P							
Adult Day Care Homes and Adult Day Health Homes				S		P		P							
Child Care, unregulated by State of NC				P			P								
Child Care Centers			P	S		P	P	P		P					
<i>Education Related</i>															
College or University	•	•	•	•	•		P		•	•	•	•	C	•	<>
Kindergartens and Day Nurseries							P	P							
School, Music or Dance							P	P							
School, Elementary, Middle, High	•	P	P	P	P		P		P	•	C	C	C	•	<>
School, Vocational	•	•	•	•	P		P		P	P	•	C	C	C	<>
Schools					S		P								
<i>Government Related</i>															
Fire/EMS/Police Station	•	P	P	P	P	P	P		P	P	C	C	C	C	<>
Government Maintenance, Storage, and Distribution	•	P	P	P	P	P	P		P	P	C	C	C	C	<>



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		AGR	RUR	LDR	MXR	MR-NC	MR-GB	MR-MU	TNC	IND	RCZ	MCZ	CCZ	ICZ	
USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
Government Office	•	P	•	•	P		P		P	P	C	C	C	C	<>
Government Training Facility, excluding firing range	•	•	•	•	•		P		•	P	•	•	C	C	<>
Post Office	•	•	P	P	P		P		P	P	C	C	C	C	<>
Public buildings and facilities			P			P	P								
Youth Development Center	•	P	P	•	P		P		P	P	C	C	C	C	<>
Health Care															
Extended Care Facility							P	P							
Hospital	•	•	•	•	•		P		•	P	•	•	C	C	<>
Hospitals and clinics						S	P								
Outpatient Facility	•	•	•	•	•		P		•	•	•	C	C	•	<>
Psychiatric Services	•	•	•	•	•		P		•	•	•	C	C	•	<>
Residential Treatment Facility	•	•	•	•	•		P		•	P	C	C	C	C	<>
Medical, Institutional Care Development			S	S				P							
Urgent Care	•	•	•	•	P		P		P	P	•	C	C	C	<>
Open Space															
Arboretum or Formal Garden	P	P	P	P	P		P		P	•	C	C	C	•	<>
Cemetery or Mausoleum	•	P	P	P	P		P		•	•	C	•	•	•	<>
Church Cemetery				P			P								
Recreation Related															
Athletic Field or Court	P	P	P	P	P		P		P	P	C	C	C	C	<>
Camp			P												
Community Recreation Facility, private	•	•	•	•	•		P		•	P	C	C	C	C	<>
Dock or Pier, Public	P	P	•	•	P		•		P	P	C	C	C	•	<>
Golf Course, public or private	•	P	P	P	P		•		•	•	C	C	C	C	<>
Indoor Recreation, public	P	P	P	•	P		P		P	P	C	C	C	C	<>
Outdoor Recreation, public	P	P	P	P	P		P		P	P	C	C	C	C	<>



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		AGR	RUR	LDR	MXR		GLC		TNC	IND	RCZ	MCZ	CCZ	ICZ	
USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
Park or Playground, public or private	P	P	P	P	P		P		P	P	C	C	C	C	<>
Parks, camps, tennis and racquet clubs, and golf courses			P	S				P							
<i>Social Services</i>															
All Types	•	•	•	•	P		P		P	P	C	C	C	C	<>
<i>Telecommunications</i>															
Antenna Collocation, Major	P	P	•	•	P		P		P	P	C	C	C	C	<>
Antenna Collocation, Minor	P	P	P	P	P		P		P	P	C	C	C	C	<>
Broadcasting Tower	•	S	•	•	•		•		•	S	•	•	•	C	<>
Small Wireless Facility	P	P	P	P	P		P		P	P	C	C	C	C	<>
Telecommunications Facility, Major	•	P	•	•	•		•		•	P	•	•	•	C	<>
Telecommunications Facility, Minor or Concealed	P	P	P	•	•		P		P	P	C	C	C	C	<>
Group 1 Communications Towers & Tower Activities			P	S		P	P	P		P					
Group 2 Communications Towers & Tower Activities			P	S		P	P	P		P					
Group 3 Communications Towers & Tower Activities							P	P		P					
Group 4 Communications Towers & Tower Activities								P							
Group 5 Communications Towers & Tower Activities								P							
Group 6 Communications Towers & Tower Activities			S	S				P							
<i>Transportation</i>															
Airstrip	•	S	•	•	•		•		•	•	•	•	•	C	<>
Bus Station	•	•	•	•	•		P		P	•	C	C	C	•	<>
Park and Ride Facility	•	•	•	P	P		P		P	P	C	C	C	C	<>
Rail Services	•	•	•	•	•		•		•	P	•	•	•	C	<>
Taxi & Ground Transportation	•	•	•	•	•		P		P	P	C	C	C	C	<>



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		AGR	RUR	LDR	MXR	MR-NC	MR-GB	MR-MU	TNC	IND	RCZ	MCZ	CCZ	ICZ	
USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
RESIDENTIAL USE CLASSIFICATIONS															
<i>Assisted Living</i>															
Congregate Care	•	•	•	P	P		•		•	•	C	•	•	•	<>
Continuing Care Retirement Community	•	•	•	P	P		P		P	•	C	•	•	•	<>
<i>Group Living</i>															
Boarding House	•	•	•	•	•		•		•	•	C	•	•	•	<>
Family Care Home	•	P	P	P	P		•		•	•	C	•	•	•	<>
Family Care Homes			P	P		P		P							
Family Child Care Homes and Incidental Home Occupations			P	P		P	P	P		P					
Group Home	•	•	•	•	•		•		•	•	C	•	•	•	<>
Structured Home Environments			S	S		S	S	P							
Halfway House	•	•	•	•	•		•		•	•	C	•	•	•	<>
Homeless Shelter	•	•	•	•	•		•		•	•	C	•	•	•	<>
<i>Household Living</i>															
Bungalow Court	•	•	•	P	P		•		P	•	C	•	•	•	<>
Conservation Subdivisions	•	P	P	P	P		•		•		C	C	•	•	<>
Live/Work	•	•	•	•	P		P		P		C	C	C	•	<>
Manufactured Home	•	P	P	P	•		•		•		C	•	•	•	<>
Manufactured Home Park	•	S	•	•	•		•		•		C	•	•	•	<>
Manufactured Home Park								P							
Manufactured Home Graveyard								P							
Mixed Uses (vertical)							S	P							
Multifamily Dwelling, Attached or Detached	•	•	•	•	P		•		P	•	C	C	C	•	<>
Multifamily Dwelling, Upper Story Only	•	•	•	•	P		•		P	P	C	C	C	C	<>
Planned Unit Developments			S	S			P								
Pocket Neighborhood	•	•	P	P	P		•		P	•	C	C	•	•	<>
Single-Family Attached Dwelling	•	•	•	P	P		•		P	•	C	C	•	•	<>



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USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
Single-Family Detached Dwelling	•	P	P	P	P		•		•	•	C	•	•	•	<>
Single-family dwellings			P	P		P		P							
Single-family residential cluster developments			S												
Tiny Home Parks, Park Model Parks, Recreational Vehicle Parks								S							
Triplex or Quadplex	•	•	•	P	P		•		P	•	C	C	•	•	<>
Two-family Dwelling	•	P	P	P	P		•		•	•	C	C	•	•	<>
Residential Duplexes			P	S				P							
SECONDARY USES²²															
Accessory Uses and Structures			P			P	P	P							
Accessory Dwelling Units			P												
Agriculture (to be used in conjunction with a permitted or secondary use)										P					
Adult Day Care Centers										P					
Adult Day Health Centers										P					
Assembly (entertainment, special events, conferences)										P					
Cafeterias, restaurants and pubs, including catering										P					
Cemeteries			P												
Church Bulletin Boards				P											
Converters and processors to recycle materials into useable energy										P					
Customary Accessory Bldgs				P											
Electronic Gaming							P								
Incidental Home Occupations				P											
Home Occupations						S									
Promotion, sale and tasting of products manufactured or processed on site										P					
Recreation facilities (indoor and outdoor)										P					
Retail facilities									P						

²² NOTE: The Secondary uses portion of new Chapter 4, Land Uses will address these and other common accessory use types in a separate table.



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USE TYPE															
Current Districts & Uses (in yellow rows)			MR-RR	MR-30		MR-NC	MR-GB	MR-MU		MR-LI	MR-R-CD	MR-M-CD	MR-C-CD	MR-I-CD	
Sales training and meeting facilities (including overnight lodging)															
Signs not more than 4 sq ft			P	P		P	P	P		P					
Solar Panels			P	P											
Wind Turbines										P					



4.2.6. STANDARDS FOR SPECIFIC PRINCIPAL USES

A. This section sets out the full range of use-specific standards for the common principal uses and consolidates and updates the standards in Section 153, current zoning, as well as the standards for:

- 01.** The standards for townhouse (single-family, attached) and multi-family developments;
- 02.** New standards for short term rentals, campgrounds, and RV Parks;
- 03.** Existing standards from Chapter 151 and new standards for manufactured homes and manufactured home parks with additional clarity regarding use and conversion of recreational vehicles in these parks;
- 04.** Updated standards for telecommunications facilities contained in current Chapter 154.090 through 154.101;
- 05.** New standards for energy-generating uses, such as solar farms, which are in Section 089 of the existing zoning ordinance;
- 06.** New standards for novel housing configurations like bungalow courts, live/work units, detached multi-family, and pocket neighborhoods; and
- 07.** Revise standards for Structured Home Environments in Section 154-85 of the zoning ordinance to Family Care Homes in keeping with NCGS 160D and other state laws.

B. Principal uses are listed in alphabetical order to ease in navigation, though each use type with use-specific standards has a cross reference to these standards in the table of common principal uses.

C. This section will carry forward and build on the use-specific standards for the various permanent principal (food parks), secondary (food stand) and temporary uses (food trucks) from Section 111, Temporary Vendors, but relocates the accessory or temporary use standards to the appropriate location in the new Ordinance.

§ 4.3 PROHIBITED USES

This section sets out the list of use types that are prohibited everywhere within the Town's planning jurisdiction (organized by use classification). Some example uses anticipated to be prohibited include storage of radioactive or infectious waste, consolidated animal feeding operations, internet sweepstakes cafes, and others. The section also lists a variety of secondary uses that are prohibited Townwide, like using a recreational vehicle as a permanent dwelling, or the keeping of exotic animals as pets. This section is proposed in response to recent NC Court of Appeals cases that found that uses intended to be prohibited must be listed or otherwise identified in the UDO.

§ 4.4 SECONDARY USES

This section sets out the standards for secondary (or accessory) use types. These are use types that are incidental to a principal use on the same lot. The section includes a new summary table (similar to the one included for principal uses) for common secondary uses. It also includes a series of new use-specific standards for secondary uses

4.4.1. INTENT

This section authorizes the establishment of secondary uses and structures that are incidental and subordinate to principal uses on lots of three acres in area or less. The purpose of this section is to allow a broad range of secondary uses and structures, provided they comply with the standards set forth in this section in order to reduce potentially adverse impacts on surrounding lands.

4.4.2. ESTABLISHMENT OF A SECONDARY USE

A. Secondary uses or structures may be approved in conjunction with the approval of the principal use or subsequently following the establishment of the principal use. No secondary use or structure shall be approved, established, or constructed before the principal use is approved in accordance with this Ordinance, except for storage sheds or fenced areas.

B. Except when indicated as a Special Use or a in conditional zoning district in Table <>, Listing of Common Secondary Uses, establishment of a secondary use or structure subsequent to an established principal use shall require approval of a Zoning Compliance Permit in accordance with Section <>, Zoning Compliance Permit.



C. In cases where a secondary use or structure is identified as a Special Use in Table <>, Listing of Common Secondary Uses, establishment of a secondary use or structure subsequent to an established principal use shall require approval of a Special Use Permit in accordance with Section <>, Special Use Permit.

D. In cases where a secondary use or structure is permitted in a conditional zoning district in Table <>, Listing of Common Secondary Uses, establishment of a secondary use or structure subsequent to an established principal use shall require approval of a conditional rezoning in accordance with Section <>, Conditional Rezoning. Applications to establish a conditional zoning district shall include a written list of proposed secondary uses which shall be attached to the application approval along with other conditions of approval.

E. Section <>, Listing of Common Secondary Uses, may not be inclusive of all possible secondary uses, and in the event a secondary use is proposed that is not listed in the table, the Planning Director shall consult Table <>, Listing of Common Principal Uses, to determine if the proposed secondary use corresponds to a listed principal use. Any listed principal use is permitted as a secondary use in any zoning district where the principal use is permitted. In no instance shall a secondary use be permitted in a zoning district where it is prohibited as a principal use.

F. In the event a proposed secondary use is not listed in Table <>, Common Secondary Use Table, and there is no corresponding principal use, the Planning Director shall determine how to treat the secondary use in accordance with Section <>, Unlisted Uses.

4.4.3. GENERAL STANDARDS FOR SECONDARY USES

Secondary structures may deviate from these general standards and the specific standards in Section <>, Standards for Specific Secondary Uses, only where expressly authorized by this Ordinance, as part of an approved Variance or Administrative Adjustment, are subject to conditions of approval associated with an Unlimited Conditional Rezoning or are configured in accordance with Section <>, Incentives and Alternatives.

A. CHARACTERISTICS OF SECONDARY USES AND STRUCTURES

Permitted secondary uses and structures subject to these standards and located on a lot of three acres in area or less include those that the Planning Director determines:

- 01.** Are clearly incidental to an allowed principal use or structure;
- 02.** Are subordinate to and serving an allowed principal use or structure;
- 03.** Are subordinate in extent and purpose to the principal use or structure;
- 04.** Are smaller in terms of total floor area or square footage than the principal structure; or
- 05.** Are shorter in height and smaller in mass than the principal structure.

B. LOCATION OF SECONDARY USES AND STRUCTURES

01. ON A LOT WITH AN ESTABLISHED PRINCIPAL USE

- a. Except on special purpose lots, secondary uses may only be established on lots that contain a pre-existing principal use. Some secondary uses or structures may be located on a lot during construction of a principal use when expressly permitted by this Ordinance.
- b. Secondary uses may be located on a designated special purpose lot prior to a principal use.
- c. A secondary use and the principal use it serves shall be located within the same zoning district.
- d. Secondary uses on lots more than three acres in area are exempted from the standards in this Section.

02. WITHIN REQUIRED LANDSCAPING OR STREETSCAPE BUFFERS

Except for fences and walls contributing to the screening function of a buffer, no secondary structure shall be located within a required landscaping or streetscape buffer except where permitted in accordance with Section <>, Site Landscaping, or Section <>, Screening.

03. WITHIN A REQUIRED SETBACK

No secondary use or structure shall deviate from the setbacks applied to the zoning district where located, except as authorized by Table <>, Allowable Encroachment into Setbacks.

04. WITHIN OTHER AREAS ON A SITE

No secondary use or structure shall:



- a. Be located within a designated fire lane;
- b. Obstruct required sight distance triangles;
- c. Impede ingress or egress to a lot, site, or principal structure;
- d. Be located within a public utility easement;
- e. Interfere with drainage or stormwater control measures;
- f. Be within an emergency access route designated on an approved site plan; or
- g. Create an unsafe condition, in the sole opinion of the Planning Director.

05. WITHIN AN EASEMENT (OTHER THAN A PUBLIC UTILITY EASEMENT)

- a. No secondary uses or structures shall be located within a public utility easement.
- b. Except for authorized stormwater control measures and directly-related facilities within a drainage easement, no secondary use or structure shall be located within any platted or recorded easement without the prior written consent of the landowner.

06. PROXIMITY TO A STREET

- a. Except on lots of one acre in area or more, the following secondary uses or structures shall be no closer to a public street right-of-way than a principal structure on the same lot:
 - i. Accessory dwelling unit;
 - ii. Detached garage or carport;
 - iii. Ham radio antenna or equipment;
 - iv. Stables;
 - v. Tool sheds;
 - vi. Swimming pools or hot tubs;
 - vii. Storage of an inoperable vehicle; or
 - viii. Parking of a recreational vehicle, heavy truck, or trailer containing another vehicle, boat, or equipment.
- b. When one of the secondary uses or structures listed in sub-section (a) above is proposed in front of a principal structure on a lot of one acre or more in area, it shall be setback at least twice the applicable street setback.

C. MAXIMUM SIZE

- 01.** Except for in-ground swimming pools, secondary uses and structures on lot smaller than 2 acres shall be smaller in square footage, floor area, and use area than the principal structure they serve.
- 02.** In-ground swimming pools may have a use area or volume greater than the principal structure they serve.
- 03.** Barns, silos, green houses, and similar features serving as secondary structures to agricultural uses may exceed the total floor area or square footage of a principal use on the lot where the agricultural use is located.

D. ALLOWABLE HEIGHT

- 01.** Secondary structures shall comply with the maximum building height requirements for the zoning district where located, except that secondary structures within 10 feet of a lot line shall not be taller than 15 feet.
- 02.** Maximum height standards shall not apply to certain secondary structures in accordance with Section <>, Exceptions.

E. COMPLIANCE WITH DESIGN STANDARDS

- 01.** Secondary uses and structures serving principle uses that are subject to the design standards or guidelines in Section <>, Design Standards and Guidelines, shall comply with the design standards applied to the principal use they serve or shall employ exterior materials, colors, and architectural details that are configured to be complementary to the principal use, as determined by the Planning Director.
- 02.** The degree to which proposed exterior materials, colors, and architectural details are configured in a complementary manner to a principal use shall be in the sole opinion of the review authority deciding the application.

F. COMPLIANCE WITH USE STANDARDS

- 01.** Secondary uses shall only be permitted subject to all applicable standards in Section <>, Standards for Specific Secondary Uses.



02. In cases where a use type identified in Table <>, Listing of Common Principal Uses, is proposed as a secondary use, the secondary use shall also comply with all applicable standards in Section <>, Standards for Specific Principal Uses.

4.4.4. LISTING OF COMMON SECONDARY USES

A. TABLE AS GUIDE

Table <>, Listing of Common Secondary Uses, is established as a guide to identify the appropriateness of the more common secondary uses in each zoning district.

B. LISTED SECONDARY USES

Table <>, Listing of Common Secondary Uses, lists what types of secondary uses, structures, and activities are allowed in each of the zoning districts.

- 01.** If a specific secondary use is allowed by-right, subject to issuance of a Zoning Compliance Permit, and any applicable secondary use-specific standards, the cell underneath the zoning district is marked with a "P".
- 02.** If a specific secondary use is allowed subject to a special use permit, subject to any applicable secondary use-specific standards the cell underneath the zoning district is marked with a "S".
- 03.** If the specific secondary use or structure is not allowed in a zoning district, the cell is blank (marked with a ".").
- 04.** In the case of conditional development districts, if a secondary use is allowable subject to any applicable secondary use-specific standards, it is marked with an "C", and the secondary use must be identified in the conditional rezoning application or approved conditions.

This section includes a summary table of common secondary uses, the zoning district where permitted, and the review process. This listing is expected to include at least the following secondary use types:

- Accessory Dwelling Unit (detached and internal)
- Alcohol Sales (as part of another principal use)
- Amateur Ham Radio
- Athletic Field
- Automated Teller Machine
- Canopy (Drive Through, Fuel, etc.)
- Caretaker Dwelling
- Cemetery
- Child Care, Incidental (based on GS Ch 110 Art 7)
- Cluster Mailbox Unit
- Dock
- Drive Through
- Electric Vehicle Charging Station
- Family Health Care Structure
- Flagpole
- Garage or Carport, Detached
- Generator
- Guard House, Shelter, or Gatehouse
- Home Occupation
- Mobile Food Vendors (motorized & non-motorized)
- Outdoor Dining/Seating
- Outdoor Display/Sales
- Outdoor Storage
- Parking of Heavy Trucks or Trailers in Residential Neighborhoods
- Parking of Recreational Vehicles
- Play Equipment
- Private Stables on a residential lot
- Produce Stand
- Recreational Vehicle, Boat, or Trailer
- Retail Sales (as a Secondary Use)
- Satellite Dish Antenna
- Solar Energy Conversion, Level 1
- Storage Tank, Above or Below Ground
- Swimming Pool/Hot Tub
- Tool/Storage Shed
- Underground Storage Tank
- Vehicle Repair (non-commercial)

4.4.5. STANDARDS FOR SPECIFIC SECONDARY USES

This section sets out the use-specific standards for each of the common secondary use types, like controls for grease disposal as part of a mobile food secondary use.



§ 4.5 TEMPORARY USES

This is a new section that establishes the standards for temporary uses of land, temporary structures, and temporary activities, like special events (such as an event at a local brewery).

4.5.1. INTENT

This section allows for the establishment of specific temporary uses of limited duration, provided that such uses do not negatively affect adjacent land, and provided that such temporary uses are discontinued upon the expiration of a set time period. Temporary uses shall not involve the construction or alteration of any permanent building or structure.

4.5.2. ESTABLISHMENT OF TEMPORARY USES

- 01.** Temporary uses or structures may be approved prior to the establishment of a principal use, in conjunction with the approval of the principal use, or subsequent to the establishment of a principal use.
- 02.** All temporary uses or structures listed in this section shall require prior approval of a temporary permit in accordance with Section <>, Temporary Permit.
- 03.** In the event a temporary use is proposed that is not listed in this section, the Planning Director shall consult Section <>, Unlisted Uses, to determine how to treat the proposed temporary use.

4.5.3. GENERAL STANDARDS FOR TEMPORARY USES

All temporary uses and structures shall comply with the following general standards, unless otherwise specified in this Ordinance:

A. GENERAL REQUIREMENTS

An applicant proposing a temporary use or structure shall:

- 01.** Secure written permission from the landowner;
- 02.** Obtain the appropriate permits and licenses from the Town and other agencies;
- 03.** Comply with the applicable requirements for signs in Section <>, Signage, if signage is proposed;
- 04.** Meet public utility requirements for proper connection to water, sewer, electrical and other utility service connections, as applicable;
- 05.** Not violate the applicable conditions of approval that apply to a site or use on the site;
- 06.** Not result in a situation where the principal use, if present, fails to comply with the standards of this Ordinance;
- 07.** Ensure the site of a temporary use or structure contains sufficient land area for the temporary use and for the parking and traffic movement associated with the temporary use, without impacting environmentally sensitive lands;
- 08.** Ensure temporary uses remain in place no longer than 90 days if located within a special flood hazard area;
- 09.** Provide adequate on-site restroom facilities (as appropriate); and
- 10.** Cease all outdoor activities within 500 feet of a residential use on a lot in a residential zoning district by 11:00 PM.

B. GENERAL CONDITIONS

In approving a Temporary Permit, the Planning Director is authorized to impose any of the following general conditions upon the premises benefited by the permit as may be necessary to reduce or minimize any potential adverse impacts upon other property in the area, as long as the condition relates to a situation created or aggravated by the proposed temporary use or structure. The Planning Director is authorized, where appropriate, to require:

- 01.** Provision of temporary parking facilities, including vehicular access and egress;
- 02.** Control of nuisance factors, such as but not limited to, the prevention of glare or direct illumination of adjacent properties, noise, vibrations, smoke, dust, dirt, odors, gases, and heat;
- 03.** Prohibition of the storage or use of hazardous materials;
- 04.** Regulation of placement, height, size, and location of equipment;
- 05.** Provision of sanitary and medical facilities;
- 06.** Provision of solid waste collection and disposal;
- 07.** Provision of security and safety measures;



08. Use of an alternate location or date;
09. Modification or elimination of certain proposed activities;
10. Regulation of operating hours and days, including limitation of the duration to a shorter time period than requested or specified in this subsection; and
11. Submission of a Performance Guarantee (see Section <>, Performance Guarantee) to ensure that any temporary use will be removed from the lot.

4.5.4. DURATION OF COMMON TEMPORARY USES

This section includes a summary table of common temporary uses and their maximum duration. An example table is included below:

TABLE <>: TABLE OF COMMON TEMPORARY USES AND DURATIONS

TYPE OF TEMPORARY USE OR STRUCTURE	MAXIMUM DURATION	MAXIMUM FREQUENCY PER CALENDAR YEAR
Outdoor Seasonal Sales	Not more than 45 continuous days per lot per calendar year	Three, subject to maximum duration per year
Portable Storage Containers	Not more than 45 continuous days per lot per calendar year	Three, subject to maximum duration per year
Other Special Event	Circus, Carnival, or Fair	Up to 14 consecutive days per calendar year
	Grand Opening Sale	Up to 7 consecutive days per calendar year
	Non-Profit Event	Up to 7 consecutive days per calendar year
	Retail Sale	Up to 3 consecutive days per calendar
	Religious Event	Up to 5 consecutive days per calendar year
	Tent Sale	Up to 7 consecutive days per calendar year
Temporary Disaster Dwelling	No more than 12 months	Twice per lot per calendar year
Temporary Dwelling	No more than 6 months	N/A
Temporary Office	Must be removed within 30 days after all units are sold or leased	
Temporary Wireless Communications Facility	No more than 14 days unless placed for emergency purposes	
	No more than 30 days when placed to serve emergency purposes	

NOTES:

[1] No temporary use shall remain in place more than 90 days if located on a lot within the within the Special Hazard Area Overlay District.

4.5.5. STANDARDS FOR SPECIFIC TEMPORARY USES

This section sets out the use-specific standards for each of the common secondary use types.



§ 4.6 UNLISTED USES

This is a new section that supplements the principal, secondary, temporary, and prohibited use sections with details on how the Town will consider the process and requirements for unlisted use types. Unlisted uses may not be simply prohibited, and the UDO must include a standardized process for determination on how to classify them. The determination procedure (see Chapter 2) is used to clarify how unlisted uses will be treated.

4.6.1. PROCEDURE FOR DETERMINATION

Sets out the process to be used in classifying an unlisted use based on the standards in the determination procedure, definitions, and the use category descriptions.

- A.** In the event that a proposed principal, secondary, and temporary use type is not listed in this Ordinance, and such land use is not listed in Section <>, Prohibited Uses, or is not otherwise prohibited by law, the Planning Director shall determine whether a materially similar land use exists in this Ordinance.
- B.** The Planning Director shall determine whether or not an unlisted use is similar to an existing use type based on the definitions in Section <>, Terms Defined, the standards for unlisted uses in Section <>, Determination, and the appropriate table in Section <>, Use Category Descriptions. Nothing shall limit the Planning Director from seeking input from Town staff, the Planning Board, or the Town Council in determining how to categorize an unlisted use.
- C.** Should the Planning Director determine that a materially similar land use does exist, the regulations governing that land use shall apply to the unlisted use type and the Planning Director's Determination shall be recorded in writing.
- D.** In cases where a proposed unlisted use type is not found to be similar to an existing use type, the Planning Director may, but shall not be required to, initiate a text amendment application to revise the text of this Ordinance to add the use type in accordance with Section <>, Text Amendment.

4.6.2. USE CATEGORY DESCRIPTIONS

The following tables set out the range of use categories, use characteristics, and example use types by use classification listed in Section <>, Listing of Common Principal Uses.

A. AGRICULTURAL USE CLASSIFICATION

Table <>, Agricultural Use Categories, sets out the use categories included in the agricultural use classification in Table <>, Listing of Common Principal Uses. It also describes the characteristics and examples of the use types in each use category.

TABLE <>: AGRICULTURAL USE CATEGORIES

USE CATEGORY	CHARACTERISTICS
	EXAMPLE
Agricultural Production	The Agricultural Production Use Category is characterized by general agricultural activities, including the cultivation and production of orchard, garden, or nursery crops on a small or large scale, the production of field grown crops, specialty crops, flowers, fruit, grapes, market gardening, nursery stock, nuts, ornamental plants, sod, vegetables, and similar horticultural uses. The use category also includes agricultural processing, agronomy, aquaculture, biotechnical agriculture (including education parks for biotechnical agriculture or a demonstration farm), fisheries, honey production, and similar uses. Secondary uses may include offices, storage areas and repair facilities related to agriculture uses.



TABLE <>: AGRICULTURAL USE CATEGORIES

USE CATEGORY	CHARACTERISTICS
	EXAMPLE
	Example use types include agronomy, aquaculture, biotechnical, crop farming, fisheries, apiculture, silviculture, plant nurseries, and similar uses.
Livestock-related	<p>The Livestock-Related Use Category is characterized by the commercial and non-commercial propagation, rearing, exercising, feeding, milking, housing, controlling, handling, or general care of living animals and livestock.</p> <p>Example use types include the raising and production of cattle (beef and dairy), pigs, mules, ducks, horses, goats, poultry, sheep, and similar livestock or domesticated animals. Breeding and rearing of animals typically thought of as household pets (e.g., dogs, cats, small rodents, etc.) is not animal husbandry.</p>

B. COMMERCIAL USE CLASSIFICATION

Table <>, Commercial Use Categories, sets out the use categories included in the commercial use classification in Table <>, Listing of Common Principal Uses. It also describes the characteristics and examples of the use types in each use category.

TABLE <>: COMMERCIAL USE CLASSIFICATION

USE CATEGORY	CHARACTERISTICS
	EXAMPLE
Animal Related	<p>The Animal-Related Use Category is characterized by uses related to the provision of medical services and treatment to animals, including veterinary services, animal hospitals, and the boarding of animals related to the provision of these services.</p> <p>Example use types include animal shelters, animal grooming, kennels (outdoor and indoor), animal hospitals, and veterinary clinics.</p>
Eating & Drinking	<p>The Eating and Drinking Use Category includes use types that prepare and sell food and beverages for immediate or direct on- or off-premise consumption. Secondary uses may include bars or cocktail lounges associated with the establishment, decks and patios for outdoor seating, drive-through facilities, facilities for live entertainment or dancing, customer and employee parking areas, and valet parking facilities.</p> <p>Example use types include restaurants (including brewpubs) with indoor and outdoor seating, caterers, restaurants, specialty eating establishments (ice cream parlors, bakery shops, dessert shops, juice, or coffee houses). Secondary uses may include bars or cocktail lounges associated with the establishment, decks and patios for outdoor seating, drive-through facilities, facilities for live entertainment or dancing, customer and employee parking areas, and valet parking facilities.</p>
Equipment Related	<p>The Equipment-Related Use Category is characterized by commercial establishments engaged in the rental and repair of large and small equipment, tools, tables, chairs, party supplies, plants, and similar features available for short term rental for consideration.</p> <p>Example use types include tool rental, and heavy and light equipment repair/refurbishment uses.</p>
Event Venue	<p>The Event Venue Use Category is characterized by establishments that provide gathering spaces and facilities available for conducting events, receptions, and similar shared experiences. Such facilities are rented hourly or by the day, and may include dining, catering, and activity areas. Secondary uses may include classrooms, accommodations, and equipment storage.</p> <p>Example use types include conference halls, conference centers, retreats, wedding venues, and similar spaces.</p>
Financial Services	The Financial Services Use Category includes use types engaged in the provision of financial advice, savings, making of loans, and secure storage of currency or similar valuables.



TABLE <>: COMMERCIAL USE CLASSIFICATION

USE CATEGORY	CHARACTERISTICS
	EXAMPLE
Lodging	Example use types include banks, credit unions, investment offices, payday loan establishments, credit counselling, and pawn shops.
	The Lodging Use Category includes use types that provide lodging units or space for short-term stays for rent, lease, or interval occupancy. Secondary uses may include pools and other recreational facilities, limited storage, restaurants, bars, supporting commercial, meeting facilities, offices, and parking.
Office Related	Example use types include hotels, motels, bed and breakfast inns, extended stay facilities, campgrounds, and hunting lodges.
	The Office Use Category includes use types that provide for activities that are conducted in an office setting and generally focus on business, professional, or financial services. Secondary uses may include cafeterias, day care facilities, recreational or fitness facilities, parking, supporting commercial, or other amenities primarily for the use of employees in the business or building.
Parking Related	Example use types include business and sales offices (such as tax preparers, and real estate agents), and professional services (such as lawyers, accountants, engineers, or architects). Offices that are part of and located with a principal use in another use category are considered secondary to the establishment's primary activity. Contractors and others who perform services off-site are included in the Offices Use Category if equipment and materials are not stored outside and no fabrication, services, or similar work is carried on at the site. Government offices and medical and dental clinics, medical or dental labs, and blood collection facilities are classified as Institutional uses.
	The Parking-Related Use Category includes uses engaged in the provision of short-term, temporary off-site parking for automobile, trucks, motorcycles, battery powered vehicles, and similar vehicles intended for personal transport. Such uses may or may not permit the temporary storage of trailers and similar vehicle-related appurtenances.
Personal Services	Example use types include parking lots and parking structures. Uses engaged in sales or rental are vehicle-related uses.
	The Personal Service Use Category is characterized by use types related to the provision of services or product repair for consumers. Personal services use types meet frequent or recurrent service needs of a personal nature, including the repair of small personal items such as shoes, watches, jewelry, and clothing.
Recreation Related	Example use types include laundromats, laundry and dry-cleaning drop-off establishments, photographic studios, mailing or packaging services, photocopy and blueprint services, funeral homes, fitness centers, locksmiths, hair salons and barber/beauty shops, tanning and nail salons, tattoo parlors and body piercing establishments, massage therapy and day spas, dance or music instruction, and psychics or mediums.
	The Recreation-Related Use Category is characterized by use types that provide recreational, amusement, and entertainment opportunities that are privately-owned and commercial in nature. Uses may be either indoors, outdoors, or both.
Retail Sales	Example use types include recreational uses occurring outdoors (private golf driving ranges and privately-owned miniature golf facilities; go-cart racing, race-track, or dirt-track facilities; water parks, and amusement parks; and privately-owned active sports facilities), billiard halls, indoor commercial recreation uses, bowling alleys, movie theatres, dance and yoga studios, fitness centers, sports instructional schools, martial arts instruction, and similar uses.
	The Retail Sales Use Category includes use types involved in the sale, lease, or rent of new or used products primarily intended for the general public. Secondary uses may include offices, storage of goods, limited assembly, processing, or repackaging of goods for on-site sale, concessions, ATM machines, outdoor display/sales areas, and parking. Use types within this use category are categorized based on their intensity, scale, and function.
	Example use types include stores selling, leasing, or renting consumer, home, and business goods, whether new or used, including art and art supply stores, audio/video stores, bicycle sales, book stores, clothing stores, convenience stores, department stores, dry good sales, electronic equipment stores, fabric shops, furniture stores, florist shops, garden supply centers, gift shops, grocery stores, hardware stores, stores that sell household products, jewelry stores, office supply stores, pet and pet supply stores,



TABLE <>: COMMERCIAL USE CLASSIFICATION

USE CATEGORY	CHARACTERISTICS
	EXAMPLE
	and pharmacies. Secondary uses may include storage of products for sale, offices, concessions, seating areas, areas for testing of products prior to purchase, and provision of product-related service or repair.
Sexually-Oriented Businesses	An adult use as defined in Section 14-202.10(2) of the North Carolina General Statutes.
Storage-Related	The Storage-Related Use Category includes uses engaged in the temporary short-term storage of goods, personal property, vehicles, and similar aspects in off-site areas. Storage of goods can take place in indoor and outdoor facilities.
	Example use types include self-storage facilities.
Vehicle Related	The Vehicle-Related Use Category includes use types involving the direct sale; rental; storage; and servicing of automobiles, trucks, boats, motorcycles, recreational vehicles, and other consumer motor vehicles intended to transport persons or goods over land or water or through the air, whether for recreation, commerce, or personal transport. Secondary uses may include offices, sales of parts, maintenance facilities, parking, outdoor display, and vehicle storage.
	Example use types include vehicle sales or rentals; automotive repair and servicing; automotive painting/bodywork; boat and marine sales or rental; aircraft parts, sales, and maintenance; transmission shops; automotive wrecker services; oil change, state vehicle inspection, and muffler shops; automotive parts sales and maintenance; car wash and auto detailing; and tire sales and mounting services.

C. INDUSTRIAL USES

Table <>, Industrial Use Categories, sets out the use categories included in the industrial use classification in Table <>, Listing of Common Principal Uses. It also describes the characteristics and examples of the use types in each use category.

TABLE <>: INDUSTRIAL USE CATEGORIES

USE CATEGORY	CHARACTERISTICS
	EXAMPLE
Energy Related	The Energy-Related Use Category is characterized by establishment engaged in the industrial-scale production of energy (electricity).
	Example use types include solar energy conversion, wind energy conversion, geothermal, and gas energy conversion activities, as well as coal-fired plants, natural gas plants, and hydro-electric facilities.
Extractive Industry	The Extractive Industry Use Category includes use types involving the extraction, removal, or basic processing of minerals, liquids, gases, or other natural resources. Such uses also include quarrying, well operation, drilling, mining, or other procedures typically done at an extraction site. Secondary uses may include offices, limited wholesale sales, security or caretaker's quarters, outdoor storage, and maintenance facilities.
	Examples use types include quarries, borrow pits, mining, and sand and gravel operations.
Flex Space	The Flex Space Use Category includes uses engaged in the provision of covered floor area available for short-term or long-term rental for the conduct of light industrial, assembly, storage, office, and related functions.
	Example use types include industrial floor area that is available for rental and configuration as a wide variety of use types.



TABLE ◊: INDUSTRIAL USE CATEGORIES

USE CATEGORY	CHARACTERISTICS EXAMPLE
Industrial Services	<p>The Industrial Services Use Category includes use types involving the repair or servicing of industrial, business, or consumer machinery equipment, products, or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar use types perform services off-site. Few customers, especially the general public, come to the site. Secondary activities may include limited retail or wholesale sales, offices, parking, warehousing, and outdoor storage.</p>
Manufacturing	<p>Example use types include machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; heavy equipment sales, rental, or storage; heavy equipment servicing and repair; building, heating, plumbing, or electrical contractors; fuel oil or bottled gas distributors; research and development facilities; laundry, dry-cleaning, and carpet cleaning plants; and general industrial service uses. Contractors and others who perform services off-site are included in the Office Use Category under Commercial Use Classification if equipment and materials are not stored outside and no fabrication, services, or similar work is carried on at the site.</p>
	<p>The Manufacturing Use Category includes use types involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. The use category also includes custom industries (establishments primarily engaged in the on-site production of goods by use of hand tools and small-scale equipment). Goods are generally not displayed or sold on site, but if so, such sales are a subordinate part of total sales. Relatively few customers come to the manufacturing site. Secondary uses may include retail or wholesale sales, offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, repair facilities, truck fleets, fueling facilities, security and caretaker's quarters.</p>
Utility Related	<p>Manufacturing uses include, but are not limited to: manufacture or assembly of machinery, equipment, instruments, vehicles, appliances, communications equipment, computer or electronic equipment, precision items and other electrical items; the processing of food and related products; lumber mills, pulp and paper mills, the manufacture of other wood products; production or repair of small machines or electronic parts and equipment; and similar uses.</p>
	<p>The Utility-Related Use Category is characterized by activities associated with the provision of a utility or infrastructure-related service such as electricity distribution, potable water treatment, storage, or delivery, wastewater collection, storage, or treatment. Facilities are classified as major or minor depending upon their impacts or scale.</p>
	<p>Example use types include potable water treatment plants, utility equipment and storage yards, utility substations, water towers, pump stations, stormwater management facilities, telephone exchanges, and facilities serving transit.</p>
Warehouse Related	<p>The Utility-Related Use Category includes use types involving the storage or movement of goods for themselves or other firms or businesses. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present. Secondary uses include offices, truck fleet parking, outdoor storage, and maintenance areas.</p>
	<p>Example use types include separate storage warehouses (used for storage by retail stores such as furniture and appliance stores); distribution warehouses (used for distribution by trucking companies; cold storage plants; and outdoor storage (as a principal use). Self-storage is a commercial use type.</p>
Waste Related	<p>The Waste-Related Use Category includes use types that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the composting of organic material or processing of scrap or waste material. This use category also includes use types that receive wastes from others. Secondary uses may include offices, outdoor storage, recycling of materials, and repackaging and trans-shipment of by-products.</p>



TABLE <>: INDUSTRIAL USE CATEGORIES

USE CATEGORY	CHARACTERISTICS
	EXAMPLE
	Example use types include recycling and salvage centers, convenience centers, transfer stations, land clearing and construction debris landfills, tire disposal or recycling, waste composting, incinerators, energy recovery plants, salvage yards and junkyards, and recycling drop-off centers.
Wholesale Sales	<p>The Wholesale Use Category includes use types involving the sale, lease, or rent of products primarily intended for industrial, institutional, or commercial businesses. The uses emphasize on-site sales or taking of orders and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited. Products may be picked up on-site or delivered to the customer. Secondary uses may include offices, product repair, warehouses, minor fabrication services, outdoor storage, and repackaging of goods.</p> <p>Example use types include sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment and store fixtures; mail order houses; and wholesalers of food, clothing, plants and landscaping materials, auto parts, and building hardware.</p>

D. INSTITUTIONAL USES

Table <>, Institutional Use Categories, sets out the use categories included in the institutional use classification in Table <>, Listing of Common Principal Uses. It also describes the characteristics and examples of the use types in each use category.

TABLE <>: INSTITUTIONAL USE CATEGORIES

USE CATEGORY	CHARACTERISTICS
	EXAMPLE
Assembly	<p>The Assembly Use Category is characterized by uses and facilities that bring people together for the purposes of learning or discussion, worship, recreation, or as part of a fraternal organization. Secondary uses may include entertainment or recreation facilities, day care, food preparation facilities, offices, parking, and similar features.</p> <p>Example use types include auditoriums, community centers, fraternal clubs, lodges, and religious institutions. Schools are included in the education related category.</p>
Cultural Facility	<p>The Cultural Facility Use Category includes use types of a public, nonprofit, or charitable nature that provide cultural amenities and educational services. Services and facilities typically include meeting areas, display areas, recreational features, as well as indoor facilities used primarily for business or professional conferences, seminars, and training programs. Generally, such uses are open to or provide services to members of the general public. Secondary uses may include parking, training facilities, kitchens/cafeterias, recreation areas, offices, meeting rooms, storage, food sales or consumption.</p> <p>Example use types include museums, libraries, senior centers, youth clubs, and art galleries.</p>
Day Care	<p>The Day Care Use Category includes use types that provide care, protection, and supervision for children or adults on a regular basis away from their primary residence, and for less than 24 hours a day. Care can include education and development activities. Care can be provided during daytime or nighttime hours. Secondary uses include offices, food preparation, recreation areas, and parking.</p> <p>Example use types day care centers, nurseries, nursery schools, adult day care facilities. Home day care is considered a secondary use. Drop-in or short-term day care provided in connection with employment or at a shopping center, recreational facility, religious institution, hotel, or other principal uses are not included in the Day Care Use Category.</p>



TABLE <>: INSTITUTIONAL USE CATEGORIES

USE CATEGORY	CHARACTERISTICS EXAMPLE
Education Related	<p>The Educational Use Category is characterized by uses engaged in the provision of educational services to children and adults, whether through public or private learning institutions. Secondary uses include living quarters, food preparation facilities, recreational facilities, offices, gathering spaces, and related activities.</p> <p>Example use types include primary and secondary schools, colleges, vocational schools, and establishments engaged in providing training whether for profit or as a community service.</p>
	<p>The Government-Related Use Category includes facilities and establishments engaged in governance and the provision of governing-related services, public safety, and operations.</p>
Governmental Related	<p>Example use types include governmental offices, governmental maintenance facilities, post offices, law enforcement facilities, fire stations, and similar uses.</p>
	<p>The Health Care Use Category includes use types that provide medical or surgical care and treatment to patients as well as laboratory services. Secondary uses may include offices, laboratories, laundry facilities, teaching facilities, meeting areas, cafeterias, parking, maintenance facilities, housing for staff or trainees, and limited accommodations for family members.</p> <p>Example use types include hospitals, outpatient medical facilities, urgent care providers, medical offices (doctors, dentists, radiologists, etc.), clinics, congregate care, memory care, drug and alcohol treatment facilities, psychiatric treatment facilities, and blood/tissue collection facilities.</p>
Open Space	<p>The Open Space Use Category includes use types that focus on open space areas largely devoted to vegetative landscaping or outdoor recreation and that tend to have few structures. Secondary uses may include club houses, recreational structures, statuary, fountains, maintenance facilities, concessions, parking, and columbaria and mausoleums (as secondary to cemeteries).</p>
	<p>Example use types include arboretums or botanical gardens, parks, community gardens, areas of undisturbed vegetation on land owned by the public or a conservation entity, and cemeteries.</p>
Recreation Related	<p>The Recreation Use Category includes active and passive recreation uses and facilities (whether indoor or outdoor) that are available for use by the general public or by the residents of a neighborhood or community.</p>
	<p>Example use types include athletic fields or courts, swim clubs, country clubs, golf courses, indoor recreation uses, and similar facilities.</p>
Telecommunications	<p>The Telecommunications Use Category is characterized by uses and facilities engaged in the provision of wireless telecommunication signals and information.</p>
	<p>Example use types include telecommunications antennae, signal processing equipment, antenna supporting structures, broadcasting studio and broadcasting towers.</p>
Transportation	<p>The Transportation Use Category includes use types that provide for the landing and takeoff of airplanes and helicopters, and passenger terminals for surface transportation. Secondary uses may include freight handling areas, concessions, offices, parking, maintenance, and fueling facilities.</p>
	<p>Example use types include airports, helicopter landing facilities, and passenger terminals for ground transportation (train, bus). Transit route facilities such as bus stops, bus shelters, and park-and-ride facilities are classified as Utilities.</p>

E. RESIDENTIAL USES

Table <>, Residential Use Categories, sets out the use categories included in the residential use classification in Table <>, Listing of Common Principal Uses. It also describes the characteristics and examples of the use types in each use category.



TABLE <>: RESIDENTIAL USE CATEGORIES

USE CATEGORY	CHARACTERISTICS
	EXAMPLE
Assisted Living	<p>The Assisted Living Use Category is characterized by establishment providing residential occupancy to unrelated individuals in need of care, treatment, or assistance. Assistance may take the form of daily life care, specialized medical care, counselling, addiction, or fostering services.</p>
	<p>Example use types include congregate care, nursing homes, rehabilitation centers, and retirement communities.</p>
Group Living	<p>The Group Living Use Category includes use types that provide for the residential occupancy of a structure by a group of people who do not meet the definition of "household." The size of the group may be larger than the average size of a household. Tenancy is typically arranged on a monthly or longer basis. Generally, group living structures have a common eating and or congregating area for residents. The residents may receive care, training, or treatment. Secondary uses include recreational facilities, dining facilities, and parking of vehicles for occupants and staff.</p>
	<p>Example use types include dormitories, family care homes, group homes, rooming, boarding houses, and similar uses. Facilities for rehabilitation or the treatment of addiction are considered assisted living facilities.</p>
Household Living	<p>The Household Living Use Category includes use types that provide for the residential occupancy of a dwelling unit by a household. Tenancy is arranged on a month-to-month or longer basis. Secondary uses commonly associated with household living are recreational activities, raising of pets, hobbies, and parking of the occupants' vehicles. Home occupations are secondary uses that are subject to additional regulations.</p>
	<p>Example use types include detached residential dwellings like single-family detached dwellings or manufactured homes, attached residential structures like townhouses, multi-family uses, upper story dwellings, and similar uses.</p>



CHAPTER 5.

NONCONFORMITIES

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TOC/Key Changes



§ 5.1 CHAPTER INTRODUCTION

This section replaces Section 154.105 of the current zoning ordinance and is updated to comply with recent changes to State law related to UDO text or zoning map amendments and the creation of nonconformities. This law requires local governments to obtain consent from any affected landowner prior to adopting a text or map amendment that creates a nonconforming situation for existing development on a lot in a non-residential development.

5.1.1. CHAPTER ORGANIZATION

This section identifies the six main sections in the Nonconformities Chapter, explains the differing types of nonconforming situations contemplated under the Ordinance, and sets out the general provisions related to the establishment of a nonconformity.

5.1.2. PURPOSE AND INTENT

There are existing structures, uses of land, signs, site features, and lots of record that became nonconforming in accordance with the standards and procedures identified in this Ordinance. Nonconformities do not comply with the applicable standards of this Ordinance or with a condition of approval applied to the development at the time of its approval. The purpose of this Chapter is to establish the rules under which nonconformities may continue and how their continued existence may be affected by changing conditions. More specifically, these standards are intended to:

- A.** Establish the procedure under which existing development may come to be considered as nonconforming;
- B.** Allow lawfully-established nonconformities to continue;
- C.** Encourage routine maintenance and activities necessary to preserve or improve public safety associated with a lawful nonconformity;
- D.** Clarify that any alteration to a nonconformity shall require full compliance with the applicable standards in this Ordinance, or shall require prior authorization from the Town to continue as a nonconformity;
- E.** Clarify how certain nonconformities may be continued or re-established following casualty damage; and
- F.** Limit the re-establishment of a nonconformity following its discontinuance.

5.1.3. NONCONFORMITIES, GENERALLY²³

A. EXISTING NONCONFORMITIES ABOLISHED UPON UDO EFFECTIVE DATE

This section clarifies that the nonconforming status of any development in existence prior to the effective date of this Ordinance is abolished and the prior nonconformity is granted amnesty upon its effective date. As of (insert the effective date of this Ordinance) nonconforming status is removed, and all existing and approved but not yet complete development shall be considered conforming with respect to the standards in this Ordinance.

B. AUTHORITY TO CONTINUE

- 01.** Based on the standards in this Section, existing development in place or approved prior to (insert the effective date of this Ordinance) may:

²³ NOTE TO STAFF: This section sets out the standards associated with Session Law 2024-57 pertaining to prohibition of downzoning. While the Mills River UDO is exempted from this session law until July 1, 2026, once adopted, the UDO will need to comply. This section sets out the proposed strategy. Essentially, the strategy includes three basic elements: 1) granting amnesty to all nonconformities in place at the time of UDO adoption (to avoid the need for tracking which ones do or do not have consent after adoption), 2) broadening the definition of what constitutes "new" development that is subject to the standards in the UDO at the time of application (so that the UDO can continue to be revised over time as necessary and appropriate without the Town having to track which developments are subject to which versions of the standards as they change over time), and 3) a procedure for changes to existing development that qualify as new development to come into compliance or become nonconforming. These standards may remain in this Chapter, or may be relocated to new Chapter 1, Administration.



- a. Remain in place;
- b. Continue to operate;
- c. Cease and be re-established as it existed on the date the development ceased; and
- d. Be reduced in size, scope, density, intensity, or impact, provided that any subsequent changes following such reduction remain subject to the standards in Section <>, Alterations to Existing Development.

02. In no instance shall existing development be increased in size, scope, density, intensity, or impact, except in full compliance with all applicable requirements in this Ordinance.

C. ALTERATIONS TO EXISTING DEVELOPMENT

01. GENERALY

- a. Except as authorized in accordance with Section <>, Exemptions, below, any alteration to existing or approved by incomplete development subject to the Unified Development Ordinance shall be considered as new development subject to full compliance with all applicable provisions of this Ordinance and any applicable conditions of approval in place at the time the alteration is proposed.
- b. A development may be considered to be fully compliant if it:
 - i. Meets all applicable Town requirements, standards in this Ordinance, and conditions of approval; or
 - ii. Is subject to an approved Variance in accordance with Section <>, Variance, that addresses aspects of the development that do not meet all applicable Ordinance standards and conditions of approval; or
 - iii. Is subject to a conditional rezoning approval established in accordance with Section <>, Conditional Rezoning, that includes conditions of approval intended to mitigate instances where the subject development does not meet all applicable Ordinance standards; or
 - iv. The development has authorization to be nonconforming, established in accordance with Section <>, Authority to Become Nonconforming.
- c. Examples of alterations to existing development subject to the standards in this section include, but are not limited to:
 - i. Changes in use type;
 - ii. Any subdivision or change to a lot line;
 - iii. Any change that increases the amount of impervious surface on a lot; or
 - iv. Any change that increases the height of a building, sign, or other structure subject to the height standards in this Ordinance.

02. EXEMPTIONS

The following activities or forms of development shall not be considered an alteration to existing development subject to section (01) Generally, above:

- a. Sale or re-sale without a change in use type;
- b. Complete demolition and removal of all above-ground structures and site features;
- c. Replacement of existing landscaping, provided the applicable minimum planting standards and screening performance objectives are maintained;
- d. Changes in exterior building materials, provided they comply with any applicable standards in Chapter 6, Standards;
- e. Replacement of signage, subject to NCGS§160D-912.1, and provided the signage complies with any applicable uniform sign plan requirements; or
- f. Establishment of a temporary use or structure, subject to the standards in Section <>, Temporary Uses.

D. AUTHORITY TO BECOME NONCONFORMING

Development proposed for alteration in accordance with Section <>, Alterations to Existing Development, that cannot reasonably comply with the applicable standards of this Ordinance, cannot meet the standards for approval of a Variance in accordance with Section <>, Variance, or is not subject to an approved Conditional Rezoning, that authorizes the proposed development's configuration (see Section <>, Conditional Rezoning), may only be altered by an applicant in accordance with the following requirements:

01. REQUEST FOR AUTHORIZATION

Prior to the establishment of a nonconformity, a landowner shall file a request for authorization to establish a nonconformity in accordance with these standards. A portion of the request for authorization shall include a signed statement of consent for nonconformity creation that is signed by all affected landowners (see Section <>, Application Filing).

02. RECORDATION OF CONSENT



- a. Following receipt of a request for authorization and associated statement of consent, Town staff shall review the request and statement, and if approved, the Town shall grant authorization and return the statement of consent form to the applicant for recordation with the Henderson County Register of Deeds. Failure of the applicant to record the statement of consent may result in the inability of the Town to process any future permit requests.
- b. The decision to approve a request for authorization and statement of consent shall be at the sole discretion of the Planning Director, whose decision shall be based on the practicality of the proposed development reaching full compliance with the applicable requirements of this Ordinance. The Planning Director's decision may be appealed in accordance with Section <>, Appeal.

E. STATEMENT OF CONSENT

An approved statement of consent authorizes a lot, use type, sign, structure, site feature, or proposed development to be nonconforming with respect to the provisions of this Ordinance.

01. RECORDED

Following acceptance by the Town, statements of consent shall be recorded with the Henderson County Register of Deeds. Failure to record a statement of consent shall render it null and void and may prevent the Town from issuing any subsequent permits for the use or site subject to the statement.

02. NOT RESCINDED

Once a statement of consent has been recorded, it shall run with the land and may not be rescinded unless the nonconformity subject to the statement conforms with this ordinance or an amendment thereto.

03. EFFECT

Development subject to a recorded statement of consent shall be subject to the applicable provisions in Chapter 5, Nonconformities.

5.1.4. MAINTENANCE AND CONTINUATION ALLOWED

A. CONTINUATION

B. COMPLETION

C. MAINTENANCE ALLOWED

D. STRENGTHENING ALLOWED

5.1.5. TENANCY AND OWNERSHIP CHANGES

Except as indicated with respect to outdoor advertising rules, nonconforming status shall run with the land and is not affected by a change in tenancy, ownership, or management.

§ 5.2 NONCONFORMING LOTS OF RECORD

This section addresses established lots subject to consent to not meet the dimensional requirements of the district where they are located. It discusses the procedures for use of such lots of record when located in a residential district as well as redevelopment or reconstruction on such lots following a casualty (major damage). It removes requirements for variances to develop these lots (in cases of residential development). In addition, the standards specify that governmental acquisition of a portion of a lot in a residential district shall not render the lot nonconforming (even if it no longer meets the dimensional standards). The section will deal with changes to nonconforming lots such as boundary line adjustments or assembly of multiple lots. It also clarifies that special purpose lots are not required to meet the dimensional standards for the zoning district where located as long as they are developed or utilized in accordance with the special purpose for their formation.



5.2.1. APPLICABILITY**5.2.2. NONCONFORMING LOT WIDTH OR SIZE****A. SINGLE LOT OF RECORD IN RESIDENTIAL OR TOWN CENTER DISTRICTS****B. SINGLE LOT OF RECORD IN A NON-RESIDENTIAL ZONING DISTRICT****C. RECOMBINATION OF LOTS WITH CONTIGUOUS FRONTAGE IN SINGLE OWNERSHIP****D. ADDITION OF LAND ENCOURAGED****5.2.3. NONCONFORMITY AFFECTS SETBACKS**

This section includes a sliding scale of maximum allowable Administrative Adjustment thresholds for residential development on lots in residential zoning districts, whether the lot is vacant and never developed, if the prior building was demolished, if the development is an extension or addition, or if the development consists of changes to a secondary structure.

5.2.4. FURTHER SUBDIVISION OF LAND

Allows further boundary line changes provided such changes do not increase the level of nonconformity.

5.2.5. GOVERNMENTAL ACQUISITION OF LAND

Clarifies that any nonconformities stemming from the governmental acquisition are subject to automatic relief without requiring the lot to be classified as nonconforming.

5.2.6. SPECIAL PURPOSE LOTS

If the special purpose of a lot is concluded, it may only be developed in accordance with applicable dimensional requirements for the district where located.

§ 5.3 NONCONFORMING SIGNS

This section addresses nonconforming signage subject to consent to be considered nonconforming. The standards allow such nonconforming signage to be continued, relocated, and replaced in accordance with NCGS§160D-912.1.

5.3.1. APPLICABILITY**5.3.2. MAINTENANCE ALLOWED****5.3.3. RECONFIGURATION AND REPLACEMENT****A. RELOCATION****01. IMPROVES NONCONFORMITY****02. NONCONFORMITY UNAFFECTED****B. REMOVAL WITHOUT REPLACEMENT**

Removal of nonconforming signage is encouraged.



C. REPLACEMENT

- 01. IMPROVES NONCONFORMITY**
- 02. NONCONFORMITY UNAFFECTED**

D. REPAIR FOLLOWING CASUALTY DAMAGE**01. REPAIR COSTS BELOW 50 PERCENT OF REPLACEMENT COST**

If damage to a nonconforming sign from any cause is less than 50 percent of its replacement cost, the sign may be rebuilt or repaired to its original condition in its original location and may continue to be displayed as long as the use it serves remains in operation.

02. REPAIR COSTS EXCEED 50 PERCENT OF REPLACEMENT COST²⁴

If damage from any cause to a nonconforming sign equals or exceeds 50 percent of its replacement cost, the nonconforming sign, including sign supports and mounting hardware, may only be replaced with a sign that complies with the provisions of this Ordinance.

²⁴ NOTE: The consulting team will continue to explore and refine the casualty damage provisions for nonconforming signage in light of recent changes to the General Statutes.



§ 5.4 NONCONFORMING STRUCTURES

This section establishes the key standards governing nonconforming structures, which are considered nonconforming when subject to a statement of consent. The section will address enlargement, abandonment, relocation, and reconstruction after casualty damage.

5.4.1. APPLICABILITY

5.4.2. CONTINUATION AND REPLACEMENT

A. CONTINUATION

B. REPLACEMENT

C. RELOCATION

D. UPGRADE

5.4.3. ALTERATION AND EXPANSION

No nonconforming structure may be altered in any way which increases the nonconformity; however, any nonconforming structure or portion thereof may be altered to decrease the degree of nonconformity.

5.4.4. COMPLIANCE WITH DESIGN STANDARDS

In cases where an existing nonconforming structure pre-dates or is exempted from any applicable design standards in Chapter 6, Standards, any allowable modifications or expansions to the nonconforming structure shall also be exempted from design standards.

5.4.5. RECONSTRUCTION FOLLOWING DAMAGE OR DESTRUCTION

- A.** Except for single-family detached dwellings, if a nonconforming structure is damaged or destroyed by any means to an extent of 51 percent or more of its replacement cost or size, it may only be reconstructed in accordance with the requirements of this Ordinance.
- B.** Nonconforming single-family detached dwellings damaged or destroyed by any means may be restored or reconstructed to the pre-damaged state regardless of the degree of damage or cost of restoration or reconstruction. In no instance shall the restoration or reconstruction increase the level of nonconformity.

5.4.6. NONCONFORMING SECONDARY STRUCTURES OR USES



§ 5.5 NONCONFORMING USES

This section includes provisions dealing with existing uses subject to a statement of consent. Carries forward some the provisions included in the current zoning ordinance section 154.105.

5.5.1. DECLARED INCOMPATIBLE

5.5.2. CONTINUATION ALLOWED

5.5.3. INCREASING ELEVATION

Nothing in this section shall limit the increase in elevation of an existing or damaged building or structure in the Conservation (CON) District to a height above the regulatory flood elevation.

5.5.4. USE SEPARATION REQUIREMENTS

In cases where a use type is lawfully established and in compliance with the applicable standards of this Ordinance, and another use type is subsequently established within a minimum required separation distance required by Section <>, Standards for Specific Principal Uses, the initial existing use shall not be rendered nonconforming.

5.5.5. PARTIAL NONCONFORMANCE

Clarifies that in cases where a principal use is nonconforming or has a nonconforming aspect, the entire use, including all related, partial, or subservient uses, secondary uses, or associated activities shall also be considered nonconforming.

5.5.6. EXPANSION OR EXTENSION

A. SINGLE-FAMILY DETACHED DWELLINGS

01. ADDITIONS

02. SECONDARY USES OR STRUCTURES

B. MANUFACTURED OR MOBILE HOMES

- 01.** An existing nonconforming manufactured or mobile home serving as a principal use may be replaced with another nonconforming manufactured or mobile home provided the replacement mobile or manufactured home:
 - a. Is 12 feet wide or wider;
 - b. Is in place within 365 days of the removal of the prior nonconforming mobile or manufactured home;
 - c. Is connected to the public sewer system, or has all the necessary permits from the county health department pertaining to wastewater treatment;
 - d. Is surrounded by underpinning comprised of an all-weather base material; and
 - e. Provided the new structure meets all Wind Zone 3 classification requirements.
- 02.** Nothing shall require the owner of a mobile home park or manufactured dwelling park to surrender the ability to maintain a lawfully established leasehold or home/dwelling site even after a nonconforming mobile or manufactured home is removed.
- 03.** A mobile home park or manufactured dwelling park may reconfigure individual sites within the park as long as each home or dwelling continues to meet applicable dimensional requirements.
- 04.** In cases where a mobile home park or a manufactured home park is reconfigured by the owner in ways that reduce the total number of individual sites from the number that existed prior to the reconfiguration, the total number of sites shall not be increased after the reconfiguration.



05. A nonconforming mobile home park or manufactured dwelling park shall not be re-established after removal of all mobile homes or manufactured dwellings has taken place.

C. ALL OTHER USES

A nonconforming use may not be extended, expanded, enlarged, or altered in any way that increases the degree of nonconformity.

D. RENOVATION LIMITED

A nonconforming use may be renovated provided the renovation does not extend, expand, or enlarge the nonconformity or create a new nonconforming use.

5.5.7. CONVERSION

No nonconforming use shall be converted to another nonconforming use. Nonconforming uses may only be converted to a conforming use.

5.5.8. RESTORATION FOLLOWING CASUALTY DAMAGE**A. SIGNIFICANT DAMAGE**

Nonconforming uses that sustain significant casualty damage (an amount of damage sufficient to require a repair or replacement expenditure exceeding 50 percent of the use's assessed value as identified in the current tax records from the County Tax Assessor) may not be restored or replaced except in accordance with Ordinance requirements.

B. INSIGNIFICANT DAMAGE

Nonconforming uses that sustain insignificant casualty damage (an amount of damage requiring a repair or replacement expenditure of 50 percent or less than the use's assessed value as identified in the current tax records from the County Tax Assessor) may be restored or replaced to the level existing prior to the casualty.

5.5.9. RESTORATION FOLLOWING ABANDONMENT OR NEGLECT

Restoration of a nonconforming use following abandonment or neglect shall be prohibited unless such actions render the use or development conforming. The determination of neglect shall be based on the standards in Section <>, Maintenance of Property, and shall be in the sole discretion of the Planning Director, who's decision may be appealed in accordance with Section <>, Appeal.

5.5.10. CESSION AND ABANDONMENT**A. CESSION**

Describes the conditions under which a nonconforming use has been determined to have stopped or been ceased, such as interruption of electrical service, interruption of potable water service, or failure to pay required property taxes for two years or more.

B. ABANDONMENT

A condition that occurs with respect to a use type that has stopped or ceased for a period of 180 days or longer. A nonconforming use that has been ceased or stopped for a period of 180 days or longer is considered abandoned, and may not be re-established except in accordance with all applicable requirements of this Ordinance.



CHAPTER 6.

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§ 6.1 CHAPTER INTRODUCTION

This chapter includes standards and guidelines for new development in ways that protect the public's health, welfare, and safety, that protect the established community character, that promote quality of life for local citizens, visitors, and business owners, and that support property values. These provisions address the physical relationship between development and adjacent properties, streets, neighborhoods, and the natural environment.

§ 6.2 ACCESS & CIRCULATION

This section deals with ingress, egress, and circulation within development sites (including the standards from Section 9-4 of the current UDO). The standards address access to individual lots, whether via public street, private street, shared driveway, or private driveway. It establishes standards for minimum points of entry (via streets) into new developments and differing standards for driveways serving residential versus non-residential developments (including spacing, surfacing, width, and how parking is accommodated). The standards also address street continuation, street stubs onto abutting vacant lands, street connectivity, and parking lot connections between adjacent, compatible uses, including configuration and placement.

6.2.1. INTENT

The purpose of this section is to establish standards for the safe and efficient ingress into, egress from, and circulation within development sites in the Town's planning jurisdiction for vehicles and bicyclists

6.2.2. APPLICABILITY

6.2.3. ACCESS TO LOTS

A. ACCESS REQUIRED FOR ALL LOTS

Requires all lots to have access to a driveway, public street, or private street.

B. DIRECT ACCESS TO MAJOR STREETS

Section limits direct access to major streets by new single-family residential lots.

C. AUTHORIZATION REQUIRED

Prior to beginning any driveway construction, permits necessary to connect to the right-of-way network of NCDOT shall be secured by the applicant. This includes approval by the Town of Mills River and an authorized signature on any driveway application to the NCDOT.

6.2.4. CONNECTIVITY

This section builds on the standards in Section 16-5 of the current UDO.

A. PARKING LOT CONNECTIONS

This section requires parking lots to be extended to connect to adjacent parking lots that serve similar or compatible development.

B. CUL-DE-SAC STREET LENGTH LIMITATIONS

This section limits the total number of driveways that may be served by an individual cul-de-sac street, and includes additional provisions for branching cul-de-sacs.

C. STREET CONNECTIONS

This section proposes to include a street connectivity index, with a minimum street connection index value by zoning district. Section may also be supplemented with standards requiring pedestrian connections from street terminations and cul-de-sacs to the larger pedestrian network.

D. STREET CONTINUATION



These standards set out the requirements for continuing existing streets through newly-developing lands and the requirements for street stubs to abutting vacant land where street continuation is practicable and may be made without negative impacts to environmental resources.

6.2.5. ENTRY POINTS FOR DEVELOPMENTS

This section specifies the minimum number of required points of entry (from streets) for new subdivisions, multi-family developments, and non-residential developments of five or more lots.

6.2.6. DRIVEWAY STANDARDS**A. PURPOSE****B. DRIVEWAYS DEFINED**

This section defines a driveway as a vehicular connection to an adjacent public or private street located outside of the lot served by the driveway

C. PARKING LOTS DISTINGUISHED

This section describes the differences between driveways and parking lots (including parking lot aisles).

D. GENERAL DRIVEWAY STANDARDS**01. COMPLIANCE WITH NCDOT STANDARDS****02. COMPLIANCE WITH TOWN STANDARDS****03. CONFIGURATION**

Includes provisions for opposing driveways and streets to align with one another.

04. SURFACING**05. MAINTENANCE****E. RESIDENTIAL DRIVEWAYS****01. DESIGN****02. WIDTH AND DEPTH****03. REQUIRED NUMBER****04. MINIMUM SPACING****05. ALTERNATIVE ACCESS**

This section is proposed to replace and build on the provisions in Section 16-12.40 of the current UDO and be limited to serving up to four residential dwellings (after which the shared driveway must become a public or private street).



- a. MULTIPLE RESIDENTIAL LOT DEVELOPMENT
- b. SINGLE-FAMILY LOT OF RECORD
- c. DRIVEWAYS SERVING MORE THAN FOUR LOTS
- d. MAINTENANCE

06. REVISION OF EXISTING ACCESS**F. NON-RESIDENTIAL DRIVEWAYS****01. DESIGN**

This section includes new limitations for design and surface materials specified by State law.

02. WIDTH AND DEPTH²⁵**03. REQUIRED NUMBER****04. MINIMUM SPACING****05. REVISION OF EXISTING ACCESS****G. NONCONFORMING DRIVEWAYS****6.2.7. SIGHT DISTANCE TRIANGLES**

This section applies sight distance triangle protection standards with new rules based on AASHTO provisions (often referred to as the “10-70” rule). Also clarifies that sight distance triangles are measured from the edge of the paving, not the edge of the right-of-way.

²⁵ NOTE TO STAFF: Additional discussion is necessary about problems with downtown spacing in the downtown.



§ 6.3 ARCHITECTURAL STANDARDS & GUIDELINES²⁶

- A.** This is a new section that sets out basic building appearance and design standards for certain use types. Design standards are mandatory and are applied to mixed-use, multi-family, commercial, and industrial uses. The design standards in the UDO are intentionally limited to those with the most impact on the building form to help ensure they are not an obstruction to new development and that they are practical to administer.
- B.** The State prohibits the regulation of design for any residential structure subject to the North Carolina Residential Building Code. Therefore, residential design guidelines are voluntary (unless applied as a condition of approval) and address single-family detached and attached dwellings, duplexes, triplexes, and quadplexes (triplexes and quadplexes of 3 or more stories are subject to the multi-family design standards).
- C.** Each set of standards includes a purpose and intent section, applicability and exemptions, and a set of basic design requirements. Design requirements are narrowly-tailored to focus on exterior appearance and aesthetic concerns of buildings as well as site configuration issues (like the placement of service areas). Aesthetic concerns focus on primary entrances, building articulation, exterior cladding materials, roof form, fenestration (glazing or transparency), and issues relating to multi-building development. Where possible, standards dealing with design requirements include a menu of options and flexibility.
- D.** The standards will include an option for new development to avoid the need for compliance with architectural standards by locating out of view from external streets and adjacent development and heavily screening development from off-site views through tree retention, use of berms, and other techniques to minimize visibility.

6.3.2. INTENT

6.3.3. APPLICABILITY

Includes if and how the standards are applied in the Downtown district.

6.3.4. FARMLAND COMPATIBILITY STANDARDS

This is a new section that will promotes compatibility between existing bona fide farms and new residential development by requiring subdivisions to double minimum lot sizes for lots abutting boundaries with bona fide farms (excluding conservation subdivisions), establishing type D (50-foot) perimeter landscaping buffers along lot lines shared with bona fide farms, and locating required passive open space set-aside areas between the farm and new building lots.

6.3.5. MIXED-USE DESIGN STANDARDS

This is a new section that distinguishes between vertical and horizontal mixed-use development and puts forth design and use standards that allow for the placement of multi-buildings on a single site.

A. PURPOSE AND INTENT

B. APPLICABILITY

²⁶ NOTE: The Town has expressed a desire to preserve and protect ridgelines and hilltops. The open space set-aside standards require such landforms to be preserved (but preservation mandates are limited to the minimum set-aside percentage). The sustainability standards include incentives for set-aside of additional ridgeline or hilltop area beyond the minimum open space set-aside percentage if these landforms exceed the minimum percentage. In instances where there is more ridgeline or hilltop than open space set-aside percentage, the UDO could include screening and visibility reduction standards for new development on a ridgeline or hilltop. However, such standards come close to design prohibitions, are complicated to apply, and could result in litigation. Additional discussion about use of these visibility reduction standards is necessary, as well as where they could best be located (either here, in screening, in open space, or in some other section).



Includes provisions that any expansions or alterations to existing development are considered as new development, and that additions and alterations must at least be compatible with the existing development if it is impractical to meet the mixed-use design standards.

C. EXEMPTIONS**D. TIMING OF REVIEW****E. DESIGN REQUIREMENTS****01. BUILDING ORIENTATION**

- a. SINGLE BUILDING
- b. MULTIPLE BUILDING DEVELOPMENT

02. OCCUPIED FRONTAGE REQUIREMENTS**03. GROUND FLOOR CONFIGURATION****04. OFF-STREET PARKING LOCATION****05. BUILDING ARTICULATION****06. BUILDING ENTRANCES****07. BUILDING FENESTRATION****08. ROOF FORM****6.3.6. MULTI-FAMILY DESIGN STANDARDS**

This is a new section intended to provide architectural and site design standards specific to multi-family (apartment, condominium, etc.) uses.

A. PURPOSE AND INTENT**B. APPLICABILITY**

Includes if and how the standards are applied in the Town Center and Mixed Residential zoning districts.

01. GENERALLY**02. EXEMPTIONS****03. VOLUNTARY COMPLIANCE FOR ATTACHED SINGLE-FAMILY DEVELOPMENT**

State law prohibits the application of design standards to attached residential development (townhouses), though an applicant may chose to comply with architectural controls, or they may be applied as part of a conditional rezoning.

C. TIMING OF REVIEW**D. DESIGN REQUIREMENTS**

01. BUILDING ORIENTATION**02. BUILDING ENTRANCES****03. BUILDING FACADES****04. FAÇADE VARIATION IN MULTI-BUILDING DEVELOPMENTS****05. BUILDING MASSING****06. BUILDING ARTICULATION****07. BUILDING HEIGHT****08. ROOF FORM****09. BUILDING MATERIAL AND COLORS****10. SECONDARY STRUCTURES****6.3.7. NON-RESIDENTIAL DESIGN STANDARDS**

This is a new section that aims to provide architectural and site design standards for new commercial and industrial development.

A. PURPOSE AND INTENT**B. APPLICABILITY****01. NEW COMMERCIAL USE TYPES****02. NEW INDUSTRIAL USE TYPES****03. EXPANSIONS AND ADDITIONS TO EXISTING USES TREATED AS NEW DEVELOPMENT**

Includes provisions that any expansions or alterations to existing development are considered as new development, and that additions and alterations must at least be compatible with the existing development if it is impractical to meet the applicable non-residential design standards.

C. EXEMPTIONS**D. TIMING OF REVIEW****E. DESIGN REQUIREMENTS**

01. BUILDING WALLS DISTINGUISHED

This section recognizes two or three different kinds of building walls: primary, or those abutting and fronting the street from which a building derives its street address; secondary, those walls that may also face a street or a public park, but not the street from which the building is addressed; and, tertiary walls, which includes any other building wall.

02. CUSTOMER ENTRANCES

03. BUILDING ADDRESS NUMBERS

04. BUILDING ARTICULATION

05. MATERIAL AND COLORS

06. BUILDING FENESTRATION

07. ROOF FORMS

08. AWNINGS

09. OUTPARCELS

10. MULTI-BUILDING DEVELOPMENT

11. ADDITIONAL STANDARDS FOR LARGE FORMAT RETAIL BUILDINGS

These are standards for single-tenant or multi-tenant commercial (including wholesale) uses on one or more lots that include 50,000 or more square feet of building area. For these uses, the design standards seek to limit monolithic building walls, and include more practical parking lot location standards. These use have additional limitations on outdoor storage and display, and include additional screening standards from streets.

6.3.8. SINGLE-FAMILY RESIDENTIAL DESIGN GUIDELINES

Municipalities are unable to require design standards for single-family residential uses. However, these guidelines are intended to provide design suggestions for single family, attached and detached, duplexes, triplexes, and quadplexes to ensure quality development and architectural interest. We note that as a matter of practice, design standards are often applied to certain kinds of small lot/small size residential developments like pocket neighborhoods, bungalow courts, and detached multi-family developments.

A. PURPOSE AND INTENT

B. APPLICABILITY

C. STATEMENT OF VOLUNTARY COMPLIANCE

D. DESIGN FEATURES



E. GARAGES

F. SIDE AND REAR FACADES

G. FOUNDATION MATERIALS

H. MATERIAL CHANGES

I. PROHIBITED MATERIALS

J. STREET-FACING GARAGES

K. SIDE-LOADED GARAGES

L. VARIABILITY IN SUBDIVISIONS



§ 6.4 EXTERIOR LIGHTING

This section addresses exterior building lighting and exterior lighting from recreational facilities. It builds on the exterior lighting standards in Section 154.117 recently adopted by the Town, but relocates definitions to Chapter 8, relocates and revises the nonconforming provisions (see Chapter 5, Nonconformities), and carries forward the current exemptions and prohibitions. In addition, it establishes new requirements for shielding the source of illumination and limits to glare (visibility of the illumination source from off-site areas), maximum mounting heights, uniformity ratios within parking lots, and standards for recreational or athletic uses.

6.4.1. INTENT

6.4.2. APPLICABILITY

6.4.3. EXEMPTIONS

6.4.4. LIGHTING PLAN

6.4.5. MAXIMUM ILLUMINATION LEVELS

These standards carry forward the current a maximum illumination threshold (measured in footcandles) that is applied to non-residential, mixed-use, and multi-family development along lot lines shared with single-family detached and duplex dwellings as well as the limits on lighting levels next to riparian areas.

6.4.6. PROHIBITED LIGHTING

Establishes limits on the flashing, rotating, or moving lights, the use of LED lights around doors or windows, and the use of rope or string lights along building corners.

6.4.7. RECREATIONAL LIGHTING

Includes the provisions for lighting of athletic facilities

6.4.8. STANDARDS

01. APPEARANCE

02. ARCHITECTURAL LIGHTING

03. FIXTURE HEIGHT

04. LAMP TYPE

05. MAXIMUM ILLUMINATION LEVELS

06. MOUNTING LOCATION



07. SHIELDING

6.4.9. STREET LIGHTS

Carries forward and builds on the standards in Section 17-4 of the current UDO as well as the recent changes to the Town's lighting provisions.

§ 6.5 FENCES, WALLS, AND GATES

This section carries forward some of the standards Section 150.15 through 150.18 of Building Regulations and outlines very basic development standards for permanent fences and walls on individual lots or development sites, including the standards for vehicular entry gates into developments. These standards are designed to protect the health and safety of the public while balancing the practical uses for fencing and walls like security and privacy with the need for aesthetic quality and a high-quality built environment.

6.5.1. INTENT

6.5.2. APPLICABILITY

A. GENERALLY

B. EXEMPTIONS

C. PRE-EXISTING DEVELOPMENT

Includes provisions that any expansions or alterations to existing development are considered as new development subject to these fence and wall standards.

D. TEMPORARY FENCING

6.5.3. PLACEMENT STANDARDS

A. GENERAL

B. EASEMENTS

C. DRAINAGEWAYS

D. LANDSCAPING AREAS

E. WITHIN SETBACKS

6.5.4. MATERIALS

A. PERMITTED FENCE MATERIALS



B. PROHIBITED FENCE MATERIALS

This section prevents the use of junk or debris as a fence or wall.

C. RESTRICTED FENCE MATERIALS²⁷**D. TEMPORARY FENCE MATERIALS****E. WALL MATERIALS****6.5.5. STANDARDS FOR RETAINING WALLS**

This section sets out the requirements for Building Permits and design considerations for retaining walls over four feet in height (regardless of the amount of the wall that is visible above the grade).

6.5.6. MAINTENANCE REQUIRED**6.5.7. MAXIMUM HEIGHT****6.5.8. VEHICULAR GATES**

This section clarifies that vehicular gates may not be located on a public street or road, but may be permitted on a private street or at the entrance to a parking lot. This section will also address emergency access features included as part of maintaining compliance with street connection and continuation standards in the Access and Circulation standards in new Section 6.1.

²⁷ NOTE: Additional discussion is needed regarding the Town's desire to limit barbed and concertina wire atop fences or walls.



§ 6.6 INFRASTRUCTURE

This section establishes standards for the planning and installation of public infrastructure as part of development, whether as part of a subdivision, site plan, or expansion or addition of an existing site. Many of the current standards will be carried forward pending further discussion with Town infrastructure providers.

6.6.1. INTENT

6.6.2. APPLICABILITY

6.6.3. GENERALLY

A. REASONABLE RELATIONSHIP

B. CONSISTENCY WITH ADJACENT DEVELOPMENT

C. INSTALLATION SEQUENCE

D. LOCATION

E. MAINTENANCE REQUIRED

F. PLANS REQUIRED

01. PLAN APPROVAL PRIOR TO INSTALLATION

Includes requirement for plan approvals prior to final plat approval.

02. AS-BUILT PLANS REQUIRED

Includes requirement for the cost of as-built plans to be included performance guarantee amounts.

G. UNDERGROUND UTILITIES

Establishes requirement for underground electrical lines in new residential developments and all major subdivisions, non-residential and residential.

6.6.4. BRIDGES AND DAMS

A. BRIDGES

B. DAMS

6.6.5. CLUSTER MAILBOXES

A. ACCESS

B. CONSTRUCTION



C. LOCATION**D. LIGHTING****E. PARKING****6.6.6. DRAINAGE FACILITIES²⁸**

Carries forward and enhances the standards from Sections 13-3 and 17-3 of the current UDO.

A. APPLICABILITY**B. APPROVAL REQUIRED****C. CONFIGURATION****01. MUNICIPAL STORM DRAINAGE SYSTEM****02. PRIVATE DRAINAGE SYSTEM****D. INSTALLATION TIMING****E. MAINTENANCE RESPONSIBILITIES****6.6.7. EASEMENTS****A. GENERALLY****01. EASEMENT TYPES DISTINGUISHED****02. ALLOWABLE FEATURES****03. AUTHORIZATION FOR ENCROACHMENT****04. AUTHORIZATION FOR REMOVAL OF FEATURES IN EASEMENT****05. IDENTIFICATION****B. ACCESS EASEMENTS**

²⁸ NOTE TO STAFF: Do private streets need to incorporate street drainage facilities?



C. DRAINAGE EASEMENTS

These are drainage easements for stormwater conveyance across private property.

D. MAINTENANCE EASEMENTS

Includes access to private stormwater control measures when they abut a public right-of-way or impact a public street.

E. PUBLIC UTILITY EASEMENTS**F. STREET DRAINAGE EASEMENTS**

An easement in favor of the Town that allows the Town to have access to stormwater control measures and similar privately-owned street drainage features when such measures are adjacent to or impact an adjacent public street.

6.6.8. FIRE PROTECTION**A. FIRE CODE****B. FIRE HYDRANTS****C. FIRE LANES****6.6.9. POTABLE WATER²⁹**

Carries forward and builds on the standards in Section 153.068 of the current Subdivision Ordinance.

A. POTABLE WATER SUPPLY SYSTEM REQUIRED**B. CONNECTION TO PUBLIC POTABLE WATER SYSTEM****C. CONFIGURATION****D. DEDICATION AND ACCEPTANCE****E. CONNECTION FEES****F. OVERSIZING****G. ON-SITE WATER SUPPLY SERVICE**

²⁹ Discuss the degree to which connection requirements are not applied in certain areas (such as the southern end of Town or to lots with elevations above 2250 AMSL)



6.6.10. STREETS³⁰

This section carries forward and enhances many of the standards in Section 153.069 through 153.076 of the current Subdivision Ordinance (sidewalk provisions are relocated to the Pedestrian Facilities section).

A. COMPLIANCE WITH ADOPTED POLICY GUIDANCE

Clarify that new development is required to dedicate and construct roadways in accordance with the applicable Comprehensive Transportation Plan and any approved Transportation Impact Analysis.

B. STREET TYPES DISTINGUISHED

Distinguishes between NCDOT streets and private streets.

C. DEDICATION REQUIRED FOR NCDOT STREETS**D. CONSTRUCTION AND IMPROVEMENT REQUIRED****E. MAINTENANCE REQUIRED****F. GENERAL REQUIREMENTS FOR ALL STREETS³¹**

This section sets out the design configuration for streets via reference to the Comprehensive Transportation Plan or NCDOT Design Manual.

G. PRIVATE STREETS

Private streets required to meet public street standards (except as related to vehicular gates). These standards include a cross reference to alternative driveway provisions that allow up to four lots to obtain access via a shared driveway (but drives serving more than four lots must meet private street standards).

H. CURB AND GUTTER

Carries forward the standards in Section 16-11 of the current UDO with new provisions indicating curb and gutter is not required unless sidewalk is also provided.

I. STREET NAMES

Carries forward standards from Section 16-9 of the current UDO with new provisions preventing street names similar to others in Henderson County.

J. STREET SIGNS

Add additional clarification regarding street sign standards for private streets and clarify that developers or subdividers are responsible for covering the costs of decorative street signs.

K. TRAFFIC CONTROL DEVICES**6.6.11. WASTEWATER**

Carries forward and builds on the standards in Section 153.068 of the current Subdivision Ordinance.

A. WASTEWATER TREATMENT SYSTEM REQUIRED**B. CONNECTION TO PUBLIC WASTEWATER TREATMENT SYSTEMS**

³⁰ NOTE TO STAFF: Additional discussion is necessary regarding relocation of some portions of Chapter 28 of the Town Code of Ordinances into the UDO.

³¹ NOTE: Many mountain communities find it necessary to adopt additional design requirements for private streets in areas with significant elevation or slope as the basic NCDOT standards (like those pertaining to slope, grade, and turning radius) are impractical in these areas.



C. CONFIGURATION**D. DEDICATION AND ACCEPTANCE****E. CONNECTION FEES****F. OVERSIZING****G. ON-SITE WASTEWATER****H. PRIVATE MULTI-USER WASTEWATER TREATMENT SYSTEMS**

§ 6.7 LANDSCAPING & SCREENING

This section consolidates many of the provisions found in Sections 154.230 through 154.237 from the current zoning ordinance but also introduces new standards. It includes a comprehensive set of applicability and exemption standards, requirements for landscape plans, a new set of plant material specifications with requirements for species diversity. There are generic provisions for landscaping placement along rights of way, in groups, in easements, stormwater measures, and the rules pertaining to utility easements. The standards clarify the kinds of features allowable in required landscaping areas, along with comprehensive maintenance and inspection standards. The landscaping standards are organized into parking lot landscaping (shade trees, islands, and perimeter screening), perimeter buffers (four versions applied by district boundaries, not uses) with options for alternative configuration based on fencing, existing landscaping, and shading condition. The standards also include provisions for streetscape buffers used to conceal a development from adjacent external streets, and a comprehensive set of screening requirements applied based on the type of site feature being screened and the type of adjacent off-site area.

6.7.1. INTENT

6.7.2. APPLICABILITY

6.7.3. EXEMPTIONS

Parking lot landscaping and screening standards are not applied to developments that are located and configured to be out-of-view from existing external streets or adjacent existing development. Developments seeking exemption from otherwise applicable design standards will likely be required to maintain existing tree cover, and need to rely on the use of perimeter landscaping buffers to achieve concealment.

6.7.4. LANDSCAPING PLAN REQUIRED

These are plans prepared by a registered landscape architect. They must locate and provide details on existing trees to be credited towards required landscaping. Landscaping plans are reviewed by Town staff as part of Site Plan or Subdivision review. Requested deviations or flexibility requested as part of an Alternative Plan option (see Chapter 2, Applications) must be depicted in the approved landscape plan.

6.7.5. PLANT MATERIAL SPECIFICATIONS

A. CANOPY TREE SIZE

B. UNDERSTORY TREE SIZE

C. SHRUB SIZE AND VARIETY

D. SPECIES DIVERSITY

E. SOIL STABILIZATION

6.7.6. PLACEMENT

A. OUTSIDE PUBLIC RIGHTS OF WAY



B. GROUPING OF PLANT MATERIAL**C. UNIFIED DEVELOPMENTS****D. EASEMENTS****E. CONFLICTS WITH SETBACKS AND EASEMENTS****F. FIRE PROTECTION****G. BIO-RETENTION AREAS****H. PERMITTED ENCROACHMENTS INTO REQUIRED LANDSCAPING AREAS****I. PROHIBITED FEATURES IN REQUIRED LANDSCAPING AREAS****6.7.7. PARKING LOT LANDSCAPING****A. INTERIOR LANDSCAPING**

This includes landscaping islands, that may include trees, shrubs, and lighting fixtures (subject to minimum spacing from trees). Parking lot islands are encouraged to be configured as rain gardens and the Ordinance includes incentives for low impact development standards parking lots.

B. PERIMETER LANDSCAPING**C. TREE SHADING**

Requires that no off-street parking space in a parking lot of five or more spaces be more than 50 feet from the trunk of a shade tree.

6.7.8. PERIMETER LANDSCAPING BUFFERS**A. WHEN REQUIRED****B. BUFFERS DISTINGUISHED**

Establishes four separate types of buffers: separation, intermittent, semi-opaque, and fully opaque. The standards also include a narrow-width option where buffer widths may be reduced through provision of a six-foot fence, wall, or berm.

C. BUFFER DETERMINATION

Applies the different buffer type requirements based on the edge conditions between two different zoning districts. Requires wider buffers (but no increases in stocking amounts) for lots or sites that have been mass graded or cleared without benefit of a Tree Clearing Certificate, if one was required.

D. BUFFER LOCATION

6.7.9. SCREENING

This section includes a comprehensive approach to screening a wide variety of development types and site features with screens that differ in configuration based on the vantage point. This section replaces the standards for waste container screening in Section 115 of the zoning ordinance.

A. PURPOSE AND INTENT

B. APPLICABILITY

C. EXEMPTIONS

D. GENERAL REQUIREMENTS

6.7.10. STREETSCAPE BUFFERS

These standards are optional, and are intended for use in cases where a development subject to architectural or design controls instead seeks to avoid these standards through configuration that conceals the development from view from external streets and existing developments. The section also clarifies that once established, the streetscape buffer must remain in place and continue its performance objective, or the development being screened will have to come into full compliance with all applicable design standards.

A. WHEN REQUIRED

B. PERFORMANCE OBJECTIVE

Clarifies the intent of a streetscape buffer is to effectively conceal a new development from view from external roadways and existing abutting development. This can be achieved through building and site feature placement, retention of existing vegetation, supplemental planting, the installation of berms or other natural screens, or other techniques as approved by the Planning Director (or TRC).

C. LOCATION

D. ALLOWABLE FEATURES

6.7.11. PLANTING FLEXIBILITY

New expanded section that carries forward portions of existing Section 235 from the Zoning Ordinance.

A. CREDIT FOR EXISTING VEGETATION

This section permits accelerated credit towards required landscaping stocking provisions for developments that retain existing trees during and after construction. The section clarifies the credit rate (caliper inches towards required landscaping for each caliper of existing tree width retained, provided trees to be retained are proximate to where required landscaping would be planted and provided existing trees are located within a designated tree save area).

B. ALTERNATIVE PLANS

C. BERMS

D. FENCES AND WALLS



E. PLANTERS**6.7.12. TIME OF INSTALLATION****6.7.13. REQUIRED MAINTENANCE**

New section that carries forward Section 237 of the Zoning Ordinance

A. RESPONSIBILITY**B. MAINTENANCE****C. SEVERE PRUNING UNLAWFUL****6.7.14. SITE INSPECTION****6.7.15. REPLACEMENT OF REQUIRED VEGETATION****A. DAMAGE OR REMOVAL****B. REPLACEMENT REQUIRED****C. REVEGETATION PLAN REQUIRED****D. LOCATION OF REPLACEMENT VEGETATION****E. EXCESSIVE PRUNING OR TRIMMING****F. FAILURE TO MAINTAIN**

§ 6.8 MAINTENANCE OF PROPERTY

This carries forward the nuisance and maintenance standards (from Sections 154.113 of the current zoning ordinance) that apply to properties within the corporate limits of the Town with no substantive changes.

6.8.1. ABANDONED, NUISANCE, AND JUNKED MOTOR VEHICLES

A. ABANDONED VEHICLES UNLAWFUL

B. NUISANCE VEHICLE

C. JUNKED MOTOR VEHICLE

D. EXCEPTIONS

6.8.2. ACCUMULATION OF JUNK AND OTHER MATERIALS

6.8.3. BUILDING MAINTENANCE

This subsection provides the standards of fitness for nonresidential structures.

6.8.4. MINIMUM HOUSING STANDARDS

This subsection provides the standards of fitness for dwellings and dwelling units.

6.8.5. PROPER DISPOSAL OF REFUSE

6.8.6. UNLAWFUL SIGNS

6.8.7. WEEDS, NOXIOUS GROWTH



§ 6.9 OPEN SPACE SET-ASIDE AND PARKLAND DEDICATION

A. The open space and parkland dedication standards include new requirements for almost all forms of development to provide open space set-aside or fee-in-lieu (as a means of establishing greenways and linear recreation areas in parts of the Town that are already built). The open space standards establish new requirements for active forms of recreation, passive forms of recreation, and gathering areas (more urban recreation land that includes plazas, seating areas, sidewalk cafes, roof terraces, and public atriums appropriate in the Town Center district and other retail areas) along with details about the range of allowable features located within each. There are details about configuration, ownership, and maintenance.

B. One unique feature of these standards is that they mandate designation of ridgeline and hilltop land forms as open space set-aside when these features are present on a site. The mandatory set-aside of such areas corresponds to the minimum open space set-aside percentage applied based on the type of development proposed. In cases where a site contains more ridgeline or hilltop than the required open space set-aside percentage, the standards include additional incentives for setting aside all of the ridgeline or hilltop (but retention beyond the minimum percentage is not required).

C. The standards also apply parkland dedication requirements for single-family residential development. The standards are configured to allow greenway segments to qualify as parkland dedication, park land in areas proximate to planned public parks, and an option for payment of fee-in-lieu for the Town to use to acquire park and greenway connection lands in already built areas.

6.9.2. OPEN SPACE SET ASIDE

A. HOW TO APPLY THESE STANDARDS

B. INTENT

C. APPLICABILITY

01. GENERALLY

02. CONSERVATION SUBDIVISIONS

03. RIDGELINES AND HILLTOPS

Clarifies that such areas must be set aside as open space up to the minimum percentage (with incentives for set-aside of all ridgeline and hilltop land form on a site). This section defines and describes how these landforms are defined and measured.

04. EXEMPTIONS

D. MINIMUM OPEN SPACE SET ASIDE REQUIREMENTS

01. AMOUNT

This section relies on the dimensional standards tables for each zoning district in Chapter 3. Generally speaking, residential development is expected to set aside 10 percent of the site area, mixed-use development is seven percent, and non-residential development is five percent.

02. TYPE

This section describes what kinds of open space (whether passive, active, or gathering) is required or allowable. Generally speaking, single-family residential is expected to provide both active and passive recreation land, multi-family development is expected to provide active open space. Mixed-use is expected to provide gathering area, and non-residential is expected to provide passive open space. Landscaping, greenways, park land, and stormwater control measures configured as green stormwater infrastructure or as site amenities are credited towards open space set-aside requirements.



E. OPEN SPACE SET ASIDE CONFIGURATION³²**01. ACTIVE**

- a. CONFIGURATION**
- b. ALLOWABLE FEATURES**

02. GATHERING SPACES

- a. CONFIGURATION**
- b. ALLOWABLE FEATURES**

03. PASSIVE³³

- a. CONFIGURATION**
- b. ALLOWABLE FEATURES**
- c. FEATURES CREDITED**

04. FEATURES NOT PERMITTED WITHIN OPEN SPACE SET-ASIDES**F. OWNERSHIP****01. PRIVATE OWNERSHIP**

Not available for subdivisions required to provide open space set-aside.

02. OWNERS' ASSOCIATION**03. NON-PROFIT ORGANIZATION****04. DEDICATION****G. MAINTENANCE REQUIREMENTS****6.9.3. PARKLAND DEDICATION**

Subdivisions of land for six or more single-family residential lots (including detached or attached units) shall be required to dedicate a portion of the land, or pay a fee-in-lieu thereof, for public parkland, in accordance with the standards of this section.

A. DEDICATION AMOUNT

Anticipated to be at or around 1,000 square feet per dwelling unit.

B. DEDICATION OR PAYMENT OF FEE-IN-LIEU

Anticipated to be the cash equivalent of 1,000 square feet per unit based on a Town-accepted appraisal.

C. NATURE OF LAND TO BE DEDICATED**01. UNITY****02. USABILITY**

³² Prioritize access to existing blueways as common open space feature as well as agricultural features (silo grains, barns)

³³ Public access to and along waterfront areas will always be the preferred form of open space for waterfront lots.



03. SHAPE

04. LOCATION

05. ACCESS

06. GREENWAYS

§ 6.10 OWNERS' ASSOCIATIONS

This is a new section that requires developments with common lands or private infrastructure to form and maintain an owners' association to ensure long-term maintenance of those facilities. The section sets out the responsibilities of the association, the procedure for establishment, documentation requirements, and membership requirements. The section also clarifies the process for transfer of maintenance responsibility from the developer to the association.

6.10.1. PURPOSE

6.10.2. APPLICABILITY

6.10.3. CREATION REQUIRED

6.10.4. MEMBERSHIP REQUIRED

6.10.5. PROCEDURE FOR ESTABLISHMENT

6.10.6. ASSOCIATION RESPONSIBILITIES

6.10.7. REQUIRED DOCUMENTATION TO ESTABLISH

6.10.8. TRANSFER OF MAINTENANCE RESPONSIBILITIES

6.10.9. FAILURE TO MAINTAIN IS A VIOLATION



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§ 6.11 PARKING AND LOADING

This section carries forward and builds on the standards in Sections 154.106 and 107 of the current zoning ordinance. It includes a comprehensive applicability section that addresses how the standards are applied to changes in use, minor additions of parking spaces to existing parking lots, and minor building additions. The section provides a minimum parking space standard for each listed principal use, parking maximums for certain uses like large format retail, standards for secondary uses, along with simplified bicycle parking standards. Where possible, current parking standards will be revised to be based on building square footage and reduced for consistency with national best practice. The standards also update parking lot configuration, surfacing, as well as stacking or standing spaces. The standards include new parking lot flexibility options through the Alternative Plan procedure. The section also establishes loading standards with space size and circulation provisions for delivery trucks that are applied when an applicant chooses to include loading facilities.

6.11.1. INTENT

6.11.2. APPLICABILITY

6.11.3. EXEMPTIONS

These standards apply off-street parking exemptions by zoning district designation rather than by some other un-mapped geography.

6.11.4. OFF-STREET PARKING REQUIREMENTS

This section replaces Section 154.106 with a new summary table of minimum and maximum off-street parking standards by use type (using the use types listed in the table of common principal uses). The section also include provisions about how to determine the parking standards for unlisted uses and abolishes the current “special situation” provisions.

6.11.5. STACKING SPACES

6.11.6. PARKING LOT CONFIGURATION³⁴

This section includes new standards for parking lot and vehicular use area configuration. The standards encourage parking spaces larger than five spaces to be configured in accordance with low-impact development requirements (like bio-swales and rain gardens) instead of underground or retention pond storage. Parking lots over 100 spaces must be configured in accordance with low-impact development standards. This section also relocates any parking lot configuration provisions currently found in the UDO Appendices to this section.

6.11.7. ACCESSIBLE PARKING SPACES

Sets out the standards for how electric vehicle parking spaces are to be configured, if provided. EV spaces are not counted toward minimum parking standards.

³⁴ NOTE: Steering Committee members have raised concerns about parking space widths as narrow as nine feet. Unfortunately, the State has mandated that no development regulation may mandate a parking space wider than nine feet (though wider spaces could be provided voluntarily or incentivized).



6.11.9. BICYCLE PARKING SPACES

This section sets out the requirements for the minimum number of bicycle spaces that must be provided for certain uses as well as how bicycle parking facilities must be configured.

6.11.10. PARKING FLEXIBILITY**A. SHARED PARKING****B. OFF-SITE PARKING****C. ALTERNATIVES**

These provisions address deviations below minimums, above maximums, surfacing standards, location, and similar allowable deviations permitted under the Alternative Plan procedure.

6.11.11. OFF-STREET LOADING

This section carries forward standards for loading areas in Section 154.107 of the current zoning ordinance, but does not require uses to provide loading. Rather, these standards specify how loading areas are to be configured if they are provided. The decision as to whether or not to include loading spaces is left to the landowner or applicant. If loading facilities are provided, they must be configured in accordance with the applicable UDO standards.



§ 6.12 REFUSE AND RECYCLING COLLECTION

This carries forward requirements included in the current zoning ordinance in Section 154.115 and sets out standards for refuse and recycling facilities that are required for all use types, including single-family detached developments.

6.12.1. PURPOSE AND INTENT

6.12.2. APPLICABILITY

Trash and recycling collection facilities shall be provided for all forms of development in the Town, and may take the form of roll-off dumpsters, dumpster containers, roll-out carts, or carried bins.

6.12.3. EXEMPTIONS

6.12.4. STANDARDS

A. REFUSE AND RECYCLING CONTAINERS

01. NUMBER REQUIRED

Each use type shall provide refuse and recycling collection facilities of a number and size necessary to accommodate all refuse and recycling material generated or that accumulates between removal service.

02. LOCATION

Refuse and recycling container areas shall not be located within required setbacks, site distance triangles, within easements, or within required landscaping areas. Wherever possible, refuse and recycling container areas shall be located to the side or rear of a principal building and no closer to a street than a front or side building façade wall.

03. ACCESS

Refuse and recycling containers shall be stored in areas that may be accessed and serviced by vehicles without creating safety hazards, interrupting traffic of pedestrian circulation, or blocking site functions like off-street parking or loading.

04. SCREENING

Refuse and recycling containers shall be screened in accordance with the applicable requirements in Section <>, Screening.

05. GATES

Enclosures surrounding refuse and recycling containers shall include self-closing gates that will provide the same level of screening as required by for the enclosure.

06. PADS

Refuse and recycling containers shall be stored on a concrete pad served by a reinforced concrete apron capable of supporting the weight of the service vehicle.

07. WINDBLOW TRASH SUPPRESSION REQUIRED

Refuse and recycling containers shall be fitted with self-closing lids or be stored within an enclosure that has a prevents trash or debris from blowing out of the enclosure.

B. ROLL OUT CARTS AND BINS

01. SHARED CARTS AND BINS



- a. WASTE STORAGE ROOMS
- b. SCREENING FOR OUTDOOR WASTE STORAGE AREAS
- c. WINDBLOWN TRASH SUPPRESSION REQUIRED

02. CARTS AND BINS SERVING INDIVIDUAL DWELLING UNITS

This section sets out the requirements for location and screening requirements for refuse and recycling bins or carts.



§ 6.13 SIDEWALKS AND GREENWAYS

This section establishes a consolidated set of pedestrian facility requirements based upon the policy guidance pertaining to sidewalks and greenways and standards in Section 153-078 of the subdivision ordinance. The standards clarify that pedestrian facilities are required in parts of the Town as identified in adopted policy guidance. The standards set out requirements for dedication and construction of these required features (with the ability to propose fee-in-lieu) in instances where existing facilities are sufficient to maintain pedestrian connection. The standards set out sidewalk and greenway configuration, allowable setback reductions from greenways, and how pedestrian facilities are credited towards parkland and open space set-aside requirements.

6.13.1. GREENWAYS

A. GREENWAYS AND TRAILS DISTINGUISHED

01. GREENWAYS

02. TRAILS

B. GREENWAY DEDICATION AND CONSTRUCTION REQUIRED

C. GREENWAY CONFIGURATION

01. MINIMUM GREENWAY WIDTH

02. GREENWAY ACCESS

03. GREENWAY SURFACE

04. COLLOCATION OF UTILITIES

05. MAXIMUM GRADE

06. SLOPE

07. LOCATION OUTSIDE BUILDABLE LOTS

08. LOCATION WITHIN RIPARIAN AREAS

D. FEE-IN-LIEU FOR GREENWAY

E. GREENWAY CREDITS TOWARDS OPEN SPACE AND PARKLAND

01. OPEN SPACE SET ASIDE

02. PARKLAND DEDICATION



F. MAINTENANCE REQUIRED**6.13.2. SIDEWALKS AND MULTI-USE PATHS****A. SIDEWALKS AND MULTI-USE PATHS DISTINGUISHED****01. SIDEWALKS****02. MULTI-USE PATHS****B. APPLICABILITY****C. DEDICATION AND CONSTRUCTION REQUIRED****D. LOCATION****01. BOTH SIDES OF THE STREET****02. ONE SIDE OF THE STREET****03. CONNECTION OF CUL-DE-SAC BULBS****04. NO SIDEWALKS OR MULTI-USE PATHS REQUIRED**

Includes alleys

E. CONFIGURATION**F. CROSSWALKS AND ACCESSIBLE RAMPS REQUIRED****G. TIMING OF INSTALLATION****H. FEE-IN-LIEU****I. CREDIT FOR GREENWAYS****J. MAINTENANCE REQUIRED**

§ 6.14 SIGNAGE

This section carries forward and builds on the standards in the signs section (Sections 154.250 through 268) in the current zoning ordinance and sets forth sign standards that identify content neutrality and protection of 1st amendment rights while also removing the remaining content-based sign standards (standards where Town staff must read the sign in order to determine what regulations should apply to the sign, or standards related corporate logos, religious symbols, for profit, etc.). It includes establishment of basic exemptions for several kinds of signage including governmental and parking-related signs, and more clarity regarding the range of prohibited signs like moving, off-premise, and outdoor advertising signs. It also anticipates establishment of a series of tabular-based provisions for each of the 16 generic sign types anticipated by the UDO.

6.14.1. INTENT

This section includes language about protection of first amendment rights, economic development, and quality visual environment. The section clarifies that there are some content-based sign provisions, but they are narrowly tailored and included to serve a compelling public interest.

6.14.2. APPLICABILITY

6.14.3. EXEMPTIONS

This includes governmental signs as well as parking-related signs, farm signs, fence wraps during construction, holiday displays, signs not visible from the public realm, and exemptions for public art.

6.14.4. NONCONFORMING SIGNS

This section cross references the applicable standards in Chapter 5, Nonconformities, which will revise the Town's current standards in accordance with recent changes to NCGDS§160D-912.1 in accordance with State law.

6.14.5. PROHIBITED SIGNS

Includes signage that moves, flashes, blinks, or roof signs. Also prohibits inflatable signs and feather flags, but allows electronic message boards.

6.14.6. PROHIBITED SIGN LOCATIONS

6.14.7. PROVISIONS APPLICABLE TO ALL SIGNS

A. SIGN PERMIT REQUIRED

B. SIGNS NOT SUBJECT TO SIGN PERMIT

C. SIGNS IN THE PUBLIC STREET RIGHT OF WAY

Prohibits signs in the public right of way except for sidewalk signs in the districts where they are permitted.

D. CHANGEABLE COPY

E. ILLUMINATION

F. STRUCTURAL CONFIGURATION



G. MAINTENANCE REQUIRED**H. REMOVAL OF DILAPIDATED OR UNSAFE SIGNS****I. MURALS**

New section proposed to allow murals that may or may not include a commercial message like a wall sign.

6.14.8. STANDARDS BY SIGN TYPE

This section sets out a series of individual tables, one for each sign type. The table includes a definition, precedent image examples, a graphic showing how dimensional standards are applied, the zoning districts where signs are permitted, the dimensional standards, and any other special requirements. These provisions will replace the current signage diagrams.

A. AWNING SIGNS**B. BANNER SIGNS****C. ELECTION SIGNS****D. ELECTRONIC MESSAGE BOARDS****E. FLAGS****F. GROUND SIGNS³⁵**

Proposed to replace the term "freestanding" signs.

G. INCIDENTAL SIGNS

Proposed to replace current "secondary" signs. Under Reed, every developed lot has the right to one incidental sign. These are also sometimes referred to as "ideological" signs.

H. OUTDOOR ADVERTISING SIGNS

Carries forward the prohibition of billboards in the current zoning ordinance.

I. PROJECTING SIGNS**J. SIDEWALK SIGNS****K. SPECIAL PURPOSE SIGNS**

These are signs of strange shapes or configurations that do not easily fit into one of the other generic sign types. Generally speaking these signs require approval of a special use permit.

L. SUBDIVISION SIGNS

³⁵ NOTE TO STAFF: Additional discussion is necessary regarding the Town's desire to eliminate new pole signs in favor of new ground (also called "monument") signs.



M. SUSPENDED SIGNS**N. TEMPORARY SIGNS**

These standards will treat temporary signs as temporary in terms of their materials, not their duration. This is done to help ease administration as it avoids the need for staff to track temporary sign permit durations. In this approach, each lot gets one temporary sign in addition to the other forms of permitted signage. The lot can have the temporary sign for 365 days per year. A temporary sign still has size, height, location, and material standards. Under the Reed ruling, each developed lot has the right to a single temporary sign.

O. WALL SIGNS**P. WINDOW SIGNS****6.14.9. UNIFORM SIGN PLANS**

A uniform sign plan is required for non-residential and mixed-use developments of two or more principal buildings on one or more lots and in cases where a development is subject to a master plan. The uniform plan documents how conformance with sign standards are addressed in these kinds of developments and how basic signage continuity will be maintained throughout the development.



§ 6.15 STORMWATER AND SEDIMENTATION

This is a new section that will undergo further review and amendment as the UDO is drafted.

6.15.1. STORMWATER

This section carries forward the current standards from Section 153.077, Stormwater Drainage, contained in the existing Subdivision Ordinance with no substantive changes.

A. PURPOSE

B. APPLICABILITY AND JURISDICTION

C. DESIGN MANUAL

D. REVIEW PROCEDURES

E. STANDARDS

F. RESTRICTION REQUIRED

G. STANDARDS FOR STORMWATER CONTROL MEASURES

H. MAINTENANCE REQUIRED

I. ENFORCEMENT

6.15.2. SOIL EROSION AND SEDIMENTATION CONTROL

This is a new section that includes basic erosion and sedimentation controls the Town will administer while continuing to rely on the State Sedimentation Commission/NCDEQ/Henderson County for other erosion control functions.

A. PURPOSE AND INTENT

B. SCOPE AND EXCLUSIONS

C. MANDATORY STANDARDS FOR LAND DISTURBANCE

This section carries forward the requirements from Section 153.067, Subdivisions.

D. STORMWATER OUTLET PROTECTION

E. MAINTENANCE REQUIRED

F. ENFORCEMENT



§ 6.16 SUBDIVISION DESIGN³⁶

This section carries forward the standards in Sections 65-85 of the current Chapter 153: Subdivisions, along with configuration provisions and requirements specific to the creation of lots for sale and development.

6.16.1. INTENT

6.16.2. APPLICABILITY

6.16.3. APPROVAL AND RECORDATION OF PLATS REQUIRED

This section includes the Voluntary Agricultural District notifications on new plats as outlined in Section 153.083 of the current subdivision ordinance.

6.16.4. RELATIONSHIP TO CONSTRUCTION DRAWINGS

6.16.5. EASEMENTS

6.16.6. LANDSCAPING

This section cross references the perimeter landscaping buffer standards included in new Section 6.7, and clarifies that required perimeter buffers may not be located within buildable lots.

6.16.7. LOT CONFIGURATION

6.16.8. MONUMENTS

6.16.9. REASONABLE RELATIONSHIP

6.16.10. RESERVATIONS

6.16.11. SUBDIVISION NAMES

§ 6.17 SUSTAINABILITY INCENTIVES

This is a voluntary approach to incorporating more sustainable development (like low impact development-configured parking lots, avoidance of mass grading, protection of additional ridgelines or hilltop areas beyond those required, provision of workforce housing, support for higher single-family residential design quality, green stormwater infrastructure, and many others) by incorporating incentives like density bonuses and dimensional standard reductions in return for provision of

³⁶ Discuss the use of flag lots, standards surrounding their usage, especially on slopes.



sustainable development features. The section sets out a range of potential incentives that are available for an applicant to request. The section also identifies the range of sustainable development practices that must be provided by the applicant in order to utilize one or more of the requested incentives. The section includes a summary table of development practices that the applicant may choose from. Each practice has a rough “value,” and the standards require provision of at least two development practices in order to take advantage of an available incentive. Review for consistency with the requirements is undertaken during the plan, plat, or permit review stage, and a failure to provide approved sustainable development practices is a violation of the Ordinance.

6.17.1. PURPOSE AND INTENT**6.17.2. APPLICABILITY****6.17.3. HOW TO USE THE INCENTIVES****6.17.4. TYPE OF INCENTIVES****6.17.5. PROCEDURE****6.17.6. MENU OF SUSTAINABLE DEVELOPMENT PRACTICES****§ 6.18 TREE PROTECTION³⁷**

This section is intended to retain “significant trees” over 18 inches in diameter during and after the construction process. The standards clarify that such trees must be retained after development but also allow such trees to be removed with mitigation in cases where the trees interfere with authorized access to the lot or that render the lot unbuildable. Mitigation includes replanting and payment of fee-in-lieu. Also includes disincentives for mass grading and provides for reforestation and replanting standards. Other provisions related to tree clearing certificates are relocated to Chapter 2, and the provisions pertaining to use of existing trees as credit towards landscaping requirements are relocated to the landscaping flexibility section.

6.18.1. INTENT**6.18.2. APPLICABILITY****6.18.3. EXEMPTIONS**

³⁷ NOTE TO STAFF: Additional discussions are necessary regarding significant tree retention policy or towards a reforestation standard instead.



6.18.4. TREES TO BE RETAINED

6.18.5. TREE PROTECTION AREAS ESTABLISHED

6.18.6. CREDIT TOWARDS LANDSCAPING REQUIREMENTS AND OPEN SPACE SET-ASIDES

6.18.7. TREE REMOVAL AND TOPPING ON PUBLIC PROPERTY

6.18.8. TREE CLEARING CERTIFICATES



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TOC/Key Changes



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§ 7.1 CHAPTER INTRODUCTION

This chapter carries forth policies and procures in Section 154.999 of the current zoning ordinance and lays out the types of UDO violations and sets forth the framework for enforcement of the UDO. It clarifies that the Town seeks to encourage and assist with voluntary compliance, not the application of penalties.

§ 7.2 COMPLIANCE REQUIRED

This section clarifies that compliance is required by all persons owning, developing, managing, using, or occupying land or structures.

§ 7.3 DESCRIPTION OF VIOLATIONS

This section enumerates and describes the six most common classes of violation of the UDO.

7.3.1. CONTINUING OR REPEATING A VIOLATION

7.3.2. DEVELOPMENT WITHOUT AUTHORIZATION

7.3.3. DEVELOPMENT INCONSISTENT WITH AUTHORIZATION

7.3.4. FAILURE TO MAINTAIN PROPERTY

7.3.5. MINIMUM HOUSING OR MAINTENANCE VIOLATION

7.3.6. NUISANCE VIOLATION

7.3.7. REMOVAL OF TREES OR LANDSCAPING SUBJECT TO PROTECTION

7.3.8. SUBDIVISION OF LAND IN VIOLATION

7.3.9. USE IN VIOLATION

7.3.10. VIOLATION BY ACT OR OMISSION

7.3.11. VIOLATION OF ENVIRONMENTAL REGULATIONS

§ 7.4 ENTITY RESPONSIBLE



7.4.1. RESPONSIBLE FOR ENFORCEMENT

Delegates the Planning Director as the review authority responsible for enforcing the UDO.

7.4.2. RESPONSIBLE FOR VIOLATION

Carries forward the wide range of potential responsible parties, including the landowner, tenant, agents, and many others.

A. ENTITIES IDENTIFIED**7.4.3. FAILURE BY TOWN DOES NOT RELIEVE ENTITY****§ 7.5 GENERAL ENFORCEMENT PROCEDURES**

This section describes the basic steps the Town follows with respect to determination if a violation exists and how it is to be corrected (as well as what happens if it isn't).

7.5.1. COMPLAINTS**7.5.2. INVESTIGATION****7.5.3. WRITTEN NOTICE OF VIOLATION/CITATION****7.5.4. DELIVERY OF WRITTEN NOTICE****7.5.5. REMEDY UPON NOTICE****7.5.6. ABILITY TO APPEAL****7.5.7. FAILURE TO COMPLY****7.5.8. EACH DAY A SEPARATE VIOLATION****§ 7.6 REMEDIES**

This section identifies the range of remedies available to the Town to induce compliance with the UDO. Remedies are continuous and cumulative. The section describes how each of the remedies are applied.

7.6.1. GENERALLY

7.6.2. ASSESSMENT OF CIVIL PENALTIES

This section sets out the process used by the Town for the assessment and collection of civil penalties associated with UDO violations. Provides an increase in penalties to \$250 for the first offense and \$500 for any subsequent offense.

A. RESPONSIBLE PARTIES**B. NOTICE****C. CONTINUING VIOLATION****D. DEMAND FOR PAYMENT****E. NONPAYMENT****F. PENALTIES****7.6.3. CONDITIONED PERMIT OR CERTIFICATE****7.6.4. CRIMINAL PENALTIES**

There are very limited situations in which a misdemeanor is permitted to be utilized as a penalty in accordance with NCGS Chapter 160D, such as transferring lots in an unapproved subdivision. Standards authorized under other chapters of the NCGS (like sedimentation) may continue to include criminal penalties for violations. This section will also update the provisions currently outlined in Section 154.999 of the zoning ordinance.

7.6.5. STOP WORK ORDERS**7.6.6. REVOCATION OF PERMITS****7.6.7. INJUNCTIVE RELIEF****7.6.8. ORDER OF ABATEMENT****7.6.9. EQUITABLE REMEDY****7.6.10. STATE AND COMMON LAW REMEDIES****7.6.11. PREVIOUS ENFORCEMENT**

7.6.12. REMEDIES, CUMULATIVE AND CONTINUOUS**§ 7.7 STATUTE OF LIMITATIONS**

This section clarifies that the enforcement procedure may only be conducted in accordance with NCGS§1-49(3) and 1-51(5) pertaining to the length of time that an enforcement action may be pursued by the Town.

§ 7.8 VIOLATION OF ENVIRONMENTAL CONTROLS**7.8.1. VIOLATION OF SOIL EROSION OR SEDIMENTATION CONTROLS****A. CIVIL PENALTIES****B. CRIMINAL PENALTIES****C. RESTORATION****7.8.2. VIOLATION OF STORMWATER STANDARDS****A. GENERALLY****B. ENFORCEMENT PROCEDURES****C. REMEDIES AND PENALTIES**

CHAPTER 8.

WORD USAGE

TOC/Key Changes



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§ 8.1 CHAPTER INTRODUCTION

§ 8.2 ABBREVIATIONS

This section includes a glossary of abbreviations used in the UDO.

§ 8.3 RULES OF LANGUAGE CONSTRUCTION

This section is related to the interpretation of words and phrases.

8.3.1. MEANINGS AND INTENT

- A.** All provisions, terms, phrases, and expressions contained in this Ordinance shall be interpreted in accordance with the general purposes set forth in Chapter 1, and the specific purpose statements set forth throughout this Ordinance.
- B.** When a specific section of these regulations gives a different meaning than the general definition, the specific section's meaning, and application of the term shall control.
- C.** Terms that are not defined are subject to their common or customary meaning.

8.3.2. LISTS AND EXAMPLES

Unless otherwise specifically indicated, lists of items or examples that use terms like "for example," "including," and "such as," or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

8.3.3. COMPUTATION OF TIME

Carries forward the provisions in Section 1-11 of the current UDO. The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town, the deadline or required date of action shall be the next day that is not a Saturday, Sunday, or holiday observed by the Town.

8.3.4. TIME-RELATED LANGUAGE

- A.** Whenever certain hours are named, they shall mean standard time or daylight savings time as may be in current use by the Town.
- B.** The term "day" means a calendar day, or any day during a week, including business days and weekend days.
- C.** The term "holiday" means a legal holiday recognized by the Town.
- D.** The term "week" means five business days and two weekend days.
- E.** Weeks commence on a Monday.
- F.** The term "month" means a calendar month.
- G.** The term "year" means a calendar year.
- H.** The term "temporary" shall mean a condition lasting for only a limited period of time; not permanent.

8.3.5. REFERENCES TO THIS ORDINANCE

A reference to an article, section, sub-section, or paragraph means an article, section, sub-section, or paragraph of this Ordinance, unless otherwise specified.



8.3.6. REFERENCES TO OTHER ORDINANCES OR PUBLICATIONS

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall be construed as a reference to the most recent edition or adopted version of such regulation, resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.

8.3.7. REFERENCES TO THE NORTH CAROLINA GENERAL STATUTES

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section.

8.3.8. DELEGATION OF AUTHORITY

Whenever a provision of this Ordinance requires or authorizes an officer or employee of the Town to do some act or perform some duty, the officer or employee may designate, delegate, or authorize subordinates to perform the act or duty unless the terms of the provision specifically provide otherwise.

8.3.9. JOINT AUTHORITY

All words giving a joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

8.3.10. TECHNICAL AND NON-TECHNICAL TERMS

Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

8.3.11. PUBLIC OFFICIALS AND AGENCIES

All public officials, bodies, and agencies to which references are made are those of the Town of Mills River, North Carolina, unless otherwise indicated.

8.3.12. MANDATORY AND DISCRETIONARY TERMS

The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may," "can," and "should" are permissive in nature.

8.3.13. CONJUNCTIONS

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

- A.** "And" indicates that all connected items, conditions, provisions or events apply.
- B.** "Or" indicates that one or more of the connected items, conditions, provisions, or events apply.

8.3.14. TENSES, COUNTABLE NOUNS, AND GENDER

A. Words used in the past or present tense include the future tense as well as the past and present.

B. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise.

C. Words used in the masculine gender include the feminine gender and the neuter, and vice versa.

8.3.15. OATH

The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in like cases the terms "swear" and "sworn" shall be equivalent to the terms "affirm" and "affirmed."



8.3.16. TERMS NOT DEFINED

If a term used in any article of this Ordinance is not defined, the Planning Director is authorized to interpret the term in accordance with Section <>, Determination, based upon the definitions used in professionally accepted sources.

§ 8.4 RULES OF MEASUREMENT

This section includes material explaining the different types of lots, lot lines, setbacks, and required yards. It identifies how various dimensional standards (like building height or use separations) are measured, and it sets out the allowable forms of deviation (such as exceptions to building heights, encroachments into setbacks, etc.). It also includes the basic rules for measurement such as rounding, determination of impervious surface, slope, and other basic measurement rules. Each set of standards will include illustrations demonstrating how the standards operate.

8.4.1. BASIC MEASUREMENT**A. ABUTTING VERSUS ADJACENT****B. DISTANCE****C. IRREGULAR SHAPES****D. LINEAR VERSUS SQUARE FEET****E. ROUNDING**

Sets out the rules for when fractions are rounded up (like density, or rounded down, like parking provisions).

F. SEPARATION**8.4.2. DENSITY AND YIELD CALCULATIONS**

This section describes how to calculate maximum allowable residential density versus calculation of the maximum number of individual lots (based on minimum lot size requirements by use type). It also address density equivalence issues like those related to accessory dwelling units or congregate care uses.

A. GENERALLY**B. CALCULATION OF DENSITY****C. CALCULATION OF MAXIMUM NUMBER OF LOTS****D. CALCULATION OF YIELD****E. DENSITY EQUIVALENCE OR EXEMPTION**

8.4.3. FLOOR AREA**A. INCLUDED IN FLOOR AREA****B. EXCLUDED FROM FLOOR AREA****8.4.4. HEIGHT****A. MEASUREMENT****B. MAXIMUM****C. STORY****D. EXCEPTIONS****8.4.5. LOTS****A. LOT MEASUREMENTS****B. LOT LINES****C. LOT TYPES****8.4.6. LOT COVERAGE**

Sets out the rules for how lot coverage is calculated.

8.4.7. SETBACKS**A. PERIMETER SETBACK****B. REAR SETBACK****C. SETBACKS FROM RAILROADS****D. SIDE SETBACK****E. STREET SETBACK****F. USE-BASED SETBACKS**

8.4.8. SETBACK ENCROACHMENTS**8.4.9. SLOPE AND ELEVATION****A. AVERAGE SLOPE****B. BASE FLOOD ELEVATION****C. FINISHED GRADE****D. NATURAL GRADE****8.4.10. MEASUREMENT OF DEVELOPMENT STANDARDS****A. BUILDING WALL CALCULATION****B. EXTERIOR LIGHTING CALCULATION****C. FENCE AND WALL HEIGHT CALCULATION****D. LANDSCAPING CALCULATIONS****E. OFF-STREET PARKING CALCULATION****F. SIGNAGE CALCULATION****8.4.11. ZONING MAP BOUNDARIES****§ 8.5 TERMS DEFINED**

This section replaces Section 25 and 26 from the current Subdivision Ordinance and Section 154.007 from the Zoning Ordinance and includes the definitions of terms used in the UDO. It defines all use types, all procedures, all review authorities, and terms common to development standards and use standards. The section will include notes that some definitions, like those associated with signs, lot dimensions, or flood protection standards are located elsewhere in the Ordinance. This section will update and clarify terms such as development, dwelling unit, etc. to be consistent with other current State regulations, such as Building Code. It will add terms from the existing ordinances including "Close Familial Relationship" and those terms from specific ordinance sections such as the lighting standards of Section 117 ad the Town's new floodplain ordinance.



CHAPTER 9. APPENDICES

TOC

§ 9.1 PLAN AND PLAT CONTENT REQUIREMENTS

This section includes a summary table of plan and plat contents for Site Plans, Concept Plans, Exempt Plats, Limited Subdivisions, Minor Subdivisions, Transfer Plats, Preliminary Plats, and Final Plats.

§ 9.2 SUBDIVISION CERTIFICATES AND DECLARATIONS

This section includes a list of required certifications and mandatory subdivider declarations to be included on subdivision plat drawings.

§ 9.3 VEGETATION PREFERRED AND PROHIBITED

Contains tree planting recommendations with additional detail on prohibited species, and species to plant with caution (due to their potential invasive nature).



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ANNOTATED OUTLINE November 2025

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