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Boiling Springs - Land Usage

CHAPTER 150: SUBDIVISION REGULATIONS

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GENERAL PROVISIONS**§ 150.001 TITLE.**

This chapter shall be known as the Subdivision Ordinance of the town of Boiling Springs, North Carolina.

(Ord. passed 4-7-98)

§ 150.002 AUTHORITY.

This chapter is adopted under the authority and provisions of the General Statutes of North Carolina chapter 160A, Article 19, Part 2, Subdivision Regulations.

(Ord. passed 4-7-98)

§ 150.003 JURISDICTION.

These regulations shall govern all subdivisions of land within the Territorial Jurisdiction of the town of Boiling Springs as now or hereafter established.

(Ord. passed 4-7-98)

§ 150.004 PURPOSE.

The purpose of this chapter is to establish procedures and standards for the development and subdivision of real property within the Corporate Limits and extraterritorial jurisdiction of the town of Boiling Springs, NC, in an effort to protect the public health, safety and general welfare and to promote orderly growth and development; provide for suitable residential and nonresidential

subdivisions with adequate streets and utilities and appropriate building sites; provide for the distribution of population and traffic in a manner which shall avoid congestion and overcrowding; provide for the coordination of streets within subdivisions with existing or laned streets and with other public facilities; provide for the dedication or reservation of rights-of-way or easements for street and utility purposes; provide for the dedication or reservation of adequate spaces for open space, public lands and buildings; protect and enhance environmental quality; provide for the dedication or provision of facilities for adequate storm drainage; provide proper land records for the convenience of the public and for better identification and permanent location of real property boundaries.
(Ord. passed 4-7-98)

§ 150.005 SUBDIVISION DEFINED.

For the purposes of this chapter "Subdivision" shall mean all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations of this chapter; provided, however, that any document or plat to be recorded pursuant to any such exclusion shall bear the notation "No approval required" and the signature of the Subdivision Administrator or his designated agent before being presented for certification by the Review Officer:

(A) The combination or recombination of portions of previously subdivided and recorded Lots where the total number of lots is not increased and the resultant Lots are equal to or exceed the standards of this chapter.

(B) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved.

(C) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.

(D) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three Lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this chapter.

(E) The division of land into burial plots where no street right-of-way dedication is involved.

(F) The division of land by will. (Note: Although the division of land by will is exempt from the requirements of this chapter, the resultant lots may not be eligible for a zoning permit/building permit if the lots do not meet the standards and requirements of the Zoning Ordinance.)
(Ord. passed 4-7-98; Am. Ord. passed 4-10-06)

§ 150.006 COMPLIANCE.

From and after the adoption of this chapter, no real property lying within the jurisdiction of this chapter shall be subdivided except in conformance with all applicable provisions of this chapter. In addition, after the effective date of this chapter, no plat for the subdivision of land within the jurisdiction of this chapter shall be certified for recording by the Review Officer, nor shall the Clerk of Superior Court order the recording of a plat until it has been submitted and approved in accordance with the provisions of this chapter.
(Ord. passed 4-7-98)

§ 150.007 SUBDIVISION ADMINISTRATOR.

This chapter shall be administered by the Subdivision Administrator who shall be appointed by the Board of Commissioners. The Subdivision Administrator shall administer and enforce the provisions of this chapter and have such other specific powers and duties as are set forth in this chapter. The Subdivision Administrator' may designate agents to act on his behalf. The Subdivision Administrator shall have the right-to enter property at reasonable hours for the purpose of making inspections.
(Ord. passed 4-7-98)

§ 150.008 COORDINATION OF PLANS.

All plans, plats and supporting documents to be submitted in connection with the procedures set forth in this chapter shall be submitted first to the Subdivision Administrator. The Subdivision Administrator shall develop and maintain a set of standards to serve as a basis for the type, size, graphic media, number of copies, information to be shown and other such matters in regard to the maps and documents required to be submitted in the administration of this chapter. Such standards may also include standards for street, storm drainage and utility Construction Plans. A listing of such standards may be appended to this chapter and are presumed to be necessary to satisfy the requirements of this chapter. However, it is recognized that each development is unique, and therefore, the Subdivision Administrator may exercise flexible judgement in requiring less or more information and submittals according to the needs of the particular case.
(Ord. passed 4-7-98)

§ 150.009 ADMINISTRATIVE FEE.

The Board of Commissioners shall set a fee schedule for the administration of this chapter. The Subdivision Administrator shall be responsible for collecting such fees. All fees relating to recording of documents shall be borne directly by the subdivider.
(Ord. passed 4-7-98)

§ 150.010 GENERAL DEFINITIONS.

Unless specifically defined in this Section, words used in this Subdivision chapter shall have their respective customary dictionary definitions. Defined words and other important words are capitalized throughout this chapter. For the purpose of these regulations certain words, terms or phrases used herein are interpreted and defined as follows:

Words used in the present tense shall include the future tense.

The word "Lot" includes the words "plot", "tract" and/or "parcel".

The word "building" includes the word "structure".

The word "person" includes a "firm, association, organization, partnership, trust, company, corporation and/or individual".

The word "use" includes the terms "arranged", "designed" and/or "intended" for use, activity and/or purpose.

DEDICATION. A gift, by the owner, of a right to use of land for a specified purpose or purposes. Because a transfer of property rights is entailed, Dedication must be made by written instrument, and is completed with an acceptance.

EASEMENT. A grant of one or more of the property rights by the property owner of a portion of land for a specified purpose and use by the public, a corporation or other entities.

LOT. A separate and distinct unit of land described by either a metes and bounds description and/or subdivision plat of record and/or probated will. Lot includes a portion of a subdivision or any other parcel of land, intended as a unit for transfer of ownership or for development or both.

(1) **CORNER LOT.** A lot abutting two or more streets at their intersection.

(2) **REVERSE FRONTAGE LOT.** A through lot which is not accessible from one of the parallel or non-intersecting streets upon which it fronts.

(3) **THROUGH LOT.** A lot abutting two streets that do not intersect at the corner of the lot.

PLANNING BOARD. The Planning Board of the town of Boiling Springs, North Carolina.

RESERVATION. An obligation, shown on a plat or site plan, to keep property free from development and available for public acquisition for a stated period of time. It is not a Dedication or conveyance.

RESERVE STRIP. A strip of land (usually only a few feet wide) owned privately, and set aside around a subdivision in order to prevent access to adjacent property by way of subdivision streets.

REQUIRED DRAINAGE CHANNEL. The theoretical stream bed section which is required to discharge the runoff from a one hundred year storm.

REVIEW OFFICER. A person appointed by the Board of County Commissioners to review state mapping standards prior to authorizing a subdivision plat to be recorded by the Register of Deeds.

SUBDIVIDER. A person engaging in the act of subdividing property.

SUBDIVISION. See § 150.005.

STREET. A public right-of-way for vehicular travel which has been constructed and then dedicated to and accepted by the town of Boiling Springs or the North Carolina Department of Transportation for public use or which has been otherwise obtained by such agencies for such use or which is proposed to be constructed and then dedicated to and accepted by such agencies as a public right-of-way for vehicular traffic for public use pursuant to this chapter.

STREET, HALF. A proposed vehicular travel way intended to be developed by constructing one-half of a required width of a street with the remainder to be provided at some future date.

STREET, PRIVATE. A vehicular travel way not accepted as a public street.

TERRITORIAL JURISDICTION. The town Limits and the Extraterritorial Area of the town of Boiling Springs as now or may be hereafter established.

THOROUGHFARE PLAN. The Thoroughfare Plan as adopted by the Board of Commissioners of the town of Boiling Springs and as may from time to time be amended.
(Ord. passed 4-7-98; Am. Ord. passed 4-5-05)

§ 150.011 MORATORIA ON DEVELOPMENT APPROVALS.

Per G.S. § 160A-381, the Board of Commissioners may adopt temporary moratoria on any development approval issued by the town as required by law. See applicable provisions of the town zoning code and G.S. § 160A-381.
(Ord. passed 4-10-06)

SUBDIVISION REVIEW PROCEDURE**§ 150.020 APPROVAL LEVELS.**

(A) The subdivision review procedure shall consist of two levels of required approval:

- (1) *Preliminary Plan* (including required Construction Plans); and,
- (2) *Final Plat*

(B) Preliminary Plan approval shall be a prerequisite to Final Plat approval.

(C) Prior to Preliminary Plan application, the subdivider may submit to the Subdivision Administrator a sketch plan showing the concept of the proposed subdivision. The subdivider may at that time discuss the proposed subdivision with the subdivision Administrator and become familiar with the subdivision Regulations. This procedure does not require formal application or fee.
(Ord. passed 4-7-98)

§ 150.21 SUBDIVISION TYPES.

(A) The subdivision review procedure shall consist of two types of subdivisions: major subdivisions and minor subdivisions.

(B) Major subdivisions are those subdivisions which involve more than five lots or more than ten acres, those subdivisions which involve the dedication of new street segments (but not simply widening), those subdivisions where special developments are involved as permitted by the Zoning chapter, and those subdivisions that involve dedication or reservation of land for open space, school sites and other public purposes. All other subdivisions shall be considered to be minor subdivisions.
(Ord. passed 4-7-98)

§ 150.022 APPROVAL AUTHORITY.

The approval authority for the levels and types of subdivision approval shall be as follows:

(A) *Preliminary Plans.*

- (1) Major Subdivisions - Planning Board
- (2) Minor Subdivisions - Subdivision Administrator

(B) *Final Plats.*

(1) Major Subdivisions - Board of Commissioners

(2) Minor Subdivisions - Subdivision Administrator
(Ord. passed 4-7-98)

§ 150.023 PLAN AND PLAT REQUIREMENTS.

Plans and plats and supporting documents and material for the levels of subdivision approval shall be submitted in the form as provided for in the standards for such submittals contained in the Appendix of this chapter.

(Ord. passed 4-7-98)

§ 150.024 PLAN AND SUBMITTAL AND REVIEW PERIODS.

(A) Plans and plats, in the proper form, shall be submitted to the Subdivision Administrator for review and consideration of approval by the appropriate agency, according to the following schedule: (Note: The Subdivision Administrator may refuse to accept the submission of any plans, plats or supporting documents which in his opinion do not meet the standards for such submittals as contained in the Subdivision Administrator's Mapping Standards and this chapter.)

(1) *Preliminary Plans - Minor Subdivisions.* Plans may be submitted at any time. The Subdivision Administrator shall either approve, approve conditionally or deny the approval of the Preliminary Plans within thirty days of receipt. Approval, conditional approval or denial shall be in written and/or drawn form and dated.

(2) *Preliminary Plans - Major Subdivisions.* Plans may be submitted at any time provided, however, in order to be eligible to be placed on an agenda of a Planning Board meeting, such submittal shall have been filed with the Subdivision Administrator at least fifteen days prior to that meeting. The Planning Board shall approve, approve with conditions, or deny of the Preliminary Plan within thirty-five days of its first consideration. The decision shall be in written and/or drawn form and dated.

(3) *Final Plats.* Plans may be submitted at any time provided, however, in order to be eligible to be placed on an agenda of a Board of Commissioners meeting, such submittal shall have been filed with the Subdivision Administrator at least fifteen days prior to that meeting. The Board of Commissioners shall approve, approve with conditions, or deny of the Preliminary Plan within thirty-five days of its first consideration. The decision shall be in written and/or drawn form and dated.

(Ord. passed 4-7-98)

§ 150.025 APPEALS.

An aggrieved person may appeal any decision of the Subdivision Administrator to the Planning Board, or the Planning Board to the Board of Commissioners, by filing written notice with the Subdivision Administrator within thirty days of the Subdivision Administrator or Planning Board action, or, failure to act, if there was a failure to act within the allotted time. The Planning Board, or Board of Commissioners, acting on appeal, shall have the same authority as the approval authority from which the appeal is made in regard to the subject level of subdivision review and approval.

(Ord. passed 4-7-98)

§ 150.026 EFFECTS OF APPROVALS - PREREQUISITES.

(A) Preliminary Plan approval shall constitute tentative approval of the Final Plat if the Final Plat is in substantive agreement with the Preliminary Plan and shall entitle the subdivider to proceed to prepare street, storm drainage and utility construction plans, if applicable, and/or to proceed to prepare the Final Plat. Approval of construction plans shall entitle the subdivider to proceed with construction of subdivision improvements for the Preliminary Plan and no construction, including grading, shall proceed without such approval. In addition, the Planning Board may require, as a prerequisite to Preliminary Plan approval, the submittal for review and approval of all or part of subdivision construction plans in order to ascertain the feasibility of all or part of a proposed subdivision.

(B) If a Final Plat of all or part of the area shown on a Preliminary Plan is not recorded in the Office of the Register of Deeds within 18 months of approval of the Preliminary Plan, or if there is a lapse of more than 18 months between the recording of sections, the Subdivision Administrator may require the resubmittal of the unrecorded portion as a Preliminary Plan.

(C) Final Plat approval shall entitle the subdivider to record the Final Plat. A Final Plat must be recorded in the Office of the Register of Deeds within 30 days of its approval by the Subdivision Administrator. No Final Plat shall be regarded as finally approved until such plat shall be recorded.

(D) No Final Plat shall be approved for recording until all required subdivision improvements have been installed and approved or until the subdivider supplies an appropriate financial guarantee as provided for in this chapter.

(E) In addition, no Final Plat shall be approved for recording unless such plat is in substantial agreement, as determined by the Board of Commissioners, with the approved Preliminary Plan. Final Plats not in substantial agreement shall be resubmitted as Preliminary Plans as provided for herein.

(F) After the Final Plat is recorded, lots as shown on the plat may be sold or otherwise conveyed by reference to the Plat. Building permits may be authorized to be issued provided all improvements have been installed and inspected and approved by the Subdivision Administrator. The subdivider shall provide the Subdivision Administrator with a certified copy of the recorded final plat.

(G) Approval and recording of the Final Plat shall constitute Dedication by the subdivider of the right-of-way of each public street and utility and drainage Easement shown on such plat. Such Dedication, however, does not constitute acceptance by the town of such right-of-way, nor does it constitute acceptance for maintenance or for other purposes of the improvements within such rights-of-way and Easements such as pavements, sidewalk, drainage facilities and other utility lines. Such right-of-way and improvements may be accepted by the Board of Commissioners by resolution upon completion by the subdivider and inspection by the appropriate town staff. In addition, land designated on an approved and recorded Final Plat as public open space and similar public purposes shall be considered to be offered for Dedication until the town has by resolution accepted such Dedication and such land is deeded to the town. Until such Dedication has been accepted, land so offered may be used for open space purposes by its owner or his designees and the town shall be held harmless of any liability involving such land. Land so offered for dedication shall not be used for any purpose inconsistent with the proposed public use without the express approval of the Board of Commissioners.

(H) The provisions of this section shall not prohibit any subdivider or subdivider's agent from entering into contracts to sell or lease land by reference to an approved Preliminary Plan for which a Final Plat has not yet been properly approved under this chapter or recorded with the Office of the Register of Deeds, provided such is done in compliance with G.S. § 160A-375, as amended.

(Ord. passed 4-7-98; Am. Ord. passed 4-10-06)

***SUBDIVISION DESIGN STANDARDS; RESERVATIONS AND DEDICATIONS;
REQUIRED IMPROVEMENTS***

§ 150.030 GENERAL.

(A) All proposed subdivisions subject to the regulation of this chapter shall comply with this section and shall be so planned as to facilitate the most advantageous development of the entire community and shall bear a reasonable relationship to the Thoroughfare Plan of the town.

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

(C) The Planning Board may require the subdivider to prepare an Environmental Impact Statement (EIS) pursuant to NCGS 113A-8 as part of the Preliminary Plan for any subdivision of two acres or more where in the Planning Board's opinion one or more of the suitability factors outlined in the paragraph above, or any similar environmental factor, is a significant issue regarding the particular subdivision. The Planning Board may waive the EIS where an EIS or equivalent document is required by a state or federal agency for the same or essentially the same factor(s).

(D) The subdivider shall install the improvements specified herein and such improvements shall be at no cost to the town, except as set forth herein and except as may be otherwise provided for in the town policies. No improvements shall be installed until construction plans have been approved by the town and such other agency as may be appropriate or as required by law. As provided for in § 150.035, a Final Plat may be recorded prior to installation of any or all required improvements provided that a financial guarantee is given by the subdivider as provided for in this chapter.
(Ord. passed 4-7-98; Am. Ord. passed 4-10-06)

§ 150.031 SUBDIVISION AND STREET NAMES.

(A) In no case shall the name of a proposed subdivision duplicate or be phonetically similar to an existing subdivision name within the jurisdiction unless the proposed subdivision lies adjacent to or is in close proximity to the existing subdivision.

(B) Proposed streets which are obviously in alignment with others already existing or proposed and named shall bear the names of the existing or proposed ones. In no case shall the names of proposed streets duplicate or be phonetically similar to other existing street names in the jurisdiction irrespective of the addition of a prefix, suffix or word such as street, avenue, place, drive or court.
(Ord. passed 4-7-98)

§ 150.032 BLOCKS.

(A) Blocks shall have sufficient width to allow two tiers of lots of minimum depth except where single-tier lots are required to separate residential development from through vehicular traffic or another type of use or when abutting a water area.

(B) Blocks shall not be less than 400 feet nor more than 1,320 feet in length.
(Ord. passed 4-7-98)

§ 150.033 LOTS.

(A) The size, shape and orientation of lots shall be appropriate for the location of the proposed subdivision, for the type development contemplated, and in consideration of the method of providing water and sewer facilities to the lots.

(B) It is the intent of this chapter that lot size, shape and orientation shall be controlled by the provisions of the Boiling Springs Zoning chapter and the types of development permitted by that chapter. The configuration of lots in subdivisions designed for non-residential purposes may be omitted on the Final Plat. The final lot sizes may be determined on a lot by lot basis provided each meets the minimum requirements of the Zoning chapter for the district in which located. Every lot shall have sufficient area, dimensions and shape to permit a principal building to be constructed thereon in conformance with the applicable provisions of the Zoning chapter. Lots shall be designed so as to provide positive drainage away from building sites and individual lots shall be coordinated with the general storm drainage plan for the subdivision. Lot boundaries shall be made to coincide with natural and pre-existing man-made drainageways to the extent practicable to avoid the creation of lots that can be built upon only by altering such drainageways. Lotting arrangements shall be made with due consideration given to not disturbing wetlands, rock outcrops and other such natural features. Side lines of lots should be at or near right angles or radial to street lines. All lots must have public street access and frontage meeting the requirements set forth in the Zoning chapter unless other development types are provided for in that chapter. Parcels created through the subdivision process which are not intended for building purposes shall be so designated and perpetually bound as "not-buildable" unless subsequently released through the subdivision process.

(Ord. passed 4-7-98)

§ 150.034 STREETS AND STREETS IMPROVEMENTS.

The proposed street system shall extend existing and projected streets at not less than the required minimum width and shall be in conformance with the following criteria:

(A) *Conformance with Thoroughfare Plan.* The location and design of streets shall be in conformance with the Thoroughfare Plan. Where conditions warrant, right-of-way width and pavement width in excess of the minimum street standards may be required. In any case where any part of a subdivision lies within the corridor of a Thoroughfare shown on a Roadway Corridor Official Map adopted pursuant to North Carolina General Statutes chapter 136, Article 2E, no subdivision approval shall be granted with respect to the property in the Roadway Corridor. Provided, however, no subdivision plat approval shall be delayed by the provision of the Roadway Corridor Official Map procedure for more than three years from the date of its original submittal.

(B) *Street Classification.* The final determination of the classification of streets in a proposed subdivision shall be made by the Planning Board.

(C) *Conformance with Adjoining Street System.* The planned street layout of a proposed subdivision shall be compatible with existing or proposed streets and their classifications on adjoining or nearby tracts.

(D) *Access to Adjoining Property.* Where in the opinion of the Planning Board it is desirable to provide for street access to adjoining property, proposed streets shall be extended to the boundary of such property.

(E) *Reserve Strips, Half Streets and Privates Streets.* Reserve strips and non-access easements adjoining street rights-of-way for the purpose of preventing access to or from adjacent property, (except those required to prevent access to Thoroughfares), private streets and half streets shall not be permitted under any condition.

(F) *Intersections.* Streets shall be designed so as to intersect as nearly as possible at right angles, and no street shall intersect any other street at an angle of less than 60 degrees. Streets crossing natural areas or streams shall cross at or near to right angles as possible within limits of topographic conditions. Offset intersections are to be avoided. A minimum intersection offset of 125 feet shall be maintained.

(G) *Cul-de-sacs.*

(1) Cul-de-sacs should not be used to avoid connection with an existing street, to avoid the extension of a thoroughfare or collector street, or to avoid connection to adjoining property.

(2) Permanent dead end streets shall not exceed 800 feet in length unless necessitated by topography or property accessibility and approved by the Planning Board. Measurement shall be from the point where the centerline of the dead end street intersects with the centerline of a through street to the center of the turnaround of the cul-de-sac. Cul-de-sacs shall be provided with a turn-around meeting town standards.

(3) Where one cul-de-sac extends from another cul-de-sac, the end of each cul-de-sac shall be no more than 800 feet from a through street as measured by the centerline of the streets.

(H) *Marginal Access streets.* Where a tract of land to be Subdivided adjoins a thoroughfare, the subdivider may be required to provide a marginal access street parallel to the thoroughfare or provide for through Lots on a local street for the Lots to be developed adjacent to the Thoroughfare. Where through Lots are established, such lots may be prevented from having direct access to the thoroughfare by driveways through the use of reserve strips or non-access easements.

(I) *Utilities, Street Lights and Storm Drainage Within Streets.* Utilities, street lights, sidewalks, storm drainage and other such facilities to be placed within the street right-of-way shall be placed in accordance with town standards. All utilities shall be placed underground.

(J) *Pavement, Curb and Gutter and Pavement and Side Ditch.* Pavement, curb and gutter to be placed in public streets shall be placed in accordance with town standards.

(K) *Street Design Criteria.* All street designs and construction within public street rights-of-way shall be in accordance with town standards. All utilities shall be placed underground.

(L) *Connection to State Streets.* An approved permit is required to connect to any existing state system street.

(1) North Carolina General Statutes 136-102.6 "Compliance of Subdivision Streets with Minimum Standards of the Board of Transportation Required of Developers" requires that new public streets outside the town limits and changes to existing streets inside the town limits that are the responsibility of NCDOT be in accordance with the Minimum Right-of-Way and Construction Standards established by the Board of Transportation for acceptance on the State highway system. It is the intent of these standards and requirements, as set forth, to complement and not to conflict with the requirements of NCDOT as stated in NCGS 136-102.6. In all cases the most restrictive limitation or requirement or the requirement causing the highest standard of improvement shall govern. All proposed streets shall be constructed in accordance with the minimum Public Street Standards as shown in the Appendix. All street improvements shall be designed and installed in accordance with town Standards and the approved construction plan. The subdivider's engineer shall furnish the town with a certified statement that all street improvements installed in the subdivision meet the minimum standards of the chapter.

(M) In addition, street improvements, in accordance with the street design guidelines shall be installed in the following situations:

(1) Any existing street segment that has not been accepted for maintenance by either the town or the North Carolina Department of Transportation, and that is to serve as the required frontage for one or more lots created pursuant to this chapter, shall be improved and dedicated to the public, as provided for above, in such a way that the street segment meets the standards of this chapter for the particular classification of street, including right-of-way width. Such street segment shall be directly connected to the existing public street system by way of at least one public street accepted for maintenance by either the town or the North Carolina Department of Transportation. No subdivision shall be permitted on any street that is an "island" not connected directly to the public street system.

(2) Subdivisions that adjoin existing streets maintained by either the town or NCDOT shall dedicate additional street right-of-way necessary to meet the minimum width requirements for the type of classification of the adjoining street. When any part of the subdivision is on both sides of an existing street, the entire minimum right-of-way shall be provided. When the subdivision is located on only one side of an existing street, one-half of the minimum right-of-way, measured from the centerline of the existing street, shall be provided. The improvement requirements of this Section shall not apply to the subdivision of lots fronting on established streets that have already been accepted for maintenance by the town or NCDOT.

(3) The Planning Board may require pavement and widening or pavement and widening and curb and gutter for turning lanes along any existing or proposed street that forms a significant entrance to a proposed subdivision where in the opinion of the Board such improvements are necessary in order to provide for safe vehicular movement into and out of the proposed subdivision.

(4) In cases where a street is stubbed into adjoining property future extension and such street serves as the frontage for one or more lots which are not corner lots, the Planning Board may require the pavement of a temporary turn-around in a form similar to a Cul-de-Sac on such street where in their opinion such turn-around is necessary for the public convenience, safety and service. Temporary easements for such purposes may be required.

(Ord. passed 4-7-98)

§ 150.035 DRINKING WATER IMPROVEMENTS.

(A) Any subdivision which has public water available shall be required to extend the public water system throughout the subdivision to each lot located therein. All required water line extensions shall include appropriate valves, hydrants, taps and service to the property line of each lot as required in accordance with the *Town of Boiling Springs Standard Specifications and Construction Details*.

(B) In the event the agency elects not to extend a water line of sufficient size, flow and/or pressure, to the subdivision (if in the town) or within the distances shown on the table below of the subdivision boundary (if outside the town) because of topographic features, legal obstacles, or financial reasons, then, the subdivider shall not be required to extend water lines to each lot nor provide water service to the subdivision.

(C) In any case where a public drinking water system and/or supply system intended to serve more than two lots is proposed to be installed in a subdivision as part of the plan approval process, such system shall be considered to be a "Required Improvement" within the context of this section regardless of whether such a system is an extension of the town or agency system or not and such system shall be required to be installed by the subdivider. This requirement includes both facilities within the subdivision and off-site facilities which are essential to providing the service to the property.

(Ord. passed 4-7-98; Am. Ord. passed 4-5-05)

§ 150.036 SANITARY SEWERAGE IMPROVEMENTS.

Any subdivision which has public sewer system lines available shall be required to extend the public sewer system throughout the subdivision to each lot located therein. All required sewer line extensions shall include appropriate manholes, life stations, pumps, clean outs, taps and service to the property line of each lot in accordance with the *Town of Boiling Springs Standard Specifications and Construction Details*. (Ord. passed 4-7-98; Am. Ord. passed 4-5-05)

§ 150.037 OVERSIZED WATER AND SEWER FACILITIES.

The town may, in order to serve future development, require the subdivider to install certain oversized water and sewer improvements and/or to increase such improvements to a size and/or extent beyond those required in the *Town of Boiling Springs Standard Specifications and Construction Details*. In such cases, the town shall enter into an agreement to reimburse the subdivider for the oversizing and/or extension based upon rates as agreed to by the town. Any actions by the town and the subdivider under the provisions of this section must comply with applicable state laws (such as G.S. § 160A-320 or G.S. § 160A-499). (Ord. passed 4-7-98; Am. Ord. passed 4-5-05; Am. Ord. passed 4-10-06)

§ 150.038 STORM AND DRAINAGE IMPROVEMENTS.

A comprehensive storm drainage system shall be planned and implemented for each subdivision in accordance with the *Town of Boiling Springs Standard Specifications and Construction Details*. The general storm drainage plan shall be shown on the preliminary plan. Detail plans where required shall be submitted as part of the construction plan requirement. Where easements are required, they shall be noted on the Final Plat. (Ord. passed 4-7-98; Am. Ord. passed 4-5-05)

§ 150.039 SIDEWALK IMPROVEMENTS.

Sidewalks are required in accordance with the *Town of Boiling Springs Standard Specifications and Construction Details*. (Ord. passed 4-7-98; Am. Ord. passed 4-5-05)

§ 150.040 EASEMENTS.

To provide for electric, telephone and gas service, community antenna television distribution systems, water and sewer lines and other such facilities within the subdivision, appropriate utility easements not to exceed 30 feet shall be provided on the Final Plat. The locations of such easements shall be as determined by the Subdivision Administrator and based upon the approved construction plans. All utilities shall be placed underground. In addition, storm drainage easements may be required in order to carry out the storm drainage improvements as required in § 150.026 (Ord. passed 4-7-98; Am. Ord. passed 4-5-05)

§ 150.041 STREET NAME SIGNS.

In all subdivisions, the subdivider shall install street name signs at appropriate locations in accordance with the standards and specifications of Cleveland County. (Ord. passed 4-7-98; Am. Ord. passed 4-5-05)

§ 150.042 TRAFFIC CONTROL SIGNS AND MARKINGS.

In subdivisions outside the town limits, the subdivider shall install traffic control signs and pavement markings in accordance with the standards and specifications of the North Carolina Department of Transportation. Inside the town limits, the town will install traffic control signs and pavement markings in accordance with the town's standards and specifications.

(Ord. passed 4-7-98)

§ 150.043 STREET LIGHTS.

Inside the town limits the subdivider shall install street lighting at appropriate locations in the subdivision in accordance with town standards. Outside the town limits the subdivider shall install the wiring for future street light installation at appropriate locations in the subdivision in accordance with town standards. All wiring shall be underground.

(Ord. passed 4-7-98)

§ 150.044 MONUMENTS.

The subdivider shall install such monuments and other property markers as are required by North Carolina General Statutes Chapter 39, Article 5A and as are specified by the "Standards of Practice for Land Surveying" in North Carolina.

NOTE: Electric power, telephone, cable television, natural gas lines and other utilities which are proposed to be installed in the subdivision, and which are required to be shown on construction plans are not "Required Improvements" within the context of this section. Since the installation of such improvements are by agreement between the subdivider and the appropriate utility company the execution of such agreements between the subdivider and the utility companies are deemed to satisfy the construction and installation requirements of this chapter as long as they are installed in the public right-of-way or easement in accordance with town standards for such installations.

(Ord. passed 4-7-98)

§ 150.045 SUBDIVISION ENTRANCE SIGNS AND LANDSCAPED MEDIANS.

The Planning Board may permit subdivision entrance signs and landscaped medians provided they are entirely contained on private property and provided that the Planning Board determines that a satisfactory arrangement is in place to provide perpetual maintenance.

(Ord. passed 4-7-98)

§ 150.046 PHASING.

Subdivisions may be designated to be constructed and platted in phases. Provided, however, the Planning Board may not approve a phasing plan when in its opinion such phasing will not provide for adequate public facilities to support any such phase or phases independent of the overall subdivision plan. In approving phases the Planning Board may require that additional streets, water and sewer facilities or other required public facilities be constructed as part of the phase or phases in order to ensure that sufficient public facilities will be in place to support such phase or phases independent of any future subdivision development.

(Ord. passed 4-7-98)

GUARANTEE OF REQUIRED IMPROVEMENTS; WARRANTY AGAINST DEFECTS**§ 150.050 FINANCIAL GUARANTEE IN LIEU OF IMMEDIATE INSTALLATION FOR APPROVAL.**

In lieu of requiring the completion, installation and inspection of all or any part of the required improvements as described in this chapter prior to Final Plat approval, the town may enter into a contract with the subdivider whereby the subdivider shall agree to complete all required improvements. Once said agreement is signed by both parties and the security required herein is provided, the Final Plat may be approved if all other requirements of this chapter are met. To secure this contract, the subdivider shall select and provide either of, or a combination of, the following guarantees to cover the costs of the proposed improvements:

(A) Cash or Equivalent Security.

(1) The subdivider shall deposit cash, an irrevocable letter of credit or other instrument readily convertible into cash at face value, either with the town or in escrow with a financial institution. The use of any instrument other than cash shall be subject to the approval of the town as to its legal form. The amount of deposit shall be equal to 120% of the estimated cost as approved by the Subdivision Administrator, of installing all required improvements. The initial cost estimate shall be the responsibility of the subdivider and certified by his engineer but the approval of the final cost estimate shall be made by the Subdivision Administrator.

(2) If cash or other instrument is deposited in escrow with a financial institution as provided above, then the subdivider shall file with the town an agreement between the financial institution and himself guaranteeing the following:

(a) That said escrow account shall be held in trust until released by the Board of Commissioners and may not be used or pledged by the subdivider in any other matter during the term of the escrow; and

(b) That in the case of a failure on the part of the subdivider to complete said improvements within the time allotted, the financial institution shall, upon notification by the town and submission by the town to the financial institution of an estimate of the amount needed to complete the improvements, immediately either pay to the town the funds estimated to complete the improvements, up to the full balance of the escrow account, or deliver to the town any other instruments fully endorsed or otherwise made payable in full to the town.

(B) Governmental Guarantee. In any case where a required improvement is to be provided by the State of North Carolina or any local government other than the town, the subdivider may provide, in lieu of the types of financial guarantee as provided for above, a letter from the appropriate State or local government official guaranteeing the installation of the improvement in the required manner and within the time allotted. Provided, however, in any case where the cost of such improvement exceeds ten thousand dollars (\$10,000) as determined by the town, such governmental Guarantee shall be in form of an approved Project Budget chapter where local government is to be the provider and an equivalent document where the State is to be the provider.

(Ord. passed 4-7-98; Am. Ord. passed 4-10-06)

§ 150.051 DURATION OF FINANCIAL GUARANTEES.

(A) The duration of a financial guarantee shall be of a reasonable period to allow for completion and acceptance of improvements. In no case shall the duration of the financial guarantee for improvements exceed 18 months.

(B) All subdivisions whose public improvements are not completed and accepted at least thirty days prior to the expiration of the financial guarantee shall be considered to be in default, unless said guarantee is extended with the consent of the Board of Commissioners to a future date certain not to exceed six months.

(Ord. passed 4-7-98)

§ 150.052 DEFAULT.

(A) Upon default, meaning failure on the part of the subdivider to complete the required improvements in a timely manner as specified in the escrow agreement, the surety or the financial institution holding the escrow account shall, if requested by the town, pay all or any portion of the escrow fund to the town up to amount needed to complete the improvements based on an estimate by the town. Upon payment, the town, at its discretion, may expend such portion of said funds as deemed necessary to complete all or any portion of the required improvements. The town shall return to the subdivider any funds not spent in completing the improvements.

(B) Default on a project does not release the subdivider from liability/responsibility, financial or otherwise, for the completion of the improvements.

(Ord. passed 4-7-98)

§ 150.053 RELEASE OF GUARANTEE SECURITY.

The Board of Commissioners may release a portion or all of any security posted as the improvements are completed and approved by the Administrator. Prior to such release the subdivider shall provide the Subdivision Administrator with set of "as built" drawings certified by his Engineer.

(Ord. passed 4-7-98)

§ 150.054 WARRANTY AGAINST DEFECTS.

(A) Prior to the approval of the Final Plat or acceptance by the town of any improvements in any subdivision, the subdivider shall furnish to the town a written warranty against defects which shall guarantee the material and workmanship for a period of not less than one year from the date of such acceptance. Such warranty shall be accompanied by a financial guarantee payable to the town equal to at least 50% of the cost of the installation of such improvements as determined by the Subdivision Administrator. Such financial guarantee shall be as provided for in § 150.050 of this chapter.

(B) Upon successful performance of the improvements, as determined by the Board of Commissioners for the one year period, the financial guarantee shall be returned to the subdivider. Upon the failure of an improvement to perform within the generally accepted standards for the type improvement as determined by the Board of Commissioners, the subdivider shall be notified and given a reasonable period of time to correct the defects. Should the subdivider fail to act, fail to act in a timely manner, or otherwise fail to correct the defect(s), the Board of Commissioners shall find the subdivider in default and proceed in the same manner as provided for in § 150.052 of this chapter.

(Am. Ord. passed 4-10-06)

LEGAL PROVISIONS**§ 150.060 INTERPRETATION, PURPOSE AND CONFLICT.**

In interpreting and applying the provisions of this chapter, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity and general welfare. It is not intended by this chapter to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, that where this chapter imposes a greater restriction or imposes higher standards than those required by other chapters, rules, regulations, or by easements, covenants, or agreements the provisions of this chapter shall govern so that, in all cases, the most restrictive limitation or requirement, or the requirement causing the highest standard of improvement, shall govern. Provided, however, in any case where the Zoning Code specifically permits a development type not otherwise provided for in this chapter, the Zoning code shall prevail.
(Ord. passed 4-7-98)

§ 150.061 REPEAL AND REENACTMENT OF EXISTING SUBDIVISION REGULATIONS.

The rewriting of this chapter in part carries forth by reenactment some of the provisions of the existing Subdivision Regulations of the town and it is not intended to repeal but rather to reenact and continue in force such existing provisions so that all rights and liabilities that have been accrued are preserved and may be enforced. All provisions of the Subdivision Regulations which are not reenacted herein are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of the subdivision Regulations in effect, which are now pending in any of the courts of this State or of the United States, shall not be abated or abandoned by reason of the adoption of this chapter, but shall be prosecuted to their finality the same as if this chapter had not been adopted; and any and all violations of the existing Regulations, prosecutions for which have not been instituted, may be filed and prosecuted; and nothing in this chapter shall be so construed as to abandon, abate, or dismiss any litigation or prosecution now pending and/or which may have been instituted or prosecuted.
(Ord. passed 4-7-98)

§ 150.062 EFFECT UPON OUTSTANDING PRELIMINARY PLATS.

(A) Nothing herein contained shall require any change in any Preliminary Plat which has received approval by the town prior to the time of the adoption of this chapter provided that such Preliminary Plat has been prosecuted to completion and a Final Plat recorded in the Office of the Register of Deed within 18 months after the time of the adoption of this chapter. If the Final Plat of all or part of the area shown on any previously approved Preliminary Plat is not recorded in the Office of the Register of Deeds within 18 months after the time of the adoption of this chapter, such non-recorded area shall be subject to all the provisions of this chapter.

(B) After the effective date of this chapter, any Final Plat to be recorded based upon any outstanding Preliminary Plat shall follow the Final Plat approval procedures of this chapter including the Guarantee of Installation provisions.

(C) In addition, nothing herein contained shall require any change in any Final Plat which has received approval by the town prior to the time of the adoption of this chapter provided that such Final Plat is prosecuted to completion in accordance with the terms of approval. In the event of default or the failure of the subdivider to perform in accordance with the conditions as approved, the town may, at its option, take lawful action pursuant to the subdivision chapter in existence-at the time of the Final Plat approval or this chapter.

(Ord. passed 4-7-98)

§ 150.063 EFFECT UPON NEW TERRITORY ADDED TO JURISDICTION.

(A) At any time when new territory is added to the jurisdiction of this chapter, such new territory shall immediately become subject to the provisions of this chapter. Any proposed subdivision or any subdivision in progress within such new territory shall proceed only in accordance with the following:

(1) Any subdivision for which a Final Plat has been recorded in the Register of Deeds Office pursuant to the approval of another local government, but which is subject to an outstanding guarantee to such local government for the installation of subdivision improvements, shall remain under the subdivision control of such local government until such time as such subdivision shall have been prosecuted to completion. Provided, however, the town may not accept the dedication of any street or street improvements unless such street and street improvements meet the standards of this chapter and the town's Policy for Acceptance of streets for use and maintenance by the town.

(2) All other subdivisions shall meet all of the requirements of this chapter and it shall be the responsibility of the subdivider of any proposed subdivision or subdivision in progress to receive approval as provided for in this chapter before proceeding with any development. The subdivider shall arrange a conference with the subdivision Administrator who shall determine the level and type of approval required and provide the subdivider with an approval track for the particular case.
(Ord. passed 4-7-98)

§ 150.064 MODIFICATIONS.

The Planning Board may modify the requirements of this chapter where, because of the size or shape of the tract to be subdivided, its topography, the condition or nature of adjoining areas, or the existence of other unusual physical conditions, strict compliance with the provisions of this chapter would cause an unusual and unnecessary hardship on the subdivider. In granting Modifications, the Planning Board may require such conditions as will secure, insofar as practicable, the objectives or requirements modified. In no case however, shall the Planning Board, acting pursuant to this section, modify the terms or requirements of the Zoning Code or the Flood Damage Prevention chapter. Violation of any condition shall constitute a violation of this chapter. A modification granted as part of a plan approval shall have the same duration as the plan approval.

(Ord. passed 4-7-98)

§ 150.065 AMENDMENT.

The Board of Commissioners may from time to time amend the terms of this chapter after a public hearing has been held and notice given as required by North Carolina General Statutes 160A-364. However, any proposed amendment shall be submitted to the Planning Board for review and recommendation prior to Board of Commissioners action. The Planning Board shall have 45 days from the date such amendment is first submitted for review to the Board to make its recommendation. If the Planning Board fails to make its recommendation within the specified time, it shall be deemed to have recommended in-favor of the amendment.

(Ord. passed 4-7-98)

§ 150.066 LIABILITY.

Acceptance of dedication of lands or facilities located within the jurisdiction of this chapter but outside the town limits shall not place on the town any duty to open, operate, repair or maintain any street, utility line, or other land or facility and the town shall in no event be held to answer in any civil action or proceeding for failure to open, repair or maintain any street located outside its corporate limits.

(Ord. passed 4-7-98)

§ 150.067 VALIDITY.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter. The Board of Commissioners hereby declares that it would have passed this chapter and each section, subsection, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.
(Ord. passed 4-7-98)

§ 150.099 VIOLATIONS; PENALTY.

(A) After the effective date of this chapter, no Subdivision Plat of land within the jurisdiction of this chapter shall be filed or recorded until it shall have been submitted to and approved by the appropriate approval authority.

(B) The Review Officer shall not certify for recording a plat of subdivision of land subject to this chapter that has not been approved in accordance with this chapter nor shall the Clerk of Superior Court order or direct the recording of a plat if the recording would be in conflict with the provisions of this chapter.

(C) After the effective date of this chapter, any person who, being the owner or agent to the owner of any land within the jurisdiction of this chapter, thereafter subdivides his land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this chapter and recorded in the Office of the Register of Deeds shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from such penalty.

(D) Any violation of the terms of this chapter subject the violator to penalties and remedies, both civil and criminal, as set forth in § 10.99 of this code.

(E) Building permits required pursuant to G.S. § 160A-417 may be denied for lots that have been illegally subdivided. In addition to other remedies, the town may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct or abate the violation or to prevent any illegal act or conduct.
(Ord. passed 4-7-98; Am. Ord. passed 4-10-06)

APPENDIX A: MAPPING STANDARDS

Town of Boiling Springs
Subdivision Regulations

A. The following are the Standards of Maps to be submitted as part of the subdivision process. These standards are intended to be general and the subdivider may be required to file fewer or more maps or provide less or more information depending upon the circumstances of the particular case.

NUMBER AND TYPE OF MAP TO BE SUBMITTED			
MAP	INITIAL REVIEW	PLANNING BOARD/BOARD OF COMMISSIONERS REVIEW	TOWN FILE (as approved)
Preliminary Plan			
Minor	3 prints (1 reproducible)	—	4 prints (1 reproducible)
Major	3 prints (1 reproducible)	10 prints (1 reproducible)	4 prints (1 reproducible)
Final Plat	3 prints	8 prints (1 reproducible)	7 prints; 1 mylar

All maps shall be drawn to scale. The scale shall be not less than 1" = 200'. Construction plans shall be in accordance with the *Town of Boiling Springs Standard Specifications and Construction Details*. Prints may be blue-line or black-line and map size shall be a minimum of 11" X 17" and a maximum of 24" X 36", except that Final Plats shall not exceed an outside dimension of 18" X 24".*ft The Final Plat prints and mylar for Town file shall be copies of the Final Plat as presented for recording. If larger than 8 ½ by lithe reproducible may be in the form of a sepia.

*Must be certified by subdivider's engineer.

**Consult Cleveland County Review Officer for Record Map requirements.

(Am. Ord. passed 4-5-05)

B. MAP INFORMATION

REQUIRED INFORMATION	PRELIMINARY PLAT	FINAL PLAT
Date submitted		
TITLE BLOCK:		
Name of development	X	X
Name or type of map/plan (sketch, preliminary, final, etc.)	X	X
Owner's name with address and daytime phone number	X	X
Location Description (including address, city, county and state)	X	X
Date(s) map(s) prepared or revised	X	X
Scale of drawing in feet per inch (drawing shall be at scale of not less than 1" equals 200')	X	X
Bar Graph Scale	X	X
Name, address, and daytime phone number of map preparer	X	X
Developer's name, address, and daytime phone number (if different from owner's)	X	X
Plat book or deed book references		
OTHER INFORMATION:		
Zoning district(s) within the property and adjacent properties	X	X
Existing land use within the property and adjacent properties	X	
Names of adjoining property owners (or subdivisions or developments of record) with plat book and/or deed book references	X	X
Tax map, block and parcel(s) number	X	X
Vicinity map showing location of site relative to surrounding area (typically drawn in upper right hand corner at a scale of 1"=2,000')	X	X
Corporate limits, ETJ limits, and other jurisdiction lines, if any affecting the tract	X	X
North arrow & orientation (North arrow will be oriented to top of map where practicable)	X	X

Boiling Springs - Land Usage

REQUIRED INFORMATION	PRELIMINARY PLAT	FINAL PLAT
OTHER INFORMATION:		
Boundaries of the tract to be subdivided or developed:		
- distinctly and accurately represented and showing all distances; show bearings and distances and curve data on outside boundaries and street centerlines on preliminary with street centerline tied to boundary	X	X
- tie at least one corner to NC grid and provide grid coordinates where at least one of or two control monuments needed are within 2,000 feet of the boundary or tie to nearest street intersections		X
- showing locations of intersecting boundary lines of adjoining properties		X
Location and description of all monuments, markers and control corners		X
Existing property lines on tract to be subdivided. If existing property lines are to be changed, label as "old property lines" and show as dashed lines	X	X
Dimensions, location and use of all existing buildings; distances, between buildings, measured at the closest point; distance from buildings to closest property lines; buildings to remain on final plat	X	X
The name and location of any property or building on the National Historic Register of Historic Places or locally designated historic property	X	X
Railroad lines and rights-of-way	X	X
Water courses, ponds, lakes or streams	X	X
Marshes, swamps and/or other wetlands	X	X
Areas designated as common area or open space under control of an Owner's Association	X	X

REQUIRED INFORMATION	PRELIMINARY PLAT	FINAL PLAT
OTHER INFORMATION:		
Existing and proposed topography of the tract and 100 feet beyond property showing existing contour intervals of no greater than 5 feet (2 feet where available) and labeling at least two contours per map and all others at 10 foot intervals from sea level	X	
Proposed lot lines & dimensions: show bearings and distances on final plat	X	X
Square footage of all proposed lots under one acre in size	X	X
Acreage for all lots over one acre	X	X
SITE CALCULATIONS INCLUDING:		
Acreage in total tract	X	X
Acreage in public greenways and other open space	X	X
Total number of lots proposed	X	X
Linear feet in streets	X	X
Acreage in newly dedicated street right-of-way	X	X
Lots sequenced or numbered consecutively	X	X
STREET DATA ILLUSTRATING:		
Existing and proposed rights of way within and adjacent to property showing		
Right-of-way lines	X	X
Total right-of-way width dimensions	X	X
Right-of-way width dimensions from centerline of existing public streets	X	X
EXISTING AND PROPOSED STREETS SHOWING:		
Pavement or curb lines	X	
Pavement width dimensions (face to face or edge to edge)	X	
Cul-de-sac pavement radius from centerpoint	X	
Existing and proposed street names	X	X

Boiling Springs - Land Usage

REQUIRED INFORMATION	PRELIMINARY PLAT	FINAL PLAT
EXISTING AND PROPOSED STREETS SHOWING:		
Location, dimension and type of all easements (existing and proposed)	X	X
UTILITY LAYOUT PLAN: showing connections to existing systems, line sizes, material of lines, location of fire hydrants, blowoffs, valves, manholes, catch basins, force mains, etc. for the following types of utility lines: (not to substitute for construction plans)		
Sanitary sewer (if applicable)	X	
Water distribution (if applicable)	X	
Storm sewer	X	
Natural gas, electric, telephone and cable TV	X	
Plan for providing water and/or sewer service graphic or narrative form	X	

(Am. Ord. passed 4-5-05)

C. CERTIFICATIONS, NOTES AND APPROVAL BLOCKS

The following Certificates, Notes and Approval Blocks shall appear on the appropriate plans and plats in substantially the following formats:

Preliminary Plan - minor:

Preliminary Plan Approved

Subdivision Administrator

Date: _____

Preliminary Plan - major:

Preliminary Plan Approved
I hereby certify that this
Preliminary Plan was approved
by the Planning Board of the
Town of Boiling Springs
on the ___ day of
____ 19__

Chairman, Planning Board

Date: _____

Final Plat:

Certificate of Survey and Accuracy

I, _____ certify that this plat was drawn under my supervision from an actual survey made under my supervision (deed description recorded in Book _____ page _____, etc.) (other); that the boundaries not surveyed are clearly indicated as drawn from information found in Book _____ page _____; that the ratio of precision as calculated is 1:____ that this plat was prepared in accordance with 6.5. 47-30 as amended. Witness my original signature, registration number and seal this _____ day of _____, AD., 1997.

Seal or Stamp

Surveyor

Registration Number
(maximum allowable error: 1:10,000)

Boiling Springs - Land Usage

Review Officer Certificate

State of North Carolina
County of Cleveland

I, _____, Review officer of Cleveland County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

Review Officer

Date

Certificate of Ownership and Dedication

I (We) hereby certify that I am (we are) owner(s) of the property shown and described herein, that the property is within the Subdivision Jurisdiction of the Town of Boiling Springs and that I (we) hereby adopt this plan of subdivision with my (our) free consent and hereby establish all lots and dedicate all streets, alleys, walks, parks and other open spaces to public or private use as noted.

Owner(s)

Certificate of Final Approval

Approved for recording by the Board of Commissioners of the Town of Boiling Springs, N.C. on this the __ day of __, 19__ pursuant to authority of Article II of the Subdivision Ordinance. Must be recorded within thirty (30) days of this date.

Town Clerk

NCDOT Construction Standards Certification

Department of Transportation
Division of Highways
Proposed Subdivision Road
Construction Standards Certificate

Approved: _____
District Engineer

Date: _____

**Onsite Water and/or Sewer Note
(where appropriate)**

Note: (ALL the LOTS) or (LOTS#____) as shown on this plat are proposed to be served with on-site water and/or sewer systems. The lots as shown meet the minimum size prescribed by the Cleveland County Health Department for such system(s). However, the recording of this plat does not guarantee that any such lots will meet the requirements for the approval by the Health Department for such on-site system(s).

Engineer/Surveyor

License or Registration #

**Water and Sewer District Note
(where appropriate)**

Note: (ALL the LOTS) or (LOTS #____) as shown on this plat are proposed to be served with water lines of the Cleveland County Sanitary District Water and Sewer District. Such lines are/are not capable of furnishing sufficient pressure and flow to directly serve pumper type fire trucks or sprinkler systems.

Engineer/Surveyor

License or Registration #

Register of Deeds Certificate

State of North Carolina, _____ County

This instrument was presented for registration and recorded in Map Book _____, Page _____ this _____ day of _____ 19____ at _____ am.

Register of Deeds

(Am. Ord. passed 4-5-05)

CHAPTER 151: ZONING CODE

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- 151.121 Dangerous or unsafe signs
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- 151.123 Signs expressly prohibited
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Landscaping; Impervious Surface Limitations

- 151.140 Landscaping
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Non-Conforming Situations

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GENERAL PROVISIONS**§ 151.001 PURPOSE.**

The zoning regulations and districts as herein set forth have been made in accordance with a comprehensive plan and for the purpose of: (1) Promoting the public health, safety, morals, and general welfare; (2) Promoting the orderly growth and development of the town of Boiling Springs and the surrounding area; (3) Lessening congestion in the street and roads; (4) Providing adequate light and air; (5) Securing safety from fires, panic and other dangers; (6) Preventing the overcrowding of land; (7) Avoiding undue congestion of population; (8) Facilitating the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. They have been made with reasonable consideration, among other things to the character of each zoning district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdiction.

(Ord. 011106.1, passed 11-6-01)

§ 151.002 AUTHORITY.

This chapter is enacted pursuant to the authority conferred by G.S. Article 19, Chapter 160A.
(Ord. 011106.1, passed 11-6-01)

§ 151.003 TITLE.

This chapter shall be known as the Zoning Code of the town of Boiling Springs, North Carolina and may be referred to as the "Zoning Code." The map referred to herein is identified by the title "Official Zoning Map, town of Boiling Springs, North Carolina" and may be known as the "Zoning Map."

(Ord. 011106.1, passed 11-6-01)

§ 151.004 INTERPRETATION, PURPOSE, CONFLICT.

In interpreting and applying the provisions of this chapter, the provision shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity and general welfare. This chapter is not intended to interfere with or abrogate or annul any easements, covenants, or other agreements between parties; provided, however, where this chapter imposes a greater restriction or imposes higher standards than those required by other rules, regulations, or by easements, covenants or agreements, the provisions of this chapter shall govern so that, in all cases, the most restrictive limitation or requirement causing the highest standard of improvement shall govern.

(Ord. 011106.1, passed 11-6-01)

§ 151.005 REPEAL AND REENACTMENT OF EXISTING ZONING CODE.

The rewriting of this chapter in part carries forth by reenactment some of the provisions of the existing Zoning Code and it is not intended to repeal but rather to reenact and continue in force such existing provisions so that all rights and liabilities that have been accrued are preserved and may be enforced. All provisions of the Zoning Code, which are not reenacted herein, are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of the Zoning Code in effect, which are now pending in any of the courts of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this chapter, but shall be prosecuted to their finality the same as if this chapter had not been adopted; and any and all violations of the existing chapter, prosecutions for which have not been instituted, may be filed and prosecuted; and nothing in this chapter shall be so construed as to abandon, abate, or dismiss any litigation or prosecution now pending and/or which may have been instituted or prosecuted.

(Ord. 011106.1, passed 11-6-01)

§ 151.006 EFFECTS UPON OUTSTANDING BUILDING PERMITS; CONDITIONAL/SPECIAL USE PERMITS; ZONING PERMITS; AND ZONING PERMITS WITH VESTED RIGHTS.

(A) Nothing herein contained shall require any change in the plans, construction, size, or designated use of any building, structure, or part thereof for which a building permit has been granted by the Building Inspector prior to the time of passage of this chapter or any amendment thereto; provided, however, that where construction is not begun under the outstanding permit within a period of 180 days subsequent to the passage of this chapter or any amendment thereto, or where it has not been prosecuted to completion within 18 months subsequent to passage of this chapter or any amendment thereto, any further construction or use shall be in conformity with the provisions of this chapter or any such amendment.

(B) Nothing herein contained shall require any change in the plans, construction, size, or designated use of any zoning permit which has been granted prior to the adoption of this chapter provided that a building permit has been obtained and construction begun within 180 days of the date of the issuance of such permit and provided that such building permit is prosecuted to completion as provided for above.

(C) Nothing herein contained shall require any change in the plans, construction, size, or designated use of any conditional or special use permit which has been granted prior to the adoption of this chapter and which conditional or special use is no longer carried forth on this chapter provided that a building permit has been obtained and construction begun within 180 days of the date of the approval of such permit and provided that such building permit is prosecuted to completion as provided for above. Such valid Conditional or Special Uses including those already existing for non-continued uses may be constructed, continued, and reconstructed the same as any permitted use subject to such use limitations and other conditions as provided for in the original issuance of the Conditional or Special Use Permit. Any such Conditional or Special Use that is changed to any permitted use for any period of time shall not be permitted to resume the Conditional or Special Use.

(D) Nothing herein contained shall require any change in any zoning vested right which has been established prior to the adoption of this chapter during its vested rights period except to the extent permitted at the time of the approval of the site specific development plan and consistent with G.S. § 160 A-385.1.

(Ord. 011106.1, passed 11-6-01)

§ 151.007 DEFINITIONS.

For the purposes of this chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein when not inconsistent with the context; words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The words "used for" shall include the meaning "designed for."

(A) General definitions.

ACCESSORY USE or ACCESSORY BUILDING (NON-RESIDENTIAL). A subordinate non-residential use or building customarily incidental to and located on the same lot with the main use or building.

ACCESSORY USE or ACCESSORY BUILDING (RESIDENTIAL). A noncommercial use or building customarily incidental and subordinate to but located on the same lot with the main residential use or building such as a private garage or carport, family garden, personal storage building, or workshop, all of which are totally for personal use.

APARTMENT. A room or suite of rooms in an multi-unit residential building, generally rented by the occupant, which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation in each separate unit.

BED AND BREAKFAST. A dwelling in which lodging available for rent to the public, with or without meals, is provided for overnight guests for a fee.

BONA FIDE FARM. Bona Fide farm purposes include the production of and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry and all other forms of agricultural products having a domestic or foreign market.

BUILDING. See **STRUCTURE.**

BUILDING HEIGHT. The vertical distance measured from the average elevation of the finished grade to the topmost section of the roof.

BUILDING, MAIN. The principal structure in which the primary use of the property is undertaken.

BUILDING OCCUPANCY. See **USE.**

BUILDING SETBACK LINE. See **SETBACK.**

COMMON OPEN SPACE. The open space land held in common ownership by property or unit owners in a development, normally provided for in the declaration or restrictive covenants and normally in common use.

CONDITIONAL USE. A use of land permitted in a Conditional Use District upon approval by the Board of Commissioners as part of the Conditional Use rezoning process, or a use of land permitted by a Conditional Use Permit authorized by the Board of Adjustment pursuant to § 151.176.

CONDOMINIUM. Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

CONGREGATE CARE FACILITY. A facility providing shelter and services for ambulatory individuals at least 55 years of age that by reason of age, functional impairment, or infirmity may require meals, housekeeping and personal care assistance. Congregate care facilities do not include nursing homes or similar institutions devoted primarily to the care of the chronically ill or the incurable.

DAY CARE CENTER. A facility providing care for six or more non-handicapped children, more than four hours per day, for payment of a fee, but without transfer or assignment of custody.

DWELLING, MULTIFAMILY. A detached building constructed on-site in compliance with the North Carolina State Building Code and designed for three or more dwelling units.

DWELLING, SINGLE-FAMILY (CONVENTIONAL or MODULAR). A detached building constructed on-site or in industrialized modules in compliance with the North Carolina State Building Code and designed for or occupied exclusively by one family.

DWELLING, SINGLE-FAMILY ATTACHED. A single-family dwelling that except for corner units is connected.

DWELLING, TWO FAMILIES. A detached residential building arranged or designed to be occupied by two families living independent of each other.

DWELLING UNIT. An enclosure of one or more rooms providing complete independent living facilities for one family, including permanent facilities for living, sleeping, eating, cooking and sanitation within the separate enclosure.

FAMILY. Any number of persons related by blood, adoption, or marriage or no more than four persons not related by blood, adoption or marriage, living together as a single housekeeping unit sharing the same domestic facilities. It does not include congregate residential care facilities; family care and group care facilities; foster homes for children; homes for the aged and infirmed; family care homes for the aged and infirmed; day care facilities; day care centers; and family day care homes; shelter homes for children and/or families including foster shelter homes and group shelter homes; adult day care centers; day nurseries; preschool centers; hospitals; nursing homes; sanitariums; and dormitories, fraternal organizations, or other organized social or institutional residential situations.

FAMILY CARE HOME. A home with support and supervisory personnel which provides room and board, personal care and habilitation services in a family environment for not more than six resident handicapped persons.

FAMILY DAY CARE HOME. A building used as a residence for a family which is also used to provide day care services on a temporary basis without transfer of custody for three to five unrelated children, for a fee. (The keeping of one to two children does not require a permit.)

FAMILY MEMBERS, DIRECT. Direct lineal descendents (children, grandchildren and great grandchildren) and direct lineal ascendants (father, mother, grandfather and grandmother); and brothers, sisters, nieces, and nephews.

FRONTAGE. The property abutting on one side of a street measured along the street right-of-way line.

GROSS FLOOR AREA. The total area of any buildings in the projects, including the basements, mezzanines, and upper floors, exclusive of stairways and elevator shafts. It excludes separate service facilities outside the store such as boiler rooms and maintenance shops.

GROUP CARE FACILITY. A facility licensed by the state, (by whatever name it is called, other than **FAMILY CARE HOME**), with support and supervisory personnel that provides room and board, personal care, or habilitation services in a family environment.

GROUP RESIDENTIAL DEVELOPMENT. A development where more than one principal residential building is permitted on a lot or any development where there are three or more dwelling units in a building including attached dwelling units in conformance with the provisions of SR 3.

HANDICAPPED PERSON. A person with a temporary or permanent physical, emotional, or mental disability including but not limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances, and orthopedic impairments, but does not include mentally ill persons who are dangerous to others as defined in G.S. § 122-58.2(1)b, or any amendment thereto.

HOME OCCUPATION, CUSTOMARY. An occupation conducted incidental to the use of property as a dwelling unit, which does not adversely impact or change the residential character of the neighborhood. The incidental use of any dwelling by the occupant(s) for the purpose of receiving or transmitting messages by mail, record or bookkeeping, filing, address listing for applicable privilege license or tax identification and other similar activities which do not involve the on-site sale, delivery, distribution, reception, storage or manufacture of goods, products, or services shall not constitute a home occupation for the purpose of regulation under this chapter.

HOTEL or MOTEL. A building which provides sleeping accommodations in six or more rooms, commonly available for pay on a daily basis to transient or permanent guests.

JUNK YARD. A lot or group of contiguous lots where more than 600 square feet of area is used for the dismantling or the storage of wrecked or used automobiles or the storage, sale, or dumping of dismantled or wrecked cars or their parts, or for storage of appliances, machinery and other salvage goods.

KENNEL. An establishment wherein any person engages in business or practice, for fee, of boarding, breeding, grooming, letting for hire, or training of more than three domesticated animals at any one time; or an establishment wherein any person engages in the business or practice, for a fee, of selling more than one litter of domesticated animals at any one or the selling of any three individual domesticated animals (not defined as litter herein) at any one time. Domesticated animals, for the purpose of this chapter, shall be defined as dogs, cats, and other generally acceptable household pets. Litter, for the purpose of this chapter, shall be defined as the progeny resulting from the breeding of two domesticated animals. The following shall not constitute the operation of a kennel as defined above and in no way shall this provision regulate the following:

- (1) The ownership of domesticated animals as household pets;
- (2) The ownership of domesticated animals for hunting or tracking purposes;
- (3) The ownership of domesticated animals for the purpose of exhibiting at shows, obedience or field trials; and
- (4) The ownership of domesticated animals for the purpose of protection or guarding of residences or commercial establishments.

LANDOWNER. Any owner of a legal or equitable interest in real property, including the heirs, devise, successors, assigns and personal representative of such owner. The owner may allow a person holding a valid option to purchase, to act as his agent or representative for purposes of submitting a proposed site-specific development plan in the manner allowed by this chapter.

LOT. A parcel of land, the boundaries of which are established by some legal instrument such as a deed or a recorded plat (but not tax maps) and which is recognized as a separate tract for purposes of transfer of title or lease of greater than three years.

LOT, CORNER. A lot adjacent to or abutting on two streets at their intersection.

LOT FRONT. On a corner lot, the front is the frontage with the least dimension at the street. Where the dimensions are equal the front shall be designated by the owner.

LOT, INTERIOR. Any lot other than a corner lot.

LOT LINES. The line forming the perimeter or boundary of the lot.

LOT OF RECORD. A lot which is a part of a subdivision, a plat of which has been recorded in the office of the register of deeds, or a lot which is described by metes and bounds, the description of which has been so recorded, prior to the effective date of this chapter.

LOT, THROUGH. An interior lot having frontage on two streets. Also called a double frontage lot.

LOT WIDTH. The distance from side lot line to side lot line measured at the required minimum front yard setback parallel to the front property line. For lots with a radial side line(s), lot width may be measured at a front yard setback greater than the minimum required front yard setback. In such case the point where the minimum lot width is measured shall become the front yard setback for that lot.

MANUFACTURING. The processing of raw products and materials into items for sale.

MOBILE HOME. A dwelling unit that (1) is not constructed in accordance with the standards set forth in the North Carolina State Building Code, (2) is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis, and (3) exceeds 40 feet in length and eight feet in width.

MOBILE HOME, CLASS "A." A multi-sectional mobile home constructed after July 1, 1976, that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction. A "double-wide."

MOBILE HOME, CLASS "B." A mobile home constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U.S. Department of Housing and Urban Development that were in effect at the time of construction. A "single-wide."

MOBILE HOME, CLASS "C." A mobile home which does not meet the Class "A" or Class "B" definitions.

MOBILE HOME PARK. A lot(s) or tract(s) of land used or intended to be used, leased, or rented for occupancy by mobile homes in conformity with the mobile home park provision of this chapter.

MOBILE HOME PARK, NON-CONFORMING. A lot(s) or tract(s) of one and for two or more mobile homes sharing common ownership and/or facilities and which do not qualify as individual mobile homes on individual lots and which park is not in conformance with all the requirements for the initial establishment for a mobile home park as defined above.

MODULAR HOME, BUILDING. Any building or structure which was pre-manufactured, all or in part, at some point other than the building site for assembly or installation later at the building site and which complies with the North Carolina State Building Code. Further defined, such building may be assembled from pre-manufactured rooms, wall panels, frame units, or other factory manufactured parts, which may be fabricated of wood, concrete, metal, or other materials, and anchored on a permanent foundation or foundation material at the building site. This definition does not include **MOBILE HOMES** as defined in this chapter.

NET RESIDENTIAL AREA (NET LAND). That portion of a development or project site designated for residential lots and related common open space areas excluding dedicated public rights-of-way.

NONCONFORMING USE. Any use which legally existed on the effective date of this chapter, and which does not conform with each regulation of the zoning district in which it is located, including any **NONCONFORMING USE** legally recognized under a prior zoning code.

OPEN SPACE. Any land area not occupied by buildings, structures, storage areas, open or enclosed balconies, patios, porches or decks, excluding, however, any land encroaching or located within a right-of-way or easement. Open area in any required setback or land used for sidewalks, landscaping and grassing shall be considered **OPEN SPACE**.

PARKING LOT. An area or tract or partial tract of land used for the storage or parking of vehicles.

PLANNED UNIT DEVELOPMENT. A tract(s) of land under single corporation, firm, partnership, or association ownership, or otherwise under unified ownership or control, planned, and developed as an integral unit in a single development scheme or a well defined series of development operations in accordance with an approved site plan.

PROPERTY. All property subject to zoning regulations and restrictions and zone boundaries within the zoning jurisdiction of the town.

PUBLIC SEWAGE DISPOSAL SYSTEM. An approved sewage disposal system serving ten or more connections, including municipal and sanitary district sewerage systems as well as "package" plants constructed in a location and to specifications approved by the County Sanitarian in consultation with the North Carolina Division of Health Services.

PUBLIC WATER SUPPLY SYSTEM. An approved water supply system serving ten or more connections, including municipal and sanitary district water systems as well as water systems designed to serve particular subdivisions at full development and constructed to specifications approved by the County Sanitarian in consultation with the North Carolina Division of Health Services.

RECREATION or TRAVEL TRAILER. A vehicular, portable, structure built on a chassis designed to be used as a temporary dwelling for travel, recreational, and vacation uses, permanently identified as a **TRAVEL TRAILER** by the manufacturer of the unit. Includes motor home, recreational vehicle and the like.

RESIDENTIAL CARE FACILITY. A building or facility used primarily to provide residential, social, and personal care for children, the aged or others who suffer some limit on the ability for self-care, but where medical care is not a major service. It includes such uses as adult day care facilities, home for the aged and other like uses, which are not otherwise specifically defined.

RESIDENTIAL GROUP DEVELOPMENT. A residential development of more than four units in an individual building and any residential development with more than one residential building on a lot or plat.

SCREEN. A device such as a fence or planting area used to visually separate property.

SERVICE STATION. A lot or building where gasoline, oil, grease, and automobile accessories are supplied and dispensed to the motor vehicle trade, or where battery, tire and other similar repair services are rendered.

SETBACK. The horizontal distance from the property line or street right-of-way line to the nearest part of the applicable building, structure, sign, or use, measured perpendicularly to the line.

SITE SPECIFIC DEVELOPMENT PLAN. A plan which has been submitted to the town by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property.

SLUDGE. Any solid, semisolid, or liquid waste generated from residential wastewater treatment plant.

STACKING SPACE. A space to store an automobile off-street while waiting in line for a drive-through service such as an automatic teller service, drive through restaurant and the like.

STREET, PRIVATE. A vehicular travel way not dedicated as a public street or a dedicated but unaccepted vehicular travel way.

STREET, PUBLIC. A public right-of-way for vehicular travel which has been constructed and then dedicated to and accepted by a municipality or the North Carolina Department of Transportation for public use or which has been otherwise obtained by such agencies for such use or which is proposed to be constructed and then dedicated to and accepted by such agencies as a public right-of-way for vehicular traffic for public use.

STRUCTURE. Anything constructed or erected which requires location on the ground or attached to something having location on the ground.

STRUCTURAL ALTERATIONS. Any change, except for the repair or replacement, in the supporting members of a building such as load bearing walls, columns, beams, or girders.

SWINE FARM. A tract of land devoted to raising animals of the porcine species served by or requiring animal waste systems having a design capacity of 600,000 pounds steady live weight or greater.

TOWNHOUSE. A single-family dwelling unit constructed in a series or group of attached units with property lines separating each such unit.

TRANSMISSION TOWER. A structure, either freestanding, supported by guywires, or attached to a building, and accessory equipment related to broadcast services, private radio services, including AM, FM, two-way radio, television, and cable antenna television transmission, microwave transmission and facilities such as satellite dish receiving centers. This definition does not include electrical transmission distribution poles, towers, and line, personal satellite dishes, or structures not more than 35 feet in height.

TRAVEL TRAILER PARKING AREA. A parcel of land in which two or more spaces are designed, occupied or intended for occupancy by trailers for transient dwelling purposes.

USE. The primary purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied or maintained.

VESTED RIGHT or ZONING VESTED RIGHT. The right to undertake and complete the development and use of the property under the terms and conditions of an approved site specific development plan.

WIRELESS TELECOMMUNICATION TOWER. A tower supporting licensed or unlicensed wireless telecommunication facilities including cellular, digital cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), commercial or private paging services, or similar services marketed or provided to the general public. This definition does not include services by non-commercial entities in the Amateur Radio Service, Public Safety Radio Service, or licenses assigned to non-profit organizations, such as the Red Cross, Civil Air Patrol, Military Affiliated Radio Service (MARS) that are licensed by the Federal Communications Commission.

YARD. An open space located on the same lot with a building, unoccupied and unobstructed from the ground upward, except by trees, shrubbery or as otherwise provided herein. A **YARD** is the area created by a setback.

YARD, FRONT. A yard extending across the full width of the lot and extending from the closest front wall of the building to the property line or established edge of a right-of-way, whichever is closer.

YARD, REAR. A yard extending across the full width of the lot and extending from the closest rear wall of the main building to the rear of the property.

YARD, SIDE. A yard which extends from the closest side wall of a building to the nearest side property line or the established edge of the street right-of-way, whichever is closer, if the lot is a corner lot.

ZONING ADMINISTRATOR. An employee or agent of the town who is assigned primary responsibility for the administration and enforcement of the Zoning Code.

ZONING PERMIT. A permit issued by the town conferring the right to undertake and complete the development of and use of property.

ZONING PERMIT WITH VESTED RIGHTS. A permit authorized by the Board of Adjustment concerning the right to undertake and complete the development of and use of property under the terms and conditions of an approved site-specific development plan.

(B) *Definitions relating to adult oriented businesses.*

ADULT ARCADE (also known as **PEEP SHOW**). Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed depict or describe **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS**.

ADULT BOOKSTORE or **ADULT VIDEO STORE.** A commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, or video reproductions, slides, or other visual representations that depict or describe **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS**; or

(2) Instruments, devices, or paraphernalia that are designed for use in connection with **SPECIFIED SEXUAL ACTIVITIES**.

ADULT CABARET. A nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits, or displays as one of its principal business purposes:

(1) Persons who appear nude or semi-nude;

(2) Live performances which are characterized by the exposure of ***SPECIFIED ANATOMICAL AREAS*** or by ***SPECIFIED SEXUAL ACTIVITIES***; or

(3) Films, motion pictures, video cassettes, slides, or other photographic reproductions which depict or describe ***SPECIFIED SEXUAL ACTIVITIES*** or ***SPECIFIED ANATOMICAL AREAS***.

ADULT MOTEL. A hotel, motel, or similar commercial establishment that:

(1) Offers accommodations to the public for any form of consideration which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that depict or describe ***SPECIFIED SEXUAL ACTIVITIES*** or ***SPECIFIED ANATOMICAL AREAS*** as one of its principal business purposes; or

(2) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(3) Allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than ten hours.

ADULT MOTION PICTURE THEATER. A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown as one of its principal business purposes that depict or describe ***SPECIFIED SEXUAL ACTIVITIES*** or ***SPECIFIED ANATOMICAL AREAS***.

ADULT ORIENTED BUSINESS. An adult arcade, adult bookstore, or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center (including adult massage parlor and adult health club), sexually oriented device business or any combination of the foregoing or any similar business.

ADULT THEATER. A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits or displays, as one of its principal business purposes, persons who appear in a state of nudity or semi-nude, or live performances that expose or depict ***SPECIFIED ANATOMICAL AREAS*** or ***SPECIFIED SEXUAL ACTIVITIES***.

ESCORT. A person who, for any tips or any other form of consideration, agrees or offers to act as a date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY. A person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its principal business purposes, for a fee, tip, or other consideration.

NUDE or A STATE OF NUDITY.

(1) The appearance of a human anus, male genitals, or female genitals; or

(2) A state of dress which fails to opaquely cover a human anus, male genitals, or female genitals.

NUDE MODEL STUDIO. Any place where a person who appears nude or semi-nude, or who displays ***SPECIFIED ANATOMICAL AREAS*** is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. ***NUDE MODEL STUDIO*** shall not include a proprietary school licensed by the state or a college, junior college, or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

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(1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;

(2) Where in order to participate in a class a student must enroll at least three days in advance of the class; and

(3) Where no more than one nude or semi-nude model is on the premises at any one time.

SEMI-NUDE. A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER CENTER. A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling (including sexually oriented massaging) between persons of the opposite sex, or similar activities between male and female persons and/or between persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

SEXUALLY ORIENTED DEVICES. Any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device.

SPECIFIED ANATOMICAL AREAS. Human genitals in a state of sexual arousal.

SPECIFIED SEXUAL ACTIVITIES. Is and includes any of the following:

(1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or females breasts;

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral, copulation, or sodomy;

(3) Masturbation, actual or simulated;

(4) Excretory functions as part of or in connection with any of the activities set forth above.

(C) *Definitions related to signs.*

AWNING. A shelter projecting from and supported by the exterior wall of a building constructed of non-rigid materials on a supporting framework.

CANOPY. A permanent structure other than an awning made of cloth, metal, or other material attached or unattached to a building for the purpose of providing shelter to patrons or automobiles, or as a decorative feature on a building wall. A canopy is not a completely enclosed structure.

CHANGEABLE COPY. Copy that is or can be changed manually in the field or through mechanical or electronic means, such as reader boards with changeable letters.

ERECT. To assemble, build, construct, raise, install, attach, hang, place, suspend, affix, post, create, paint, draw, apply, or in any other way bring into being or establish.

FACING or SURFACE. The surface of a sign upon, against, or through which the message is displayed or illuminated on the sign.

FRONTAGE, LOT. The length of that part of a lot that fronts a public street.

GRADE. The height of the top of the curb, or if no curb exists, the height of the edge of pavement in the lane of travel adjacent to a freestanding sign.

INTERSTATE HIGHWAY SYSTEM. That portion of the national system of interstate and defense highways located within the state as officially designated or as may hereafter be so designated by the Board of Transportation or other appropriate authorities and are also so designated by interstate numbers.

LOGO. A business trademark or symbol.

LOT. A parcel of land, the boundaries of which are established by some legal instrument such as a deed or a recorded plat and which is recognized as a separate tract for purposes of transfer of title.

MARQUEE. A permanent rooflike structure other than a roof attached to, supported by, and projecting from a building, providing protection from natural elements over the ground, sidewalk, or walkway.

PARAPET. The portion of a building wall or false front that extends above the roof.

PERSON. Any natural person, firm, partnership, corporation, company, organization, association, trust, or individual or any other group or combination of individuals operating as a unit and including any trustee, receiver, assignee, or other similar representative thereof.

PREMISES. A lot or parcel of real property where a business, profession, service, commodity, product, accommodation, event, attraction, or other enterprise or activity or use exists or is conducted, manufactured, sold, offered, maintained, or takes place.

SETBACK. The shortest horizontal distance from the property line or right-of-way to the nearest point (leading edge) of a sign or its supporting member.

SIGN. Any object, placard, device, display or structure, or part thereof, made of any material, except live vegetation, including any surface, fabric, or other background material which is designed, constructed, and/or used for the purpose of relaying information from a fixed or mobile position to visually inform, advertise, identify, display, promote, direct or attract the attention of general or privileged persons to an object, person, institution, organization, corporation, business, profession, commodity, product, service, event or location by any means including, but not limited to, words, letters, phrases, sentences, emblems, trademarks, tradenames, insignias, numerals, figures, devices, designs, symbols, pictures, logos, fixtures, colors, illumination or projected images or any other attention directing device, displayed by means of paint, bills, posters, panels, or other devices erected on an open framework, or attached or otherwise applied to stakes, poles, trees, buildings or other structures or supports. The term **SIGN** shall include the terms advertisement, announcement, insignia, billboard, bill, billet, badge, display, brand, emblem, flyer, label, message board, poster, shingle, symbol, title and trademark. The term **SIGN** shall not include the terms television, telegraph, radio, signal or transmission. If the message is removed from a structure that was originally designed and used as a sign, this structure shall still be considered a **SIGN**.

SIGN, AWNING. A sign placed directly on the surface of an awning. For purposes of this chapter an **AWNING SIGN** for measuring purposes will be considered a **WALL SIGN**.

SITE, ADVERTISING. See **SIGN, BILLBOARD**.

SIGN, BILLBOARD. A permanent, usually free-standing, off-premise sign that is affixed to the ground or to a building, owned by a person, corporation, or other entity that engages in the business of selling or leasing the advertising space on that sign and which advertises an establishment, service, commodity, goods or entertainment sold or offered on premises other than that on which such sign is located. Such signs commonly referred to as "outdoor advertising signs" are generally designed so that the copy or posters on the sign can be changed frequently.

SIGN, BUSINESS. A permanent, on-premise sign that is affixed to the ground or to a building which directs attention to a service, commodity, goods, or entertainment sold or offered on the premises on which such sign is located.

SIGN, CAMPAIGN or ELECTION. A sign that advertises a candidate or issue to be voted upon on a definite election day.

SIGN, CANOPY. A sign attached to or painted onto or forms a part of a canopy. For the purposes of this chapter a **CANOPY SIGN** for measuring purposes will be considered a **WALL SIGN**.

SIGN, CHANGEABLE COPY. A sign message center or readerboard that is designed so that its informational content or copy can be changed or altered by manual, electrical, electro-mechanical, or electronic means. A **CHANGEABLE COPY SIGN** shall be counted as a sign face.

SIGN CLEARANCE. The smallest vertical distance between the grade of the adjacent street, and the lowest point of any sign, including framework and embellishment, extending over that grade.

SIGN, CONFORMING. A sign, which is in compliance with all the provisions of this chapter.

SIGN, CONSTRUCTION. A sign placed at a construction site giving the name or names of building owners or developers, architects, engineers, and/or lending institutions and principal contractors, subcontractors and material suppliers participating in construction on the site where the sign is placed, together with other appropriate information included thereon.

SIGN COPY. Alphabetic, pictorial, numerical, and/or graphic display of permanent or removable words, letters, numbers, figures, characters, symbols, logos, or insignia that are used on a sign display surface area for advertising and/or informational purposes.

SIGN COPY AREA. Area measured by the smallest circle, square, or rectangle which will encompass all elements of informational or representational matter including all cut outs or extensions together with any materials or color forming an integral part of the display or to differentiate the sign from the background to which it is placed. The term **SIGN COPY AREA** shall also include the terms display area, surface area, and the word area as it relates to signage. The term **SIGN COPY AREA** shall not be construed to include architectural trim, frames, and structural supports that do not bear any sign copy. In computing area, only one side of a double-faced sign shall be considered. The maximum angle of a double-faced sign shall be 45 degrees, except for signs located at corners in which case the maximum angle may be 90 degrees. This refers to the distance between sign faces on a single structure.

SIGN, DISCONTINUED. Any conforming or legal nonconforming sign, other than a billboard sign, which no longer identifies or advertises a bona fide business, service, product, or activity, and/or for which no legal owner can be found which has been discontinued for a period of 120 days or more regardless of reason or intent, or a temporary sign for which the permit has expired. This is not intended to apply to seasonal type businesses which annually operate "in season." However, failure to operate any such seasonal business for a minimum of 190 consecutive days in a calendar year will deem these signs to have been discontinued.

SIGN, DOUBLE-FACED. A sign designed to be seen from two opposite directions shall be considered as one sign, provided that the two sign faces shall be supported on the same pole(s) or other structure, are at the same elevation and form an angle of 45 degrees or less on an interior lot or 90 degrees or less on a corner lot.

SIGN FACE. The part of a sign that is or can be used to identify, advertise or communicate information, or is used for visual representation which attracts the attention of the public for any purpose. **SIGN FACE** includes any background material, panel, trim, color, or internal illumination used that differentiates that sign from the building, structure, backdrop, surface, or object upon which or against which it is placed. The sign structure shall not be included as a portion of the sign face provided that no identifying/advertising message, symbol or any of the aforementioned sign face criteria are displayed on or designed as part of the sign structure, whether structurally necessary or not.

SIGN, FLASHING. Any sign which contains an intermittent or flashing light source, or which includes the illusion of intermittent or flashing light by means of animation or an externally mounted intermittent light source. Automatic changing signs such as public service time, temperature and date signs or electronically controlled message centers are classified as **CHANGEABLE COPY SIGNS**, not **FLASHING SIGNS**.

SIGN, FREESTANDING. A sign which is permanently affixed to and supported by structures or supports such as poles, masts, or frames which are placed upon or anchored in the ground and which structures or supports are independent from any building or other structure. For the purposes of this chapter a **FREESTANDING SIGN** shall be only those signs meeting the definition given above and which are located on the same premises for which its message is carried. Pole, ground, and billboard signs are examples of **FREESTANDING SIGNS**.

SIGN, GOVERNMENT. Any temporary or permanent sign, symbol, or device erected and maintained for any federal, state, county, or municipal governmental purposes including, but not limited to, legal notices, identification and informational signs, and traffic warning, directional or regulatory signs.

SIGN, GROUND. A freestanding sign with a base which either appears to rest on the ground or which has a support(s) which places the base and portion of the sign copy area thereof less than ten feet from the ground. A monument sign is a **GROUND SIGN**.

SIGN HEIGHT. The vertical distance measured from the highest point of the sign, including decorative embellishments, to the grade of the adjacent street or the surface grade beneath the sign, whichever is less.

SIGN, IDENTIFICATION. Either or both of the following:

(1) A sign used to display only the name, address, crest, or trademark of the business, individual, family, organization or enterprise occupying the premises; the profession of the occupant; the name of the building on which the sign is displayed.

(2) A permanent sign announcing the name of a subdivision, tourist home, group housing project, church, school, college, park or other public or quasi-public structure, facility or development and the name of the owners or developer but bearing information pertaining only to the premises on which such sign is located and carrying no advertising message.

SIGN, ILLEGAL. A sign which does not meet the requirements of this chapter and which has not received legal non-conforming status.

SIGN, INCIDENTAL. A small sign, emblem, or decal informing the public of goods, facilities or services available on the premises, such as a credit card sign or a sign indicating hours of business.

SIGN, ILLUMINATED. A sign illuminated in any manner by an artificial light source, whether internally or externally lit.

SIGN, INDIRECTLY or EXTERNALLY ILLUMINATED. A sign designed to have illumination from a detached light source, shielded so that no direct rays from the light source are visible elsewhere than on the lot where said illumination occurs. The term **SIGN, INDIRECTLY or EXTERNALLY ILLUMINATED**, includes back lighted.

SIGN, INFORMATIONAL or INSTRUCTIONAL. An on-premises sign designed to guide vehicular and or pedestrian traffic and give other instruction or direction to the public but not including any advertising message. The name or logo of the business or use about which the sign is giving direction may also be included on the sign, provided such name or logo does not comprise more than 10% of the copy area. Such signs include, but are not limited to, the following: the identification of rest rooms, public telephones, walkways, entrance and exit drives, parking, handicapped access, freight entrances, and traffic direction.

SIGN, INTERNALLY or DIRECTLY ILLUMINATED. A sign where the source of the illumination is inside the sign and light emanates through the message of the sign through transparent or translucent materials rather than being reflected off the surface of the sign from an external source. Without limiting the generality of the foregoing, signs that consist of or contain tubes that: (1) are filled with neon or some other gas that glows when an electric current passes through it; and (2) are intended to form or constitute all or part of the message of the sign, rather than merely providing illumination to other parts of the sign that contain the message, shall also be considered internally or **DIRECTLY ILLUMINATED** signs.

SIGN MAINTENANCE. The cleaning, painting, repair or replacement of defective parts of a sign in a manner that does not alter the basic copy, design or structure of the sign.

SIGN, MARQUEE. A sign affixed, superimposed, or painted on a marquee identifying the name of an establishment, type of product sold, manufactured or assembled, and/or service or entertainment offered on the premises where such a sign is displayed. For purposes of this chapter a **MARQUEE SIGN** for measuring purposes will be considered a **WALL SIGN**.

SIGN, MEMORIAL. A sign designating names of buildings and/or date of erection and other items such as architect, contractor, or others involved in the building's creation, cut into or attached to a building surface.

SIGN, MOTION. A sign or device designed to attract attention, all or any part of which uses movement or apparent movement by fluttering, revolving, rotating, spinning, swinging, animation or moving in some other manner and is set in motion by movement of water or the atmosphere or by mechanical, electrical or any other means.

SIGN, MOVABLE. A sign, which is movable by two or fewer individuals without aid of a motor vehicle or other mechanical equipment. The term **MOVABLE SIGN** includes the terms A-frame sign, T-shaped sign and tent sign.

SIGN, NONCOMMERCIAL. Any sign, display, or device that does not direct attention to a business operated for profit, or to a commodity, product or service for sale, which displays a substantive message, statement, or expression that is protected by the First Amendment to the United States Constitution.

SIGN, NONCONFORMING. Any sign which was lawfully erected in compliance with applicable code provisions and maintained prior to the effective date of this chapter, and any amendments to, and which fails to conform to all applicable standards and restrictions of this chapter. An illegal sign is not a **NONCONFORMING SIGN**.

SIGN, OBJECT or PRODUCT. A sign used in conjunction with equipment or other functional elements of a use or operation. These shall include, but not be limited to, drive-through window menu boards, and signs on automatic teller machines, gas pumps, vending machines, or newspaper boxes.

SIGN, OFF-PREMISE. A sign or structure, pictorial or otherwise, regardless of size or shape that draws attention to or communicates information about a business, profession, service, commodity, product, accommodation, event, attraction or other enterprise or activity that exists or is conducted, manufactured, sold, offered, maintained or provided at a location other than on the premises where the sign is located. Several types of **OFF-PREMISE SIGNS** may exist or otherwise be subject to the requirements of this chapter. Billboards are examples of **OFF-PREMISE SIGNS**. This definition does not include governmental, traffic, directional, or regulatory signs or notices of the federal, state, county or town government or their public agencies.

SIGN, ON-PREMISE. A sign or structure, pictorial or otherwise, regardless of size or shape that draws attention to or communicates information about a business, profession, service, commodity, product, accommodation, event, attraction or other enterprise or activity that exists or is conducted, manufactured, sold, offered, maintained or provided on the premises or at the same location (site or tract) as that where the sign is located. Several types of **ON-PREMISE SIGNS** may exist or otherwise be subject to the requirements of this chapter regarding said signs. **GROUND SIGNS** and directional signs are examples of **ON-PREMISE SIGNS**.

SIGN, POLE. A freestanding sign with the base and all of the sign copy area at least ten feet above the ground and which is supported from the ground by one or more poles or similar support structures of narrow width (maximum of 10% of the width of the sign face) and not attached to any building (not a **GROUND SIGN**).

SIGN, POLITICAL. A **TEMPORARY SIGN** used in connection with a local, state, or national election or referendum.

SIGN, PORTABLE. A sign designed or intended to be readily relocated from one location to another whether on the same premises or a different premises, is not permanently attached to the ground, building or other permanent structure and is differentiated from a **MOVABLE SIGN** in that it may be equipped for transportation by motor vehicle or other mechanical means. The term **PORTABLE SIGN** shall include signs on wheels, trailers, truck beds, or any other device, which is capable of or intended to be moved from one location to another. Signs defined as **TEMPORARY SIGNS** are not included in this definition.

SIGN, PROJECTING. A sign, which projects from and is supported by a building or other structure only when said projection is greater than 12 inches. The term **PROJECTING SIGN** does not include the terms wall, awning, canopy or marquee sign, which are otherwise defined herein.

SIGN, PUBLIC INTEREST. A sign on private property that displays information pertinent to the safety or legal responsibilities of the general public such as warning and no trespassing signs.

SIGN, REAL ESTATE. A **TEMPORARY SIGN** that is used to offer for sale, lease, rent, or development the premises upon which such sign is placed.

SIGN, ROOF. A sign erected or maintained in whole or in part on, upon, or over the roof or parapet of a building or structure and which is wholly or partially dependent upon the roof of the building or structure for support.

SIGN STRUCTURE. Any structure which supports, has supported or is capable of supporting a sign, including any decorative cover for the **SIGN STRUCTURE**.

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SIGN, SNIPE. A **TEMPORARY SIGN** or poster affixed to a fence, pole, post, hydrant, bridge, another sign, public bench, streetlight or any tree, rock or other natural object.

SIGN, TEMPORARY. Any sign, designed in structure, materials, and/or copy message, which is temporary in nature to be used in connection with a circumstance, situation or event that is designed, intended, or expected to take place or to be completed within a reasonably short or definite period after the erection of such sign, whether attached to a structure, fence or freestanding, and whether or not it contains a frame. The term **TEMPORARY SIGN** includes the terms banner, pennant, valance, flyer and announcement. **TEMPORARY SIGN** materials consist of cloth, vinyl, canvas, light fabric, cardboard, paper, wall board or other light material. This definition shall not include a permanent sign display area with changeable copy, or to movable or portable signs.

SIGN, VEHICLE. A sign on a parked vehicle visible from the public right-of-way where the primary purpose of the vehicle is to advertise a product or to direct people to a business or activity located on the same or nearby property. For the purposes of this chapter, vehicular signs shall not include business logos, identification or advertising on vehicles primarily used for other business purposes.

SIGN, WALL. A sign which is placed on and/or attached to and supported throughout its entire length by the facade or exterior side of a building (or fence) wall by means of adhesive, paint, manufacturing process, structural and/or mechanical attachment, which said sign is not more than 12 inches from the facade or exterior wall line and when its exposed face is parallel or approximately parallel to the plane of the building or structure on which the sign is affixed. Such sign may not extend above the roofline.

SIGN, WINDOW. A sign that is placed on and/or attached to the interior side of a window or door glass of a building by means of adhesive, paint and/or manufacturing process intended for viewing from the exterior of such building; or a sign within a building, placed no more than 12 inches behind the window which is visible through the window.

SPECIAL EVENT. A planned, temporary activity.

STRUCTURAL (ARCHITECTURAL) TRIM. The molding, battens, capping, nailing strips, latticing, and platforms which are attached to a sign structure.

USE. The purpose for which a building, lot, sign or structure is intended, designed, occupied or maintained.

(Ord. 011106.1, passed 11-6-01)

§ 151.008 TERRITORIAL JURISDICTION.

For the purpose of this Zoning Code, the zoning jurisdiction shall include the land within the corporate limits of the town and that land located between these limits and the boundaries established in the municipal ordinance establishing extraterritorial jurisdiction boundaries, as now or hereafter fixed.

(Ord. 011106.1, passed 11-6-01)

§ 151.009 INCORPORATION OF ZONING MAP.

The Official Zoning Map, Boiling Springs, North Carolina and all notations, references and other information shown on the map are hereby incorporated and made a part of this chapter.

(Ord. 011106.1, passed 11-6-01)

APPLICATION, EXCEPTIONS AND MODIFICATIONS**§ 151.020 ZONING AFFECTS EVERY BUILDING AND USE.**

No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered except in conformity with the regulations herein specified for the district in which it is located, except as hereinafter provided in this Zoning Code.
(Ord. 011106.1, passed 11-6-01)

§ 151.021 RELATIONSHIP OF BUILDINGS TO LOT.

Every building hereafter erected, moved or placed shall be located on a lot and in no case shall there be more than one principal residential building on a lot except as otherwise provided for in this chapter by the Special Requirements of Appendix B.
(Ord. 011106.1, passed 11-6-01)

§ 151.022 STREET ACCESS.

No building, structure or use of land shall be established on a lot nor shall any lot be created that does not abut upon a public street as defined herein to which it has legal access for a distance of not less than 40 feet. Provided, the following exceptions shall apply to the access requirement:

(A) The access requirement shall not apply to lawfully existing lots of record with a minimum of 40 feet of frontage on a dedicated but not maintained street.

(B) The access requirement shall not apply to developments exempt from the public street access by a Special Requirement of Appendix B or where that section permits a lesser minimum frontage requirement.
(Ord. 011106.1, passed 11-6-01)

§ 151.023 LOT OF RECORD.

(A) Where the owner of a lawfully existing lot of official record in any residential district or the owner's successor in title thereto does not own sufficient contiguous land to enable the owner to conform to the minimum lot size requirements of this chapter, such lot may be used as a residential building site, where permitted, provided, however, that the other requirements of the district are complied with or a variance is obtained from the Board of Adjustment.

(B) Notwithstanding the foregoing, whenever two or more adjoining vacant lots of record are in a single ownership at any time after the adoption of this chapter and such lots individually have less area or width than the minimum requirements of the district in which such lots are located, such lots shall be considered as one or more lots which meet the minimum requirements of this chapter for the district in which such lots are located.
(Ord. 011106.1, passed 11-6-01)

§ 151.024 OPEN SPACE REQUIREMENTS.

No part of a yard, court or other open space provided around any building or structure for the purpose of complying with the provisions of this chapter shall be included as a part of a yard or other open space required under this chapter for another building or structure. Every part of a required yard shall be open and unobstructed from its lowest level to the sky, except as provided for in this section. However, certain accessory structures are permitted to be placed in the required yard areas as provided for in the Schedule of District Regulations and this chapter.

(Ord. 011106.1, passed 11-6-01)

§ 151.025 REDUCTION OF LOT AND YARD AREAS PROHIBITED.

No yard or lot existing at the time of passage of this chapter shall be reduced in size or area below the minimum requirements set forth in this chapter. Yards or lots created after the effective date of this chapter shall meet at least the minimum requirements established by this chapter.

(Ord. 011106.1, passed 11-6-01)

§ 151.026 WATER AND SEWER REQUIREMENTS.

The lot sizes required for the various districts in this chapter were drawn upon the assumption that adequate water supply and sewage disposal systems are available to each and every lot. The lack of adequate systems for one or both facilities may require larger lot areas or, in some instances, because of health department standards, may not permit development as intended.

(Ord. 011106.1, passed 11-6-01)

§ 151.027 HEIGHT LIMITATION EXCEPTIONS.

The height limitations of this chapter shall not apply to public buildings, churches, temples, schools, hospitals, belfries, cupolas and domes not intended for residential purposes, or to monuments, water towers, observation towers, power and communication transmission towers, flag poles and similar structures provided such structures meet the required North Carolina Building Code. Height limitations shall apply to cellular telephone towers as regulated herein. See § 151.074.

(Ord. 011106.1, passed 11-6-01)

§ 151.028 BUILDING SETBACK EXCEPTIONS.

Setback distances shall be measured from the property line or street right-of-way line to the nearest portion of any building, or structure excluding:

(A) Unenclosed porches, attached carports, balconies or decks which do not project into any required yard more than three feet; and

(B) Chimneys, flues, eaves, roof overhangs, window sills and bay windows which do not project into any required yard more than three feet; and

(C) Patios, drives, walkways, if no portion of the same extends more than 12 inches off the ground.

(D) Any structure that is a mere appendage to a building such as a flagpole or fountain.

(Ord. 011106.1, passed 11-6-01)

§ 151.029 FENCES AND WALLS.

Unless otherwise specified within this chapter, fences and walls shall be exempt from setback and yard requirements provided they comply with the visibility requirements of § 151.033 and the following standards.

(A) Fences may be installed in the required setback of any residential lot, except that in the required front setback of the lot, the height of such fencing or screening shall be limited to a maximum height of three feet if a solid fence and five feet if the fence is 50% or less opaque.

(B) Fencing in all other setbacks of residential property shall be limited to a maximum height of eight feet in height except as otherwise specifically stipulated herein. Fences in non-residential districts are limited to eight feet in height.

(Ord. 011106.1, passed 11-6-01; Am. Ord. 100105.03, passed 1-5-10)

§ 151.030 ACCESSORY BUILDINGS AND STRUCTURES.

No accessory building shall be erected in any front or side yard whether required or provided. Accessory buildings may be located in a rear yard not adjacent to a street within ten feet of the property line. Accessory buildings adjacent to a street shall meet the principal building set back for that side. No accessory building shall be erected within ten feet of any other building. In residential districts, accessory buildings shall not exceed one-half of the total square footage of the foot print of the principal dwelling. (Ord. 011106.1, passed 11-6-01)

§ 151.031 DOUBLE FRONTAGE LOTS.

For the street segments listed below, Double Frontage Lots shall provide the minimum yard requirements for front yards along both street fronts. All other lots shall comply with Table 151.074.

(A) East College Avenue (NC 150) - College Avenue.

(B) Gaffney Road (NC 150) - South Main Street.

(C) West College Avenue - Cliffside Road (SR 1003).

(D) North Main Street - McBrayer Homestead Road (SR 1161).

(Ord. 011106.1, passed 11-6-01; Am. Ord. 100105.01, passed 1-5-10)

§ 151.032 FRONT YARD SETBACKS FOR DWELLINGS.

For dwellings in residential districts, where lots located on either side of a center lot are improved with buildings having a front yard setback of less than 25 feet, and the structures are no more than 200 feet apart, the required setback of the center lot shall be the average of the setback of the two adjacent main buildings.

(Ord. 011106.1, passed 11-6-01)

§ 151.033 VISIBILITY AT INTERSECTIONS.

On a corner lot in any district other than the B-1 District, no planting, structure, sign, fence, wall or obstruction to vision within the range of three feet to seven feet in height measured from the centerline of

the street shall be placed or maintained within the triangular area formed by the intersecting street right-of-way lines and a straight line connecting points on said right-of-way lines, each of which is 15 feet from the point of intersection.

(Ord. 011106.1, passed 11-6-01)

§ 151.034 TEMPORARY BUILDINGS.

Temporary buildings, including mobile structures, incidental to a construction project may be permitted to be used concurrent with the permit for permanent building(s) or construction. Such temporary building shall be removed promptly upon completion of construction. No such building shall be used for dwelling purposes. Temporary buildings shall be located at least 25 feet from any property used for residential purposes. Temporary classroom buildings for public schools may be permitted for a two year period. Extensions of the time period may be permitted as a conditional use permit by the Board of Adjustment.

(Ord. 011106.1, passed 11-6-01)

§ 151.035 ENTRANCES/EXITS TO PUBLIC STREETS.

(A) Entrances and exits to public streets shall be placed and constructed in accordance with the "Policy on Street and Driveway Access to North Carolina Highway" adopted by the North Carolina Department of Transportation (NCDOT), as amended, provided that the following access point provision shall apply to developments other than one and two-family dwellings on the street sections listed below.

(B) *Access Points.* Any lot of record in existence on the effective date of this section shall be allowed one access point to the roadway notwithstanding the provisions of this section that may prohibit such access; provided, however, that two or more lots under common ownership shall be considered one lot and shall comply with the requirements of this section. The maximum number of access points shall be as follows:

<u>Street Frontage</u>	<u>Access Points to Roadway</u>
0 - 199	1
200 - 599	2
600 or more	3

(C) Except where access would be denied, driveways shall be located not less than 200 feet from the center line of any street intersecting the roadway, and shall be located at least 30 feet from side property lines, except where a mutual joint access agreement exists, which provides for a shared driveway for adjoining owners. Driveways shall be not less than 200 feet apart, measured along the right-of-way from center of driveway to center of driveway.

(D) This provision shall apply to the following street sections:

- (1) East College Avenue (NC 150) - College Avenue
- (2) Gaffney Road (NC 150) - South Main Street
- (3) West College Avenue - Cliffside Road (SR 1003)
- (4) North Main Street - McBrayer Homestead Road (SR 1161)

(Ord. 011106.1, passed 11-6-01)

§ 151.036 UNDERGROUND UTILITIES.

For all developments, all utility services for the property, including all wire services, shall be placed underground.

(Ord. 011106.1, passed 11-6-01)

§ 151.037 EXTERIOR BUILDING MATERIALS ON CERTAIN STREETS.

(A) For developments other than one and two-family developments located on the street sections listed below, no building elevation, including foundation, that is prominently visible from the street or adjoining residentially zoned property, may be covered (exposed) with sheet or corrugated aluminum, iron or steel, plain concrete, plain concrete block, or exterior panelized plywood. Except, however, such materials may be used as secondary exterior finish materials if they cover no more than 20% of a facade. Buildings may consist of any of the following materials: utility brick, standard brick, stucco, synthetic stucco, colored split-faced block, glass, stone, tile or other similar high quality materials.

(B) Street segments to which this section applies:

(1) East College Avenue (NC 150) - College Avenue;

(2) Gaffney Road (NC 150) - South Main Street;

(3) West College Avenue - Cliffside Road (SR 1003);

(4) North Main Street - McBrayer Homestead Road (SR 1161)

(Ord. 011106.1, passed 11-6-01)

§ 151.038 DEVELOPMENTS WITH MORE THAN ONE PRINCIPAL BUILDING.

Developments with more than one principal building (including "out parcels," group and cluster developments and multi-tenant buildings) shall include similar architectural styles but should not be identical throughout the development. All sides of the individual building shall be treated in an architecturally similar manner. More specifically, at least two of the following three "unifying elements" must be presented in each building (including accessory buildings and those buildings located on out parcels) and to the greatest extent practical, in other architectural features of the development (walls, fences, signs and the like):

(A) *Building materials.* Such material shall apply to at least 30% of each ground mounted sign as well;

(B) *Colors.* A maximum of three colors may be designated as the unifying element but the maximum number of colors throughout the development is not limited;

(C) *Architectural features.* These features include but are not limited to: roof treatment (style, color, material), facade treatments or building form (overhangs, canopies, arcades, protected walkways, entrance treatments).

(Ord. 011106.1, passed 11-6-01)

§ 151.039 PROJECTIONS INTO FRONT YARDS IN COMMERCIAL AND INDUSTRIAL DISTRICTS.

In commercial and industrial districts, open, unenclosed gasoline pump canopies, gasoline filling and related equipment and similar facilities may project into one-half the front yard setback requirement for the district.

(Ord. 011106.1, passed 11-6-01)

§ 151.040 OUTDOOR LIGHTING.

Outdoor lighting fixtures shall be installed in a manner to protect the street and neighboring properties from direct glare or hazardous interference of any kind. Glare or hazardous interference are situations where the sensation produced by luminance within the visual field is sufficiently greater than the luminance to which the eyes are adapted, such as to cause annoyance, discomfort, or loss in visual performance and visibility. In addition, outdoor lighting shall be constructed and operated to minimize the spill over of obtrusive light onto property outside the boundaries of the property on which the lighting is sited which could result in annoyance, discomfort or distraction to persons on the other property. Therefore, all outdoor lighting fixtures, except for temporary and emergency lighting, that would otherwise cause glare or obtrusive spill over shall be shielded, recessed or otherwise oriented or treated in such a way to prevent glare or obtrusive spill over. Furthermore, all outdoor lighting fixtures, including display lights, shall be turned off after close-of-business, unless needed for safety or security, in which case the lighting shall be reduced to the minimum necessary. Notwithstanding the above, lighting for outdoor sporting and other similar events shall follow the generally accepted best practices for lighting based upon industry standards for the activity and the surrounding development.

(Ord. 011106.1, passed 11-6-01)

§ 151.041 CLASS B AND C MOBILE HOMES PROHIBITED.

After the effective date of this chapter no Class B or C Mobile Home shall be placed in the jurisdiction of this chapter nor shall any Class B or C Mobile Home that is existing within the jurisdiction of this chapter be moved, and placed at any other location within the jurisdiction of this chapter.

(Ord. 011106.1, passed 11-6-01)

§ 151.042 USE OF MOBILE HOMES FOR STORAGE PROHIBITED.

The use of mobile homes, travel trailers and truck trailers for storage purposes shall be expressly prohibited in all zoning districts.

(Ord. 011106.1, passed 11-6-01)

§ 151.043 OUTDOOR STORAGE AND DISPLAY.

Outdoor storage and/or display of items for sale or advertising purposes shall be prohibited in the I-1 and O & CS Districts. In the B-1, B-2, M-1 Districts, display of items for sale on premises shall be limited to items which are designed and intended for permanent outdoor usage and shall meet one-half the setback for the district in which located. Yard sales, involving non-outdoor items, may be permitted in the B-1, B-2, and M-1 districts not to exceed two two-day events. Other outdoor storage of items not for sale on premises shall meet the Screening Device requirement of § 151.140.

(Ord. 011106.1, passed 11-6-01)

§ 151.044 SETBACK FROM RESIDENTIAL DISTRICTS.

Any use in any non-residential district which has any activity area not completely enclosed in a building such as car washes, equipment repair areas, intensive play areas, heavy vehicle parking, areas with intensive lighting, amplified sound, or any such area which might cause fumes, noise, light or similar effects upon the adjoining residential area shall setback such area a minimum of 50 feet from the residential zoning line and implement measures to lessen such adverse effects.

(Ord. 011106.1, passed 11-6-01)

§ 151.045 MINIMUM REGULATIONS.

Regulations set forth by this chapter shall be minimum regulations. If the requirements set forth in this chapter are at variance with the requirements of any other lawfully adopted rules or regulations, the more restrictive or higher standards shall govern.

(Ord. 011106.1, passed 11-6-01)

§ 151.046 FEES.

Applicants for permits and other procedures as provided for by this chapter may be required to pay such fees as may be established by the Board of Commissioners in the Schedule of Fees and Charges.

(Ord. 011106.1, passed 11-6-01)

ZONING DISTRICTS**§ 151.060 PRIMARY ZONING DISTRICTS ESTABLISHED: PURPOSES SET FORTH.**

For the purposes of this chapter, the Town of Boiling Springs, North Carolina and its area of extraterritorial jurisdiction, is hereby divided into the following primary use districts.

(Ord. 011106.1, passed 11-6-01)

§ 151.061 R-20 RESIDENTIAL DISTRICT.

The R-20 Residential District is established as a district in which the principal use of the land is for low density residential or agricultural uses and to provide and protect low density residential areas for those desiring that type of environment. The R-20 district also permits associated public and private facilities typically associated with such districts.

(Ord. 011106.1, passed 11-6-01)

§ 151.062 R-15 RESIDENTIAL DISTRICT.

The R-15 Residential District is established as a district in which the principal use of land is for medium density residential uses and associated public and private facilities typically associated with such districts.

(Ord. 011106.1, passed 11-6-01)

§ 151.063 R-15TH RESIDENTIAL DISTRICT - TOWNHOUSES.

The R-15TH Residential Townhouse District is a district in which the principal use of land is for townhouses and townhouse development as defined herein.
(Ord. 011106.1, passed 11-6-01)

§ 151.064 R-10 RESIDENTIAL DISTRICT.

The R-10 Residential District is a district in which the principal use of land is for medium density, one, two and multi-family dwellings and associated public and private facilities typically associated with such districts.
(Ord. 011106.1, passed 11-6-01)

§ 151.065 I-1 INSTITUTIONAL DISTRICT.

The I-1 Institutional District is established primarily to accommodate institutional uses and facilities customarily associated with such institutional uses.
(Ord. 011106.1, passed 11-6-01)

§ 151.066 O & CS OFFICE AND CONSUMER SERVICES DISTRICT.

The O & CS Office and Consumer Services District is established as a district in which the principal use of land is for business and general offices and consumer service facilities catering to the general public but excluding retail sales facilities.
(Ord. 011106.1, passed 11-6-01)

§ 151.067 B-1 BUSINESS DISTRICT.

The B-1 Business District is established as a district in which the principal use of land is to provide for general retail and consumer services for the jurisdiction in a central business location.
(Ord. 011106.1, passed 11-6-01)

§ 151.068 B-2 BUSINESS DISTRICT.

The B-2 Business District is established as a district in which retail and consumer services are provided in locations to serve surrounding neighborhoods with primary and convenience retail goods and services.
(Ord. 011106.1, passed 11-6-01)

§ 151.069 M-1 MANUFACTURING DISTRICT.

The M-1 Manufacturing District is established as a district in which the principal use of land is for manufacturing, industrial and warehousing uses located on large tracts buffered from adjoining residential neighborhoods.
(Ord. 011106.1, passed 11-6-01)

§ 151.070 CONDITIONAL USE DISTRICTS ESTABLISHED: PURPOSES SET FORTH.

(A) There is also established a Conditional Use District (CUD) which corresponds to each of the districts authorized by this chapter as follows:

R-20 - CUD	O & CS -CUD
R-15 - CUD	B-1 -CUD
R-15TH-CUD	B-2 - CUD
R-10 - CUD	M-1 - CUD
1-1 - CUD	

(B) It is recognized that certain types of zoning districts would be inappropriate at certain locations in the absence of special conditions. Where the applicant for rezoning desires property to be rezoned to such a district in such situations, the Conditional Use District is a means by which such special conditions can be imposed in the furtherance of the purpose of this chapter. The Conditional Use District classification will be considered for rezoning only upon request of a property owner. If for any reason any condition imposed pursuant to these regulations is found to be illegal or invalid or if the applicant should fail to accept any condition, it is the intent of this chapter that the authorization of such Conditional Use Permit shall be null and void and of no effect and that proceedings shall be instituted to rezone the property to its previous zoning classification.

(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.071 DISTRICT BOUNDARIES SHOWN ON ZONING MAP.

The boundaries of the districts are shown on the map accompanying this chapter and made a part hereof entitled "Official Zoning Map, Boiling Springs, North Carolina," The Zoning Map and all the notations, references and amendments thereto, and other information shown thereon are hereby made a part of this chapter the same as if such information set forth on the map were all fully described as set out herein. The Zoning Map is posted at the Boiling Springs Town Hall and is available for inspection by the public.

(Ord. 011106.1, passed 11-6-01)

§ 151.072 RULES GOVERNING BOUNDARIES.

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

(A) Where district boundaries are indicated as approximately following the center lines of streets or highways, street or railroad right-of-way lines or such lines extended, such center lines, street or railroad right-of-way lines shall be construed to be such boundaries;

(B) Where district boundaries are so indicated that they approximately follow platted lot lines, such lot lines shall be construed to be said boundaries;

(C) Where district boundaries are so indicated that they are approximately parallel to the center lines of streets, highways, or railroads, or right-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the Zoning Map. If no distance is given, such dimension shall be determined by use of the scale shown on said Zoning Map;

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(D) Where any street or alley is hereafter officially closed, vacated or abandoned, the zoning district adjoining each side of the street or alley shall be automatically extended to the center of the street or alley, and all lands which are included in the closed portion shall thereafter be subject to the regulations of the extended districts;

(E) Boundaries indicated as approximately following town limit lines shall be construed to follow such town limit lines;

(F) Where district boundaries are indicated as following topographic contours, drainage divides or specific measured distances such features shall be construed to be such boundaries;

(G) Boundaries indicated as approximately following the centerlines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such centerlines;

(H) Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map;

(I) Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map, or if further uncertainty exists as to the location of boundaries or applicability of zoning districts, the Board of Adjustment shall interpret the intent of the Zoning Map as to the location of such boundaries, and the applicability of such districts.

(Ord. 011106.1, passed 11-6-01)

§ 151.073 DETERMINING PERMITTED AND CONDITIONAL USES, PRINCIPAL USES AND MIXED USES.

(A) The listings of Permitted and Conditional Uses in the various districts in this chapter are considered to be specific in regard to the types of uses intended for each of the various districts. In determining proposed uses, the Zoning Administrator shall classify the form and function of the use. When a proposed use is not specifically listed in the Table of Permitted and Conditional Uses, the Zoning Administrator shall determine if the use is the same as, or manifestly similar to, a listed use in form and function. If the Zoning Administrator finds that the proposed use is the same as, or manifestly similar to, a listed use, the Administrator shall classify the proposed use as the listed use. In doing so the Zoning Administrator may consult the North American Industry Classification System published by the U.S. Office of Management and Budget. If the Zoning Administrator finds that a proposed use is not the same as, or is not manifestly similar to, a listed use, the Administrator shall classify the proposed use as not permitted. In each case, the Zoning Administrator shall maintain a written record of such determinations.

(B) In determining what is a principal use, the principal use shall be considered as the primary purpose or function that a lot or structure serves or is proposed to serve. An accessory use shall be considered a structure or use that:

(1) Is clearly incidental to and customarily found in connection with a principal building or use;

(2) Is subordinate to and serves a principal building or a principal use;

(3) Is subordinate in area, extent, or purpose to the principal building or principal use served;

(4) Contributes to the comfort, convenience, or necessity of occupants, business, or industry in the principal building or principal use served; and

(5) Is located on the same lot and zones the same as the principal building or use served.

(C) Two or more principal uses may, in some cases, be permitted to occupy the same land or building as long as each use is a permitted use.
(Ord. 011106.1, passed 11-6-01)

§ 151.074 TABLE OF AREA, YARD AND HEIGHT REQUIREMENTS.

See table on following page.
(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06; Am. Ord. 060905.01, passed 11-7-06)

SCHEDULE OF AREA, YARD, AND HEIGHT REQUIREMENTS.

District	Minimum Lot Area -- Square Feet (e)	Square Feet per Dwelling Unit (e)	Lot Width at the Building Setback Line -- Feet (See Lot Width Definition)	Front Setback -- Feet	Side Setback -- Feet (a)	Rear Setback -- Feet	Maximum Height -- Feet
R-20 Single-family	30,000	30,000	100	40	20	30	35
R-15 Single-family	15,000	15,000	50	30	15	25	35
R-15TH Single-family Attached 2 or more units	15,000 first 2 units	7,500 each additional unit after first 2 units	40 each unit	30	15	25	35
R-10							
Single-family	10,000	10,000	80	30	15	25	35
Two-family	20,000	10,000	80	30	15	25	35
Multi-family	20,000 for first unit	6,500 for each additional unit after first unit	80	30	15	25	35
I-1	20,000	N/A	100	40	20	30	35
O&CS	N/A	N/A	N/A	20	20	30	35
B-1	N/A	N/A	N/A	20	(b)	(c)	35
B-2	N/A	N/A	N/A	20	20	30	35
M-1	N/A	N/A	N/A	50	25	25	35
<p>(a) Corner lots in all districts add five feet to each side. The side setback does not apply to units that are permitted to be attached.</p> <p>(b) No side yard is required in the B-1 District except where adjoining an R-20, R-15, R-15TH or R-10 District, in which case a rear yard of 20 feet shall be required.</p> <p>(c) No rear yard is required in the B-1 District except where adjoining an R-20, R-15, R-15TH or R-10 District, in which case a side yard of 20 feet shall be required.</p> <p>(d) The lot sizes required for the various districts in this section were drawn upon the assumption that adequate water supply and sewage disposal systems are available to this and every lot. The lack of adequate systems for one or both facilities may require larger lot areas, or in some instances, because of Health Department standards, may not permit development as intended.</p>							

DISTRICT REGULATIONS**§ 151.080 PRIMARY ZONING DISTRICTS REQUIREMENTS.**

The Primary Zoning Districts as established in § 151.060 shall comply with all of the general and specific requirements of this chapter and in particular shall comply with the following standards and requirements.

- (A) *Uses.* See Appendix A, entitled Table of Permitted and Conditional Uses.
- (B) *Dimensional requirements.* See § 151.074, entitled Table of Area, Land, and Height Requirements.
- (C) *Location of accessory buildings and structures.* See § 151.020.
- (D) *Off-street parking and loading.* Off-street parking and loading shall be provided in accordance with the requirements of §§ 151.100 - 151.102.
- (E) *Signs.* Signs shall be regulated by the requirements of §§ 151.110 - 151.126.
- (F) *Landscaping; impervious surface limitations.* Landscaping and impervious surfaces shall be regulated in accordance with the requirements of §§ 151.140 and 151.141.
(Ord. 011106.1, passed 11-6-01)

§ 151.081 CONDITIONAL USE DISTRICT REQUIREMENTS.

Only those uses authorized as permitted uses or conditional uses in the zoning district with which the CUD corresponds shall be eligible to be permitted, and all other requirements of the corresponding district shall be met as minimum standards. In addition, within a CUD no use shall be permitted except pursuant to a Conditional Use Permit authorized by the Board of Commissioners, which shall specify the use or uses authorized. Such permit may further specify the location on the property of the proposed use or uses, the number of dwelling units, the location and extent of supporting facilities such as parking lots, driveways and access streets, the location and extent of buffer areas and other special purpose areas, the timing of development, the location and extent of right-of-way and other areas to be dedicated for public use, and other such matters as the applicant may propose as conditions upon the request, but not to include conditions not generally a part of land development controls. In granting a Conditional Use Permit the Board of Commissioners may impose such additional reasonable and appropriate safeguards upon such permit, as it may deem necessary in order that the purpose and intent of this chapter are served, public welfare secured, and substantial justice done. Only those conditions mutually approved by the Board of Commissioners and the applicant may be incorporated into the Conditional Use Permit. The authorization of a Conditional Use Permit in any CUD for any use which is permitted only as a Conditional Use in the zoning district which corresponds to the CUD shall preclude any requirement for obtaining a Conditional Use Permit for any such use from the Board of Adjustment.
(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

OFF-STREET PARKING AND LOADING

§ 151.100 OFF-STREET PARKING REQUIREMENTS.

There shall be provided at the time of the erection of any building, or at the time any principal building is enlarged or increased in capacity by adding Dwelling Units, guest rooms, seats, or floor area; or before conversion from one type of use or occupancy to another, permanent off-street parking space in the amount specified by this section. Such parking space may be provided in a parking garage or parking lot constructed in accordance with § 151.101.

(A) *Certification of minimum parking requirements.* Each application for zoning permit submitted to the Zoning Administrator as provided for in this chapter shall include information as to the location and dimensions of off-street parking and the means of entrance and exit to such space. This information shall be in sufficient detail to enable the Zoning Administrator to determine whether or not the requirements of this subchapter are met.

(B) *Definition of a parking space.* The storage space of one automobile. The size of a parking space shall be in accordance with geometric design principles for the type space and lot. (See Table, Geometric Design Principles.)

(C) *Minimum off-street parking requirements.* The following off-street parking space shall be required:

<u>Classification</u>	<u>Off-Street Parking Requirement</u>
Residential:	
Housing designed for and used by the elderly	One space per two dwelling units
Incidental home occupations	One space in addition to the residential requirement
Multi-family residences including townhouses	Two spaces per dwelling unit
Congregate care	One space per two beds
Single-family and two-family residences (may be in a single drive with one car behind the other)	Two spaces per dwelling unit
Commercial and Industrial:	
Auto service station and/or repair shops	Three spaces per service bay, plus one space per wrecker or service vehicle and two spaces per gas dispenser
Auto sales	Three spaces plus one space per 400 square feet of building area devoted to sales
Bank and consumer financial services	One space per 200 square feet of gross floor area
Barber & Beauty shop and other similar personal services	Two spaces per operator
Car washes	Three spaces per service bay
Delivery, ambulance, taxi and other similar services	One space per vehicle, plus one space for each two employees

Classification	Off-Street Parking Requirement
Commercial and Industrial (cont'd):	
Drive-through service such as banks, drive-through restaurants, automobile service stations, dry cleaners, car washes and similar Uses (in addition to Use requirements)	Stacking for four vehicles at each bay window or lane
Dry cleaners or laundries (self-service)	One space per four rental pieces of equipment
Eating establishments and nightclubs serving meals	Five spaces, plus one for every three seats
Fire stations	One space per person on duty on an average shift
Hotel, motel, motor court and similar Uses	One space per unit, plus two spaces per three employees on a normal shift
Mobile home sales	Five spaces, plus one space per 10,000 square feet of gross land area
Manufacturing, industrial, warehousing and wholesaling	One space per two employees on the largest shift
Post offices	One space per 200 square feet of public service area, plus two spaces per three employees
Retail sales except those listed below	One space per 250 square feet of gross floor area
Retail sales of bulky items which require large amounts of floor space to the number of items offered for sale such as antiques, appliances, art, bicycles, carpet, floor covering, furniture, motorcycles, paint, upholstery and similar uses	One space per 300 square feet gross floor area
Retail uses dealing primarily in service and/or repair	One space per 300 square feet of gross floor area
Designed shopping centers	Four spaces per 1,000 square feet of gross floor area (optional to computing parking on a store by store basis)
Radio, TV stations	Two spaces per three employees on the largest shift
Transportation terminals such as airports, bus terminals and railroad passenger stations	One space per four seating accommodations for waiting passengers, plus one space for each two employees on the largest shift
Wholesale with related retail	One space per three employees on the largest shift, plus additional spaces per square foot of gross floor area devoted to retail sales as applicable from "Retail sales" schedule above

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Classification	Off-Street Parking Requirement
Office and Institutional:	
Bed and Breakfast Inn	Two spaces plus one space per room for rent
Care facilities (six or fewer persons)	One space per teacher or staff, plus space for one car dropoff and pickup
Care facilities (more than six persons)	One space per teacher or staff, plus stacking for four cars for dropoff and pickup or stacking for one car per ten persons, whichever is greater
Churches	One space per four seats in the largest assembly room
Dormitories	One space per four beds
Fraternity, sorority houses	One space per two beds
Elementary and junior high schools	Five spaces, plus one space per teacher or staff
Funeral homes	One space per four seats in the main chapel or if no main chapel, one space per 300 feet of gross floor area
General offices	One space per 200 square feet of net rentable area (Net rentable area shall be considered to be 80% of gross floor area unless otherwise shown by applicant)
Hospital, nursing and convalescent homes	One space per four beds, plus one space per staff doctor and other medical practitioners
Library, museum and art galleries	One space per 300 square feet of gross floor space
Medical, dental and similar offices	Four spaces per doctor or practitioner, plus one for each employee
Nursing, convalescent homes designed and used primarily for the elderly	One space per six beds, plus one space per staff doctor or practitioner
Orphanage, juvenile homes	One space per four beds
Senior high schools, trade and vocational schools, colleges, and universities	One space per five students and one space for each employee
Auditoriums, stadiums, assembly halls and gymnasiums located on a high school, college or university campus	One space per 12 fixed seats and one space per 12 movable seats in largest assembly room

<u>Classification</u>	<u>Off-Street Parking Requirement</u>
Recreation:	
Amusements, dance halls, nightclubs not serving meals	One space per three persons in designed capacity, plus two spaces per three employees on the largest shift
Auditoriums, stadiums, assembly halls, convention centers, gymnasiums, fraternal or social clubs or lodges, community recreation center	One space per three fixed seats and one space per three movable seats in the largest assembly room
Bowling alleys	Four spaces per lane
Golf courses	Four spaces per tee
Indoor movie theaters	One space per three fixed seats and one space per three movable seats
Public swimming pools	One space per 100 square feet of water area and deck
Recreation uses such as golf driving range, miniature golf, tennis, billiards or pool centers or similar uses	Two spaces per tee, green, court and/or other method of participation however styled
Recreation facilities such as community center, swimming pool, tennis courts, and similar activities when located in conjunction with a townhouse, condominium, group housing or homeowner association development	One space per 25 memberships or tenants

(D) *Combination of required parking spaces.* The required parking spaces for any number of separate uses may be combined in one lot or parking structure, but the required parking spaces assigned to one use may not be assigned to another use at the same time.

(E) *Lighting.* Lighting shall conform to the requirements of § 151.040.

(F) *Remote parking.* On all off-street parking lots, the required space shall be provided on the same plot with the use or on a lot separated therefrom by not more than 400 feet, except for residential uses which must be provided on the same plot.

(G) Where provision of required off-street parking for a building or other uses established subsequent to the adoption of this section involves one or more parcels or tracts of land that are not a part of the plot on which the principal use is situated, the applicant for a permit for the principal use shall submit with his application for a zoning permit an instrument duly executed and acknowledged, which subjects the parcels or tracts of land to parking uses in connection with the principal use for which it is made available. The applicant shall cause said instrument to be registered in the office of the Register of Deeds upon the issuance of a zoning permit.

(H) Parking in one zoning district in connection with a use not permitted in that district shall be permitted in accordance with the following:

(I) Any use in any zoning district with a lower number may park in any district with a higher number.

- | | |
|------------|------------|
| (1) R-20 | (6) O & CS |
| (2) R-15 | (7) B-1 |
| (3) R-15TH | (8) B-2 |
| (4) R-10 | (9) M-1 |
| (5) I-1 | |

(J) In addition, any use located in one zoning district which is also a permitted use in another zoning district may also park in such other zoning district in which the use is permitted.
(Ord. 011106.1, passed 11-6-01; Am. Ord. 120626.02, passed 6-26-12)

§ 151.101 PARKING LOT IMPROVEMENT, DESIGN AND LOCATION REQUIREMENTS.

(A) All off-street parking lots including exits, entrances, drives and parking areas shall:

(1) Be designed to allow for traffic movement in accordance with the geometric design principles table;

(2) Have physical access to a public street;

(3) Be so designed that all access to public street is by forward motion;

(4) If required parking be paved and maintained with concrete, asphalt or similar material of sufficient thickness and consistency to support anticipated traffic volumes and weights. If not required to be paved be graded, properly drained, stabilized and maintained to prevent dust and erosion;

(5) Be continuously provided and maintained as long as the use which they serve exists.

(B) Any driveway connecting to a public street from a parking lot for six or more cars that is not required to be paved shall be treated with a hard surface for the portion of the driveway within 20 feet of the public street travelway.

(C) Parking is prohibited in the first ten feet adjoining the public street of the required front yard setback in all districts except the B-1 District. Such ten foot area shall be landscaped with a treatment as provided for in § 151.140.

(Ord. 011106.1, passed 11-6-01)

§ 151.102 OFF-STREET LOADING REQUIREMENTS.

Every structure or building used for trade, business or industry hereafter erected, except in the B-1 District, shall provide space as indicated herein for the loading, unloading and maneuvering space of delivery vehicles off the street or public alley. Such space shall have access to a public alley, private driveway, or if such cannot reasonably be provided, to a public street. For the purpose of this section an off-street loading space (exclusive of adequate access drives and maneuvering space) shall have a minimum dimensions of 12 feet by 40 feet and an overhead clearance of 14 feet in height above the alley or street grade.

(Ord. 011106.1, passed 11-6-01)

Type of Use

Required Off-Street Loading Spaces

Retail business

One space for each 20,000 square feet of gross floor area or fraction thereof

Wholesale and Industries

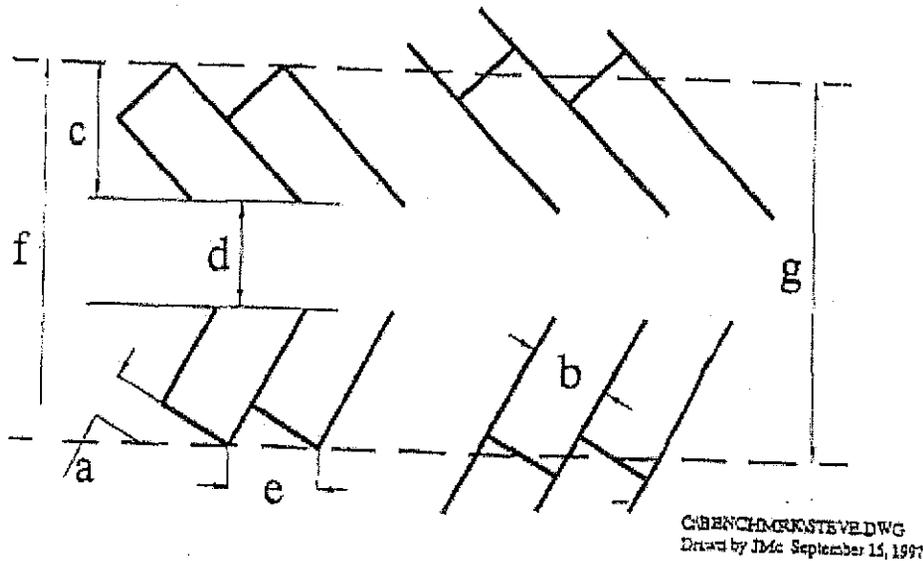
One space for each 20,000 square feet of gross floor area or fraction thereof

Office and Institutions

One space for each 20,000 square feet of gross floor area or fraction thereof

GEOMETRIC DESIGN PRINCIPLES

a	b	c	d	e	f	g
Parking angle	Stall width	Stall depth (to curb)	Aisle width	Curb length	Centerline to width of two access aisle curb to curb	Centerline row bin with between them striping centerlines
degrees	feet	feet	feet	feet	feet	feet
	9.0	9.0	12.0	23.0	30.0	
0	9.5	9.5	12.0	23.0	31.0	
	10.0	10.0	12.0	23.0	32.0	
	9.0	17.3	11.0	18.0	45.6	37.8
30	9.5	17.8	11.0	19.0	46.6	38.4
	10.0	18.2	11.0	20.0	47.4	38.7
	9.0	19.8	13.0	12.7	52.6	46.2
45	9.5	20.1	13.0	13.4	53.2	46.5
	10.0	20.5	13.0	14.1	54.0	46.9
	9.0	21.0	18.0	10.4	60.0	55.5
60	9.5	21.2	18.0	11.0	61.4	55.6
	10.0	21.2	18.0	11.5	61.0	58.0
	9.0	19.0	25.0	8.5	63.0	
90	9.5	19.0	24.0	9.5	62.0	
	10.0	19.0	24.0	10.0	62.0	



SIGNS

§ 151.110 GENERAL PROVISIONS.

The following general provisions shall apply to signs within the jurisdiction of this chapter.
(Ord. 011106.1, passed 11-6-01)

§ 151.111 IN GENERAL.

The regulations in this subchapter specify the number, types, sizes, heights, and locations of signs which are permitted within the jurisdiction of this chapter. It shall be unlawful for any person to erect, place, alter or maintain a sign in the jurisdiction of this chapter except in accordance with the provisions of this subchapter.

(Ord. 011106.1, passed 11-6-01)

§ 151.112 DETERMINATION OF SIGN COPY AREA.

In measuring the copy area of a sign permitted under this subchapter, the entire face of the sign shall be included. Where both sides of a double-faced sign contain lettering or other allowable display, one side only shall be used to compute the allowable copy area of the sign. Where the sign consists of individual letters, numbers, characters, figures or displays attached in some manner to a building or a sign face of irregular shape, the sign copy area shall include the area of the smallest circle, square or rectangle that can encompass the total sign area composed of letters, numbers, characters, figures or displays or the irregular shaped sign face. Where signs have appendages or additions, such as "pop-ups" or "cutouts" that extend beyond the main sign copy area, the area of such appendages or additions shall

be measured separately, but included in the total sign copy area. Also to be included in the total sign copy area shall be any area designed for changeable copy. Where allowed, portable signs shall be counted toward permitted maximum total aggregate sign copy area and maximum number of freestanding signs on each public street.

(Ord. 011106.1, passed 11-6-01)

§ 151.113 DETERMINATION OF SIGN HEIGHT.

The height of a sign erected within 30 feet of a street right-of-way line shall be the distance from the grade level of the nearest edge of the street to the top of the sign or sign structure, whichever is greater. The height of all signs farther than 30 feet from a street right-of-way line shall be the distance from the grade level where the sign is erected to the top of the sign or sign structure, whichever is greater.

(Ord. 011106.1, passed 11-6-01)

§ 151.114 DETERMINATION OF SIGN SETBACK; FREESTANDING SIGN SETBACK.

In determining setback, measurement shall be made from the nearest street right-of-way line. All freestanding signs shall setback a minimum of five feet from any street right-of-way.

(Ord. 011106.1, passed 11-6-01)

§ 151.115 PROTECTION UNDER FIRST AMENDMENT RIGHTS.

Any sign, display or device allowed under this subchapter may contain, in lieu of any other copy, any otherwise lawful noncommercial message which does not direct attention to a business operated for profit, or to a commodity or service for sale; provided that such sign complies with the size, lighting, spacing, setback and other requirements of this subchapter. This includes signs requiring and not requiring a zoning permit.

(Ord. 011106.1, passed 11-6-01)

§ 151.116 CHANGEABLE COPY.

Unless otherwise specified by this subchapter, any sign herein allowed may use manual, or electrically or mechanically activated changeable copy.

(Ord. 011106.1, passed 11-6-01)

§ 151.117 ILLUMINATED SIGNS.

Signs which are illuminated from within or from an external source must be illuminated in a manner which avoids glare or reflection which in any way or manner interferes with traffic safety. Any external source of illumination, such as spotlights or floodlights shall be placed so that the source is not directly visible from any adjacent residential zoning districts.

(Ord. 011106.1, passed 11-6-01)

§ 151.118 ZONING PERMIT REQUIRED.

(A) With the exception of those signs specifically exempt from requiring a zoning permit, it shall be unlawful for any person to print, paint, stand, stain, engrave, construct, place, erect, illuminate, attach, suspend, enlarge, move, relocate, replace or otherwise put into use or materially alter any sign or cause the same to be done, without first obtaining a zoning permit for such sign from the Zoning Administrator.

(B) Notwithstanding the above, changing or replacing the permanent copy of an existing lawful sign shall not require a permit, provided the copy change does not change the nature of the sign such as to render the sign in violation of this chapter.

(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.119 CONSTRUCTION STANDARDS.

All signs shall be constructed according to the requirements of the North Carolina State Building Code, as amended.

(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.120 MAINTENANCE REQUIRED.

(A) Every sign and its support, braces, guys, anchors, and electrical equipment shall be maintained in safe condition at all times. All signs shall be kept in a state of good repair and aesthetic condition, free from defective, rusting, or missing parts (such as broken sign facing, broken supports, loose appendages or struts, disfigured, cracked, ripped or peeling paint or poster paper) or missing letters or numbers and shall be able to withstand the wind pressure as prescribed in the North Carolina State Building Code. Illuminated signs shall not be allowed to operate with only partial illumination. The area within ten feet in all directions of the base of a freestanding sign shall be kept clear of debris and undergrowth.

(B) Signs that are structurally unsafe and thereby endanger the public safety shall be removed unless they are repaired and made to comply with the requirements of the North Carolina State Building Code, as amended.

(C) The message of a sign face may be changed at any time.

(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.121 DANGEROUS OR UNSAFE SIGNS.

(A) If the Zoning Administrator shall find that any sign is dangerous or is menace to the public, he shall give written notice of such violations to the owner of the sign, or by leaving said notice with the manager or other person who is apparently in charge of the premises or by affixing a copy of the notice to the sign, sign structure or building for a period of five days. The notice shall set forth the nature of the violation and order the violator to repair the sign in such a manner to be approved by the Zoning Administrator in conformance with the provisions of this subchapter or remove the sign forthwith in the case of imminent instability or immediate danger of falling, and in any case within ten days of receipt.

(B) If within ten days the notice is not complied with, the Zoning Administrator shall have the authority to remove the sign at the recipient's expense and to destroy or otherwise dispose of same.

(C) In cases of emergency, the Zoning Administrator may cause the immediate removal of a dangerous or unsafe sign without notice.

(Ord. 011106.1, passed 11-6-01)

§ 151.122 REMOVAL & DISPOSAL OF SIGNS IN RIGHT-OF-WAY.

The Zoning Administrator shall possess the authority to remove and destroy or otherwise dispose of any sign unlawfully placed within the right-of-way of any street.

(Ord. 011106.1, passed 11-6-01)

§ 151.123 SIGNS EXPRESSLY PROHIBITED.

The following signs, components and characteristics are expressly prohibited within all zoning districts.

(A) *Simulated public safety, warning or traffic signs.* Signs by their location, color, illumination, size, shape, nature, message or appearance tend to obstruct the view of or be confused with official traffic, safety or warning signs or lights or other devices erected by governmental agencies. This prohibition includes signs having no bona fide safety necessity, involving the terms "CAUTION," "DANGER," "SLOW," "STOP" OR "YIELD," or which utilize geometric figures, symbols, lights, location or message not unlike official traffic, safety or warning signs, signals or lights. Provided, however, this provision is not intended to prevent the placement on private property of signs with "stop," "yield" or other such wording or design where such is necessary for traffic control or other such legitimate notice to the public.

(B) *Snipe signs.* Signs placed upon or attached to any curb, sidewalk, utility pole, post, fence, hydrant, bridge, another sign or other surface, public bench, street light, or any tree, rock or other natural object located on, over or across any public street or public property. Provided, however, this provision shall not apply to the posting of public interest, security and warning signs nor to street signs placed upon poles by governmental units for designating the names of streets.

(C) *Flashing signs.* Signs or devices with flashing, intermittent, animated or changing intensity of illumination. Provided, however, traffic signals, railroad crossing signals and other official warning or regulatory signs and electronically controlled message centers or reader boards where different copy changes, involving alphabetical or numerical characters only, present messages of a public service or commercial nature shall not be considered flashing signs.

(D) *Motion signs.* Signs or devices designed to attract attention, all or any part of which use movement or apparent movement by fluttering, revolving, rotating, spinning, swinging, animation or moving in some other manner and are set in motion by movement of water or the atmosphere or by mechanical, electrical or any other means. This shall not apply to authorized temporary signs.

(E) *Signs below minimum clearance.* Signs, marquees, canopies and awnings with vertical clearance of less than eight feet above sidewalks and pedestrian areas and less than 14 feet above parking or vehicular passage areas.

(F) *Vehicle signs.* Signs placed upon, painted on, attached to or displayed on parked vehicles or trailers, where the primary purpose of the vehicle or trailer is to advertise a product or business or to direct people to a business or activity.

(G) *Signs obstructing motorist visibility.* Signs that substantially interfere with the view necessary for motorists to proceed safely through intersections or to enter onto or exit from public streets or private roads or driveways or that obstruct the motorists view of approaching, merging or intersecting traffic.

(H) *Signs in rights-of-way.* Any sign erected in or over any public right-of-way except for major special event signs by special permit; and governmental signs.

(I) *Signs emitting glare.* Signs with light sources or reflectivity of such brightness that result in glare, blinding or any other such adverse effect on motorist vision or into or upon any residential building not related to the signs; or which interfere with the effectiveness of, or obscures an official traffic sign, device or signal.

(J) *Pennants or streamers.* Pennants, streamers or flags consecutively strung together.

(K) *Obscene signs.* Signs containing words or graphics that are obscene, as defined in G.S. § 14-190.1.

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(L) *Off-premises signs.* A sign or structure, pictorial or otherwise, regardless of size or shape that draws attention to or communicates information about a business, profession, service, commodity, product, accommodation, event, attraction or other enterprise or activity that exists or is conducted, manufactured, sold, offered, maintained or provided at a location other than on the premises where the sign is located. This definition does not include governmental, traffic, directional, or regulatory signs or notices of the federal, state, county or town government or their public agencies or off premises signs specifically permitted by this subchapter.

(M) *Projecting signs.* Signs which project from and are supported by a building or other structure into the public right-of-way only when such projection is greater than 18 inches and where the building is built to the right-of-way line as a legally existing structure.

(N) *Roof signs (above roof line).* Signs erected in whole or in part on, upon or over the roof or parapet of a building or structure and which is wholly or partially dependent upon the roof of the building or structure for support.

(O) *Portable and movable signs.* Portable and movable signs which are not permanently affixed in accordance with the North Carolina State Building Code for freestanding signs except as are permitted as temporary signs.

(P) *Unspecified temporary signs.* Temporary signs not expressly permitted by this subchapter.

(Q) *All other signs not specifically permitted.* Other signs not expressly allowed by this subchapter. (Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.124 SIGNS PERMITTED WITHOUT A ZONING PERMIT.

The following signs and devices shall be permitted without the issuance of a zoning permit.

(A) *Public (governmental, utility) signs.* Signs erected by, on behalf of, or pursuant to the authorization of a governmental body, including legal notices, identification and informational signs, and traffic warning, directional or regulatory signs. Official signs of a non-commercial nature erected by public utilities, including safety, warning and informational signs.

(B) *Warning (health, safety, hazard) signs.* Temporary or permanent signs erected by government agencies, public utility companies or construction companies to warn of danger or hazardous conditions, including signs indicating the presence of underground cables, gas lines and similar devices or signs providing directions around such conditions.

(C) *Signs not legible off-premises.* Signs which are not legible from the boundaries of the lot or parcel upon which they are located, or from any public thoroughfare or right-of-way.

(D) *Flags (non-advertising) (non-informational).* Flags except when such are used in connection with a commercial promotion or as an advertising device or as an integral part of a sign regulated under this subchapter; provided such flags are displayed on permanent pole structures. Failure to display such flags in a manner which meets congressional protocol will be a violation of this chapter. Plain flags with no advertising or information provided such flags are displayed on permanent pole structures and are properly maintained. Proper maintenance shall not permit flags which are torn, ripped, frayed, separated from their grommets or incompletely affixed to their pole structures. All flags used in connection with a commercial promotion as an advertising device or as an integral part of a commercial sign must comply with the regulations of this subchapter for area, height, number and location.

(E) *Incidental object or product signs.* Small decals consolidated and affixed to window or door panes, such as indicating membership in a business group or credit cards accepted at the establishment. Entrance and exit signs with small, incidental logos attached directing traffic into or out of a parking area or drive. Any sign, painted or affixed to an object or product, where the sign is clearly incidental and accessory to the primary use and purpose of the object or product including, but not limited to, product dispensers and point of purchase displays for newspapers, soft drinks, gasoline, ice, telephone, ATM or similar items which indicate the contents of the machine, the name or logo of the supplier, the price and/or operating instructions.

(F) *Signs required by law.* Legal notices and signs required by law, statute or regulation.

(G) *Transportation facilities signs.* Informational signs indicating bus stops, taxi stands, train stations and similar transportation facilities.

(H) *Campaign signs at polling places.* Political signs displayed at polling places provided they are displayed in compliance with general law only on the day of the election is held and must be removed within 72 hours of the close of voting.

(I) *Street numbers.* Display of street numbers on residential and non-residential buildings, structures and mailboxes.

(J) *Handicapped signs.* Handicapped signs as required by the Americans With Disabilities Act.

(K) *Window signs.* Signs placed on or attached to the interior side of a window or door glass of a building by means of adhesive, paint or manufacturing process intended for viewing from the exterior of such buildings; or a sign within a building, placed no more than 12 inches behind the window which is visible through the window.

(L) *Temporary signs.* Temporary signs subject to the following limitations:

Type (temporary)	Maximum No.	Maximum copy area (sq. ft.)	Maximum height if freestanding (vert. ft.)	Maximum display time
Grand opening	1	32	10	Once for 30 days
Going out of business	1	32	10	Once for 30 days
Special event of civic or non-profit organization	2	32	8	30 days prior to event
Remodeling/repair	1	4	6	Until work completed
Construction - one or two family dwelling	1	4	6	Until construction completed
Construction - other than one or two family dwelling	2	32	14	Until construction completed
Construction - announcement	2	32	14	Until construction completed

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Type (temporary)	Maximum No.	Maximum copy area (sq. ft.)	Maximum height if freestanding (vert. ft.)	Maximum display time
On-premises (real-estate sale/lease/rent/ of one or two family dwelling or lot)	1	6	6	Until sale closed or rent/lease transaction finalized
Off-premises (real-estate sale/lease/rent/ of one or two family dwelling or lot)	1	3	4	Until sale closed or rent/lease transaction finalized
On-premises (real-estate sale/lease/rent/ of other than one or two family dwelling or lot)	2	32	12	Until sale closed or rent/lease transaction finalized
Off-premises (real-estate sale/lease/rent/ of other than one or two family dwelling or lot)	4	6	6	Until sale closed or rent/lease transaction finalized
Non-residential (such as commercial, industrial)	2	32	10	Seven days in any consecutive 90 day period

Temporary signs which do not meet the provisions of this subsection shall be considered in violation of the chapter. Only Temporary (political), Temporary (real estate), and Temporary (special event of a civic or non-profit organization) signs shall be permitted off-premises. No temporary sign shall be illuminated. Temporary signs shall be removed within five days from the date the purpose for such sign ceased to exist.

(M) *Miscellaneous signs.* Miscellaneous signs subject to the following limitations:

Type	Maximum No.	Maximum copy area (sq. ft.)	Maximum height if freestanding (vert. ft.)
Public interest, security warning (No trespassing, soliciting, hunting or fishing/posted/private parking/danger/warning)		1	4
Home occupation	1	3	4
Open/closed hours	2	2	6
Permanent professional or business announcement (wall)	1	2	
Building memorial (wall)	1	2	
Philosophical, Religious, Educational or other Non-Commercial	2	2	4
Occupant/address (ground or wall)	2	2	6
Private drive	1	2	6
Informational/instructional (Traffic directions, restrictions or arrows, entrance, exit, location of restrooms, public telephones, parcel pick-up, freight or service entrances, parking/ loading areas and the like)		10	4

Miscellaneous signs which do not meet the provisions of this section shall be considered in violation of the chapter. Only Private Drive signs shall be permitted off premises. No miscellaneous signs shall be illuminated.

(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.125 SIGNS PERMITTED WITH A ZONING PERMIT IN ALL ZONING DISTRICTS.

The following signs are permitted in all zoning districts upon issuance of a zoning permit provided that stated specific requirements, conditions and stipulations are met:

(A) All signs permitted without a zoning permit and signs permitted by special permit;

(B) On-premises signs identifying a single-family residential subdivision; apartment, townhouse, condominium or other multi-family residential complex or recreational facility not exceeding 32 square feet in area. There shall be a limit of one double-faced sign or two single-faced signs for each road or driveway entrance to the development named on the sign. Such signs shall be limited to the name and the address of the premises and the on-site address and phone number of the resident agent and may be directly or indirectly illuminated. In addition one identifying sign for an accessory management or rental office not exceeding six square feet shall be permitted;

(C) One on-premises identification sign or bulletin board for each road or driveway entrance indicating the name and/or address of the premises, schedule of services or activities, hours of operation, name of person(s) in authority, founding date of the organization or other information relevant to the operation of a school, college, park, public swimming pool, church, synagogue or other place of worship, hospital, sanitarium, art gallery, museum, library, YMCA, YWCA, community building, recreation center, coliseum or convention center, not to exceed 32 square feet in area to be located on private property where the use occurs. Such signs may be directly or indirectly illuminated. An on-premises sign for a college, university, hospital, coliseum or convention center may exceed 32 square feet in area if approved by the Board of Commissioners as a special exception when the Board finds that the size and scale of said sign will be in keeping with the size and scale of the development and will not be detrimental to the surrounding properties;

(D) Signs not exceeding 32 square feet in area advertising the sale of subdivision lots, not more than one sign to be located on private property at each major approach to the subdivision; provided that the display of such signs shall be limited to a six-month period or until 75% of the lots are sold, whichever comes first, and may not be illuminated;

(E) One on-premises ground or wall sign not exceeding 32 square feet in area for a legal non-conforming use in a residential zoning district in which it is located. Illumination of such signs shall be permitted only between sunrise and 10:00 p.m.;

(F) On-premises signs identifying private country clubs, golf courses, swimming/tennis clubs, equestrian centers, lakes, cemeteries and similar facilities operated on a profit or non-profit basis not exceeding 32 square feet in copy area. There shall be a limit of one double-faced sign or two single-faced signs for each road or driveway entrance to the facility. Such signs shall be limited to the name, address, founding date and hours of operation and may be directly or indirectly illuminated;

(G) One on-premises identification sign for a convalescent home, nursing home, home for the care of children, medical clinic or dental clinic not exceeding 20 square feet in copy area. Such sign shall be limited to the name and address of the home or clinic and may be directly or indirectly illuminated;

(H) Signs which denote religious, charitable, fraternal, military or service organizations may be freestanding and may be located off-site, provided, however, that no one individually chartered organization may have more than one off-premises sign which shall be illuminated. A sign denoting a single chartered organization shall not exceed four square feet in area. A number of such signs may be placed on one structure, provided, however, the copy area of each individual sign does not exceed three square feet in copy area and the structure does not exceed 32 square feet in copy area;

(I) All freestanding signs permitted by this section in all zoning districts shall have a maximum height limit of eight feet and shall have a minimum setback of five feet from any public right-of-way. (Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.126 SIGNS FOR PERMITTED NON-RESIDENTIAL USES PERMITTED IN RESIDENTIAL DISTRICTS.

Signs for permitted non-residential uses in residential districts, other than those permitted with a zoning permit in all districts under the provisions of this section, shall be permitted under the provisions of the most restrictive non-residential district in which the uses are permitted except that sign copy area may not exceed 75% of the maximum size allowed.

(Ord. 011106.1, passed 11-6-01)

§ 151.127 SIGNS PERMITTED IN THE I-1, O & CS, B-1, B-2 AND M-1 ZONING DISTRICTS.

The following permanent signs are permitted, upon issuance of a zoning permit regarding the proposed sign(s), in the above zoning districts, provided that stated requirements, conditions and stipulations are met.

(A) On-premise signs for single office, commercial or industrial establishments or other uses are permitted as follows:

(1) *Type.* Attached or freestanding on premise;

(2) *Number.* Attached, no limit. Freestanding, one except two shall be permitted if the principal use has frontage on two or more public streets. If two freestanding signs are allowed, they shall be located at least 100 feet apart as measured using the shortest straight line distance between the two signs, and said signs shall front along the two separate streets and not along the same street;

(3) *Maximum area.*

(a) Attached signs shall not exceed 20% of the vertical or near vertical (in the case of mansard type roofs) area of the building front or wall on which the sign will be attached with a 200 square feet maximum per wall.

(b) Freestanding signs in the I-1, O & CS, B-1, and B-2 Districts shall not exceed 60 square feet. For corner lots where the owner elects to erect only one sign, the sign may be enlarged up to 80 square feet.

(c) Freestanding signs within the M-1 District may be up to 80 square feet. For corner lots where the owner elects to erect only one sign, said sign may be enlarged up to 100 square feet;

(4) *Maximum height.* Attached signs shall not extend above the top building roofline or parapet. Freestanding signs shall not exceed 15 feet in height, except that within the M-1 District may extend up to 20 feet in height, provided said signs are at least 300 feet from a residential district.

(B) On-premise signs for multi-tenant developments, such as shopping centers, business parks, university and hospital campuses and the like, are regulated as follows:

(1) *Type.* Attached or freestanding on premise;

(2) *Number.* Attached, no limit. Freestanding one, except two shall be permitted if the development has frontage on two or more public streets. If two freestanding signs are allowed they shall be located at least 100 feet apart as measured using the shortest straight-line distance between the two signs.

(3) *Maximum area.*

(a) Attached signs shall not exceed 20% of the vertical or near vertical (in the case of mansard type roofs) area of the building front or wall on which the sign will be attached;

(b) Freestanding signs within such developments shall not exceed 80 square feet for multi-tenant premises with five tenants or less. For multi-tenant developments with more than five tenants freestanding signs shall not exceed 100 square feet. For corner lots where the owner elects to erect only one sign, said sign may be enlarged up to 100 square feet, for developments with five tenants or less and up to 120 square feet for development with more than five tenants.

(4) *Maximum height.* Attached signs shall not extend above the top of the building roofline or parapet. Freestanding signs shall not exceed 15 feet in height except that within the M-1 District signs may extend up to 20 feet, provided said signs are at least 300 feet from a residential district. (Ord. 011106.1, passed 11-6-01)

§ 151.128 SIGNS PERMITTED BY SPECIAL PERMIT.

(A) The following signs are permitted only by special permit issued by the Board of Commissioners and shall conform to all stated regulations and to all conditions and requirements imposed by the Board in issuing the special permit.

(B) *Festival and major special event site.* For the purpose of giving directions and information, temporary on-premises and off premises signs pertaining to festivals and other major special events are permitted with approval by the Board of Commissioners subject to a special permit specifying size, location, lighting, design, display and duration. The number of signs shall be set by the Board. (Ord. 011106.1, passed 11-6-01)

LANDSCAPING; IMPERVIOUS SURFACE LIMITATIONS

§ 151.140 LANDSCAPING.

The following landscape treatments shall be provided as set forth in this subchapter. The Zoning Administrator may modify the landscaping requirements where conditions exist in the Administrator's opinion that would make literal application not feasible. In such instances the Administrator may permit other landscaping schemes which in his opinion would result in equal or better performance.

(A) *Screening requirements.*

(1) Any non-residential use located in either the B-1, B-2, I-1, O & CS or M-1 Districts and located on property abutting any R-20, R-15, R-10 or R-15TH Residential District, unless separated by a public street or railroad right-of-way, shall provide a screening device as described below. Such screening device shall be provided along the full length of any common property line and shall be maintained as long as the conditions requiring the original installation exists, even if active operations cease. The requirement for the installation of a screening device shall be initiated by the occurrence of any one or more of the following activities on the non-residential property.

(a) The initial use, development or occupancy of the non-residential property.

(b) Any change in use or occupancy of the non-residential property which results from a change in the zoning classification of the non-residential property; and/or

(c) Any building expansion that increases the floor area of the non-residential use or any addition of parking that provides ten or more spaces, whether required or not. The screening device shall be provided by the non-residential use even if the abutting residentially zoned land is vacant.

(2) *Screening device.* A screen that is at least 90% opaque from the ground to a height of at least six feet. The screen is intended to block visual contact between uses and to create a strong impression of spatial separation. The screen may be composed of a wall, fence, landscaped earth berm, planted vegetation, or existing vegetation. Compliance of planted vegetative screens or natural vegetation will be judged on the basis of the average mature height and density of foliage of the subject species, or field observation of existing vegetation. In any case where vegetation, either existing or proposed, is to be used as the required screening device, if the vegetation is to be less than ten feet in

width (thickness), a fence, wall or similar device at least 50% opaque and six feet in height shall be used in combination with the vegetation. In all cases, the screen must be at least 90% opaque in all seasons of the year. Planted vegetation must be a minimum of four feet high and one inch in caliper, measured six inches above grade, when planted. Existing vegetation must be equivalent. In no case shall the screening device required by this section interfere with visibility at intersections as set forth in § 151.033 or with visibility at entrances and exits at public streets. The Zoning Administrator may permit a different type of screening device where in the Zoning Administrator's opinion equal or better performance will result.

(B) *Parking lot landscaping.*

(1) In any zoning district where parking spaces for 25 or more cars are required or provided for a use or uses on a site, the parking lot shall be landscaped with canopy trees as required by this section at the rate shown below. This requirement shall be initiated by the initial use or development of the property. In addition, in any case where ten parking spaces are added, whether required or not, the entire parking lot including existing parking areas shall be landscaped if the total on the site then equals 25 or more.

(2) Canopy trees shall be provided at a rate of one canopy tree for each 12 spaces. After the first two trees, any fractional remaining number of spaces over six shall require one additional tree. Required canopy trees shall be distributed throughout the parking area and shall be located within or adjacent to parking lots as tree islands, at the end of parking bays, inside medians or between rows of parking spaces. Canopy trees must be a minimum of eight feet high and two inches in diameter, measured six inches above grade at planting. When mature, a canopy tree should be at least 40 feet high and have a minimum crown width of 30 feet. The following is a sample list of canopy trees by common name:

- | | |
|-----------------|-----------------|
| Red Maple | White Pine |
| Pecan | Sycamore |
| Deodar Cedar | White Oak |
| Leyland Cypress | Pin Oak |
| American Holly | Post Oak |
| Black Locust | American Linden |
| Red Mulberry | American Elm |
| White Spruce | |

(C) *Landscaped roadway yard.*

(1) A landscaped roadway yard shall be provided by any development except one and two family dwellings on the street segments enumerated at the end of this subsection. A landscaped roadway yard is a landscaped area generally parallel to the public roadway designed to provide continuity of vegetation along the right-of-way and pleasing view from the road. The landscaped area shall be penetrated only by driveways and crosswalks. The minimum width of the roadway yard shall be ten feet and shall be located within the 20 foot section of the lot closest to the public right-of-way. It shall be landscaped and maintained with a vegetative cover and shall be planted with small and/or medium shrubs at a rate of ten shrubs per 100 linear feet of street yard not counting driveway and crosswalk area. The following is a sample list of recommended shrubs by common name:

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American Boxwood	Common Juniper
Carolina Allspice	Nandina
Flowering Quince	Azalea
Hedge Cottoneaster	Mapleleaf Viburnum
Japanese Holly	Sargents Chinese Juniper
Japanese Bayberry	Common Laurel Cherry
Purple Beautyberry	Fragrant Sumac

(2) The landscaped roadway yard shall apply to the following street segments:

- (a) East College Avenue (NC 150) - College Avenue
- (b) Gaffney Road (NC 150) - South Main Street
- (c) West College Avenue - Cliffside Road (SR 1003)
- (d) North Main Street - McBrayer Homestead Road (SR 1161)

(Ord. 011106.1, passed 11-6-01)

§ 151.141 IMPERVIOUS SURFACE LIMITATIONS.

(A) Development shall not exceed the following maximum total impervious surface coverage standards on a project by project basis:

<u>Zoning District</u>	<u>Maximum Total Impervious Surface</u>
R-20	45%
R-15	45%
R-15TH	45%
R-10	50%
I-1	65%
O & CS	65%
B-1	80%
B-2	65%
M-1	80%

(B) Development existing on the effective date of this section is not subject to the maximum total impervious surface limitations. Expansions to existing development must meet the impervious surface limitation, provided however, the impervious surface area of the existing development is not required to be included in the impervious surface calculation. In determining expansions to existing

development, the maximum permitted additional impervious surface is derived by multiplying the area of the portion of the property that is not covered by impervious surface by the appropriate percent impervious surface limitation for the district in which the property is located.

(C) In addition to the total impervious surface limitations, no impervious surface other than a building shall exceed a total of 10,000 square feet of contiguous impervious surface area. Impervious surface areas greater than 10,000 square feet may be developed on the same site provided they are separated by pervious strips (grassed or landscaped) a minimum of five feet in width penetrated only by necessary driveways and walkways.

(D) In no case shall such strips be less than five feet by 15 feet in order to qualify as a separation unless the Planning Board allows a different sized area as an equal or better performance modification. Where impervious surfaces greater than 10,000 are permitted on a site pursuant to this section, a pervious strip of a minimum of five feet shall be provided adjoining the facades of any building and along the exterior property lines. The pervious strip as provided for in this section may be used to count toward landscaped areas as may be required for parking lots and other landscaping.
(Ord. 011106.1, passed 11-6-01)

NON-CONFORMING SITUATIONS

§ 151.150 PURPOSE.

The purpose of this subchapter is to avoid undue hardship by permitting the continued use of any building, structure, or property that was lawful at the time of the enactment of this chapter or any applicable amendment thereof even though such use, structure or property does not conform with the provisions of this chapter. However, this subchapter is also established to require that non-conforming situations be terminated under certain circumstances.
(Ord. 011106.1, passed 11-6-01)

§ 151.151 CONTINUATION OF NON-CONFORMING SITUATIONS.

Non-conforming situations that were otherwise lawful on the effective date of this chapter may be continued, subject to the restrictions and qualifications set forth in §§ 151.151 through 151.159.
(Ord. 011106.1, passed 11-6-01)

§ 151.152 NON-CONFORMING LOTS OF RECORD.

Where the owners of a lot of record at the time of the adoption of this chapter or his successor in title thereto does not own sufficient land to enable him to conform to the area or lot width requirements of this chapter, such lot may be used as a building site provided all other dimensional requirements are met and provided that the use to be made of the property is not one to which larger than minimum lot area requirements are called for in the list of Permitted and Conditional Uses and the Special Requirements.
(Ord. 011106.1, passed 11-6-01)

§ 151.153 EXTENSION OR ENLARGEMENT OF NON-CONFORMING SITUATIONS.

(A) Except as specifically provided in this section, it shall be unlawful for any person to engage in any activity that causes an increase in the extent of non-conformity of a non-conforming situation.

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(B) Subject to division (D), a non-conforming use may be extended through any portion of a completed building that, when the use was made non-conforming by this chapter, was manifestly designed or arranged to accommodate such use. However, a non-conforming use may not be extended to additional buildings or to land outside the original building.

(C) A non-conforming use may not be extended to cover more land than was occupied, or manifestly designed and arranged to be occupied, by that use when it became non-conforming.

(D) The volume, intensity, or frequency of use of property where a non-conforming situation exists may be increased and the equipment or processes used at a location where a non-conforming situation exists may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no violations of other paragraphs of this section occur.

(E) Physical alteration of non-conforming structures or structures containing a non-conforming use is unlawful if it results in:

- (1) An increase in the total amount of space devoted to a non-conforming use;
- (2) Greater non-conformity with respect to dimension restrictions such as yard requirements, height limitations, or density requirements; or,
- (3) The enclosure of previously unenclosed areas, even through those areas are or were used in connection with the non-conforming activity.

(F) Minor repairs to and routine maintenance of property where non-conforming situations exist are permitted and encouraged. Major renovation, such as work estimated to cost more than 10% but less than 60% of the taxed value of the structure to be renovated may be done provided that the work will not result in a violation of any other paragraphs of this division, particularly division (E). In no case, however, shall work costing more than 60% of the taxed value of the structure be done, singularly or cumulatively, within any five year period. Provided, nothing herein shall prevent the maintenance, repair and extension of a single family dwelling that is non-conforming as to use, provided done in conformance with the dimensional requirements of the R-10 Residential District.
(Ord. 011106.1, passed 11-6-01)

§ 151.154 RECONSTRUCTION PROHIBITED.

Any non-conforming building or structure or any building or structure containing a non-conforming use for which major repair or reconstruction is proposed in any amount equal to 60% or more of the taxed value of the building or structure or which has been damaged by any cause to an extent equal to 60% or more of its taxed value shall only be repaired and/or reconstructed and used as a conforming structure and a conforming use. Provided, nothing herein shall prevent the reconstruction of a single-family dwelling that is nonconforming as to use provided such reconstruction conforms to the dimensional requirements of the R-10 Residential District.
(Ord. 011106.1, passed 11-6-01)

§ 151.155 CHANGE IN KIND OF NON-CONFORMING USE.

(A) A non-conforming use may be changed to a conforming use. Thereafter, the property may not revert to a non-conforming use.

(B) A non-conforming use shall not be changed to another non-conforming use except upon a finding by the Board of Adjustment that the use is more in character with the uses permitted in the district than the previous use.

(C) If a non-conforming use and a conforming use, or any combination of non-conforming uses exist on one lot, the use made of the property may be changed only to a conforming use.

(D) Conforming uses, except Adult Oriented Businesses, may be established or re-established in non-conforming buildings or structures provided that off street parking is provided as required by this chapter and provided no other provision of this chapter for the establishment of new uses is violated. (Ord. 011106.1, passed 11-6-01)

§ 151.156 REPLACEMENT OF NON-CONFORMING MOBILE HOMES AND MOBILE HOMES IN NONCONFORMING MOBILE HOME PARKS.

(A) A non-conforming mobile home on an individual lot outside of a mobile home park may not be replaced except by a conforming use. A non-conforming mobile home may not be enlarged or altered externally in any way.

(B) All Mobile Home Parks within the jurisdiction of this chapter are non-conforming. Mobile homes in a mobile home park shall not be replaced with another mobile home regardless of classification nor shall any vacant mobile home space in a mobile home park be filled with a mobile home regardless of classification. The intent of this provision is the eventual elimination of non-conforming Mobile Home Parks. (Ord. 011106.1, passed 11-6-01)

§ 151.157 DISCONTINUANCE OF NON-CONFORMING USES.

(A) When active operation or occupancy of a non-conforming use is discontinued regardless of the purpose or reason for a consecutive period of 180 days or removed for any period of time, the property involved may thereafter be used only for conforming uses.

(B) For purposes of determining whether a right to continue a non-conforming situation is lost pursuant to this division, all of the buildings, activities, and operations maintained on a lot are generally to be considered as a whole. For example, the failure to rent one apartment in a non-conforming apartment building for 180 days shall not result in a loss of the right to rent that apartment thereafter so long as the apartment building as a whole is continuously maintained. But if a non-conforming use is maintained in conjunction with a conforming use, cessation of operation or occupancy of the non-conforming use for the 180 day period or removal for any period of time, shall terminate the right to maintain it thereafter.

(C) Notwithstanding any other provision of this subchapter the following non-conforming situations shall be brought into conformance with the provisions of this chapter, if permitted, or discontinued and remove entirely, including the entire use and any associated components or equipment, within the following time schedules.

Non-Conforming Situation Compliance or Discontinuance Schedule	
Use	Deadline for Compliance/Discontinuance
Junk/salvage yards	36 Months
Home occupations in residential districts	12 Months
Outdoor storage yards	36 Months

(Ord. 011106.1, passed 11-6-01)

§ 151.158 DISCONTINUANCE OF NON-CONFORMING ADULT ORIENTED BUSINESSES.

Notwithstanding the provisions of § 151.157 above, Adult Oriented Businesses shall be governed by the following:

(A) Any Adult Oriented Business that fails to comply with the use and location requirements of this chapter but which was lawfully operating before the effective date of this chapter, shall not be deemed to be in violation of this chapter but shall be a non-conformity. Any such business which ceases active operation for a period of 30 days regardless of the purpose or reason shall be subject to all the requirements of this chapter and the property may thereafter be used only for conforming uses;

(B) Any Adult Oriented Business lawfully operating as of the effective date of this chapter but which subsequently fails to comply with the use and locational requirements of this chapter as the result of changes within the vicinity or amendment to this chapter, shall not be deemed to be in violation of this chapter but shall be a non-conformity. Any such business which ceases active operation for a period of 30 days regardless of purpose or reason shall be subject to all the requirements of this chapter and the property may thereafter be used only for conforming uses;

(C) Any Adult Oriented Business that is rendered a non-conforming use as a result of the conditions described in divisions (A) and (B) above shall either cease to operate or meet all of the requirements of this chapter for the use no later than 60 months from the date that the Adult Oriented Business becomes a non-conforming use.

(Ord. 011106.1, passed 11-6-01)

§ 151.159 NON-CONFORMING SIGNS.

The following requirements are established to regulate non-conforming signs:

(A) *Conformance required.* Any sign legally in use prior to the effective date of this chapter or any amendments hereto which does not satisfy the requirements of this chapter is declared to be nonconforming and may be continued subject to regulations of this section. The eventual elimination, as expeditiously and fairly as possible, of nonconforming signs is as much a subject of health, safety and welfare as is the regulation of signs.

(B) *Regulations of non-conforming signs.* A nonconforming sign may be continued but it shall not be:

(1) Changed or replaced with another nonconforming sign, except that copy may be changed;

(2) Expanded or modified in any way which increases the sign's nonconformity. Nor may illumination be added;

(3) Moved except to bring the sign into complete conformity with this subchapter;

(4) Re-established once the sign structure has been removed;

(5) Re-established after damage or deterioration as defined in division (D);

(6) Re-established after it has been discontinued regardless of reason or intent for 120 days or more.

(C) *Illumination of signs for legal non-conforming uses.* Signs for legal non-conforming uses in residential districts shall be illuminated only between sunrise and 10:00 p.m.

(D) *Damaged or deteriorated non-conforming signs.* If a nonconforming sign suffers more than 50% of its value by damage or deterioration it must be brought into conformance with this chapter if permitted, or removed. The value shall be determined by the Zoning Administrator or his designee as the depreciated replacement value of the sign.

(E) *Maintenance of non-conforming signs.* Non-conforming signs shall be subject to all requirements of this chapter regarding safety, maintenance and repair. Non-conforming signs shall be maintained in good condition including necessary non-structural repairs, incidental alterations or copy alterations, such as repainting and electrical repairs which do not extend or intensify the non-conforming features of the sign.

(F) *Discontinuance of certain non-conforming signs.* The following non-conforming signs shall be brought into conformance with the provisions of this chapter, if permitted, or discontinued and removed entirely, including the entire sign and any associated components or equipment within the following time schedule:

Non-conforming Sign Compliance or Discontinuance Schedule	
Sign Type	Deadline for Compliance/Discontinuance
Signs expressly prohibited except for roof and projecting signs	Six Months
Movable signs	Six Months
Portable signs	One year
Temporary signs	30 days
Off-premises signs	60 days

(Ord. 011106.1, passed 11-6-01)

BOARD OF PLANNING AND ADJUSTMENT

§ 151.170 ESTABLISHMENT OF BOARD OF PLANNING AND ADJUSTMENT.

(A) A Board of Planning and Adjustment is hereby established. The Board shall consist of nine members. Five members shall be residents of the town and shall be appointed by the Town Board of Commissioners and four members, who shall be residents of the Area of Extraterritorial Jurisdiction, shall be appointed by the Cleveland County Board of Commissioners upon recommendation by the Town Board of Commissioners. All members shall serve terms of three years, except for the initial appointments where three members shall be appointed for one year terms, three members shall be appointed for two year terms and three members shall be appointed for three year terms. Vacancies shall be filled for the unexpired portions of the terms in the same manner as the initial appointment. The term for each appointed member shall begin on the effective date of the adoption of this chapter. Members may be appointed for any number of successive terms. All members shall vote on all matters except as otherwise provided for in this subchapter.

(B) The Board shall meet within 30 days after appointment and elect a Chairman and Vice-Chairman and create and fill such offices as it may deem necessary. The term of the offices of Chairman and Vice-Chairman shall be one year, with eligibility for re-election. The Board may adopt rules of procedure not in conflict with this and any other town regulations or policies. The Board shall keep a record of its members attendance and of its actions, which record shall be a public record. Such records shall be submitted to the Town Administrator and shall be on file at the town offices for public inspection.

(C) Regular attendance and interest shall be considered prerequisites of membership on the Board of Planning and Adjustment. Failure to attend three consecutive meetings or four meetings in any 12 month period shall be considered as a resignation from the Board unless the Board determines by majority vote that good and sufficient reason has been given for the member's absence.

(D) The Board of Planning and Adjustment is created to carry out the powers and duties of the Planning Board as provided for in G.S. § 160A-361 and the Board of Adjustment as provided for in G.S. § 160A-388 and to carry out the powers and duties of the Planning Board and the Board of Adjustment as provided for in this chapter; Chapter 150; and any other regulations or policies of the town. In carrying out its function as a Board of Adjustment, the Board of Planning and Adjustment shall be bound by its rules of procedure and §§ 151.171 - 151.177. In carrying out its function as a Planning Board, the Board of Planning and Adjustment shall be bound by its rules of procedure and by §§ 151.178 and 151.179.
(Ord. 011106.1, passed 11-6-01)

§ 151.171 BOARD OF ADJUSTMENT; COMPOSITION.

When acting as a Board of Adjustment the Board shall consist of five regular members and four alternate members. The Chairman and Vice-Chairman of the Board of Planning and Adjustment shall serve as regular members of the Board of Adjustment and serve as Chairman and Vice-Chairman respectively, of the Board of Adjustment. The Chairman shall appoint three additional members from the remaining seven members of the Board of Planning and Adjustment to serve as regular members and the remaining four members shall serve as alternate members. At all times, however, at least two Area of Extraterritorial Jurisdiction members shall serve as regular members of the Board of Adjustment.
(Ord. 011106.1, passed 11-6-01)

§ 151.172 RULES OF CONDUCT.

Members of the Board may be removed by the Board of Commissioners for cause, including violation of the rules stated below:

(A) No Board member shall take part in the hearing, consideration or determination of any case in which the member has a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a personal interest or a close familial, business or other associational relationship with an affected person, a financial interest in the outcome of the matter or some other conflict of interest that would violate affected persons' constitutional rights to an impartial decision maker. A board member shall have a "financial interest" in a case when a decision in the case will (1) cause the member or the member's spouse to experience a direct financial benefit or loss, or (2) will cause a business in which the member or the member's spouse owns any interest to experience a direct financial benefit or loss. A board member shall have "personal interest" in a case when it involves a member of the Board member's immediate family (such as parent, spouse or child). If an objection is raised to a member's participation and that member does not recuse himself, the remaining members shall, by majority vote, rule on the objection.

(B) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided however, that members may receive and/or seek information on that case from the Zoning Administrator or any other member of the board, its secretary or clerk prior to the hearing.

(C) Members of the Board shall not express individual opinions on the proper judgement of any case prior to its determination on that case.

(D) Members of the Board shall give notice to the chairman 48 hours prior to the hearing of any potential conflict of interest, which the member has in a particular case before the board.
(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.173 PROCEEDINGS OF THE BOARD OF ADJUSTMENT.

(A) The Board shall adopt rules and by-laws in accordance with the provisions of this chapter and of G.S. Article 19, Chapter 160A. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in the Chairman's absence, the Vice-Chairman, may administer oaths and compel the attendance of witnesses by subpoena. All meetings of the Board shall be open to the public.

(B) The Chairman of the Board of Adjustment, or in the Chairman's absence the Vice-Chairman, may appoint alternates to sit for any regular members in case of the absence or temporary disqualification of any regular members or to fill a vacancy pending appointment of a member. In such case the alternate members shall have the same powers and duties of the regular members they are replacing during such time. In no case, however, shall more than five regular members or combination of regular members and the alternate members be empowered to make motions or to vote on any matter that comes before the Board involving the Zoning Code.

(C) The concurring vote of four members of the Board shall be necessary to reverse any order, requirement, decision or determination of any administrative official charged with enforcement of this chapter or to decide in favor of the applicant any matter upon which it is required to pass under the Zoning Code or to affect any variation of such regulation. Vacant positions on the Board and members who are disqualified from voting on a quasi-judicial Zoning Code matter shall not be considered "members of the Board" for calculation of the required supermajority if there are no qualified alternates to take the place of such members. In other Board business, such as procedural and by-law matters, a simple majority of those present and voting shall be required to pass on any matter. A quorum of five of the total nine regular members shall be required to act on general Board business whereas a quorum of four of the five regular members, or any combination of four regular members or alternate members sitting as regular members, shall be required to act on any matter involving the Zoning Code.

(D) Although alternate members who are not replacing a regular member on a particular Zoning Code matter are not empowered to make motions and vote on such matters, such alternate members in attendance, and who are not otherwise disqualified, may fully participate in the discussion of such matters to the same extent as any other member sitting as one of the five regular voting members.
(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.174 APPEALS, HEARINGS AND NOTICE.

An appeal from the decision of the Zoning Administrator may be taken by the aggrieved party to the Board of Adjustment. Such appeal shall be taken within 30 days by filing with the Zoning Administrator a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the Board all papers constituting the record upon which the action appealed from was taken. The Board of Adjustment shall fix a reasonable time for hearing the appeal, give public notice thereof, as well as due notice to the parties in interest and decide the same within a reasonable time. No matter to be heard by the Board of Adjustment shall be placed on the Board's agenda unless a completed application has been filed with the Zoning Administrator at least 14 days prior to the meeting date. At the hearing, any party may

appear in person or by agent or attorney. On all appeals, applications and other matters brought before the Board of Adjustment, said Board shall inform in writing all the parties involved of its decisions and the reasons therefore.

(Ord. 011106.1, passed 11-6-01)

§ 151.175 STAY OF PROCEEDINGS.

An appeal stays all legal proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board of Adjustment after the notice of appeal shall have been filed with the Administrator, that by reason of facts stated in the certificate a stay would, in the Administrator's opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the Zoning Administrator, on due cause shown.

(Ord. 011106.1, passed 11-6-01)

§ 151.176 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT.

The Board of Adjustment shall have the following powers and duties.

(A) *Administrative review.* To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the Zoning Administrator in the enforcement of this chapter.

(B) *Zoning permit with vested rights.* To hear and decide zoning permits with vested rights in accordance with § 151.203.

(C) *Variances.* To authorize upon appeal in specific cases such variances from the terms of the chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will, in an individual case, result in practical difficulty or unnecessary hardship, so that the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship where the Board of Adjustment makes the following affirmative findings.

(1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the regulation:

(a) If the property owner complies with the provisions of the regulation, the property owner can secure no reasonable return from or make no reasonable use of, his property;

(b) The hardship results from the application of the regulation;

(c) The hardship is suffered by the applicant's property;

(d) The hardship is not a result of the applicant's own actions; and

(e) The hardship is peculiar to the applicant's property.

(2) The variance is in harmony with the general purpose and intent of the regulation and preserves its spirit.

(3) In granting the variance the public safety and welfare have been assured and substantial justice has been done.

(D) *Conditional Use Permits.* To hear and decide, in particular cases, and subject to appropriate conditions and safeguards, permits for conditional uses as authorized by Appendices A and B. In granting a Conditional Use Permit the Board shall make the following affirmative findings:

(1) The use requested is among those listed as an eligible Conditional Use in the district in which the subject property is located;

(2) That the Conditional Use will not materially endanger the public health or safety if located where proposed and developed according to the plan as proposed;

(3) That the Conditional Use meets all required conditions and specifications; and that satisfactory provision and arrangement has been made for at least the following, where applicable.

(a) Satisfactory ingress and egress to property and proposed structures thereon, with particular reference to automotive and pedestrian safety and convenience, traffic flow and control.

(b) Provision of off-street parking and loading areas where required, with particular attention to the items in subsection (a) above, and the economic, noise, glare and odor effects of the conditional use on adjoining properties in the area.

(c) Adequate and proper utilities, with reference to locations, availability and compatibility.

(d) Buffering, with reference to type, location and dimensions.

(e) Signs, if any, and proposed exterior lighting, with reference to glare, traffic safety, economic effect and compatibility and harmony with properties in the district.

(f) Playgrounds, open spaces, yards, landscaping, access ways, pedestrian ways, with reference to location, size and suitability.

(g) Buildings and structures, with reference to location, size and use.

(h) Hours of operation, with particular reference to protecting and maintaining the character of the neighborhood.

(4) That the Conditional Use will not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and,

(5) That the location and character of the Conditional Use if developed according to the plan as proposed will be in harmony with the area in which it is to be located and in general conformity with the plan of development of the town and its environs.

(E) In granting a Conditional Use Permit, the Board may impose such additional restrictions and requirements upon such permit as it may deem necessary in order that the purpose and intent of this chapter are served, public welfare secured and substantial justice done. If all requirements and conditions are accepted by the applicant, the Board shall authorize the issuance of the Conditional Use Permit, otherwise the permit shall be denied. Any Conditional Use Permit so authorized shall be perpetually binding upon the property included in such permit unless subsequently changed or amended by the Board, as provided for in this subchapter.

(F) The Board may change or amend any Conditional Use Permit, after a public hearing and subject to the same consideration as provided for in this subchapter for the original issuance of Conditional Use Permit.

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(G) No proposal to amend or change any Conditional Use Permit shall be considered within three months of the date of the original authorization of such permit or within three months of hearing of any previous proposal to amend or change any such permit.

(H) *Change of kind of non-conforming use.* The Board may permit change in use from one non-conforming use to another as provided for in § 151.155.
(Ord. 011106.1, passed 11-6-01)

§ 151.177 APPEALS FROM THE BOARD OF ADJUSTMENT.

Any person or persons, jointly or severally, aggrieved by any decision of the Board, any taxpayer, or any officer, department, board or bureau of the jurisdiction of this chapter may, within 30 days after the filing of the decision in the office of the Board, but not thereafter, present to a court of competent jurisdiction a petition duly verified setting forth that such decision is illegal, in whole or in part, specifying the ground of illegality, whereupon such decision of said Board shall be subject to review by certiorari as provided by law.

(Ord. 011106.1, passed 11-6-01)

§ 151.178 PLANNING BOARD - COMPOSITION.

When acting as a Planning Board, five of the nine members of the Board of Planning and Adjustment shall constitute a quorum and a simple majority of those voting shall be required to act favorably on any matter that comes before the Planning Board.

(Ord. 011106.1, passed 11-6-01)

§ 151.179 PLANNING BOARD - POWERS AND DUTIES.

In addition to its specific duties set forth in this and other town regulations and policies, the Planning Board shall have the following powers and duties:

- (A) To make studies of the town and surrounding areas;
- (B) To determine objectives to be sought in the development of the town;
- (C) To propose and recommend plans for achieving these objectives;
- (D) To develop and recommend to the Board of Commissioners policies, regulations, administrative procedures and other means for carrying out plans in a coordinated and efficient manner;
- (E) To advise the Board of Commissioners concerning the use and amendment of means for carrying out plans;
- (F) To exercise such functions in the administration and enforcement of various means for carrying out plans as may be assigned by this subchapter or other regulations of the town; and
- (G) To perform other related duties as may be assigned by this subchapter or other regulations.

(Ord. 011106.1, passed 11-6-01)

AMENDMENT PROCEDURES; CONDITIONAL USE DISTRICTS**§ 151.190 GENERAL.**

The Board of Commissioners may amend, supplement or change the Zoning Code text and zoning district lines and designations according to the following procedure. It is the intent of this chapter that the applicant for rezoning to any district other than a Conditional Use District shall be prohibited from offering any testimony or evidence concerning the specific manner in which he intends to use or develop the property. If the applicant believes that the development of his property in a specific manner will lessen adverse effects upon surrounding properties or otherwise make the rezoning more in accordance with the principles underlying the town's comprehensive zoning plan, the applicant shall apply for rezoning to the appropriate Conditional Use District and simultaneously apply for a Conditional Use Permit specifying the nature of his proposed development. No permit shall be issued for any development within a Conditional Use District except in accordance with an approved Conditional Use Permit.
(Ord. 011106.1, passed 11-6-01)

§ 151.191 AMENDMENT INITIATION.

Applications to change, supplement or amend this chapter may be initiated by:

(A) *Textual amendment.*

- (1) The Board of Commissioners;
- (2) The Planning Board;
- (3) Anyone who owns property or resides in the area of jurisdiction of this chapter or the authorized agent of such person.

(B) *Map amendment.*

- (1) The Board of Commissioners;
- (2) The Planning Board;
- (3) Anyone who owns property or resides in the area of jurisdiction of this chapter or the authorized agent of such person. Provided, however, map amendments involving Conditional Use Districts may only be initiated by the owner(s) of all property to be included in the Conditional Use District.
(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.192 SUBMITTAL.

(A) All applications for amendments to this chapter, except for those initiated by the Board of Commissioners or the Planning Board, shall be in writing, signed and filed with the Zoning Administrator as provided below.

(B) The Zoning Administrator, before scheduling any application for amendment for consideration by the Planning Board, shall ensure that it contains all the required information as specified in this chapter and on the application form. Applications which are not complete, or otherwise do not comply with the provisions of this chapter shall not be scheduled by the Zoning Administrator, but shall be returned to the applicant with a notation of the deficiencies in the application.

(C) Completed applications shall be received a minimum of 14 days prior to the Planning Board meeting at which the proposed amendment is scheduled to be considered.

(D) All applications for amendment shall contain, as a minimum, a description of the proposed change, and if it would require a change of the zoning maps, the application shall include a map drawn to a scale of not less than 400 feet to the inch and not more than 20 feet to the inch showing the land covered by the proposed amendment, a legal description of the property and a list of names and addresses of all owners of property involved in the map change and all adjoining property owners as shown on county tax records.

(E) Any application requesting a change to a Conditional Use District shall be accompanied by a Conditional Use Permit application showing the use or uses proposed and any conditions being proposed by the applicant.

(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.193 PLANNING BOARD ACTION.

(A) The Zoning Administrator shall present any properly completed application for amendment to the Planning Board at its next regularly scheduled meeting occurring at least 14 days after filing of such application with the Zoning Administrator. Amendment proposals originated by the Board of Commissioners shall also be submitted to the Planning Board.

(B) The Planning Board shall advise and comment on whether a proposed amendment is consistent with any adopted comprehensive plan and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan or other plans shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners. The Board of Commissioners is not bound by the recommendations of the Planning Board.

(C) A statement analyzing the reasonableness of a proposed zoning map amendment (rezoning) shall be prepared for each application for a rezoning to a Conditional Use District or other small-scale rezoning.

(D) A Planning Board member shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(E) The Planning Board shall either recommend in favor of an amendment or in opposition to an amendment by simple majority vote of those present and voting. A tie vote on a proposal shall be considered to be in opposition to such amendment. If the Planning Board should fail to act on any proposed amendment within 45 days after it is presented to the Board such failure to act shall be considered to be a favorable recommendation for the purposes of this procedure.

(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.194 BOARD OF COMMISSIONERS ACTION.

(A) The Zoning Administrator shall present any proposed amendments to the Board of Commissioners at its next regular scheduled meeting, following Planning Board action, at which it hears rezoning proposals. The Zoning Administrator shall transmit to the Board of Commissioners the Planning Board's record of action on the proposed amendments, including its written recommendations.

(B) Before taking action on any proposed zoning amendment, the Board of Commissioners shall hold a public hearing on such amendment. Notice of public hearing shall be given as required by G.S. Article 19, 160A, Part I (General Provisions) and G.S. Article 19, 160A, Part 3 (Zoning).

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

(D) A member of the Board of Commissioners shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.195 PROTEST PETITION.

(A) In case, however, of a qualified protest against a zoning map amendment, that amendment shall not become effective except by favorable vote of three-fourths of all the members of the Board of Commissioners. For the purposes of this subchapter, vacant positions on the Board of Commissioners and members who are excused from voting shall not be considered "members of the Board of Commissioners" for calculation of the requisite supermajority. To qualify as a protest under this section, the petition must be signed by the owners of either: (1) 20% or more of the area included in the proposed change or (2) 5% of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel of land is subject to the proposed zoning amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the town may rely on the county tax listing to determine the "owners" of potentially qualifying areas. The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the Zoning Map as a result of annexation or otherwise, or to an amendment to an adopted Conditional Use District if the amendment does not change the types of uses that are permitted within the district or increase the approved density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the Conditional Use District.

(B) No protest against any change in or amendment to the Zoning Map shall be valid or effective for the purposes of this subchapter and G.S. § 160A-385 unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, and unless it shall have been received by the Town Clerk in sufficient time to allow the town at least two normal work days, excluding Saturday, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition. All protest petitions shall be on a form prescribed and furnished by the town, and such form may prescribe any reasonable information deemed necessary to permit the town to determine the sufficiency and accuracy of the petition. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed zoning amendment. Only those protest petitions that meet the qualifying standards set forth in division (A) of § 151.195 and G.S. § 160A-385 at the time of the vote on the zoning amendment shall trigger the supermajority voting requirement.

(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.196 SPECIAL PROVISIONS FOR CONDITIONAL USE DISTRICTS AND CONDITIONAL USE PERMITS ASSOCIATED WITH CONDITIONAL USE DISTRICT REZONING.

(A) An application for rezoning to any Conditional Use District shall always be accompanied by an application for a Conditional Use Permit. Conditional Use District rezoning applications shall be processed, considered and voted upon using the same procedures as conventional rezoning proposals. Applications for Conditional Use Permits accompanying applications for Conditional Use District rezonings shall be processed using the same procedures as conventional rezoning proposals including submittal to the Planning Board for review and recommendations. Such Conditional Use Permit applications shall be considered and voted upon by the Board of Commissioners using quasi-judicial procedures, however no vote greater than a majority vote shall be required for the Board of Commissioners to grant such permits.

(B) If the Board of Commissioners should determine that the property involved in the Conditional Use District rezoning application should be rezoned and the Conditional Use Permit issued, it shall adopt an ordinance rezoning the property and authorizing the issuance of the Conditional Use Permit. Otherwise the proposal shall be denied.

(C) In granting a Conditional Use Permit associated with a Conditional Use District rezoning application, the Board of Commissioners shall make the following affirmative findings:

(1) That the use(s) requested is an eligible conditional use in the Conditional Use District in which the subject property is located or is to be located (see § 151.081);

(2) That the use limitations and conditions as proposed and/or imposed for the Conditional Use Permit meet or exceed and/or are at least as restrictive as the minimum standards for the corresponding General Use District;

(3) That the use limitations and conditions as proposed and/or imposed for the requested Conditional Use Permit can reasonably be implemented and enforced for the subject property;

(4) That when implemented the proposed and/or imposed use limitations and conditions will mitigate specific land development issues that would likely result if the subject property were zoned to accommodate all the uses and the minimum standards of the corresponding General Zoning District;

(5) That the applicant has agreed to accept the use limitations and conditions as proposed and/or imposed for the requested Conditional Use Permit.

(D) In granting a Conditional Use Permit, the Board of Commissioners may impose such additional reasonable and appropriate conditions upon such permit as it may deem necessary in order that the purpose and intent of this chapter are served, public welfare secured and substantial justice done. If all conditions are accepted by the applicant, the Board of Commissioners shall authorize the issuance of the Conditional Use Permit, otherwise the permit shall be denied.

(E) Any Conditional Use Permit so authorized shall be perpetually binding upon the property included in such permit unless subsequently changed or amended by the Board of Commissioners, as provided for in this subchapter.

(F) The Board of Commissioners may change or amend any Conditional Use Permit, after a public hearing upon recommendation by the Planning Board and subject to the same consideration as provided for in this section for the original issuance of a Conditional Use Permit.

(G) No proposal to amend or change any Conditional Use Permit shall be considered within 12 months of the date of the original authorization of such permit or within 12 months of hearing of any previous proposal to amend or change any such permit.

(H) No member of the Board of Commissioners shall take part in the hearing, consideration or determination of a Conditional Use Permit in which the member has a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business or other associational relationship with an affected person, a financial interest in the outcome of the matter or some other conflict of interest that would violate affected persons' constitutional rights to an impartial decision maker. If an objection is raised to a member's participation and that member does not recuse himself, the remaining members shall by majority vote, rule on the objection.
(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.197 MAXIMUM NUMBER OF APPLICATIONS.

(A) No application for the same zoning district applicable to the same property or any part thereof shall be filed until the expiration of 12 months from:

- (1) The date of final determination by the Board of Commissioners; or
- (2) The date of the public hearing or scheduled public hearing if the application is withdrawn after it has been advertised for public hearing.

(B) Fees submitted for withdrawn cases shall not be refundable.
(Ord. 011106.1, passed 11-6-01)

ADMINISTRATION

§ 151.200 ADMINISTRATIVE OFFICER.

This chapter shall be administered and enforced by the Zoning Administrator who shall be appointed by the Board of Commissioners. The Zoning Administrator is hereby authorized:

- (A) To issue a zoning permit prior to the authorization of the issuance of a building permit;
- (B) To collect the designated fees in the Administration of this chapter;
- (C) To investigate violations of the provisions of this chapter and enforce actions necessary for correction thereof. To enter upon private property at reasonable times in the carrying out of the duties;
- (D) To make and keep all records necessary and appropriate to the office including a record of issuance and denial of all zoning permits and Conditional Use Permits, amendments, variances, appeals and receipt of complaints of violations of this chapter and action taken on the same;
- (E) To appoint agents to act on the Administrator's behalf;
(Ord. 011106.1, passed 11-6-01)

§ 151.201 ZONING PERMITS; BUILDING PERMITS; CERTIFICATES OF OCCUPANCY REQUIRED.

(A) *Zoning permit.* Application for a zoning permit shall be filed with the Zoning Administrator or the Administrator's designate. No building permit will be issued until a zoning permit has been issued.

(B) *Building permit.* No building permit shall be issued until the plans and specifications for a building comply with the North Carolina State Building Code, the provisions of the Zoning Code and until a zoning permit has been issued.

(C) *Certificate of occupancy.* No building which has been erected, added to, relocated, or structurally altered for which a building permit has been issued shall be used or occupied nor the use of any building or land changed until a Certificate of Occupancy has been issued by the Building Inspector stating that the building or structure or part thereof complies with the North Carolina State Building Code, and the provisions of this chapter. No previously unoccupied structure shall be occupied until a Certificate of Occupancy is issued.

(D) No temporary utilities shall be connected until a building permit is issued. No permanent utilities shall be connected until a Certificate of Occupancy is issued.
(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.202 ZONING PERMIT.

Except as allowed by G.S. § 160A-392, no land shall be used or occupied and no building hereafter shall be structurally altered, erected, or moved, shall be used, or have its use changed, until a zoning permit shall have been issued by the Zoning Administrator stating that the building and/or the proposed use thereof complies with the provisions of this chapter. No building permit shall be issued and no building shall be occupied until the zoning permit is issued. The issuance of a valid zoning permit shall confer with it the right to undertake and complete the development and/or use of property under the terms and conditions of such permit provided that such action as authorized by the permit is commenced within 180 days of issuance and provided that all other permits are obtained. Otherwise the permit shall be void.

(A) *Application procedures.* Each application for a zoning permit shall be accompanied by a plan in duplicate, drawn to scale, one copy of which shall be returned to the owner upon approval. The plan shall show the following:

- (1) The shape and dimensions of the lot on which the proposed building or use is to be erected or conducted;
- (2) The location of the lot with respect to adjacent rights-of-way;
- (3) The shape, dimensions, and location of all buildings, existing and proposed, on the said lot;
- (4) The nature of the proposed use of the building or land, including the extent and location of the use, on the lot;
- (5) The location and dimensions of off-street parking and the means of ingress and egress to such space; and
- (6) Any other information which the Zoning Administrator may deem necessary for consideration in enforcing the provisions of this chapter.

(B) *Right of appeal.* If the zoning permit is denied, the applicant may appeal the action of the Zoning Administrator to the Board of Adjustment as provided for herein. Such appeal shall be made within 30 days of such permit denial.
(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.203 ZONING PERMIT WITH VESTED RIGHTS.

(A) In any case where the applicant for a zoning permit desires to obtain a vested right, as authorized by G.S. § 160A-385.1, the applicant shall observe the following procedures.

(1) The applicant shall submit to the Zoning Administrator seven copies of a site specific development plan drawn to scale describing with reasonable certainty the type and intensity of use for the specific parcel or parcels of land. Such plan shall include:

- (a) The boundaries of the site;
- (b) Significant topographical and other natural features affecting the development of the site;
- (c) The location on the site of the proposed buildings, structures, and other improvements;
- (d) The dimensions, including height, of the proposed buildings and other structures;
- (e) The location of all existing and proposed infrastructure on the site, including water, sewer, roads and walkways; and

(f) Such other information as the Zoning Administrator may determine to be necessary in order to determine the specifics of the plan.

(2) *Public hearing; notice thereof.* Upon receipt of a properly prepared site specific development plan the Zoning Administrator shall arrange to bring such plan before the Board of Adjustment in the manner of a public hearing. Completed plans shall be received a minimum of 14 days prior to the public hearing at which the proposed vested rights plan is scheduled to be considered by the Board. Notice of the public hearing shall be given in the same manner as that required for a variance.

(3) In considering an application for a zoning permit with vested rights the Board of Adjustment shall give due regard that the purpose and intent of this chapter shall be served, public safety and welfare secured and substantial justice done. If the Board should find, after public hearing, that the proposed permit should not be granted, such proposed permit shall be denied.

(4) In granting such permit, the Board of Adjustment shall make the following affirmative findings:

(a) The use requested is among those listed as a Permitted or Conditional Use in the district in which the subject property is located or is to be located and complies with all the requirements of this chapter and other applicable regulations;

(b) The requested permit is either essential or desirable for the public convenience or welfare;

(c) The requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety or welfare of the community;

(d) Adequate utilities, access roads, drainage, sanitation and/or other necessary facilities have been or are being provided.

(5) In granting a zoning permit with vested rights, the Board of Adjustment may impose such additional restrictions and requirements upon such zoning permit as it may deem necessary in order that the purpose and intent of this chapter are served, public welfare secured and substantial justice done. Approval of a site specific development plan with the condition that a variance, Conditional Use Permit or modification be obtained shall not confer a vested right unless and until the necessary variance,

Conditional Use Permit or modification is obtained. If all requirements and conditions are accepted by the applicant, the Board shall authorize the issuance of the permit, otherwise the permit shall be denied. Any permit so authorized shall remain vested for a period of two years from the date of the action granting the permit.

(B) *Violations.* Any violation of a term or condition involved in the granting of a zoning permit with vested rights shall be treated the same as a violation of this chapter and shall be subject to the same remedies and penalties as any such violation. In addition, the Board of Adjustment may, after public hearing, revoke any such vested rights for failure to abide by any such term or condition. (C) *Other regulations apply.* The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity or use, or regulations which are general in nature and are applicable to all property subject to land-use regulation, including, but not limited to building, fire, mechanical, electrical and plumbing codes.

(D) *Changes or amendments.* No change or amendment to any permit with vested rights shall be made except after public hearing and except as provided for in this chapter for the original issuance of such permit. If, at the time of consideration of proposed change or amendment to an existing permit, such permit or proposed change or amendment could not be lawfully made under conditions existing at that time, such proposed change or amendment shall be denied. In addition, in no case shall there be an extension of the two-year time period for which such development right is vested. Nothing herein shall exempt plans related to such permit from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approvals.

(E) *Status at expiration of term.* A right which has been vested shall terminate at the end of the two-year vesting period with respect to buildings and uses for which no valid building permit applications have been filed. Upon issuance of a building permit, the provisions of G.S. § 160A-418 and G.S. § 160A-422 shall apply except that a building permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding. Any development constructed pursuant to a zoning permit with vested rights for which the vested term has expired and which is not in conformance with all the terms of this chapter because of changes made in the provisions of this chapter, including the Zoning Map, after the issuance of such permit shall be subject to the provisions of this chapter relating to non-conformities the same as any other non-conformity.

(F) *Annexation declaration.* Any landowner who signs an annexation petition to the town pursuant to G.S. § 160A.31 or G.S. § 160A-58.1 shall, as part of that petition, file a signed statement declaring whether or not vested rights with respect to the property subject to the petition have been established under G.S. § 160A-385.1 or G.S. § 153A-344.1. If the statement declares that such rights have been established, the town may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established by law shall be binding on the landowner and any such vested right shall be terminated.

(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

§ 151.204 SITE PLAN APPROVAL PREREQUISITE TO ZONING PERMIT.

(A) As a prerequisite to the issuance or authorization of a zoning permit or zoning permit with vested rights, Site Plan Approval by the Planning Board shall be required for construction or expansion of the following developments:

- (1) Non-residential developments, including any institutional use, of 5,000 square feet or more of gross floor area;
- (2) Multi-family developments of more than four dwelling units;
- (3) Multi-family developments with more than one building on the lot.

(B) Site plans shall be submitted at least seven days prior to the Planning Board meeting at which review is scheduled and shall be in form and number of copies of the site specific development plan required in § 151.203(A)(1).
(Ord. 011106.1, passed 11-6-01)

§ 151.205 DUTIES OF ZONING ADMINISTRATOR, BOARD OF ADJUSTMENT, COURTS AND BOARD OF COMMISSIONERS TO MATTERS OF APPEAL.

It is the intention of this chapter that all questions arising in connection with the enforcement of this chapter shall be presented first to the Zoning Administrator and that such questions shall be presented to the Board of Adjustment only on appeal from the Zoning Administrator; and that from the decision of the Board of Adjustment recourse shall be to courts as provided by law. It is further the intention of this chapter that the duties of the Board of Commissioners shall not include the hearing and passing upon disputed questions that may arise in connection with the enforcement thereof, but the procedure for determining such questions shall be as herein set out in the chapter, and that the duties of the Board of Commissioners shall be only the duty of considering and passing upon any proposed amendment or repeal of the chapter as provided by law.

(Ord. 011106.1, passed 11-6-01)

§ 151.206 MORATORIA ON DEVELOPMENT APPROVALS.

(A) Per G.S. § 160A-381, the Board of Commissioners may adopt temporary moratoria on any town development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the Board of Commissioners shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. § 160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. § 160A-417 is outstanding, to any project for which a Conditional Use Permit application has been accepted under this chapter, to development set forth in a site-specific development plan approved pursuant to G.S. § 160A-385.1 and this chapter, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the town prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the town prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

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

(1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the town and why those alternative courses of action were not deemed adequate.

(2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.

(3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.

(4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the town during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

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

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

(Am. Ord. passed 4-10-06)

ENFORCEMENT AND PENALTIES

§ 151.995 VIOLATIONS; REMEDIES.

Any of the following shall be a violation of this chapter and shall be subject to the enforcement remedies and penalties provided by this subchapter and by state law.

(A) *Development without permit.* To engage in any development, use, construction, remodeling, or other activity of any nature upon land or improvements thereon subject to the jurisdiction of this chapter without all required permits, certificates, or other forms of authorization as set forth in this chapter.

(B) *Development inconsistent with permit.* To engage in any development, use, construction, remodeling, or other activity of any nature in any way inconsistent with any approved plan, permit, certificate, or other form or authorization granted for such activity.

(C) *Violation by act or omission.* To violate, by act or omission, any term, variance, modification, condition, or qualification placed by the Board of Commissioners or its agent boards upon any required permit, certificate, or other form of authorization for the use, development, or other activity upon land or improvements thereon.

(D) *Use in violation.* To erect, construct, reconstruct, alter, repair, convert, maintain, or use any building or structure or to use any land in violation or contravention of this chapter or any other regulation made under the authority conferred thereby.

(E) *Continue a violation.* Each day's continuance of any of the above violations is a separate and distinct offense.

(Ord. 011106.1, passed 11-6-01)

§ 151.996 INSPECTION AND INVESTIGATION.

In order to determine violations of this chapter the Zoning Administrator shall have the following rights and powers:

(A) *Inspections.* The Zoning Administrator shall have the right upon presentation of proper credentials, or inspection warrant if necessary, to enter on any premises within the jurisdiction at any reasonable hour for the purposes of inspection, determination of plan compliance, or other enforcement action.

(B) *Investigations.* The Zoning Administrator shall have the power to conduct such investigations as the Administrator may reasonably deem necessary to carry out the Administrator's duties as prescribed in this chapter and, for the purpose of investigating and inspecting the sites of any complaints or alleged violations of this chapter.

(C) *Supporting documentation.* The Zoning Administrator shall have the power to require written statements, certificates, certifications, or the filing of reports with respect to pertinent questions relating to complaints or alleged violations of this chapter.

(Ord. 011106.1, passed 11-6-01)

§ 151.997 ENFORCEMENT PROCEDURE.

If the Zoning Administrator shall find that any of the provisions of this chapter are being violated, the Administrator shall notify the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. The Administrator shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or additions; alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this chapter to insure compliance with or to prevent violations of its provisions.

(A) *Notice of violation.* If the owner or occupant of the land, building, structure, sign or use in violation fails to take prompt corrective action, the Zoning Administrator shall give the owner or occupant written notice (by certified or registered mail to his last known address, by personal service, or by posting notice conspicuously on the property) of the following:

- (1) That the land, building, structure, sign, or use is in violation of this chapter;
- (2) The nature of the violation, and citation of the section(s) of this chapter violated; and
- (3) The measures necessary to remedy the violation.

(B) *Appeal.* Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of the Zoning Administrator to the Board of Adjustment within 15 days following the date of the Notice of Violation. The Board of Adjustment shall hear an appeal within a reasonable time, and it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal, the decision of the Zoning Administrator shall be final.

(C) *Notice of decision.* The decision of the Board of Adjustment may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

(Ord. 011106.1, passed 11-6-01)

§ 151.998 FAILURE TO COMPLY WITH NOTICE; REMEDIES.

(A) If the owner or occupant of a property fails to comply with a Notice of Violation from which no appeal has been taken, or a final decision by the Board of Adjustment following an appeal, the owner or

occupant shall be subject to the penalties and remedies as set forth in this section and in § 151.999 or to such remedies and penalties as may be provided by state law.

(B) *Remedies.* Any or all of the following procedures may be used to enforce the provisions of this chapter.

(1) *Injunction.* Any violation of this chapter or of any condition, order, requirement, or remedy adopted pursuant hereto may be restrained, corrected, abated, mandated, or enjoined by other appropriate proceeding pursuant to state law.

(2) *Civil penalties.* Any person who violates any provision of this chapter shall be subject to the assessment of a civil penalty under the procedures provided in § 151.999.

(3) *Denial of permit or certificate.* The Zoning Administrator shall withhold or deny any permit, certificate, or other authorization on any land, building, structure, sign, or use in which there is an uncorrected violation of a provision of this chapter, or of a condition or qualification of a permit, certificate, or other authorization previously granted.

(4) *Conditional permit or temporary certificate.* The Zoning Administrator may condition the authorization of any permit or certificate upon the correction of the deficiency, payment of civil penalties within a specified time, or the posting of a compliance security approved by appropriate governmental authority.

(5) *Stop work orders.* Whenever a building, structure, sign, or part thereof is being constructed, reconstructed, altered, or repaired in violation of this chapter, the Zoning Administrator may order the work to be immediately stopped. The stop work order shall be in writing and directed to the owner, occupant, or person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Such action shall be in accordance with G.S. § 160A-421 or the North Carolina State Building Code.

(6) *Revocation of permits or certificates.* The Zoning Administrator may revoke and require the return of a permit or certificate by notifying the permit holder in writing, stating the reason for the revocation. Permits or certificates shall be revoked for any substantial departure from the approved application, plans, or specifications; refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit or certificate. Any permit or certificate mistakenly issued in violation of an applicable state or local law may also be revoked. (Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06) Penalty, see § 151.999

§ 151.999 PENALTY.

(A) Violations of this chapter shall constitute either a misdemeanor, with a fine not exceeding \$50 or imprisonment not exceeding 30 days, or, at the election of the town, shall subject the offender to a civil penalty upon the issuance of a citation for said violations as hereinafter provided. The civil penalty, if not paid to the town within fifteen days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt. Civil penalties shall be in the amount of \$50 for each violation and each day any single violation continues shall be a separate violation.

(B) In addition to the civil penalties set out above, any provision of this chapter may be enforced by an appropriate equitable remedy issuing from any court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the town for equitable relief that there is an adequate remedy at law.

(C) In addition to the civil penalties set out above, any provision of this chapter that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by General Court of Justice. When a violation of such a provision occurs, the town may apply

to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and/or of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by laws and rules governing civil proceedings, including the Rights of Civil Procedure in general and Rule 65 in particular.

(D) An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from buildings on the property; that abandoned or junked vehicles be removed; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this chapter. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and material man's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith,

(E) The provisions of this chapter may be enforced by one, all or a combination of the remedies authorized and prescribed by this section.

(F) Upon determination of a violation of any section of this chapter, the penalty for which is a civil penalty, the Zoning Administrator shall cause a warning citation to be issued to the violator. Such citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated.

(G) An appeal from a warning citation shall be taken within ten days from the date of such warning citation and the Board of Adjustment, in considering such appeal, shall, notwithstanding other powers as may be granted, have power only in the manner of administrative review and interpretation where it is alleged that the Zoning Administrator has made an error in the application of the chapter, in the factual situation as it relates to the application of the chapter, or both.

(H) Where the Zoning Administrator determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or Consent Agreement, the Zoning Administrator may amend the warning citation to provide additional time. The warning citation shall specify that a second citation shall incur civil penalty, together with costs, and attorney fees.

(I) Upon failure of the violator to obey the warning citation a civil citation shall be issued by the Zoning Administrator and either served directly on the violator, the violator's duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the town or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to pay the civil assessment within 15 days of the date of citation. The violation for which the citation is issued must have been corrected by the time the citation is paid, otherwise further citations shall be issued. Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.

(J) If the violator fails to respond to a citation within 15 days of its issuance, and pay the penalty prescribed therein, the town may institute a civil action in the nature of debt in the appropriate division of the North Carolina General Court of Justice for the collection of penalty, costs, attorney fees, and such other relief as permitted by law.

(Ord. 011106.1, passed 11-6-01; Am. Ord. passed 4-10-06)

APPENDIX A: TABLE OF PERMITTED AND CONDITIONAL USES

A-1 GENERAL.

The Table of Permitted and Conditional Uses which follows contains a listing of uses which may be permitted in one or more of the various zoning districts established by this chapter. Uses are listed in alphabetical order in nine functional categories. The categories in the order of listing are:

- Residential Uses
- Recreational Uses
- Educational and Institutional Uses
- Business, Professional, and Personal Services
- Retail Trade
- Wholesale Trade
- Manufacturing and Industrial Uses
- Public Works Facilities, Utilities, and Infrastructure
- Miscellaneous

A-2 ENTRIES.

The district or districts in which a particular listed use may be permitted is indicated by an "x" or "c" in the District column(s) opposite the listed use.

A-3 MEANING OF ENTRIES.

The meanings of the entries in the table are as follows:

(A) "x" indicates the use is permitted by right and a zoning permit may be obtained.

(B) "c" indicates the use requires approval of a Conditional Use Permit in accordance with the procedures of § 151.176. The column on the far right, labeled "SR" (Special Requirements) means that there are special additional performance requirements that the use must comply with in its development. These requirements are contained in Appendix B. For any use subject to a Conditional Use Permit, the Special Requirement shall represent the minimum conditions for issuance of a Conditional Use Permit.

(C) The listing of a use in the Table of Permitted and Conditional Uses in no way relieves that use of having to meet all local, state and federal laws pertaining to the establishment and operation of that use.

Table of Permitted and Conditional Uses.

See table on following page.

(Am. Ord. 060905.01, passed 11-7-06; Am. Ord. 100105.02, passed 1-5-10; Am. Ord. 100105.03, passed 1-5-10; Am. Ord. 121204.01, passed 12-4-12)

TABLE OF PERMITTED AND CONDITIONAL USES										
USE TYPES	R-20	R-15	R-15th	R-10	1-1	O&CS	B-1	B-2	M-1	SR
Residential Uses										
bed and breakfast inns	C	C		X			X	X		1
cluster development, residential			See	Spec	ial	Requir	ement			2
family care home (6 or less persons)	X	X	X	X	X	X	X	X	X	3
family daycare (6 or less persons)	C			C	X					3
home occupation, customary	X	X	X	X						4
mobile home, class A on individual lot	X									5
multi-family dwelling				X						6
nursing, convalescent, group care, congregate care	C			C	X					7
planned unit development			See	Spec	ial	Requir	ement			8
residential group development			See	Spec	ial	Requir	ement			9
single-family dwelling detached	X	X	X	X						
swimming pool	X	X	X	X						42
townhouse development (Including single-family attached dwellings)			X	X						10
traditional neighborhood development			See	Spec	ial	Requir	ement			11
transient residential facilities, shelters, half-way house				C						12
two-family dwelling on individual lot				X						13
zero lot line development			See	Spec	ial	Requir	ement			14

TABLE OF PERMITTED AND CONDITIONAL USES

USE TYPES	R-20	R-15	R-15th	R-10	I-1	O&CS	B-1	B-2	M-1	SR
Recreational Uses (continued)										
recreation facilities, public	X	X	X	X	X	X	X	X	X	
recreation facility, private: including country clubs, private neighborhood parks & multi-family recreation areas where the principal use is permitted in the zoning district	X	X	X	X	X	X	X	X	X	17
saddle, hunting, fishing, boating and similar private clubs	X								X	17
shooting ranges, indoors									X	18
swim & tennis clubs	X	X	X	X	X	X	X	X	X	17
video game arcades							C		C	39

TABLE OF PERMITTED AND CONDITIONAL USES										
USE TYPES	R-20	R-15	R-15th	R-10	I-1	O&CS	B-1	B-2	M-1	SR
<u>Educational & Institutional Uses</u>										
ambulance services	C				X		X		X	20
cemetery	X									
churches, synagogues & other associated activities	X	X	X	X	X	X	X	X		
colleges or universities					X					
correctional institutions									X	
day care centers, family care homes (6 or more)	C			C	X	X	X	X	X	19
governmental offices & facilities	X	X	X	X	X	X	X	X	X	
hospitals, public & private					X	X	X			
libraries					X	X	X	X		
museums or art galleries					X	X	X	X		
nursing & convalescent homes congregate & group care	C			C	X					20
orphanages				C	X					20
philanthropic institutions						X	X	X		
post offices						X	X	X	X	
schools, including public schools & private schools, having a curriculum similar to those given in public schools	X	X	X	X	X	X	X	X	X	
schools, specialty training, such as cosmetology, vocation or trade services, not elsewhere classified, where no retail, wholesale, or repair is conducted					X	X	X		X	
Educational and Institutional Use facilities that exceed height limitations					C					40

TABLE OF PERMITTED AND CONDITIONAL USES

USE TYPES	R-20	R-15	R-15TH	R-10	I-1	O&CS	B-1	B-2	M-1	SR
Business, Professional & Personal Services										
accounting, auditing, or bookkeeping						X	X	X		
administrative or management services						X	X	X		
advertising agencies or representatives						X	X	X		
agencies & offices rendering specialized services not involving retail trade such as real estate, insurance, advertising, architecture, engineering, & accounting and not listed elsewhere						X	X	X		
animal clinics & hospitals; including totally enclosed kennels operated in connection with animal clinics or hospitals							X	X	X	21
animal kennels									X	22
automobile parking lots & facilities for permitted uses in the district	X	X	X	X	X	X	X	X	X	
automobile parking (commercial)							X		X	
automobile rental or leasing							X		X	23
automobile towing & storage services									X	24
automobile washing facilities							X		X	
automobile wrecking or junk vehicles									X	24
banking, including loan offices & investment houses					X	X	X	X		
barber, beauty shops & tanning salons						X	X	X		
bus stations							X		X	
chiropractors' offices						X	X	X		
clothing alterations or repairs						X	X	X		
communicative facilities, including radio & television broadcasting excluding towers that exceed heights limits					X	X	X			

TABLE OF PERMITTED AND CONDITIONAL USES										
USE TYPES	R-20	R-15	R-15TH	R-10	I-1	O&CS	B-1	B-2	M-1	SR
computer services						X	X	X		
contractors' facilities with open storage									X	
contractors' offices (no storage)						X	X		X	
convenience food stores							X	X		
dental offices & laboratories					X	X	X	X		
doctors' offices & laboratories					X	X	X	X		
drive-in theaters									X	
dry cleaning & laundry facilities							X		X	
employment agencies, personnel agencies						X	X	X		
engineering, architectural, surveying services						X	X	X		
equipment rental & leasing (no vehicles/outdoor items)							X	X		
equipment repairs, heavy									X	
equipment repairs, light									X	
exterminating services									X	
farm related enterprises such as vegetable stands, fishing ponds, horticulture, landscaping services, farm supplies, stable	X								X	
finance or loan offices						X	X	X		
fraternal organizations	X					X	X	X	X	
freezer lockers							X		X	
funeral homes							X		X	
insurance agencies						X	X	X		
internal service facilities, incidental to permitted uses, including cafeterias, day care facilities, snack bars, pharmacies, optical stores & similar retail activities when conducted solely for use of employees, patrons, or occasional visitors; provided such activities are within the principal building & advertising for it is not permitted beyond premises				X	X	X	X	X	X	

TABLE OF PERMITTED AND CONDITIONAL USES

USE TYPES	R-20	R-15	R-15TH	R-10	I-1	O&CS	B-1	B-2	M-1	SR
interior decorator						X	X	X		
laundromats						X	X	X		
law offices						X	X	X		
locksmith shops, including repair							X	X	X	
medical, dental or related offices					X	X	X	X		
medical or dental laboratories					X	X	X	X		
mini-warehouses									X	
motels & hotels							X		X	
office, not classified elsewhere (no retail)					X	X	X	X		
optometrist & ophthalmologists					X	X	X			
photocopying & duplicating services						X	X	X		
photo finishing laboratories							X		X	
photography studio						X	X	X		
picture framing shop						X	X	X		
psychologists' offices					X	X	X	X		
real estate offices						X	X	X		
recreational vehicle parks or campsites									X	25
refrigerator or large appliance repairs									X	
rehabilitation or counseling services					X	X	X	X		
repair shops not classified elsewhere									X	
research, development, or testing services					X				X	
septic tank services									X	
service stations (not including truck stops) including repairs and screened storage of not more than 5 inoperable cars							X		X	
shoe repair or shoeshine shops						X	X	X		
signs as regulated by Article IX	X	X	X	X	X	X	X	X	X	

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TABLE OF PERMITTED AND CONDITIONAL USES										
USE TYPES	R-20	R-15	R-15th	R-10	1-1	O&CS	B-1	B-2	M-1	SR
antique shops							X	X		
apparel sales							X	X		
appliance sales & service							X	X		
art studios & galleries						X	X	X		
arts & craft sales; similar specialty retail							X	X		
auction houses							X	X		
automobile & truck dealers; new & used							X		X	23
automobile parts & supply store							X		X	
bakeries; retail							X	X		
bicycle sales & repair							X	X		
boat dealers; sales & repair							X		X	
book stores							X	X		
building supply dealers							X		X	
camera & photography; sales & service							X	X		
candy stores							X	X		
carpet sales & storage							X	X		
catalogue shops							X	X		
clothing shops							X	X		
cluster development, non-residential					X	X	X	X	X	27
computer stores							X	X		
department & variety stores							X	X		
dairy products stores							X	X		
drug stores & pharmacies							X	X		
electronic product sales							X	X		
fabric or piece goods stores							X	X		

TABLE OF. PERMITTED AND CONDITIONAL USES										
USE TYPES	R-20	R-15	R-15th	R-10	1-1	O&CS	B-1	B-2	M-1	SR
farm machinery sales & service							X		X	23
farmers' or produce markets							X		X	
farm supplies							X		X	
flea market							X		X	
floor covering, drapery or upholstery							X	X		
florist shop							X	X		
fuel oil sales - nonautomotive							X		X	
furniture sales							X	X		
garden centers or retail nurseries							X	X	X	
gift, novelty & souvenir shop							X	X		
grocery store							X	X		
hardware store							X	X	C	
hobby & toy store							X	X		
homes furnishings, miscellaneous							X	X		
jewelry sales & repair							X	X		
leather goods sales							X	X		
lighting goods sales							X	X		
liquor stores - ABC							X	X		
miscellaneous retail sales							X	X		
mobile home sales & service									X	23
motorcycle sales & service							X		X	23
music stores including instrument repair							X	X	X	
newsstand, magazines							X	X		
office supply store							X	X		
optical goods sales							X	X		

TABLE OF PERMITTED AND CONDITIONAL USES

USE TYPES	R-20	R-15	R-15th	R-10	1-1	O&CS	B-1	B-2	M-1	SR
paint, glass & wallpaper stores							X	X		
pawn shop							X	X		
pet stores							X	X		
radio & television, stores & repairs							X	X		
record, tape, cd stores							X	X		
recreation vehicles sales & service									X	23
restaurants (with drive-through)							X			
restaurants (no drive-through)							X	X		
retail sales & service where not classified elsewhere, and where all retail sales & services are conducted within an enclosed building							X	X		
service stations, gasoline (no repair)							X	X		
shoe sales and/or repair							X	X		
shopping centers & malls							X	X		
sporting goods stores							X	X		
tire dealers & services							X		X	
tobacco stores							X	X		
truck stops									X	
video tape rental & sales							X	X		
woodworking shops, retail							X	X	X	

TABLE OF PERMITTED AND CONDITIONAL USES

USE TYPES	R-20	R-15	R-15th	R-10	1-1	O&CS	B-1	B-2	M-1	SR
Wholesale Trade										
agricultural chem/pesticides/fertilizers									X	
agricultural products, other									X	
ammunition									X	
animals & animal products, other									X	
apparel, piece goods & notions									X	
bakeries; wholesale									X	
books, periodicals, & newspaper									X	
bulk mail & packaging									X	
chemicals & allied products									X	
courier services, central facility									X	
courier service substations									X	
drugs & sundries									X	
durable goods, other									X	
electrical goods									X	
farm supplies, others									X	
flowers, nursery stock & florist supplies									X	
forest products									X	
furniture & home furnishings									X	
groceries & related products									X	
hardware									X	
jewelry, watches, precious stones & metals									X	
livestock									X	
lumber & other construction materials									X	
machinery, equipment & supplies									X	

TABLE OF PERMITTED AND CONDITIONAL USES

USE TYPES	R-20	R-15	R-15TH	R-10	I-1	O&CS	B-1	B-2	M-1	SR
market showrooms (furniture, apparel, etc.)							X		X	
metals & minerals									X	
motor vehicles, parts & supplies									X	
movers & storage operations									X	
paints & varnishes									X	
paper & paper products									X	
petroleum & petroleum products									X	
plastics materials									X	
plumbing & heating equipment									X	
professional & comm. equipment & supplies									X	
resins									X	
scrap & waste materials, recycling									X	24
sporting & recreational goods & supplies									X	
tobacco & tobacco products									X	
toys & hobby goods & supplies									X	
trucking or freight terminals									X	
utility equipment & storage yards									X	
wallpaper & paint brushes									X	
warehousing & storage, not including storage of any hazardous materials or waste as determined by any agency of the federal, state or local governments									X	

TABLE OF PERMITTED AND CONDITIONAL USES

USE TYPES	R-20	R-15	R-15TH	R-10	I-1	O&CS	B-1	B-2	M-1	SR
coffee									X	
computer & office equipment									X	
concrete, cut stone & clay products									X	
costume jewelry & notions									X	
dairy products									X	
electrical components									X	
electronics & electronic products									X	
fabricated metal products (including can manufacturing)									X	
fabricated valve & wire products									X	
fats & oils, animal									X	
fats & oils, plant									X	
fish, canned, cured or frozen									X	
floor coverings (excluding carpet)									X	
food & food products, except animal rendering									X	
furniture products									X	
glass, including fiberglass									X	
grain mill products									X	
graphite & graphite products									X	
heating equipment & plumbing fixtures									X	
household appliances									X	
ice									X	
industrial & commercial machinery									X	
jewelry & silverware (no plating)									X	
landfill, building debris private									X	31
landfill, sanitary									X	32

TABLE OF PERMITTED AND CONDITIONAL USES

USE TYPES	R-20	R-15	R-15TH	R-10	I-1	O&CS	B-1	B-2	M-1	SR
paper products (coating or laminating)									X	
paperboard containers & boxes									X	
pens & art supplies									X	
petroleum & related products									X	34
pharmaceutical preparations									X	
photographic equipment									X	
pottery & related products									X	
plastics									X	
primary metals products and foundaries									X	
poultry operations, including hatcheries									X	
preserved fruits & vegetables (no can manufacturing)									X	
printing & publishing									X	
railroad terminals or yards									X	
refuse & raw material hauling									X	24
rubber products									X	
salvage yards, scrap processing									X	24
sawmill or planing mills									X	
signs									X	
soaps & cosmetics									X	
sporting goods & toys									X	
stone & clay products									X	
sugar & confectionery products									X	
surface active agents									X	

TABLE OF PERMITTED AND CONDITIONAL USES

USE TYPES	R-20	R-15	R-15TH	R-10	I-1	O&CS	B-1	B-2	M-1	SR
Public Works Etc.										
electric transmission distribution poles, towers supporting cable, lines & related appurtenances	X	X	X	X	X	X	X	X	X	
governmental public works facilities, utilities, & appurtenances except landfills	C	C	C	C	X	X	X	X	X	
natural gas distribution lines & related appurtenances	X	X	X	X	X	X	X	X	X	
power generation, natural gas plants & similar production facilities									X	
radio, television & similar transmitting towers that exceed height but not including wireless telecommunications towers					X				X	
sewage collection lines, pump stations & appurtenances	X	X	X	X	X	X	X	X	X	
sewage treatment plants, non-government public	C	C	C	C	C	C	C	C	X	35
telephone & television cable poles, towers supporting cable, lines & related appurtenances	X	X	X	X	X	X	X	X	X	
water distribution lines, booster pumps, storage facilities & appurtenances	X	X	X	X	X	X	X	X	X	
water treatment plants, non-government public	C	C	C	C	C	C	C	C	X	35
wireless telecommunications towers & facilities					X		X		X	36

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**APPENDIX B: SPECIAL REQUIREMENTS TO THE TABLE OF
PERMITTED AND CONDITIONAL USES**

The Table of Permitted and Conditional Uses of Appendix A contains a column on the far right labeled "SR" for Special Requirements. In any case where a use listed in the Table of Permitted and Conditional Uses has a number in the SR column opposite the use, the use must comply with the additional Special Requirements contained in this section corresponding to the Special Requirement number. For example, the use "Planned Unit Development" has the number "8" in the SR column opposite the use, therefore, the development of a Planned Unit Development must meet the special requirements for SR 8 Planned Unit Development of this section.

SR 1 BED AND BREAKFAST INNS.

In the R-20, R-15 and R-10 Districts:

- (A) The maximum number of guest bedrooms shall be six;
- (B) The inn shall be operated by a resident manager;
- (C) The use shall be located in a structure, which was originally constructed as a dwelling;
- (D) The use shall contain only one kitchen facility. Meals served on the premises shall be only for overnight guests and residents of the facility;
- (E) The use of such a facility by any one patron shall be limited to no more than 15 days per 60 day period.

SR 2 CLUSTER DEVELOPMENT, RESIDENTIAL.

Cluster Development shall be permitted as a Conditional Use in the CU-R-20, CU-R-15, CU-R-15TH and CU-R-10 districts. A minimum site to ten acres is required for a cluster development.

- (A) Uses shall be limited to single-family detached dwellings and related accessory uses.
- (B) Cluster developments shall be exempt from the minimum lot size for the district in which located provided that in no case shall the lot size be less than 75% of the minimum required lot size. All other minimum dimensional requirements of the district shall apply.
- (C) The maximum potential number of lots that may be created shall be computed by subtracting 20% of the gross area (as allowance for street right-of-way) and by dividing the remaining area by the minimum lot area requirements for the zoning district in which the development is located. This section shall apply regardless of the amount of land actually required for streets.
- (D) An amount of land at a minimum equal to the amount of reduction in lot size as determined by division (B) above shall be placed in open space within the development and each lot shall have direct access or access by right-of-way or easement to such open space. Such open spaces shall be held in nonprofit, corporate ownership by the owners of lots within the development. In consideration of the

purposes served by a cluster development, the title to such open space property shall be preserved to the perpetual benefit of the private properties in the development and shall be restricted against private ownership for any other purposes. If the corporation desires, improvements may be made within the open space provided that the maximum coverage of each type of improvement shall not exceed the following:

- (1) Above ground improvements, 3% of the open space;
- (2) Level or below ground improvements, 20% of the open space.

SR 3 FAMILY CARE HOME AND FAMILY DAY CARE HOMES.

A family care home with six or fewer persons or a family day care home with six or fewer persons may be operated as an accessory use to a principal dwelling.

SR 4 HOME OCCUPATION.

A home occupation shall be operated in conformance with the following standards:

(A) No person other than members of the immediate family occupying such dwelling shall be employed.

(B) No stock in trade (except articles produced by the members of the immediate family residing on the premises) shall be displayed or sold upon the premises.

(C) No alteration of the principal building shall be made which changes the character thereof as a dwelling.

(D) No more than 25% of the area of the dwelling shall be devoted to any home occupation.

(E) The home occupation shall be conducted entirely within the principal building that is used as the residential dwelling.

(F) No chemical, mechanical, or electrical equipment that creates odors, light emissions, noises, or interference in radio or television reception detectable outside the dwelling shall be permitted.

(G) Only vehicles used primarily as passenger vehicles (such as automobiles, vans, pickup trucks) shall be permitted in connection with the conduct of the home occupation.

(H) Only one visitor or patron shall be permitted at one time with no on-street parking, except that instructional programs may have two students at one time.

(I) No outdoor storage shall be permitted.

(J) No home occupation shall be operated in such a manner as to cause a visual, audible, sensory, or physical nuisance.

SR 5 CLASS A MOBILE HOME ON INDIVIDUAL LOT.

(A) The mobile home shall be at least 24 feet by 40 feet excluding towing apparatus.

(B) The pitch of the mobile home's roof shall have minimum vertical rise of 2.2 feet for each 12 feet of horizontal run and the roof shall be finished with a type of shingle that is commonly used in standard residential construction.

(C) The exterior siding shall consist predominantly of vinyl or aluminum horizontal lap siding (that does not exceed the reflectivity of gloss white paint), wood, or hardboard, comparable in composition, appearance, and durability to the exterior siding commonly used in standard residential construction.

(D) A continuous, permanent masonry foundation such as brick, stone, stucco, split-faced block (but not common concrete block), unpierced except for required ventilation and access, shall be installed under the mobile home.

(E) The tongue, axles, transporting lights, and removable towing apparatus shall be removed subsequent to final placement.

(F) Installation shall be in accordance with North Carolina Department of Insurance Standards.

SR 6 MULTI-FAMILY DWELLING.

Multi-family dwellings of more than four dwelling units or more than one building on a lot shall meet the standards of SR 9, Residential Group Developments. Multi-family dwellings of four or less dwelling units on individual lots shall meet the standards of the R-10 District.

SR 7 NURSING AND CONVALESCENT HOMES; CONGREGATE CARE AND GROUP CARE.

In the R-20 and R-10 Districts:

(A) A minimum of 20,000 square feet shall be required to establish any one above uses;

(B) All structures including secondary and accessory structures shall be located a minimum of 50 feet from any street line and 20 feet from any other property line;

(C) Any use listed above located in a residential district on a site greater than three acres shall have frontage on a collector or thoroughfare street;

(D) Existing uses as described above which do not meet the 20,000 square foot minimum requirement of division (A) above at the time of the adoption of that provision may expand or be reconstructed provided such expansion or reconstruction meets the minimum dimensional requirements of the district in which located.

SR 8 PLANNED UNIT DEVELOPMENTS.

(A) PUDs shall be permitted only when requested as a Conditional Use and accompanied by a rezoning request to one of the following zoning districts: CU-R-20, CU-R-15, CU-R-15TH and CU-R-10.

(B) Application for PUD shall be approved only if the following findings are made:

(1) That application of planned unit development requirements to the property will produce a development of equal or higher quality than otherwise required by the strict application of district regulations that would otherwise govern;

(2) That application of planned unit development requirements to the property will encourage innovative arrangement of buildings and open spaces to provide efficient, attractive, flexible and environmentally sensitive design;

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(3) That application of planned unit development requirements to the property will produce a development functioning as a cohesive, unified project; and

(4) That application of planned unit development requirements to the property will not substantially injure or damage the use, value, and enjoyment of surrounding property nor hinder or prevent the development of surrounding property in accordance with the adopted plans and policies of the town.

(C) An approved PUD Conditional Use Permit and the approved verified development plan shall govern all uses and development activities in a PUD.

(D) Except as otherwise provided by this SR, a PUD shall be subject to all the applicable standards, procedures and regulations of the other parts of this chapter.

(E) *Minimum size.* No PUD shall be approved for a site of less than that shown in the following table. The site must be contiguous property under unified ownership or control.

Districts	Minimum
CU-R-20, CU-R-15 and CU-R-15TH	12 acres
CU-R-10	6 acres

(F) *Uses.* Uses permitted in a PUD shall be in accordance with the following schedule, provided, that uses to be in a PUD shall be stated in the conditional use permit.

Districts	Uses
All	(1) All uses permitted in the corresponding Principal District. (2) In DUDS of 25 acres or more, all uses permitted in the B-2 and O & CS Districts.

(G) *Limitations on uses.* In a PUD that qualified for such uses by size, O & CS and B-2 uses shall not exceed 10% of the total land area and at no time shall the cumulative amount of land development for O & CS and/or B-2 purposes exceed the cumulative amount of land development for residential purposes.

(H) *Development standards.* Development in a PUD shall be exempt from the minimum required lot width, front yard, side yard, and rear yard requirements of the Schedule of District Regulations and from §§ 151.021 and 151.022 relating to relationship of buildings to lots and access to streets provided that the following development standards are followed. The overall residential density limitation and residential building types of the corresponding principal district shall apply in a PUD provided that a density bonus which may involve a different residential development type may be permitted during the PUD approval process as provided for herein.

(1) *Lot size.* The exemption from the Schedule of District Regulation Provisions shall not apply in the following situations:

(a) No lot for a single family detached dwelling shall be less than the minimum lot size for a single-family dwelling in the zoning district in which the PUD is located;

(b) Where the zoning district permits attached and multi-family developments such uses are permitted subject to the Special Requirements for such developments.

(2) *Vehicle access.*

(a) Primary vehicular access to office or commercial development shall not be through intervening residential development.

(b) Local streets shall be located and designed so that they do not encourage through access by traffic with origins and destinations outside of the development.

(3) *Pedestrian access.* PUDs shall be designed and developed and uses so arranged to promote pedestrian access within the development.

(4) *Non-residential areas.* Non-residential areas in PUDs shall be designed and located to principally serve the residents of the PUD and the immediate surrounding area.

(5) *Boundary treatment.* The scale and setbacks of development in a PUD within 150 feet of the perimeter of the PUD shall be in harmony with development on adjacent lands.

(6) *Environmentally sensitive areas.* One of the principal purposes of the PUD procedure is to protect environmentally sensitive areas through the use of innovative arrangement of buildings and spaces. It is the intent of the PUD process that significant consideration in planning and design of PUDs shall be given to the following elements such as but not limited to:

- (a) Floodway and floodway fringe areas
- (b) Steep slopes and knolls
- (c) Wetlands
- (d) Water supply watersheds and recharge areas
- (e) Rock outcrops
- (f) Soil erosion and storm water management
- (g) Tree and foliage preservation
- (h) Habitat for threatened or endangered species
- (i) Areas of historical, archaeological or architectural significance
- (j) Useable open space; recreation area

(7) In any case where the Board of Commissioners finds in its opinion that the PUD provides for significant protection of enhancement of any one or more of the above elements, or a similar element as determined by the Board, the Board may award a bonus of up to 10% increase in residential dwelling units for a PUD and may permit such additional dwelling units to be of a development type not otherwise permitted in the PUD. The determination by the Board of the significant protection or enhancement of a particular element shall be based upon a comparison between the type of development that could be placed on the property under the current zoning and other regulations and the proposed development scheme for the PUD.

(8) *Unified development plan.* The application for a PUD Conditional Use Permit as part of a Conditional Use rezoning shall be accompanied by a unified development plan in the form of a site-specific development plan.

(9) *Phased development.* A PUD may be developed in phases in the same manner as a subdivision and subject to the phasing requirement for subdivisions.

SR 9 RESIDENTIAL GROUP DEVELOPMENT.

Residential Group Developments consisting of townhouses are permitted in the R-15TH and CU-R-15TH districts. Residential Group Developments including multi-family, attached units and other forms are permitted as Conditional Uses in the CU-R-10 District. Residential Group Developments shall comply with the following standards:

(A) No multi-family dwellings or series of attached single-family, multi-family buildings or other such arrangements shall exceed a length of 150 feet when measured along the longest axis of the building or series of attached units when placed in a theoretical straight alignment.

(B) No development shall contain more than 20 dwelling units unless the development shall have frontage along and direct primary access on a major or minor thoroughfare as shown on the Thoroughfare Plan.

(C) No development shall contain more than 60 dwelling units unless the development shall have frontage along and direct primary access on two major or minor thoroughfares or combinations thereof as shown on the Thoroughfare Plan.

(D) Any development with more than 100 dwelling units shall meet the requirements of (C) above and shall submit a certified traffic engineering report evaluating the capability of the adjoining street system to carry the traffic generated by the development.

(E) No zoning permit or building permit shall be issued for any construction in a group residential development except in accordance with a site plan approved by the Planning Board, in accordance with the standards herein. In any case where land is to be dedicated in a group residential development, a Subdivision Plan may be required by Chapter 150. Developments that are proposed to be developed under the North Carolina Unit Ownership Act shall meet the requirements of that Act by recording the declaration and plan with the Register of Deeds. Where land is to be conveyed in accordance with such declaration and plan, the developer shall first comply with Chapter 150.

(F) The number of dwelling units per unit of land area shall not exceed the number of dwelling units per unit of land area permitted in the district in which the development is located. Fractional units above $\frac{1}{2}$ may be rounded to the next highest number once the basic number of units exceeds 20.

(G) The following yard requirements are hereby established.

(1) Along each exterior property line or public street, a minimum front, rear and side yard setback as required by the district in which the development is located shall be established.

(2) To determine building separation yard (or position of an individual building or series of attached units), an isosceles triangle (yard space triangle) shall be drawn from each building facade. Facades shall be designated on each building so that a minimum number, normally four, results. The base of the triangle shall be a line connecting the extreme ends of the facade (ignoring one-story storage rooms and other one-story protrusions of 100 square feet or less, exterior stairways, and decks), and its altitude shall be the length of the base line multiplied by a factor related to the height of the building as shown below:

<u>Number of Stories</u>	<u>Altitude Factor</u>
1	0.4
2	0.5
3 or more	0.6

(3) The isosceles triangle thus established shall not:

- (a) Overlap any portion of any other building;
- (b) Overlap any other yard space triangle;
- (c) Extend across the property lines of the development.

(4) In addition to the yard space triangles, in no case shall any building be closer than 20 feet to any other building on the development. Furthermore, buildings shall not be arranged in straight rows oriented in such a way as to resemble rows of barracks.

(H) All portions of every building shall be located within 300 feet of a public street that furnishes direct access to the property unless the fire chief determines that on site fire hydrants and service drives will offer adequate protection.

(I) All main utility lines, meters, taps, and other appurtenances, up to and including the meter for each individual unit, (but not including the service lines and other facilities extending service to each individual unit) shall be built to the same standard as required for subdivisions. All such facilities, together with an easement of sufficient width, shall be conveyed to and/or dedicated to the town for public use and maintenance. All utilities shall be placed underground. Each unit shall be individually metered for all utilities. Responsibility for the maintenance of common utility lines and/or facilities which have not been conveyed to the town and/or dedicated for public use shall be the responsibility of the project owner, or in the case of unit ownership clearly established in the declaration, protective covenants and other bylaws.

(J) All private streets or accessways providing ingress and egress from the development to an existing public street system shall comply with the current standards being required by the subdivision regulations then in effect, including street drainage, except that no curb and gutter is required and a pavement width of only 20 feet shall be required.

(K) Storm drainage improvements shall be made in the same manner and under the same criteria as that established in the subdivision regulations.

(L) Stationary sanitary containers shall be located so as not to interfere with sight distance or the free movement of vehicles on streets or service drives and so as to allow collector trucks adequate maneuvering space to empty the containers and to leave the property without excessive backing. Concrete pads in conformance with the public works department's stationary container location standards shall be located beneath of and in the approach to each stationary sanitary container. Where single-family attached units make up the total development and are all located along a public street in a manner similar to a typical single-family development, the Public Works Director may approve an individual household pick-up system.

(M) Storm water drainage shall be provided in the manner as required in Chapter 150.

SR 10 TOWNHOUSE DEVELOPMENTS.

Townhouse Developments of more than four attached units or more than one series of attached units in a development shall meet the requirements of SR 9, Residential Group Developments. Townhouse developments of four or less attached units and no more than one series of attached units in the development shall meet the requirements of the district in which located.

SR 11 TRADITIONAL NEIGHBORHOOD DEVELOPMENT.

Traditional Neighborhood Development (TND) shall be permitted as a Conditional Use in the CU-R-10 district. Traditional Neighborhood Development shall be exempt from the design standards of Chapter 150 and the general district regulations as established in this chapter for the R-10 District provided that the Board of Commissioners determines that the proposed TND meets the requirements of this special requirement and the findings as set forth in § 151.196. Prior to submitting an application for CU-R-10 District rezoning to develop a TND, the developer shall submit a preliminary site plan for review by the Planning Board. The site plan shall be of sufficient detail to allow the Planning Board to determine the proposal's compliance with the purposes and principles of the TND SR. The Planning Board shall have 45 days to review the plan and make its report to the developer. The Planning Board's report shall be advisory only and not binding.

(A) The TND shall carry out the following purposes and principles:

- (1) The neighborhood is well defined geographically;
- (2) Residences, shops, workplaces, civic buildings and parks are interwoven within the neighborhood, all in close proximity and connected by a system of sidewalks;
- (3) The hierarchy, design and detailing of streets, serves equitably the needs of pedestrians, bicycles and automobiles;
- (4) Carefully placed civic buildings and squares reinforce the identity of the neighborhood;
- (5) Spatially defined squares and parks are distributed and designed as specialized places for social activity and recreation;
- (6) Civic buildings provide places of assembly for social, cultural and religious activities, becoming symbols of community identity through their architectural clarity;
- (7) Private buildings form a disciplined edge, spatially delineating the public street space and the private block interior;
- (8) Architecture and landscape respond to the unique character of the region and traditional design principles with attention toward a classic sense of timelessness. Designs shall preserve the charm and unity of the neighborhood as a whole;
- (9) By providing a full range of housing types and workplaces, residents of all ages are blended together, forming the bonds of an authentic community;
- (10) By bringing within walking distance most of the activities of daily living, including dwelling, shopping and working, the elderly and the young gain independence of movement;
- (11) The compact layout of the TND minimizes the requirements for infrastructure and automobile use.

- (B) As a general principle, the TND shall not be less than 40 acres or more than 640 acres.
- (C) Lot sizes/density limitations shall be determined by the approved site plan.
- (D) Internal and external buffer and landscaping shall be determined by the approved site plan.
- (E) Building setbacks and land use relationships shall be determined by the approved site plan.
- (F) The overall impervious surface limitations of § 151.141 shall apply.

(G) Within the TND, any land use permitted by Appendix A may be permitted provided it meets the purposes and principles of the TND and provided that the use categories fall within the following general parameters:

Use Type	Amount	Typical Uses
Community Spaces	At least 5%	Parks, squares, greenbelts, trails
Civic Buildings	At least 2%	Community building, libraries, post offices, daycare, club houses, religious building, museums, recreation buildings
Shop Front Buildings	2 -20%	Consumer retail and services with residential uses above the shops
Multi-family	15-30%	May include accessory use and bed and breakfast
Single-family	20-30%	May include accessory use and bed and breakfast
Business	5-15%	Office, retail, restaurants, light industrial

(H) The TND shall incorporate the following additional design principles except where modified in the approved site plan by the Board of Commissioners.

(1) *Lots and buildings.*

(a) All lots shall share a frontage line with a street or public space; lots fronting on a public space shall have access to a rear alley.

(b) Consistent build-to lines shall be established along all streets and public space frontages.

(c) All building, except accessory structures, shall have their main entrance opening on a street or public space.

(d) No structure shall exceed 35 feet in height.

(2) *Streets, alleys and pathways.*

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(a) Designs shall permit comfortable use of the street by motorists, pedestrians, and bicyclists. Pavement widths, design speeds and the number of motor travel lanes should be minimized to enhance safety for motorists and non-motorists alike. The specific design of any given street must consider the building types which front on the street and the relationship of the street to the overall town street network.

(b) Public streets shall provide access to all tracts and lots.

(c) Streets and alleys shall, wherever practical, terminate at other streets within the neighborhood and connect to existing and projected streets outside the development. Cul-de-sacs and dead-end streets are discouraged and should only occur where absolutely necessary due to natural conditions.

(d) No block face should have a length greater than 500 feet without a dedicated alley or pathway providing through access.

(e) To prevent the build-up of vehicular speed, disperse traffic flow, and create a sense of visual enclosure, long uninterrupted segments of straight streets should be avoided.

(f) A continuous network of rear alleys is recommended for all lots in a TND.

(g) Utilities shall be underground and shall run along alleys wherever possible.

(h) Streets shall be organized according to a hierarchy based on function, size, capacity and design speed. Streets and rights-of-ways are therefore expected to differ in dimension. The proposed hierarchy of streets shall be indicated on the submitted Master Plan and each street type shall be separately detailed in the Master Plan.

(i) Every street, except alleys, shall have a sidewalk on at least one side that is at least five feet wide. In shop front areas, sidewalks shall be at least ten feet wide.

(j) Streets shall meet the NCDOT traditional neighborhood development street design guidelines.

(3) *Parking.*

(a) On-street parking should be provided on all streets. Occasional on-street parking can be accommodated without additional pavement width. For streets which serve workplace and storefront buildings, on-street parking is required and should be marked as such. On-street parking should be parallel to street unless the street lends itself to other parking layouts.

(b) Parking lots shall generally be located at the rear or at the side of buildings and shall be screened from public rights-of-way and adjoining properties by land forms or evergreen vegetation so as to provide a barrier that will be at least three feet high and provide a percent visual barrier within two years.

(c) To the extent practicable, adjacent parking lots shall be interconnected.

(d) Small and strategically placed parking areas are recommended.

(e) Parking areas shall be paved and all parking areas and traffic lanes shall be clearly marked.

(f) The number, width and location of curb cuts shall be such as to minimize traffic hazards, inconvenience and congestion.

(g) Off-street parking and loading requirements, outlined in §§ 151.100 - 151.102 maybe used a guidelines.

(h) The developer shall demonstrate the provision of adequate parking and off street loading areas for different areas of the development, based on the uses allowed and the density of development.

(i) In addition to landscaping provided for screening above, trees should be planted around the perimeter and interior of parking lots to provide shade.

(4) *Landscaping.*

(a) Trees shall be planted within rights-of-way parallel to the street along all streets except alleys.

(b) Tree spacing shall be determined by species type. Large maturing trees shall be planted a minimum of 40 feet and a maximum of 50 feet on center. Small and medium maturing trees shall be planted a minimum of ten feet and a maximum of 30 feet on center.

(c) Large maturing trees shall generally be planted along residential streets and along the street frontages and perimeter areas of parks, squares, greenbelts and civic structures.

(d) Small maturing trees shall generally be planted along non-residential streets, interior portions of parks, squares, greenbelts and civic lots. Storefronts shall not be obstructed by the planting pattern.

(e) The natural features of the landscape shall be incorporated into the landscaping plan.

(f) All plantings shall be with native species.

SR 12 TRANSIENT RESIDENTIAL FACILITIES.

(A) The facility shall meet the Minimum Housing Code.

(B) A minimum floor space of 50 square feet shall be provided for each individual sheltered.

(C) A minimum lot area of 20,000 square feet shall be provided.

(D) A maximum of nine persons shall be sheltered at any one time.

(E) No such facility shall be located within 1/4 mile of an existing facility of a similar nature.

SR 13 TWO-FAMILY DWELLING ON INDIVIDUAL LOT.

A two-family dwelling on an individual lot shall have a minimum lot area of 20,000 square feet in the R-10 District.

SR 14 ZERO LOT LINE DEVELOPMENT.

Zero lot line developments shall be permitted as a Conditional Use in the CU-R-20, CU-R15, CU-R15TH, and CU-R-10 Districts. Zero lot line developments shall have a minimum of ten contiguous lots and shall be developed in accordance with the following standards:

(A) Zero lot line developments are exempt from the side yard setback for the principal structure provided they meet the requirements of this special requirement.

(B) Setbacks of zero feet are permitted only where the lots on both sides of the affected lot line are part of a zero side setback development.

(C) A wall and roof maintenance easement [five feet along one-story walls, ten feet along two-story walls] shall be provided on the opposite side of the zero setback lot line.

(D) Every lot shall provide one side setback of at least twice; the minimum side setback required by the zoning district.

(E) Whenever one side setback of a lot is zero, the minimum setback on the opposite side of the same lot shall be twice the minimum required by the zoning district.

(F) Unless abutting, the minimum separation between dwellings shall be in accordance with the District Standard.

(G) The Preliminary Plat shall indicate the proposed single family dwelling footprint on each lot to show which side lot line will have a zero side setback and to show that all other required setbacks and maintenance easements are provided.

SR 15 AMUSEMENT OR WATER PARKS; BATTING CAGES; GOLF DRIVING RANGES; MINIATURE GOLF FACILITIES.

(A) Minimum lot size for all developments shall be five acres.

(B) No principal buildings or structures shall be located within 50 feet of any property line.

(C) Security fencing, a minimum of six feet in height, shall be provided along the entire boundary of park activities.

(D) No amusement equipment, machinery, or mechanical device of any kind may be operated within 200 feet of any residentially zoned property.

(Am. Ord. 100105.02, passed 1-5-10)

SR 16 DANCE HALLS, INCLUDING NIGHTCLUBS.

(A) All principal buildings shall be setback at least 50 feet from any residential zoning line.

(B) No part of any parking space shall be located within 20 feet of any residential zoning line.

SR 17 GOLF COURSE; INCLUDING PRO SHOP; RECREATIONAL FACILITIES, PRIVATE AND NON-PROFIT, SADDLE CLUBS, SWIM & TENNIS CLUBS AND THE LIKE.

(A) There shall be a 50 foot minimum setback between clubhouses, swimming pools, lighted tennis courts, athletic fields, and other activity areas and adjacent residentially zoned property.

(B) Outdoor swimming pools shall be protected by a fence, or equal enclosure, a minimum of four feet in height, and equipped with a self-closing and positive self-latching gate provided with hardware for permanent locking.

SR 18 SHOOTING RANGE, INDOOR.

The facility shall be designed to absorb sound to the maximum extent feasible.

SR 19 DAY CARE/FAMILY CARE CENTERS (SIX OR MORE).

An adult or child day care center with six or more attendees shall be operated as a principal use and subject to the following development standard: Centers in a residential district shall have frontage on a collector or thoroughfare street.

SR 20 NURSING AND CONVALESCENT HOMES; CONGREGATE CARE AND GROUP CARE; ORPHANAGES; AMBULANCE SERVICE.

In the R-20 and R-10 Districts:

(A) A minimum of one acre shall be required to establish any one of the above uses;

(B) All structures including secondary and accessory structures shall be located a minimum of 50 feet from any street line and, 20 feet from any other property line;

(C) Any use listed above located in a residential district on a site greater than three acres shall have frontage on a collector or thoroughfare street;

(D) Existing uses as described above which do not meet the one acre minimum requirement of (A) above at the time of the adoption of that provision may expand or be reconstructed provided such expansion or reconstruction meets the minimum dimensional requirements of the district in which located.

SR 21 ANIMAL CLINICS.

(A) The facility shall be designed to absorb sound to the maximum extent feasible.

(B) Outdoor exercise areas shall be located a minimum of 50 feet from any adjoining residential property line.

SR 22 ANIMAL KENNELS.

(A) (1) Minimum lot size shall be as follows:

1 to 10 animals	One acre
11 to 20 animals	Two acres
21 to 30 animals	Three acres

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(2) For each additional acre beyond three acres, an additional ten animals may be permitted. The minimum lot size requirements may be waived if a kennel is constructed to entirely enclose all kennel facilities so as to adequately protect all animals from weather extremes and to protect adjacent residences from noise, odors, and other objectionable characteristics, provided all building setback requirements are in accordance with division (B) below.

(B) All structures shall have minimum front, side, and rear yards of 150 feet. There shall be a separation of at least 500 feet between residences on adjoining tracts and any building used for kennel operation.

(C) Sewage disposal system and sanitation control methods as approved by the County Board of Health shall be required for all kennels. (This provision shall include, but shall not be limited to, the sanitary removal or disposal of solid waste, carcasses, or any other items deemed necessary for removal or disposal because of unsafe or unsanitary conditions by the Health Department.)

**SR 23 AUTOMOBILE RENTAL OR LEASING; AUTOMOBILE SALES (NEW AND USED);
FARM MACHINERY SALES AND SERVICE; MOBILE HOME SALES AND SERVICE;
MOTORCYCLE SALES AND SERVICE; RECREATIONAL VEHICLE SALES AND SERVICE.**

(A) Sales facilities shall be in a permanent building.

(B) Vehicles for sale shall be set back from public streets and adjoining property lines a minimum of ½ the minimum required building set back.

**SR 24 AUTOMOBILE STORAGE; AUTOMOBILE TOWING & STORAGE; AUTOMOBILE
WRECKING OR JUNK YARDS; SALVAGE YARDS, SCRAP PROCESSING; REFUSE AND RAW
MATERIAL HAULING.**

(A) Any area covered by 600 square feet or more of scrap material or seven or more junk vehicles shall qualify as a use of this type.

(B) A minimum of ten acres is required for such facilities.

(C) A solid fence or wall not less than eight feet in height shall be placed and maintained around all setback boundaries; an open space setback of at least ten feet shall be maintained around the enclosure; such area shall not be used for storage and shall be grassed and maintained in natural vegetation.

(D) Weeds and grasses shall be controlled within the facility.

(E) The height of items inside the facility shall not exceed the height of the barrier fence.

(F) Items shall not be stored closer than 500 feet to any adjoining residentially zoned property.

(G) Storm water runoff and erosion control measures shall be installed around the site in accordance with state standards.

(H) All unmounted tires (200 maximum) shall be stored in an enclosed building to prevent the accumulation of storm water within the well of the tire.

(I) The owner understands that he/she will be financially responsible for any contamination of the site and/or its environs.

SR 25 RECREATIONAL VEHICLE PARKS OR CAMPSITES.

Such uses shall comply with the following standards.

(A) *Yard requirements.* The following yard requirements are hereby established:

(1) *Exterior.* Along any public street or public right-of-way, a setback of at least 40 feet from the edge of the public right-of-way shall be maintained;

(2) *Distance between trailers.* A distance of at least ten feet shall be maintained between trailers and/or structures. Any accessory structures such as attached awnings, carports, or individual storage facilities, shall, for the purpose of this requirement, be considered a part of the trailer.

(B) *Open space.* A recreational area of not less than 10% of the gross site area or 2,500 square feet, whichever is greater, shall be maintained in a central and convenient location to all trailer spaces.

(C) *Lot area.* The lot for the park shall be a minimum of two acres.

(D) *Density.* The density shall not exceed 25 trailer spaces per acre of gross area.

(E) *Parking.* Adequate off-street parking and maneuvering space shall be provided on site. The use of any public street, sidewalk, or right-of-way or any other private grounds not a part of the travel trailer parking area for the parking or maneuvering of vehicles is prohibited.

(F) *Streets.* All internal roadways shall be stabilized and of adequate width to accommodate the volume and type of anticipated traffic, and in any event, shall comply with the following minimum requirements:

(1) Internal one-way roadway and roadways on which parking is prohibited shall not extend for more than 500 feet in total length; serve less than 25 trailer spaces; and be at least 11 feet in width;

(2) Internal one-way roadway and roadways on which parking is permitted on one side and two-way roadways which do not allow parking shall be at least 24 feet in width;

(3) Internal two-way roadways, which permit parking on one side, only shall be at least 27 feet in width;

(4) Internal two-way roadways, which permit parking on both sides, shall be at least 34 feet in width.

(G) *Water.* Each travel trailer parking area shall be connected to an approved water supply system, which provides an accessible, adequate, safe, and potable supply of water.

(H) *Sewer.* An adequate and safe sewer system shall be provided in all travel trailer-parking areas. Such system shall either be a municipal system or a system approved by the appropriate county or state agency vested with the authority to approve sewage disposal systems.

(I) *Screening.* A screening device at least six feet high and 90% opaque shall be provided where the use adjoins residentially zoned property.

(J) *Service building.* A central service building containing all necessary toilets, bathhouses and other plumbing fixtures specified in the most current edition of the North Carolina State Plumbing Code, as amended, shall be provided in all travel trailer-parking areas. Service building shall be conveniently located within a radius of 300 feet to spaces which it serves.

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(K) *Trash.* The storage, collection, and disposal of trash and refuse in the travel trailer parking area shall comply with all applicable regulations.

(L) *Time of stay.* Neither any person nor any mobile unit shall occupy a trailer space or the travel trailer parking area for a period in excess of 30 days. A register of all occupants, the space occupied, and the time of arrival and departure shall be maintained.

SR 26 TATTOOS, BODY PIERCING.

(A) No such business shall locate within 500 feet of any other such business, as measured in a straight line from property line to property line.

(B) No such business shall be located within 500 feet of a church, public or private elementary or secondary school, library, child day care or nursery school, public park, residentially zoned or residentially used property, or any establishment with an on-premise ABC license, as measured in a straight line from property line to property line.

SR 27 CLUSTER DEVELOPMENT, NON-RESIDENTIAL.

Cluster projects consisting of two or more principal buildings to be constructed on two or more acres consisting of one or more parcels of land shall be exempt from the dimensional requirements of the zoning district in which located provided the following requirements are met:

(A) Permitted uses in a cluster development are restricted to those permitted in the zoning district in which the project is located.

(B) Overall intensity or density of development of the land shall be no greater and the standard of open space shall no less than that permitted in the zoning district in which the project is located.

(C) Building heights in the project shall not exceed the height limits permitted in the zoning district in which the project is located.

(D) The property included in the project shall, along its exterior boundary, meet the front, rear and side yard requirements of the zoning district in which the project is located.

(E) Cluster projects may consist of one or more parcels of land and may be subdivided for the purpose of the project. The following requirements shall be met concerning the interior arrangement of the cluster project:

(1) Buildings are required to meet external property lines but are exempt from meeting the minimum yard requirements for internal property lines;

(2) Buildings shall either adjoin each other or be separated by a minimum distance of 20 feet.

(3) Overall parking requirements for the project shall be met. However, all or part of the parking requirement for a use may be located in another parcel in the project;

(4) Overall impervious surface area requirements for the project shall be met. However, impervious surface area requirements may be transferred from one parcel to another in the project in the same watershed district;

(5) Sign provisions shall not be exceeded but may be transferred provided that district requirements are not exceeded;

(6) In any case where buildings are to be constructed closer to an internal property line than permitted by the zoning district, in any case where parking, impervious surface or signs are to be transferred, or in any case of other shared facilities between separate parcels in a cluster project that are needed to support the project, such as common drives and entrances and exits, a recorded perpetually binding agreement between all the property owners involved in the project shall acknowledge such common facilities.

SR 28 AIRPORTS OR AIR TRANSPORTATION FACILITIES.

(A) The minimum area shall be 50 acres for Basic Utility Stage I airport with 2,000 foot runway.

(B) Security fencing shall be provided sufficient to control access to runways and taxiways. The fencing shall be a minimum six feet in height.

SR 29 AMMUNITION, SMALL ARMS.

(A) No such facility shall locate within a 500 foot radius of any residentially zoned property.

(B) Security fencing shall be provided along the entire boundary of such a facility.

(C) The facility and its operation shall observe all Fire Prevention and Protection requirements.

SR 30 ASPHALT PLANT.

(A) Any asphalt plant operations shall be located on a minimum area of ten acres and all plant operations shall be located at least 50 feet from any property line.

(B) Security fencing, a minimum of six feet in height, shall be provided around the perimeter of the operation.

(C) *Rehabilitation.*

(1) Within one year after the cessation of production, all equipment and stockpiles incidental to such operation shall be dismantled and removed by and at the expense of the owner.

(2) The site shall be drained to prevent the accumulation of standing water, and channelization of the drainage shall be designed and controlled so as not to cause erosion or silting of neighboring properties or public drainage ways, nor to appreciably increase the humidity of any natural water course, or to occlude any existing drainage course.

(D) All unpaved storage areas shall be maintained in a manner that prevents dust from adversely impacting adjacent properties.

(E) *Access.*

(1) Access roads leading to any part of the operation shall be constructed with a gravel or asphalt stone surface and maintained in a dust-free manner.

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(2) Access roads shall be located no closer than 15 feet to any property line other than a railroad right-of-way line.

(3) A plan shall be submitted showing truck routes to and from the site. Such routes shall be designed to minimize impacts on residential areas, schools, or other uses negatively affected by truck traffic. Such routes shall be adhered to.

SR 31 LANDFILL, BUILDING DEBRIS, PRIVATE.

(A) *Setback.* There shall be 50 foot minimum distance from any property line.

(B) *Use separation.* There shall be a 300 foot minimum separation from any residence.

(C) *Access.* Access to the landfill shall be controlled with gates, chains, fences, ditches, and/or trees to prevent unregulated dumping.

(D) *Dust.* All unpaved areas shall be maintained in a manner that prevents dust from adversely impacting adjacent properties.

(E) *Operation.* No filling is permitted in any flood hazard area. No filling is permitted in minor drainage ways unless the drainage has been piped in accordance with approved plans. No filling is permitted in utility easements.

(F) *Signs.* An information board sign shall be posted and maintained at the entrance, listing the name and phone number of the current operator, the types of material accepted and the hours of operation.

SR 32 LANDFILL, SANITARY.

(A) An operations and rehabilitation plan shall be submitted for approval prior to permitting.

(B) Direct illumination resulting from the operation shall not fall upon any land not covered by the application.

(C) Equivalent sound levels at the boundaries of the fill site shall not exceed the following standards:

(1) Between 7:00 a.m. and 7:00 p.m. 60 DBA

(2) Between 7:00 p.m. and 7:00 a.m. 55 DBA

(D) The Rehabilitation Plan shall be referred to the Soil and Water Conservation District for review and recommendation, in particular regarding the landscape material specified, the planting; and maintenance proposed to insure continuous growth and development, and the acceptability of the proposals for the handling of lakes, ponds and the like.

(E) The permanent roads, defined as those to be used in excess of one year, within the fill site shall be surfaced with a dust free material, such as soil cement, bituminous concrete or Portland Cement concrete.

(F) Roads other than permanent roads shall be treated with dust inhibitors, to be specified in the Operations Plan, which will reduce to a minimum the generation of dust from the road surfaces as a result of wind or vehicular action. Properly operated water wagons are an acceptable means of dust inhibition.

(G) Where the proposed fill shall take place within 300 feet of a dwelling, school, church, hospital, commercial or industrial building, public building or public land, a security fence at least six feet high shall be installed.

(H) The operations plan and the rehabilitation plan shall be coordinated so that the amount of disturbed land is kept to the absolute minimum consistent with good practices and so that rehabilitation proceeds in concert with filling.

SR 33 MINING AND QUARRYING.

(A) *Setback.*

(1) The edges of any pit where a mining operation is taking place, any equipment used in the processing of rock and gravel, any asphalt plant, or other industrial use operated in conjunction with the mine or quarry shall be located at least 50 feet from any property line.

(2) Where the mining operation site is bounded by a railroad right-of-way currently being used for rail service to the mining operation, no setback shall be required between the railroad right-of-way and such operation.

(B) Security fencing, a minimum of six feet in height, shall be provided around the perimeter of both existing and abandoned operations.

(C) *Rehabilitation.*

(1) Within one year after the cessation of production at all mining operations, all equipment and stockpiles incidental to such operation shall be dismantled and removed by and at the expense of the owner.

(2) Except in a case where redevelopment for another permitted use is in progress on the site of an abandoned extraction operation, all excavations shall be graded to reduce the surface to gently rolling topography in substantial conformity to the land area immediately surrounding, and shall be planted with a cover of sod, trees, shrubs, legumes, or grasses which will minimize erosion due to wind or rainfall.

(3) The site shall be drained to prevent the accumulation of standing water, and channelization of the drainage shall be designed and controlled so as not to cause erosion or silting of neighboring properties of public ways, nor to appreciably increase the humidity of any natural water course, or to occlude any existing drainage course.

(D) All operations involving blasting discernable beyond the external property line of a quarry shall only be conducted between the hours of 7:00 am and 6:00 pm.

(E) All unpaved storage areas shall be maintained in a manner, which prevents dust from adversely impacting adjacent properties.

(F) *Access.*

(1) Access roads leading to any part of the operation shall be constructed with a gravel or asphalt stone surface and maintained in a dust-free manner.

(2) Access roads shall be located no closer than 15 feet to any property line other than a railroad right-of-way line.

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(3) A plan shall be submitted showing truck routes to and from the site. Such routes shall be designed to minimize impacts on residential areas, schools, or other uses negatively affected by truck traffic. Such routes shall be adhered to.

SR 34 PETROLEUM AND RELATED PRODUCTS (WHOLESALE OR MANUFACTURING).**(A) Setback.**

(1) Storage tanks protected by either an attached extinguishing system approved by the Fire Marshal, or an approved floating roof, shall not be located closer to an exterior property line than a distance of either the diameter or height of the tank, except that such distance need not exceed 120 feet.

(2) Storage tanks not equipped as indicated in subsection (A)(1) above shall not be located closer to an exterior property line than a distance equal to $\frac{1}{2}$ times the greater dimension of either the diameter or height of the tank, except that such distance need not exceed 175 feet.

(B) Above ground storage tanks and loading facilities shall be located a minimum of 500 feet from any existing residence or residentially zoned property.

(C) Gravel or paved roadways shall be provided to all storage tanks.

(D) Security fencing, a minimum of six feet in height, shall be provided along the entire boundary of such facilities.

(E) Dikes.

(1) Tanks or groups of tanks shall be diked to prevent the spread of liquid onto other property, waterways, or drainage ways. The volumetric capacity of the diked area shall not be less than the capacity of the largest tank within the diked area.

(2) Dikes or retaining wall shall be of earth, steel, concrete, or solid masonry designed and constructed to be liquid-tight and to withstand a full hydraulic head. Earthen dikes three feet or more in height shall have a flat section at the top not less than two feet in width. The slope shall be consistent with the angle or repose of the material of which the dikes are constructed. Dikes shall be restricted to an average height of not more than six feet above the exterior grade unless means are available for extinguishing a fire in any tank. Dikes enclosing such tanks shall be provided at the top with a flareback section designed to turn back a boil-over wave. A flareback section shall not be required for dikes and walls enclosing approved floating roof tanks. No loose combustible material, drums, or barrels shall be permitted within the diked area.

(3) Where provision is made for draining rainwater from diked areas, such drains shall normally be kept closed and shall be designed so that when in use they will not permit flammable liquids to enter natural watercourses, public sewers, or public drains. Where pumps control drainage from the diked area, they shall not be self-starting.

(F) Tank maintenance.

(1) All storage tanks shall be maintained in a leak-proof condition with an adequately painted, rust-free exterior surface.

(2) A firm substratum shall be constructed under each storage area to eliminate differential subsidence and to prevent the product from seeping.

(G) All storage facilities shall comply with the latest edition of the "Flammable and Combustible Liquids Code, NEPA 30" of the National Fire Protection Association.

SR 35 WATER TREATMENT PLANTS, NON-GOVERNMENTAL PUBLIC; SEWAGE TREATMENT PLANTS, NON-GOVERNMENTAL PUBLIC.

In all residential districts, such plants shall meet the following standards.

(A) No use shall be made of the site that is not directly related to the operation of the plant.

(B) All buildings shall meet the minimum yard setbacks for the district in which located or 20 feet whichever is the greater.

(C) Screening shall be provided adjoining residential property lines with a six feet high, 90% opaque screen.

(D) All structures shall be enclosed by a chain link fence at least eight feet in height.

SR 36 WIRELESS TELECOMMUNICATION TOWERS AND FACILITIES.

Such towers and facilities shall conform to Chapter 155.

SR 37 ADULT ORIENTED BUSINESS.

(A) No such business shall locate within 1,000 feet of any other Adult Oriented Business, as measured in a straight line from property line to property line.

(B) No Adult Oriented Business shall be located within 1,000 feet of a church, public or private elementary or secondary school, library child day care or nursery school, public park, residentially zoned or residentially used property, or any establishment with an on-premise ABC license, as measured in a straight line from property line to property line.

(C) The gross floor area of any Adult Oriented Business shall not exceed 3,000 square feet and all business related activity shall be conducted in a building.

(D) Except for an adult motel, no Adult Oriented Business may have sleeping quarters.

(E) There shall not be more than one Adult Oriented Business in the same building, structure, or portion thereof. No other principal or accessory use may occupy the same building, structure, property, or portion thereof with any Adult Oriented Business.

(F) Except for signs as may be permitted by §§ 151.110 - 151.126, no printed material, slide, video, photograph, written text, live show, or other visual presentation format shall be visible from outside the walls of the establishment, nor shall any live or recorded voices, music, or sounds be heard from outside the walls of the establishment.

(G) No enclosed or underground parking shall be permitted.

SR 38 TEMPORARY EVENTS AND STRUCTURES.

The Zoning Administrator may issue a permit for temporary events and structures provided the Administrator makes the following affirmative determinations:

- (A) The duration of the event will be for 14 days or less.
- (B) The location for the event has not had more than two temporary events in the past 12 months and no events in the past 30 days.
- (C) The owner of the property, or his agent, has authorized in writing for the event to be held on the property.
- (D) The application for the permit is made at least five working days prior to the event.
- (E) That ample off-street parking is available.
- (F) That arrangements are made for suitable garbage disposal and site clean up.
- (G) That activities within 1,000 feet of residences not on the site are to be conducted in such a manner as to not create noise that will disturb the occupants of residences.
(Ord. 011106.1, passed 11-6-01)

SR 39 VIDEO GAME ARCADE.

(A) For the purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) **AMUSEMENT VIDEO GAME ARCADE.** The business of video gaming as a primary or ancillary business use. Typically, the use of computers, video screens and similar devices to create games of skill, role-playing or chance. For example, video-poker machines for public or private clientele at a business establishment(s) or private club(s) facility would be considered an amusement video game arcade. This definition shall herein by reference include all manner of video gaming machines.

(2) **VIDEO GAMING MACHINE.** A slot machine as defined in G.S. § 14-306(a) and other forms of electrical, mechanical, or computer games such as by way of illustration:

- (a) A video poker game or any other kind of video playing card game.
- (b) A video bingo game.
- (c) A video craps game.
- (d) A video keno game.
- (e) Eight liner.
- (f) Pot-of-gold.
- (g) A video game based on or involving the random or chance matching different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player.

(B) The requirements contained herein or referenced herein do not apply to amusement video game arcades without video gaming machines and having less than five amusement video game arcade machines. Said amusement video game arcades are considered as permitted uses by right subject to the town's other zoning regulations and all other town codes including privilege licenses and building standards.

(C) All requirements contained herein or referenced herein so apply to amusement video game arcades without video gaming machines and having more than four amusement video game arcade machines excepting items in division (D)(1) - (4) listed below.

(D) All requirements contained herein or referenced herein do apply to amusement video game arcades with video gaming machines including:

(1) Maximum number of machines - 3 (count screens, computers or individual control sets).

(2) Minimum distance from a residential zone - 300 feet.

(3) Minimum distance from a church use - 300 feet.

(4) Minimum distance from a school use - 300 feet.

(5) Minimum ratio of exterior window area to video game room floor area (all machines must be visible from the exterior of the building in order to count window area) - 10%.

(6) Minimum distance of separation from another video game amusement arcade - 300 feet.

(E) The video game amusement arcade as an establishment includes parking areas, building, yards, accessory structures, fences and other physical aspects associated with a business use. For example the distance from the rear parking area of a video game amusement arcade to an adjoining residential zoning district line must be 300 feet. The distance from a video game amusement arcade front parking area to a church lawn on the other side of the street must be 300 feet. The distance from the video game amusement arcade sign on the business use property to the school campus playground must be 300 feet.

(F) An application is required that produces supplemental information for a conditional use permit and privilege license. It is to include a physical address as well as a phone number for the owners of the property, the business owners, the business managers, the video game arcade machines owners, their tax identifications and any sub-lessors. It must contain information as to the method of giving credit, points or other compensation for scores or results including the physical location of the transaction, employees' names and the phone number. It must also contain the serial number and description of the machines by date used at the business. The supplemental information records in the Zoning Administrator's Office and elsewhere in the town must be updated prior to replacement, new or used, machines being installed.

(G) A conditional use permit may be issued for one year at a time. An application for a conditional use permit must be resubmitted to the Board of Adjustment 60 days prior to the expiration of the date of the valid conditional use permit in order for the permit to be considered eligible for renewal. The procedure for renewal of the conditional use permit shall be the same as for the original granting of the conditional use permit.

(H) Non-conforming amusement video game arcades must follow the procedure contained herein to achieve a conforming status.

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(I) In non-conforming situations, amusement video game arcades shall be governed by the following:

(1) Any existing amusement video game arcades that do not have a valid conditional use permit for such are considered non-conforming and must obtain a conditional use permit by April 5, 2005. An application for such must be submitted not less than 60 days prior to April 5, 2005.

(2) Any amusement video game arcade not having a valid conditional use permit on April 5, 2005 must immediately cease to operate and remove all amusement video equipment devices from the premises.

(J) Any amusement video game arcade obtaining a conditional use permit must comply with all conditions within 60 days of issuance of the permit. Failure to do so shall result in immediate revocation of the conditional use permit.
(Ord. 041005.2, passed 10-5-04)

SR 40 HEIGHT LIMITATION EXCEPTIONS FOR EDUCATIONAL AND INSTITUTIONAL USE FACILITIES.

(A) The maximum height for Educational and Institutional Use facilities may be increased from 35 feet up to 50 feet with an approved Conditional Use Permit from the Board of Adjustment. This requirement is intended to apply to those uses identified in the "Table of Permitted and Conditional Uses" as Educational and Institutional Uses.

(B) Structures that exceed the height limitation shall be required to be setback an additional foot for each additional foot of building height above the height otherwise applicable in the district. The Board shall also consider conditions that will ensure the proposed structure will not adversely affect adjacent properties on account of shadowing or obstruction of scenic vistas. The burden of proof for demonstrating that these criteria are met is the responsibility of the applicant.

(C) This special requirement is not meant to conflict with the provisions of § 151.027 that excepts structures from height limitations if they are not intended for residential purposes.
(Ord. 060905.01, passed 11-7-06)

SR 41 GO-CART, MOTORCYCLE, AND SIMILAR VEHICLE TRACKS.

(A) No portion of the race course perimeter shall be located closer than 300 linear feet from any exterior lot line, except 500 linear feet from any lot line abutting a residential (R) zoning district.

(B) All unpaved areas shall be maintained in a manner which prevents dust from adversely impacting adjoining properties.

(C) Security fencing, a minimum of six feet in height, shall be provided along the entire boundary of the raceway.

(D) Hours of operation shall be no earlier than 10:00 a.m. and no later than 11:00 p.m.

(E) Screening devices are as required by § 151.140(A).
(Ord. 100105.02, passed 1-5-10)

SR 42 SWIMMING POOLS - ACCESSORY RESIDENTIAL USE.

Note: The regulations of this section shall be applicable to swimming pools located on private property which are under control of a homeowner and the use of which is limited to the family members and invited guests.

(A) *Use separation.*

(1) Pools shall be located so as to comply with the minimum setback requirement for accessory structures for the district in which it is located.

(2) Pools which are not an integral part of the principal building shall be located a minimum of ten feet from the principal building.

(B) *Security fencing.* In-ground swimming pools located outdoors shall be protected by a fence or equal enclosure, a minimum of four feet in height, and equipped with a self-closing and positive self-latching gate provided with hardware for permanent locking. Above-ground pools that have permanent appurtenances such as pumps and filters affixed are also required to restrict access to the pool by means of a fence or equal enclosure.

(Ord. 100105.03, passed 1-5-10)

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CHAPTER 182: EXTRATERRITORIAL JURISDICTION BOUNDARIES

Section

182.01 Modifying coverage of zoning and subdivision regulations outside of corporate limits

§ 182.01 MODIFYING COVERAGE OF ZONING AND SUBDIVISION REGULATIONS OUTSIDE OF CORPORATE LIMITS.

(A) That the official Zoning Map of the town is hereby amended so as to display the new boundaries of its extraterritorial jurisdiction as shown more specifically on the Official Map of the town of Boiling Springs designating the location and nature of its zoning districts and the specific area of its extraterritorial jurisdiction.

(B) That the area lying outside of and beyond the corporate limits of the town as shown on the Official Extraterritorial Jurisdiction Map is hereby divided into zones or districts in accordance with the Map.

(C) That the zoning and subdivision regulations of the town shall be applicable in every respect within the modified extraterritorial jurisdiction area in the same manner as it is now applicable within the corporate limits of the town. The Zoning Enforcement Officer shall enforce all of the provisions of the town's zoning and subdivision regulations and the provisions of this chapter within the modified extraterritorial area in the same manner and to the same extent as the Officer is now authorized to enforce the town's zoning and subdivision regulations within the corporate limits.

(Ord. passed 2-5-91)



CHAPTER 153: HOUSING STANDARDS

Section

- 153.001 Findings; purpose; authority
- 153.002 Scope
- 153.003 Definitions
- 153.004 Code Enforcement Officer designated
- 153.005 Inspections
- 153.006 Preliminary investigations; notices; hearings
- 153.007 Dwelling unfit for human habitation
- 153.008 Dwellings not in compliance but not unfit for human habitation
- 153.009 Procedure after hearing; order
- 153.010 Failure to comply with order
- 153.011 Service of complaints and orders
- 153.012 Housing Appeals Board created; appeals
- 153.013 Alternative remedies
- 153.014 Conflict with other provisions
- 153.015 Violations
- 153.016 Validity

§ 153.001 FINDINGS; PURPOSE; AUTHORITY.

(A) Pursuant to Section 160A-441 of the General Statutes of North Carolina, it is hereby found and declared that there exist in the town dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents and other calamities, lack of ventilation, light and sanitary facilities, and due to other conditions rendering such dwellings unsafe and unsanitary, and dangerous and detrimental to the health, safety and morals, and otherwise inimical to the welfare of the residents of the town.

(B) In order to protect the health, safety and welfare of the residents of the town as authorized by Part 6 of Article 19, Chapter 160A of the General Statutes of North Carolina, it is the purpose of this chapter to establish minimum standards of fitness for the initial and continued occupancy of all buildings used for human habitation, as expressly authorized by Section 160A-444 of the General Statutes of North Carolina.

(C) In addition, it is hereby found and declared, under the authority of North Carolina General Statutes 160A-174, that there exist in the town dwellings which, although not meeting the classification as unfit for human habitation, fail to fully comply with all the minimum standards for housing fitness as established herein and therefore have present one or more conditions which are inimical to the public health, safety and general welfare. Such conditions, if not corrected can lead to deterioration and dilapidation of dwellings which render them unfit for human habitation.

(Ord. passed 11-8-94)

§ 183.002 SCOPE.

(A) This chapter is hereby declared to be remedial and shall be construed to secure the beneficial interests and purposes thereof - which are public safety, health and general welfare - through structural strength, stability, sanitation, adequate light and ventilation and safety to life and property from fire and other hazards incident to the construction, alteration, repair, removal, demolition, use and occupancy of dwellings, apartment houses, rooming houses or buildings, structures or premises used or intended for use as such.

(B) The provisions of this chapter shall apply to all existing housing and to all housing hereafter constructed within the town. Portable, mobile or demountable buildings or structures, including trailers, manufactured homes and mobile homes when used or intended for use for housing within the town, shall be subject to the applicable provisions of this chapter. This chapter establishes minimum requirements for the initial and continued occupancy of all buildings used for human habitation and does not replace or modify requirements otherwise established for the construction, repair, alteration or use of buildings, equipment or facilities except as provided in this chapter.

(C) The provisions of this chapter shall also apply to abandoned structures which are found by the Board of Commissioners to be a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary conditions.

(Ord. passed 11-8-94)

§ 183.003 DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter:

ABANDONED STRUCTURE. Any structure, whether designed and intended for residential or other uses, which has been vacant or not in active use, regardless of purpose or reason, for the past two-year period and which is determined by the Code Enforcement Officer to be unfit for human habitation or occupancy based upon the standards as set forth in this chapter.

BASEMENT. A portion of a building which is located partly underground, having access to light and air from windows located above the level of the adjoining ground.

CELLAR. A portion of a building located partly or wholly underground having an inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.

DETERIORATED. A dwelling that is unfit for human habitation and can be repaired, altered or improved to comply with all of the minimum standards established by this chapter, at a cost not in excess of fifty percent of its value, as determined by finding of the Code Enforcement Officer.

DILAPIDATED. A dwelling that is unfit for human habitation and cannot be repaired, altered or improved to comply with all of the minimum standards established by this chapter at a cost not in excess of fifty percent of its value, as determined by finding of the Code Enforcement Officer.

DWELLING. Any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any accessory buildings and structures and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose.

DWELLING UNIT. Any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

EXTERMINATION. The control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping or by any other recognized and legal pest elimination methods approved by the Code Enforcement Officer.

GARBAGE. The animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

HABITABLE ROOM. A room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes, excluding bathrooms, water closet compartments, laundries, heater rooms, foyers or communicating corridors, closets and storage spaces.

INFESTATION. The presence, within or around a dwelling, of any insects, rodents or other pests in such number as to constitute a menace to the health, safety or welfare of the occupants or to the public.

MANUFACTURED HOME (MOBILE HOME). A structure as defined on G.S. 143-145(T).

MULTIPLE DWELLING. Any dwelling containing more than two dwelling units.

OCCUPANT. Any person over one year of age living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.

OPERATOR. Any person who has charge, care or control of a building or part thereof, in which dwelling units or rooming units are let.

OWNER. The holder of the title in fee simple and every mortgagee of record.

PARTIES IN INTEREST. All individuals, associations and corporations who have interests of record in a dwelling and any who are in possession thereof.

PUBLIC AUTHORITY. Any housing authority or any officer who is in charge of any department or branch of the government of the town, county, or state relating to health, fire, building regulations, or other activities concerning dwellings in the town.

ROOMING HOUSE. Any dwelling, or that part of any dwelling containing one or more rooming units, in which space is let by the owner or operator to three or more persons who are not husband and wife, son or daughter, mother or father or sister or brother of the owner or operator.

ROOMING UNIT. Any room or group or rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

RUBBISH. Combustible and noncombustible waste materials, except garbage and ashes, and the term shall include paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass crockery and dust.

SUPPLIED. Paid for, furnished or provided by, or under the control of, the owner or operator.

Whenever the words "dwelling", "dwelling unit", "rooming house", "rooming unit" or "premises" are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof".

(Ord. passed 11-8-94)

§ 153.004 CODE ENFORCEMENT OFFICER DESIGNATED.

For the purposes of administering and enforcing the provisions of this chapter the Code Enforcement Officer (hereinafter referred to as "Officer") is hereby designated as the chief administrative and enforcement official. The Town Manager shall serve as the Code Enforcement Officer. The Officer shall have such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, without limiting the generality of the foregoing, in addition to others herein granted, the following powers:

(A) *Investigations.* To investigate the dwelling and building conditions in the town in order to determine which dwellings therein are unfit for human habitation and dangerous, being guided in such examination of dwellings and buildings by the requirements set forth in this chapter.

(B) *Oaths, witnesses, etc.* To administer oaths and affirmations and to examine witnesses and receive evidence.

(C) *Right of entry.* To enter upon and within premises and dwellings for the purpose of making examinations and investigations; provided, that such entries shall be made in such a manner as to cause the least possible inconvenience to the persons in possession.

(D) *Warrants; citations, etc.* To swear criminal warrants, issue civil citations and to take such other actions as may be necessary to carry out the enforcement procedures of this chapter.

(E) *Delegation of functions, etc.* To delegate any of his functions and powers under this chapter to such officers and agents as he may designate.

(Ord. passed 11-8-94)

§ 153.005 INSPECTIONS.

For the purpose of carrying out the intent of this chapter, the Officer is hereby authorized to enter, examine and survey at all reasonable times all dwellings, dwelling units, rooming units and premises, including abandoned structures. The owner or occupant of every dwelling, dwelling unit or rooming unit,

or the person in charge thereof, shall give the Officer free access to such dwelling, dwelling unit or rooming unit, and its premises, at all reasonable times for the purposes of such inspection, examination and survey. Every occupant of a dwelling or dwelling unit shall give the owner thereof, or his agent or employee, access to any part of such dwelling or dwelling unit, and its premises, at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this chapter or with any lawful order assigned pursuant to the provisions of this chapter. (Ord. passed 11-8-94)

§ 153.006 PRELIMINARY INVESTIGATIONS; NOTICES; HEARINGS.

(A) Whenever a petition is filed with the Officer by a public authority or by at least five residents of the town charging that any dwelling is unfit for human habitation or whenever it appears to the Officer (on his own motion) that any dwelling is unfit for human habitation, the Officer shall, in his preliminary investigation disclose a basis for such charges, issue and cause to be served upon the owner and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Officer (or his designated agent) at a place within the county in which the property is located fixed not less than ten days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the Officer.

(B) Upon the issuance of a complaint and notice of hearing pursuant to this section, the Officer may cause the filing of a notice of lis pendens, with a copy of the complaint and notice of hearing attached hereto, in the office of the Clerk of Superior Court of Cleveland County, to be indexed and cross-indexed in accordance with the indexing procedures of the North Carolina General Statutes. The Officer shall cause a copy of the notice of lis pendens to be served upon the owners and parties in interest in the dwelling at the time of filing in accordance with G.S. § 160A-445, as applicable. Upon compliance with the requirements of any order based upon such complaint and hearing, the Officer shall direct the Clerk of Superior Court to cancel the notice of lis pendens.

(Ord. passed 11-8-94; Am. Ord. passed 1-2-96)

§ 153.007 DWELLING UNFIT FOR HUMAN HABITATION.

(A) The Officer shall determine that a dwelling is unfit for human habitation if he finds that any one of the following conditions exist in such dwelling:

(1) Interior walls or vertical studs which seriously list, lean or buckle to such an extent as to render the dwelling unsafe.

(2) Supporting member or members which show 33% or more damage or deterioration, or nonsupporting, enclosing or outside walls or covering which shows 50% or more of damage or deterioration.

(3) Floor or roofs which have improperly distributed loads, which are overloaded or which have insufficient strength to be reasonably safe for the purpose used.

(4) Such damage by fire, wind or other causes as to render the dwelling unsafe.

(5) Dilapidation, decay, unsanitary conditions or disrepair which is dangerous to the health, safety or welfare of the occupants or other people in the town.

(6) Inadequate facilities for egress in case of fire or panic.

(7) Defects significantly increasing the hazards of fire, accident or other calamities.

(8) Lack of adequate ventilation, light, heating or sanitary facilities to such extent as to endanger the health, safety or general welfare of the occupants or other residents of the town.

(9) Lack of proper electrical, heating or plumbing facilities required by this chapter which constitutes a health or a definite safety hazard.

(10) Lack of connection to a potable water supply and/or to the public sewer or other approved sewage disposal system, the lack of either one of which renders a dwelling unfit for human habitation. For the purposes of this standard, a dwelling is not connected to a potable water supply if the water supply has been "cut off" because of non-payment of the water bill or otherwise or if the system for any reason is not receiving a flow of potable water to the tap.

(B) In addition to the ten conditions stated in division (A) above, any one of which renders a dwelling unfit for human habitation, the Officer shall determine that a dwelling is unfit for human habitation if he finds that a dwelling fails to fully comply with seven or more of the standards of dwelling fitness as stated in divisions (C) through (K) of this section.

(C) *Structural standards.*

(1) *Structural integrity.* Walls, partitions, supporting members, sills, joists, rafters or other structural members shall not list, lean or buckle, shall not be rotted, deteriorated or damaged, and shall not have holes or cracks which might admit rodents.

(2) *Supports.* Floors or roofs shall have adequate supporting members and strength to be reasonably safe for the purpose used.

(3) *Foundations.* Foundations, foundation walls, piers or other foundation supports shall not be deteriorated or damaged.

(4) *Steps.* Steps, stairs, landings, porches or other parts or appurtenances shall be maintained in such condition that they will not fail or collapse.

(5) *Egress.* Adequate facilities for egress in case of fire or panic shall be provided.

(6) *Interior materials.* Interior walls and ceilings of all rooms, closets and hallways shall be furnished of suitable materials which will, by use of reasonable household methods, promote sanitation and cleanliness, and shall be maintained in such a manner so as to enable the occupants to maintain reasonable privacy between various spaces.

(7) *Weatherization.* The roof, flashings, exterior walls, basement walls, floors and all doors and windows exposed to the weather shall be constructed and maintained so as to be weather and watertight.

(8) *Chimneys.* There shall be no chimneys or parts thereof which are defective, deteriorated or in danger of falling, or in such condition or location as to constitute a fire hazard.

(9) *Floors.* There shall be no use of the ground for floors, or wood floors on the ground.

(D) *Plumbing standards.*

(1) *Facilities.* Each dwelling unit shall contain not less than a kitchen, sink, lavatory, tub or shower, water closet, and an adequate supply of both cold water and hot water. All water shall be supplied through an approved pipe distribution system connected to a potable water supply. For the purposes of this standard, a dwelling is not connected to a potable water supply if the water supply has been "cut off" because of non-payment of the water bill or otherwise or if the system for any reason is not receiving a flow of potable water to the tap.

(2) *Maintenance.* All plumbing fixtures shall meet the standards of the Plumbing Code and shall be maintained in a state of good repair and in good working order.

(3) *Accessible.* All required plumbing fixtures shall be located within the dwelling and be accessible to the occupants of the same. The water closet and tub or shower shall be located in a room or rooms affording privacy to the use.

(E) *Heating standards generally.* Every dwelling shall have facilities for providing heat in accordance with either subdivision (1) or (2) below. Such facilities shall be maintained in a state of good repair and good working order.

(1) *Central and electrical heating systems.* Every central or electric heating system shall be of sufficient capacity so as to heat all habitable rooms, bathrooms and water closet compartments in every dwelling to which it is connected with a minimum temperature of 70° Fahrenheit measured at a point three feet above the floor during average winter conditions.

(2) *Other heating facilities.* Where a central or electric heating system is not provided, each dwelling shall be provided with sufficient electrical receptacles, fireplaces, chimneys, flues or gas vents whereby heating appliances may be connected so as to heat all habitable rooms, bathrooms and water closet compartments with a minimum temperature of 70° Fahrenheit measured three feet above the floor during average winter conditions.

(F) *Electrical standards.*

(1) *Wiring, lights, outlets.* Every dwelling shall be wired for electric lights and convenience receptacles. Every habitable room or space shall contain at least two separate and remote receptacle outlets. Bedrooms shall have, in addition, at least one wall switch controlled lighting outlet. In kitchens, three separate and remote receptacle outlets shall be provided, and a wall or ceiling lighting outlet controlled by a wall switch shall be provided. Every hall, water closet compartment, bathroom, laundry room or furnace room shall contain at least one ceiling-mounted or wall-mounted lighting outlet. In bathrooms, the lighting outlet shall be controlled by a wall switch. In addition to the lighting outlet in every bathroom and laundry room, there shall be provided at least one receptacle outlet. Any new bathroom receptacle outlet shall have ground fault circuit interrupter protection.

(2) *Hall lights.* Every public hall and stairway in every multiple dwelling shall be adequately lighted by electric lights at all times when natural light is not sufficient.

(3) *Maintenance.* All fixtures, receptacles, equipment and wiring shall be maintained in a state of good repair, safe, capable of being used, and installed in accordance with the Electric Code.

(G) *Ventilation standards.*

(1) *Generally.* Every habitable room shall have at least one window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be ten percent of the floor area of such room. Whenever walls or other portions of structures face a window of any such room and such light obstructions are located less than five feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight type window in the top of such a room, the total window area of such skylight shall equal at least 15% of the total floor area of such room.

(2) *Habitable rooms.* Every habitable room shall have at least one window or skylight which can easily be opened, or such other device as will adequately ventilate the room. The total openable window area in every habitable room shall be equal to at least 45% of the minimum window area size or minimum skylight type window size as required, or shall have other approved equivalent ventilation.

(3) *Bathroom and water closet room.* Every bathroom equipped with more than one water closet compartment shall comply with the light and ventilation requirements of habitable rooms.

(H) *Space, use and location standards.*

(1) *Room sizes.* Every dwelling unit shall contain at least the minimum room size in each habitable room as required by the Residential Building Code. (Floor area shall be calculated on the basis of habitable room area. However, closet area and wall area within the dwelling may count for not more than ten percent of the required habitable floor area. The floor area of any part of any room where the ceiling height is less than four and one-half feet shall not be considered as a part of the floor area in computing the total area of the room to determine maximum permissible occupancy.

(2) *Ceiling height.* At least one-half of the floor area of every habitable room shall have a ceiling height of not less than seven feet and six inches.

(3) *Cellar.* No cellar shall be used for living purposes unless:

(a) The floor and walls are substantially watertight;

(b) The total window area, total openable window area and ceiling height are equal to those required for a habitable room;

(c) The required minimum window area of every habitable room is entirely above the grade adjoining such window area, except where the windows face a stairwell, window well or accessway.

(I) *Safe and sanitary maintenance standards.*

(1) *Exterior foundation, walls and roofs.* Every foundation wall, exterior wall and exterior roof shall be substantially weathertight and rodentproof; shall be kept in sound condition and good repair; shall be capable of affording privacy; shall be safe to use and capable of supporting the load which

normal use may cause to be placed thereon. Every exterior wall shall be protected with paint or other protective covering to prevent the entrance of penetration of moisture or the weather.

(2) *Interior floors, walls and ceilings.* Every floor, interior wall and ceiling shall be substantially rodentproof; shall be kept in sound condition and good repair; and shall be safe to use and capable of supporting the load which normal use may cause to be placed thereon.

(3) *Windows and doors.* Every window, exterior door, basement or cellar door and hatchway shall be substantially weathertight, watertight and rodentproof; and shall be kept in sound working condition and good repair.

(4) *Stairs, porches and appurtenances.* Every inside and outside stair, porch and any appurtenances thereto shall be safe to use and capable of supporting the load that normal use may cause to be placed thereon; and shall be kept in sound condition and good repair. Protective railings shall be required on any unenclosed structure over 30 inches from the ground level or on any steps containing four risers or more.

(5) *Bathroom and kitchen floors.* Every bathroom and kitchen floor surface and water closet compartment floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit such floor to be easily kept in sound condition and good repair.

(6) *Supplied facilities.* Every supplied facility, piece of equipment or utility which is required under this chapter shall be so constructed or installed that it will function safely and effectively and shall be maintained in satisfactory working condition.

(7) *Drainage.* Every yard shall be properly graded so as to obtain thorough drainage and so as to prevent the accumulation of stagnant water.

(J) *Insect, rodent and infestation control standards.*

(1) *Screens.* For protection against mosquitoes, flies and other insects every dwelling shall have:

(a) Supplied and installed screens on every door opening leading directly from the dwelling to outdoor space. Except, that sliding doors, doors with self closing devices, doors on mobile homes with self closing devices and doors that open into rooms of living spaces that are artificially ventilated or air conditioned are exempt from this provision.

(b) Supplied and installed screens on every window or other device with an opening to outdoor space, except that this requirement shall not apply for any room or rooms of a dwelling that are ventilated year round with an operable and installed heating and air conditioning system.

(2) *Rodent control.* Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents, shall be supplied with an approved device as will effectively prevent their entrance.

(3) *Infestation.* Every dwelling shall be maintained in a manner to be free of any infestations of insects, rodents or other pests. Every occupant of a dwelling containing a single dwelling unit shall

be responsible for the extermination of any insects, rodents or other pests therein or on the premises; and every occupant of a dwelling unit in a dwelling containing more than one dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested. Whenever infestation exists in two or more of the dwelling units in any dwelling or in the shared or public parts of any dwelling containing two or more dwelling units, extermination shall be the responsibility of the owner.

(4) *Rubbish storage and disposal.* Every dwelling shall be supplied with approved containers and covers for storage of rubbish as required by town ordinances, and the owner, operator or agent in control of such dwelling or dwelling unit shall be responsible for the removal of rubbish.

(5) *Garbage storage and disposal.* Every dwelling shall be supplied with an approved garbage disposal facility, which may be an adequate mechanical garbage disposal unit (mechanical sink grinder) in each dwelling unit or an incinerator unit, to be approved by the Officer, in the structure for the use of the occupants of each dwelling unit, or an approved outside garbage can as required by town ordinances.

(6) *Smoke detector systems.* Every dwelling unit shall be provided with an approved listed smoke detector, installed in accordance with the manufacturer's recommendations and listing. When activated, the detector shall provide an audible alarm. The detector shall be tested in accordance with and meet the requirements of UL 217, Single and Multiple Station Smoke Detectors.

(K) *Rooming house standards.* All of the provisions of this chapter, and all of the minimum standards and requirements of this chapter, shall be applicable to rooming houses, and to every person who operates a rooming house or who occupies or lets to another for occupancy any rooming unit in any rooming house, except as provided in the following subdivisions:

(1) *Water closet, hand lavatory and bath facilities.* At least one water closet, lavatory basin and bathtub or shower, properly connected to an approved water and sewer system and in good working condition, shall be supplied for each four rooms within a rooming house wherever such facilities are shared. All such facilities shall be located within the residence building served, shall be directly accessible from a common hall or passageway and shall not be more than one story removed from any of the persons sharing such facilities. Every lavatory basin and bathtub or shower shall be supplied with hot and cold water at all times. Such required facilities shall not be located in a cellar.

(2) *Minimum floor area for sleeping purposes.* Every room occupied for sleeping purposes by one occupant shall contain at least 70 square feet of floor area, and every room occupied for sleeping purposes by more than one occupant shall contain at least 50 square feet of floor area for each occupant 12 years of age and over and at least 35 square feet of floor area for each occupant under 12 years of age.

(3) *Sanitary conditions.* The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors and ceilings, and for the sanitary maintenance of every other part of the rooming house; and shall be further responsible for the sanitary maintenance of the entire premises where the entire structure or building within which the rooming house is contained is leased or occupied by the operator.

(4) *Sanitary facilities.* Every water closet, flush urinal, lavatory basin and bathtub or shower required by subdivision (1) of this division shall be located within the rooming house and within a room or rooms which afford privacy and are separate from the habitable rooms, and which are accessible from a common hall and without going outside the rooming house or through any other room therein.

(L) Full compliance with a standard means that if any part of the stated standard is not complied with by a particular dwelling than that dwelling has failed to fully comply with the enumerated standard. For example, in regard to standard (D)(1), if all standards are met in a dwelling except that a supply of hot water is not provided then the dwelling fails to fully comply with standard (D)(1).
(Ord. passed 11-8-94)

§ 153.008 DWELLINGS NOT IN COMPLIANCE BUT NOT UNFIT FOR HUMAN HABITATION.

In any case where the Officer determines that a dwelling fails to fully comply with one or more but less than seven of the above enumerated standards of dwelling fitness, such dwelling shall not be found to be unfit for human habitation and shall not be subject to the procedures and remedies as provided for in this chapter for dwellings unfit for human habitation. Each such failure of noncompliance however, shall constitute a violation of the terms of this chapter and shall subject the violator to the penalties and enforcement procedures, civil or criminal or both, of § 153.013 of this chapter. In making the determination as described in this section, the Officer shall not be required to make notice and hold the hearing as called for in § 153.006, but the Officer may do so if the determination of the severity and classification of dwelling fitness is not clear to the Officer upon preliminary investigation.
(Ord. passed 11-8-94)

§ 153.009 PROCEDURE AFTER HEARING; ORDER.

(A) If, after notice and hearing, the Officer determines that the dwelling under consideration is unfit for human habitation in accordance with the standards set forth above, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order:

(1) If the repair, alteration or improvement of the dwelling can be made at a cost of less than 50% of the value of the dwelling, requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation or to vacate and close the dwelling as a human habitation, based upon the Officer's standards for closing dwellings;

(2) If the repair, alteration or improvement of the dwelling cannot be made at a cost of less than 50% of the value of the dwelling, requiring the owner, within the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the town and the Historic District Commission determines, after a public hearing as provided by chapter, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).

(B) If, after notice and hearing the Officer determines that the dwelling under consideration is not unfit for human habitation but is not in full compliance with one or more standards of dwelling fitness as set forth above, he may proceed with the enforcement procedures of § 153.013 of this chapter, civil or criminal or both.

(C) Whenever a determination is made pursuant to division (A)(1) or (2) of this section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the Officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The Officer shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole remedy shall be an order requiring the Officer to wait 45 days before causing removal or demolition.

(Ord. passed 11-8-94)

§ 153.010 FAILURE TO COMPLY WITH ORDER.

(A) If the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the Officer may:

(1) Cause the dwelling to be repaired, altered or improved or to be vacated and closed.

(2) Cause to be posted on the main entrance of any such dwelling, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a violation of this chapter.

(B) If the owner fails to comply with an order to remove or demolish the dwelling, the Officer may:

(1) Cause such dwelling to be vacated and removed or demolished,

(2) Cause to be posted on the main entrance of any such dwelling, a placard with the following words: "This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful." Occupation of a building so posted shall constitute a violation of this chapter.

(C) The duties of the Officer set forth in divisions (A) and (B) shall not be exercised until the Board of Commissioners shall have by chapter ordered the Officer to proceed to effectuate the purpose of this chapter with respect to the particular property or properties which the Officer shall have found to be unfit for human habitation and which property or properties shall be described in the chapter. No such chapter shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the Housing Code. For the purposes of this division a period of 90 days following the date of the Officer's order shall constitute a reasonable opportunity. The chapter adopted pursuant to this division shall be recorded in the Office of the Register

of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(D) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the Officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of Chapter 160A of the General Statutes of North Carolina. If the dwelling is removed or demolished by the Officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the Superior Court by the Officer, shall be secured in a manner directed by the Court, and shall be disbursed by the Court to the persons found to be entitled thereto by final order of the decree of the Court.

(E) If any occupant fails to comply with an order to vacate a dwelling, the Officer may file a civil action in the name of the town to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any persons occupying such dwelling. The Clerk of Superior Court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed ten days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the Officer produces a certified copy of an ordinance adopted by the Board of Commissioners pursuant to division (C) authorizing the Officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgement ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgement may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this division unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the Board of Commissioners has ordered the Officer to proceed to exercise his duties under divisions (A), (B) and (C) of this section to vacate and close or remove and demolish the dwelling.
(Ord. passed 11-8-94)

§ 153.011 SERVICE OF COMPLAINTS AND ORDERS.

Complaints or orders issued by the Officer pursuant to this chapter, except those being prosecuted under § 153.013 of this chapter, shall be served upon persons either personally or by registered or certified mail. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the Officer in the exercise of reasonable diligence, and the Officer makes an affidavit to that effect, then the serving of the complaint or order upon the unknown owners or other persons may be made by publication in a newspaper having general circulation in the town at least once no later than the time at which personal service would be required under the provisions of this chapter. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(Ord. passed 11-8-94)

§ 183.012 HOUSING APPEALS BOARD CREATED; APPEALS.

(A) A Housing Appeals Board is hereby created consisting of five members who shall be residents of the town. The members shall be appointed by the Board of Commissioners. Initial appointments shall be as follows: one member for one year; two members for two years; and two members for three years. Subsequent appointments shall be for three year terms and members may be reappointed. Vacancies shall be filled for the unexpired term. As an alternate, the Board of Commissioners may appoint the Board of Adjustment to serve as the Housing Appeals Board as one of its duties. The Board shall elect its own officers, fix the time and place for its meetings, adopt necessary rules of procedure, and adopt other rules and regulations for the proper discharge of its duties. The Board shall keep an accurate record of all its proceedings. The Code Enforcement Officer shall serve as the non-voting, ex-officio secretary to the Board.

(B) An appeal from any decision or order of the Officer may be taken by any person aggrieved thereby or any officer, board or commission of the town. Any appeal from the Officer shall be taken within ten days from the rendering of the decision or service of the order by filing with the Officer and with the Board a notice of appeal which shall specify the grounds upon which the appeal is based. Upon the filing of any notice of appeal, the Officer shall forthwith transmit to the Board all the papers constituting the record upon which the decision appealed from was made. When an appeal is from a decision of the Officer refusing to allow the person aggrieved thereby to do any such act, his decision shall remain in force until modified or reversed. When any appeal is from a decision of the Officer requiring the person aggrieved to do any act, the appeal shall have the effect of suspending the requirement until the hearing by the Board, unless the Officer certifies to the Board after the notice of appeal is filed with him, that because of facts stated in the certificate (a copy of which shall be furnished the appellant), a suspension of his requirement would cause imminent peril to life or property. In that case the requirement shall not be suspended except by a restraining order, which may be granted for due cause shown upon not less than one day's written notice to the Officer, by the Board, or by a court of record upon petition made pursuant to division (E) of this section.

(C) The Board shall fix a reasonable time for hearing appeals, shall give due notice to the parties, and shall render its decision within a reasonable time. Any party may appear in person or by agent or attorney. The Board may reverse or affirm, wholly or partly, or may modify the decision or order appealed from, and may make any decision and order that in its opinion ought to be made in the matter, and to that end it shall have all the powers of the Officer, but the concurring vote of four-fifths of the members of the Board shall be necessary to reverse or modify any decision or order of the Officer. The Board shall have power also in passing upon appeals, when practical difficulties or unnecessary hardships would result from carrying out the strict letter of the chapter, to adapt the application of the chapter to the necessities of the case to the end that the spirit of the chapter shall be observed, public safety and welfare secured, and substantial justice done.

(D) Every decision of the Board shall be subject to review by proceedings in the nature of certiorari instituted within 15 days of the decision of the Board, but not otherwise.

(E) Any person aggrieved by an order issued by the Officer or a decision rendered by the Board may petition the Superior Court for an injunction, restraining the Officer from carrying out the order or decision and the Court may, upon such petition, issue a temporary injunction restraining the Officer pending a final disposition of the cause. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. Hearings shall be had by the Court on a petition within 20 days, and

shall be given preference over other matters on the Court's calendar. The Court shall hear and determine the issues raised and shall enter such final order or decree as law and justice may require. It shall not be necessary to file bond in any amount before obtaining a temporary injunction under this division.

(Ord. passed 11-8-94)

§ 183.013 ALTERNATIVE REMEDIES.

(A) No dwelling shall be hereafter erected, altered, moved, or changed in occupancy without a certificate of occupancy. In any case where the Officer, after notice and hearing as required herein, finds that a dwelling or dwelling unit is unfit for human habitation, he shall withhold issuance of a certificate of occupancy for such dwelling or dwelling unit until such time that he determines that it is fit for human habitation. In addition, in any case where the Officer, after preliminary investigation as provided for herein, concludes, based upon that investigation, that a dwelling or dwelling unit is unfit for human habitation and believes that the occupancy of such dwelling or dwelling unit could cause imminent peril to life or property from fire or other hazards, he shall withhold issuance of a certificate of occupancy for such dwelling or dwelling unit until such time that he determines that it is fit for human habitation.

(B) If any dwelling is erected, constructed, altered, repaired, converted, maintained, or used in violation of this chapter or of any valid order or decision of the Officer or Board made pursuant to any chapter or code adopted under authority of this chapter, the Officer may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration or occupancy, to restrain, correct or abate the violation, to prevent the occupancy of the dwellings, or to prevent any illegal act, conduct or use in or about the premises of the dwelling.

(C) Nothing in this chapter nor any of its provisions shall be construed to impair or limit in any way the power of the town to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise nor shall enforcement of one remedy provided herein prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws. In addition to the remedies provided for herein, any violation of the terms of this chapter shall constitute either a misdemeanor or, at the election of the town, shall subject the offender to a civil penalty upon the issuance of a citation for said violation as hereinafter provided. The civil penalty, if not paid to the town within 15 days of the issuance of a citation, may be recovered by the town in a civil action in the nature of debt. Said civil penalties shall be in the amount of \$100 for each violation and each day any single violation continues shall be a separate violation.

(D) In addition to the civil penalties set out above, any provision of this chapter may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the general court of justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the town for equitable relief that there is an adequate remedy at law.

(E) In addition to the civil penalties set out above, any provision of this chapter that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement by General Court of Justice. When a violation of such a provision occurs, the town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and/or order of abatement commanding the defendant to correct the unlawful condition upon or cease

the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular.

(F) An order of abatement may direct that buildings or other structures on the property be closed, demolished or removed; that fixtures, furniture or other movable property be removed from buildings on the property; that abandoned or junked vehicles be removed; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with this chapter. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

(G) The provision of this chapter may be enforced by one, all or a combination of the remedies authorized and prescribed by this section.

(H) Upon determination of a violation of any section of this chapter, the penalty for which is a civil penalty, the Officer of the town shall proceed to issue a warning citation to the violator. Such citation shall set out the nature of the violation, the section violated, the date of the violation, and shall contain an order to immediately cease the violation. If the violation is in the nature of an infraction for which an order of abatement would be appropriate in a civil proceeding, a reasonable period of time must be stated in which the violation must be abated.

(I) Where the town determines that the period of time stated in the original warning citation is not sufficient for abatement based upon the work required or consent agreement, the appropriate official may amend the warning citation to provide for additional time. The warning citation shall specify that a second citation shall incur a civil penalty, together with costs, and attorney fees.

(J) Upon failure of the violator to obey the warning citation a civil citation shall be issued by the Officer and either served directly on the violator, his duly designated agent, or registered agent if a corporation, either in person or posted in the United States mail service by first class mail addressed to the last known address of the violator as contained in the records of the town or obtained from the violator at the time of issuance of the warning citation. The violator shall be deemed to have been served upon the mailing of said citation. The citation shall direct the violator to appear before the Town Manager, or his designee, within 15 days of the date of the citation, or alternatively to pay the citation by mail. The violation for which the citation is issued must have been corrected by the time the citation is paid, otherwise further citations shall be issued.

(K) Citations may be issued for each day the offense continues until the prohibited activity is ceased or abated.

(L) If the violator fails to respond to a citation within 15 days of its issuance, and pay the penalty prescribed therein, the town may institute a civil action in the nature of debt in the appropriate division

of the North Carolina General Court of Justice for the collection of the penalty, costs, attorney fees, and such other relief as permitted by law.
(Ord. passed 11-8-94)

§ 153.014 CONFLICT WITH OTHER PROVISIONS.

In the event any provision, standard or requirement of this chapter is found to be in conflict with any provision of any other chapter or code of the town, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of the health and safety of the residents of the town's jurisdiction shall prevail. The North Carolina Building Code, current edition, shall serve as the standard for all alterations, repairs, additions, removals, demolitions and other acts of building made or required pursuant to this chapter.
(Ord. passed 11-8-94)

§ 153.015 VIOLATIONS.

In addition to the conditions, acts or failures to act that constitute violations specified in this chapter above, it shall be unlawful for the owner of any dwelling or dwelling unit to fail, neglect or refuse to repair, alter or improve the same, or to vacate and close or vacate and remove or demolish the same, upon order of the Officer duly made and served as herein provided, within the time specified in such order. It shall be unlawful for the owner of any dwelling, with respect to which an order has been issued pursuant to § 153.009, to occupy or permit the occupancy of the same after the time prescribed in such order for its repair, alteration or improvement or its vacation and closing, or vacation and removal or demolition.
(Ord. passed 11-8-94)

§ 153.016 VALIDITY.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this chapter. The Board of Commissioners hereby declares that it would have passed this chapter and each section, subsection, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.
(Ord. passed 11-8-94)

CHAPTER 154: [RESERVED]

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CHAPTER 155: TOWER CODE

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§ 155.01 TITLE.

This chapter shall be known as the Tower Code of the Town of Boiling Springs, North Carolina.
(Ord. passed 3-7-00)

§ 155.02 AUTHORITY AND ENACTMENT.

This chapter is adopted under the authority and provision of G.S. 153A-121.
(Ord. passed 3-7-00)

§ 155.03 PURPOSE.

The Board of Commissioners finds that the construction of towers may cause unusual problems and hazards to the residents and visitors of the town. The purpose of this chapter is to regulate the construction of towers to avoid potential damage to adjacent properties from tower failure, and falling ice or other such debris, to maximize the use of existing and new towers in order to reduce the number of towers needed, to minimize potential hazards to low flying law enforcement and medical helicopters, to restrict towers that adversely detract from the natural beauty of the town by discouraging visual eyesores and to minimize the negative economic impact on tourism.

(Ord. passed 3-7-00)

§ 155.04 JURISDICTION.

This chapter, the regulations and the procedures contained herein shall apply to and govern each and every lot, parcel or tract of land within the town.
(Ord. passed 3-7-00)

§ 155.05 ENFORCEMENT OFFICER.

The Board of Commissioners shall appoint a Code Enforcement Officer. The Code Enforcement Officer or his appointee shall administer and enforce all provisions of this chapter.
(Ord. passed 3-7-00)

§ 155.06 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ANTENNA. A conductor by which electromagnetic waves are transmitted or received.

CONSTRUCTION. Any new construction, reconstruction, alteration or expansion of a new or existing tower.

FALL AREA. A circle whose center is the base of a telecommunications tower and whose radius is equal to one and one-half the tower's height.

PERSON. Any person residing, doing business or maintaining an office within the town.

RESIDENT. Any person residing, doing business or maintaining an office within the town.

STRUCTURE. Anything constructed or erected, including but not limited to buildings, that requires location on the land or attachment to something having permanent location on the land.

TELECOMMUNICATIONS TOWER. Any tower or structure erected for the purpose of supporting one or more antennas designed to transmit or receive signals (e.g. telephonic, radio, television or microwave).

TOWER. Any structure whose height greatly exceeds its maximum width, including a telecommunications tower.

TOWER HEIGHT. The vertical distance measured from ground to the upper most point of the tower and any antenna, structure or appendage fixed thereto.

TOWN. The Town of Boiling Springs, North Carolina.
(Ord. passed 3-7-00)

§ 155.07 PERMITS REQUIRED.

(A) No tower over 35 feet in height shall be constructed, altered, reconstructed or expanded until a tower permit is obtained as provided in this chapter. No permit shall be issued that is not in compliance

with this chapter. No building permit shall be issued for any tower subject to this chapter that has not received a tower permit.

(B) Tower permit applications must be submitted on a form provided by the town and are available from the Town Clerk at the Town Hall.

(C) A fee for reviewing tower permit applications shall be established by the Board of Commissioners.

(D) Following the Planning Board's approval of any tower permit application not requesting a variance, the Code Enforcement Officer shall issue a tower permit. All tower permit conditions shall appear on the face of the site development plan. The permittee shall acknowledge and agree to permit conditions approved by the Planning Board. If a building permit is not obtained within 12 months after the tower permit is issued, the tower permit shall automatically expire at the end of such period.
(Ord. passed 3-7-00)

§ 155.08 VARIANCES.

(A) Following the final decision by the Planning Board to deny a permit, a tower permit applicant may request that the Board of Commissioners grant a variance from the tower approval standards listed in § 155.11.

(B) Before determining whether to, or not to, grant a variance, the Board of Commissioners shall hold a public hearing. The Board of Commissioners shall grant a variance if and only if it concludes that:

(1) Adherence to this chapter's development standards will cause extraordinary economic hardship to the applicant; and

(2) If the variance is granted, the proposed use of the site will not substantially diminish the public health or safety or be detrimental to the general welfare of the town; and

(3) If the variance is granted, the proposed use of the site will not substantially detract from the natural beauty of the area and the town's future economic growth and development.

(C) Should the Board of Commissioners grant the requested variance, the Code Enforcement Officer shall issue a tower permit in accordance with such variance. The permit applicant shall acknowledge and agree to permit conditions approved by the Board of Commissioners.
(Ord. passed 3-7-00)

§ 155.09 APPLICATION SUBMISSION AND REVIEW PROCESS.

(A) A completed tower permit application and five copies of all supporting documentation identified in § 155.10 shall be submitted to the Code Enforcement Officer for review at least 15 working days prior to a regularly scheduled Planning Board meeting.

(B) The Code Enforcement Officer shall review the completed tower permit application for compliance with § 155.10. Any application not containing all information required by § 155.10 shall be returned to the applicant for completion and resubmission.. If the Code Enforcement Officer deems it necessary, he may retain, at the permit applicant's expense, one or more professional engineers to assist him in reviewing any technical requirements.

(C) The Code Enforcement Officer shall be responsible for submitting a notice to a local newspaper and to all known property owners abutting the property where the proposed tower is to be located. The notice shall state that the Planning Board will review and consider the tower permit application at its next meeting.

(D) The Code Enforcement Officer shall recommend to the Planning Board either approval, approval with conditions or disapproval. In making his recommendation, the Code Enforcement Officer may include any appropriate conditions he deems should be placed on issuing the permit as identified in § 155.11.

(E) The Planning Board shall consider the tower permit application at its next regularly scheduled meeting after receiving the Code Enforcement Officer's recommendation.

(F) The Planning Board shall take formal action to approve, approve with conditions or disapprove the tower permit application within 90 working days following the meeting at which the permit application was considered. However, the Planning Board may take up to 90 additional days thereafter if necessary. If the action is to disapprove the tower permit application, the reasons for such action shall be stated in the Minutes and specific reference shall be made to the requirements not met. If the Planning Board fails to act within the original 90 day period or, if extended by specific action of the Board, the second 90 day period, the application shall be considered approved or disapproved as recommended by the Code Enforcement Officer.

(G) The permittee or his agent shall record the site development plan in the Office of the Register of Deeds before obtaining a building permit for the subject tower.
(Ord. passed 3-7-00)

§ 155.10 REQUIREMENTS FOR SITE DEVELOPMENT AND PRELIMINARY TOWER DESIGN PLANS.

The site development plan and preliminary design plan shall contain the following information and shall be part of the tower permit application.

(A) The site development plan shall be prepared by a North Carolina Registered Land Surveyor and contain the following:

(1) The tower permit applicant's name and property owner's name and their addresses, scale north arrow, vicinity map, tax parcel identification number, and the tower's latitude and longitude coordinates.

(2) The name, address, signature and seal of the surveyor preparing the site development plan.

(3) The surveyed boundary lines of the parcel(s) that will contain the proposed tower and its fall area.

(4) The name, addresses and tax parcel identification numbers of all owners of property abutting the subject property.

(5) All identifiable structures located on the parcel, all private and public roads, highways and underground and overhead utilities.

(6) All existing towers on the property or any towers whose fall area encroaches onto the property.

(7) The proposed tower's location, the proposed fall area and the location of all support structures and guy line anchors.

(8) The ground elevation of the proposed tower's base, all proposed support structures, property corners and a permanent site bench mark. All elevations shall be determined using the national Geodetic Vertical Datum of 1929.

(9) All proposed access roads, easements or right-of-ways on or to the site, and any other improvements to the site.

(B) The preliminary tower design plan shall be prepared by a North Carolina Registered Professional Engineer and contain the following:

(1) The tower permit applicant's name and address, scale, north arrow, vicinity map and tax parcel identification number.

(2) The name, address, signature and seal of the engineer preparing the preliminary tower design plan.

(3) A plan showing the base of the tower and the foundations for all guy line anchors and support structures, all proposed buildings and any other proposed improvements including access roads and utility connections within and to the proposed site.

(4) A tower elevation showing the proposed lighting, all proposed antennas and other appendages.

(5) An elevation of each proposed set of guy line anchors.

(6) The proposed tower design loads.

(C) A map and description showing the service area(s) for the proposed tower's antenna(s) and/or other devices.

(D) The applicant shall provide written statements from the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) showing that the proposed tower complies with all permit regulations administered by that agency or evidence that the proposed tower is exempt from those regulations.

(E) The applicant shall identify all other possible alternatives considered within the service area for the proposed tower's antenna(s) and/or other devices and explain why the proposed tower is necessary and why existing towers and structures (e.g., Duke Power transmission towers) cannot accommodate the proposal antenna(s) and/or other devices.

(F) The applicant shall identify any requested variance(s) to this chapter, the reason(s) for seeking the variances and any measures that are proposed to mitigate possible adverse effects of the proposed variance(s).

(Ord. passed 3-7-00)

§ 155.11 TOWER APPROVAL STANDARDS.

(A) Any proposed tower shall provide a needed service or benefit to the residents of the Town and the surrounding area that cannot otherwise be met.

(B) Towers shall be sited to contain all ice-fall or debris from tower failure on-site. The minimum distance from the tower's base to all points in the property line shall be one and one-half feet to each vertical foot.

(C) A tower shall be set-back from other on-site and off-site towers and supporting structures, or other arrangements shall be made, such that one tower will not strike another tower or its support structure if it falls.

(D) Tower lighting shall not exceed the minimum standards of the Federal Aviation Administration (FAA) for a red obstruction lighting system contained in Advisory Circular No. 70/7460-IF dated September 27, 1978, as amended and shall not include any flashing or intermittent light unless required by FAA or Federal Communication Commission (FCC) regulations.

(E) To defeat unauthorized access, the base of the tower shall be surrounded by a fence or wall at least eight feet in height unless the tower is constructed entirely on a building over eight feet in height. Such enclosure shall include a planted vegetation buffer at its exterior surface equivalent to those required in the Town Zoning Code for buffers between business and residential zones.

(F) Any telecommunications tower shall be engineered and constructed to accommodate two additional antenna that are at least as large as the largest proposed antenna identified in § 155.10(B)(4).

(G) Tower permit approval is conditional subject to the owner(s) agreeing to allow future collocation of other antenna(s) or transmitting devices upon the proposed tower. This agreement shall be submitted in writing and recorded in the Office of the Register of Deeds.

(H) No tower shall exceed 150 feet in height.

(I) Towers shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are, in the opinion of the Code Enforcement Officer, compatible with the surrounding area, except when otherwise required by applicable federal or state regulations.

(J) The tower and equipment shall be located, designed and/or screened to blend with the existing natural, or built surroundings, as much as possible, to reduce the visual impacts and to be compatible with neighboring land uses and the character of the community.

(K) Any tower not in use for telecommunication purposes for two continuous years shall be removed within 120 days after the tower owner and the current property owner have received written notice by the Code Enforcement Officer or the Town Attorney. The written notice, mailed return receipt requested, shall be delivered to both the tower owner identified on the tower permit application and the current property owner.

(L) Property located within the tower's fall area shall not be subdivided and no structures shall be erected therein as long as the tower is standing.

(M) A sign identifying the owner(s) and/or operator(s) of the tower and an emergency telephone number shall be displayed in a clearly visible location on the tower's premises.

(N) Towers may be erected or maintained only upon property which is located entirely within M-1 Manufacturing Districts, B-1 Business Districts or I-1 Institutional Zoning Districts.
(Ord. passed 3-7-00)

§ 155.12 APPEALS.

Appeals of the decision of the Board of Commissioners must be made to Superior Court within 30 working days of its action.
(Ord. passed 3-7-00)

§ 155.99 PENALTY.

(A) Any person violating this chapter shall be guilty of a misdemeanor. Each day's violation of any provision of this chapter shall constitute a separate and distinct offense. A violation begins from the date of first written notification by the Code Enforcement Officer or the Town Attorney. Further violation shall be subject, upon conviction, to fine and/or imprisonment as provided by G.S. 14-4.

(B) If a tower is constructed, reconstructed, altered, expanded or utilized in violation of this chapter, the Code Enforcement Officer or Town Attorney, in addition to other remedies, may institute any appropriate action or proceedings pursuant to G. S. 153A-123 to prevent the unlawful use, construction, reconstruction, alteration or expansion and to restrain, correct, enjoin or abate the violation.
(Ord. passed 3-7-00)

CHAPTER 156: AIRPORT ZONING

Section

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- 156.06 Airport zoning plan
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- 156.15 Hazard marking and lighting

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§ 156.01 TITLE.

This chapter shall be known and may be cited as the "Airport Zoning Ordinance of the Town of Boiling Springs, North Carolina."
(Ord. 060103.01, passed 1-3-06)

§ 156.02 AUTHORITY AND ENACTMENT.

This chapter is adopted under the authority of G.S. Chapter 160A, Article 19.
(Ord. 060103.01, passed 1-3-06)

§ 156.03 PURPOSE.

The purpose of this chapter is to promote the health, safety and general welfare by preventing the creations or establishment of airport hazards, thereby protecting the lives and property of users of the Shelby Municipal Airport and of occupants of land in its vicinity and preventing destruction or impairment of the utility of the airport and the public investment therein.
(Ord. 060103.01, passed 1-3-06)

§ 156.04 JURISDICTION.

This chapter and the regulations and procedures contained herein, shall apply to the land within the corporate limits of the town and that within the boundaries of the extraterritorial jurisdiction, as now or hereafter fixed.
(Ord. 060103.01, passed 1-3-06)

§ 156.05 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AIRPORT. The Shelby Municipal Airport, Shelby, North Carolina, and the area of land designed for the landing and taking off of aircraft, and utilized or to be utilized by the public as a point of arrival or departure by air.

AIRPORT HAZARD. Any overhead power line, not constructed, operated and maintained according to standard engineering practices in general use, which interferes with radio communication between a publicly owned airport and aircraft approaching or leaving same, or any structure or tree which obstructs the aerial approaches of an airport or is otherwise hazardous to its use for landing or taking off.

LANDING AREA. The area of the airport used for the landing, takeoff or taxiing of aircraft.

NONCONFORMING USE. Any structure, tree or use of land, which does not conform to a regulation prescribed in this chapter or an amendment thereto, as of the effective date of the regulations.

PERSON. Any individual, firm, copartnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.

STRUCTURE. Any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks and overhead transmission lines.

TREE. Any object of natural growth.
(Ord. 060103.01, passed 1-3-06)

§ 156.06 AIRPORT ZONING PLAN.

In order to outline definitely the horizontal and vertical limits beyond which the projection of any structure or tree will constitute an airport hazard the Airport Zoning Plan, dated July 15, 2004, of the Shelby Municipal Airport, Shelby, North Carolina, is hereby incorporated into this chapter and made a part thereof. The Zoning Administrator shall make the Plan available for public inspection.

(A) The established elevation of the airport is: 847 feet MSL.

(B) The airport reference point is established at a location described as follows: the midpoint on the NE-SW runway centerline; 2,500 feet from either end of the 5,000-foot x 100-foot runway.
(Ord. 060103.01, passed 1-3-06)

§ 156.07 ZONES.

In order to carry out the purposes of this chapter, the following zones are hereby established as hereinafter defined and as shown on the Airport Zoning Plan.

(A) *Approach surface zones.* The approach surface zone is an inclined plane located directly above the approach area. The dimensions of the approach area are measured horizontally. The approach areas for each particular runway are symmetrically located with respect to the extended runway centerlines and have lengths and widths as shown on the Airport Zoning Plan, which also shows the slopes of the respective approach surface zones.

(B) *Horizontal surface zone.* The horizontal surface zone is a plane, circular in shape, with its height 150 feet above the established airport elevation and having a radius from the airport reference point as indicated on the Airport Zoning Plan.

(C) *Conical surface zone.* The conical surface zone extends upward and outward from the periphery of the horizontal surface zone with a slope of 20:1 measured in a vertical plane passing through the airport reference point. Measuring radially outward, from the periphery of the horizontal surface zone, the conical surface extends for a horizontal distance as shown on the Airport Zoning Plan.

(D) *Transitional surface zones.* The transitional surface zones are inclined planes with a slope of 7:1 measured upward and outward in a vertical plane at right angles to the center line of the runway. The transitional surface zones, symmetrically located on either side of the runway, extend upward and outward from a line on either side of the runway which is parallel to and level with the runway centerline. These parallel lines are at a horizontal distance from the runway centerline equal to one-half of the minimum width of each approach area as shown on the Airport Zoning Plan.
(Ord. 060103.01, passed 1-3-06)

§ 156.08 HEIGHT LIMITS.

(A) Except as otherwise provided in this chapter, no structure shall be erected, altered, maintained, or tree allowed to grow in any airport approach surface zone, horizontal surface zone, conical surface zone or transitional surface zone to a height in excess of the height herein established for the zone. The height limit for a particular location shall be the difference between the existing ground elevations of the four surface zones in question, as shown by aerial contours. For purposes of this chapter, height limits shown on the Airport Zoning Plan are hereby established for each of the zones in question.

(B) Notwithstanding any other provisions of this chapter to the contrary, the height limits prescribed by this chapter shall not establish for any particular parcel of land at any particular point within the parcel, a height limit of less than 30 feet above the surface elevation of the land at that point.
(Ord. 060103.01, passed 1-3-06)

§ 156.09 USE RESTRICTIONS.

Notwithstanding any other provisions of this chapter, no use may be made of land within any approach surface zone, horizontal surface zone, conical surface zone or transitional surface zone, in such manner as to create electrical interference with radio communication between airport and aircraft, make it difficult for flyers using the airport, impair visibility in the vicinity of the airport, or otherwise endanger the landing, taking off or maneuvering of aircraft.
(Ord. 060103.01, passed 1-3-06)

§ 156.10 NONCONFORMING USES.

The regulations prescribed in this chapter shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations as of the effective date hereof, or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this chapter, and is diligently prosecuted and completed within two years thereof.
(Ord. 060103.01, passed 1-3-06)

§ 156.11 ADMINISTRATIVE AGENCY.

The Zoning Administrator is hereby designated the administrative agency charged with the duty of administering and enforcing the regulations herein prescribed. The duties of the Zoning Administrator shall include that of hearing and deciding all permits, but the Zoning Administrator shall not have or exercise any of the powers or duties herein delegated to the Board of Adjustment.
(Ord. 060103.01, passed 1-3-06)

§ 156.12 ZONING PERMIT.

No material change shall be made in the use of land, nor shall any structure be erected, altered, replaced, or repaired in any approach surface zone, horizontal surface zone, conical surface zone or transitional surface zone unless a permit shall have been obtained from the Zoning Administrator. If the purposes for which the permit is desired are found to be in compliance with the prescribed regulations herein, then the permit shall be granted.
(Ord. 060103.01, passed 1-3-06)

§ 156.13 APPEALS.

Any person aggrieved, or taxpayer affected, by any decision of the town made in its administration of this chapter, if of the opinion that a decision of the Zoning Administrator is an improper application of this chapter, may appeal to the Board of Adjustment that exists under the Code of Ordinances of the town.
(Ord. 060103.01, passed 1-3-06)

§ 156.14 VARIANCES.

Any person desiring to erect any structure or increase the height of any structure, or permit the growth of any tree, or use his or her property, not in accordance with the regulations prescribed in this chapter, may apply for a variance therefrom. The variance will be brought before the Board of Adjustment that exists under the Code of Ordinances of the town. A variance shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of this chapter.
(Ord. 060103.01, passed 1-3-06)

§ 156.15 HAZARD MARKING AND LIGHTING.

Any permit or variance granted, if the action is deemed advisable to effectuate the purposes of this chapter and reasonable in the circumstances, shall be so conditioned as to require the owner of the structure in question to permit the town, at its expense, to install, operate and maintain thereon the markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.
(Ord. 060103.01, passed 1-3-06)

§ 156.99 PENALTY.

Each violation of this chapter or of any regulation, order or ruling promulgated hereunder shall be punishable by a fine of not more than \$50 or imprisonment for not more than 30 days, or both the fine and imprisonment, and each day a violation continues shall be a separate offense.
(Ord. 060103.01, passed 1-3-06)

CHAPTER 157: FLOOD DAMAGE PREVENTION

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GENERAL PROVISIONS**§ 157.01 STATUTORY AUTHORIZATION.**

The Legislature of the State of North Carolina has in G.S. Chapter 143, Article 21, Part 6 and G.S. Chapter 160A, Article 19, Parts 3, 5, and 8, and G.S. Chapter 160A, Article 8 delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare. Therefore, the Board of Commissioners does ordain as follows.
(Ord. 080205.01, passed 2-5-08)

§ 157.02 FINDINGS OF FACT.

(A) The flood prone areas within the jurisdiction of the town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(B) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.
(Ord. 080205.01, passed 2-5-08)

§ 157.03 STATEMENT OF PURPOSE.

It is the purpose of this chapter to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

(A) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

(B) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;

(C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

(D) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and

(E) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. 080205.01, passed 2-5-08)

§ 157.04 OBJECTIVES.

The objectives of this chapter are:

(A) To protect human life and health;

(B) To minimize expenditure of public money for costly flood control projects;

(C) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) To minimize prolonged business losses and interruptions;

(E) To minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;

(F) To help maintain a stable tax base by providing for the sound use and development of flood prone areas; and

(G) To ensure that potential buyers are aware that property is in a special flood hazard area. (Ord. 080205.01, passed 2-5-08)

§ 157.05 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY STRUCTURE (APPURTENANT STRUCTURE). A structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

ADDITION (TO AN EXISTING BUILDING). An extension or increase in the floor area or height of a building or structure.

APPEAL. A request for a review of the Floodplain Administrator's interpretation of any provision of this chapter.

AREA OF SHALLOW FLOODING. A designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one to three feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

AREA OF SPECIAL FLOOD HAZARD. See **SPECIAL FLOOD HAZARD AREA (SFHA).**

BASEMENT. Any area of the building having its floor subgrade (below ground level) on all sides.

BASE FLOOD. The flood having a 1% chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION (BFE). A determination of the water surface elevations of the base flood as published in the flood insurance study. When the BFE has not been provided in a special flood hazard area, it may be obtained from engineering studies available from a federal or state or other source using FEMA approved engineering methodologies. This elevation, when combined with the freeboard, establishes the regulatory flood protection elevation.

BUILDING. See **STRUCTURE.**

CHEMICAL STORAGE FACILITY. A building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

DISPOSAL. As defined in G.S. § 130A-290(a)(6), means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

ELEVATED BUILDING. A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

ENCROACHMENT. The advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

EXISTING MANUFACTURED HOME PARK or MANUFACTURED HOME SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the original effective date of the floodplain management regulations adopted by the community.

FLOOD or FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM). An official map of a community, issued by the Federal Emergency Management Agency, on which the special flood hazard areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

FLOOD INSURANCE. The insurance coverage provided under the National Flood Insurance Program.

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community, issued by the Federal Emergency Management Agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.

FLOOD INSURANCE STUDY (FIS). An examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The flood insurance study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

FLOOD PRONE AREA. See **FLOODPLAIN.**

FLOODPLAIN. Any land area susceptible to being inundated by water from any source.

FLOODPLAIN ADMINISTRATOR. The individual appointed to administer and enforce the floodplain management regulations.

FLOODPLAIN DEVELOPMENT PERMIT. Any type of permit that is required in conformance with the provisions of this chapter, prior to the commencement of any development activity.

FLOODPLAIN MANAGEMENT. The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

FLOODPLAIN MANAGEMENT REGULATIONS. This chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

FLOODPROOFING. Any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

FLOOD ZONE. A geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

FREEBOARD. The height added to the base flood elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization on the watershed. The base flood elevation plus the freeboard establishes the regulatory flood protection elevation.

FUNCTIONALLY DEPENDENT FACILITY. A facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

HAZARDOUS WASTE FACILITY. As defined in G.S. Chapter 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

HIGHEST ADJACENT GRADE (HAG). The highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

HISTORIC STRUCTURE. Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a local inventory of historic landmarks in communities with a Certified Local Government (CLG) Program; or

(4) Certified as contributing to the historical significance of a historic district designated by a community with a Certified Local Government (CLG) Program.

(5) Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

LOWEST ADJACENT GRADE (LAG). The elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

LOWEST FLOOR. Lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

MANUFACTURED HOME. A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term manufactured home does not include a recreational vehicle.

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MARKET VALUE. The building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (actual cash value); or adjusted tax assessed values.

MEAN SEA LEVEL. For purposes of this chapter, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which base flood elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of the original version of the community's Flood Damage Prevention Ordinance and includes any subsequent improvements to such structures.

NON-ENCROACHMENT AREA. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot as designated in the flood insurance study report.

POST-FIRM. Construction or other development for which the start of construction occurred on or after the effective date of the initial Flood Insurance Rate Map for the area.

PRE-FIRM. Construction or other development for which the start of construction occurred before the effective date of the initial Flood Insurance Rate Map for the area.

PRINCIPALLY ABOVE GROUND. That at least 51% of the actual cash value of the structure is above ground.

PUBLIC SAFETY AND/OR NUISANCE. Anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

RECREATIONAL VEHICLE (RV). A vehicle, which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

REFERENCE LEVEL. The top of the lowest floor for structures within special flood hazard areas designated as Zone A1-A30, AE, A, A99 or AO.

REGULATORY FLOOD PROTECTION ELEVATION. The base flood elevation plus the freeboard. In special flood hazard areas where base flood elevations (BFEs) have been determined, this elevation shall be the BFE plus two feet of freeboard. In special flood hazard areas where no BFE has been established, this elevation shall be at least two feet above the highest adjacent grade.

REMEDY A VIOLATION. To bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the chapter or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

RIVERINE. Relating to, formed by, or resembling a river (including tributaries), stream, brook, and the like.

SALVAGE YARD. Any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

SOLID WASTE DISPOSAL FACILITY. As defined in G.S. § 130A-290(a)(35), any facility involved in the disposal of solid waste.

SOLID WASTE DISPOSAL SITE. As defined in G.S. § 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

SPECIAL FLOOD HAZARD AREA (SFHA). The land in the floodplain subject to a 1% or greater chance of being flooded in any given year, as determined in § 157.07 of this chapter.

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

STRUCTURE. A walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. See definition of **SUBSTANTIAL IMPROVEMENT**.

SUBSTANTIAL IMPROVEMENT. Any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

(1) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

VARIANCE. A grant of relief from the requirements of this chapter.

VIOLATION. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §§ 157.25 through 157.29 and §§ 157.40 through 157.45 is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION (WSE). The height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

WATERCOURSE. A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(Ord. 080205.01, passed 2-5-08)

§ 157.06 LANDS TO WHICH THIS CHAPTER APPLIES.

This chapter shall apply to all special flood hazard areas within the jurisdiction, including extra-territorial jurisdictions (ETJs) if applicable, of the Town of Boiling Springs.
(Ord. 080205.01, passed 2-5-08)

§ 157.07 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.

(A) The special flood hazard areas are those identified under the Cooperating Technical State (CTS) agreement between the state and FEMA in its flood insurance study (FIS), for Cleveland County dated February 20, 2008, and its accompanying Flood Insurance Rate Maps Panels (1594, 1595, 1596, 2504, 2505, 2506, 2514, 2515, and 2516) which are adopted by reference and declared to be a part of this chapter.

(B) The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date: Cleveland County Unincorporated Area, dated July 2, 1991, the Town of Boiling Springs, dated July 2, 1991.
(Ord. 080205.01, passed 2-5-08; Am. Ord. 120626.01, passed 6-26-12)

§ 157.08 ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A floodplain development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities within special flood hazard areas determined in accordance with § 157.07 of this chapter.
(Ord. 080205.01, passed 2-5-08)

§ 157.09 COMPLIANCE.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this chapter and other applicable regulations.
(Ord. 080205.01, passed 2-5-08)

§ 157.10 ABROGATION AND GREATER RESTRICTIONS.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
(Ord. 080205.01, passed 2-5-08)

§ 157.11 INTERPRETATION.

In the interpretation and application of this chapter, all provisions shall be:

(A) Considered as minimum requirements;

(B) Liberally construed in favor of the governing body; and

(C) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. 080205.01, passed 2-5-08)

§ 157.12 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the special flood hazard areas or uses permitted within those areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the town, or by any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Ord. 080205.01, passed 2-5-08)

ADMINISTRATION**§ 157.25 DESIGNATION OF FLOODPLAIN ADMINISTRATOR.**

The Zoning Administrator, hereinafter referred to as the Floodplain Administrator, is hereby appointed to administer and implement the provisions of this chapter.

(Ord. 080205.01, passed 2-5-08)

§ 157.26 FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.

(A) *Application requirements.* Application for a floodplain development permit shall be made to the Floodplain Administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

(1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

(a) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;

(b) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in § 157.07, or a statement that the entire lot is within the special flood hazard area;

(c) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in § 157.07;

(d) The boundary of the floodway(s) or non-encroachment area(s) as determined in § 157.07;

(e) The base flood elevation (BFE) where provided as set forth in § 157.07, § 157.27(K) and (L), or § 157.41;

(f) The old and new location of any watercourse that will be altered or relocated as a result of proposed development;

(2) Proposed elevation, and method thereof, of all development within a special flood hazard area including but not limited to:

(a) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;

(b) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be flood-proofed; and

(c) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.

(3) If floodproofing, a floodproofing certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.

(4) A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this chapter are met. These details include but are not limited to:

(a) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls);

(b) Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with § 157(D)(1), when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30;

(5) Usage details of any enclosed areas below the regulatory flood protection elevation.

(6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;

(7) Certification that all other local, state and federal permits required prior to floodplain development permit issuance have been received.

(8) Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure § 157.41(F) and (G) of this chapter are met.

(9) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(B) *Permit requirements.* The floodplain development permit shall include, but not be limited to:

(1) A description of the development to be permitted under the floodplain development permit.

(2) The special flood hazard area determination for the proposed development per available data specified in § 157.07.

(3) The regulatory flood protection elevation required for the reference level and all attendant utilities.

(4) The regulatory flood protection elevation required for the protection of all public utilities.

(5) All certification submittal requirements with timelines.

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(6) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.

(7) The flood openings requirements, if in Zones A, AO, AE or A1-30.

(8) Limitations of below BFE enclosure uses (if applicable).

(C) *Certification requirements.*

(1) *Elevation certificates.*

(a) An elevation certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by the review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

(b) A final as-built elevation certificate (FEMA Form 81-31) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by the review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.

(2) *Floodproofing certificate.* If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA Form 81-65), with supporting data and an operational plan, is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data and plan. Deficiencies detected by the review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

(3) If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required per § 157.41(C).

(4) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

(5) *Certification exemptions.* The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in divisions (C)(1) and (2) of this section:

(a) Recreational vehicles meeting requirements of § 157.041(F)(1);

(b) Temporary structures meeting requirements of § 157.41(G); and

(c) Accessory structures less than 150 square feet meeting requirements of § 157.41(H).
(Ord. 080205.01, passed 2-5-08)

§ 157.27 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

The Floodplain Administrator shall perform, but not be limited to, the following duties:

(A) Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this chapter have been satisfied.

(B) Review all proposed development within special flood hazard areas to assure that all necessary local, state and federal permits have been received.

(C) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of notification to the Federal Emergency Management Agency (FEMA).

(D) Assure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished.

(E) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of § 157.45 are met.

(F) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with § 157.26(C).

(G) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with § 157.26(C).

(H) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with § 157.26(C).

(I) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with § 157.26(C) and § 157.41(B).

(J) Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

(K) When base flood elevation (BFE) data has not been provided in accordance with § 157.07, obtain, review, and reasonably utilize any base flood elevation (BFE) data, along with floodway data or non-encroachment area data available from a federal, state, or other source, including data developed pursuant to § 157.43(B)(2), in order to administer the provisions of this chapter.

(L) When base flood elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with § 157.07, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other source in order to administer the provisions of this chapter.

(M) When the lowest ground elevation of a parcel or structure in a special flood hazard area is above the base flood elevation, advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. Maintain a copy of the letter of map amendment (LOMA) issued by FEMA in the floodplain development permit file.

(N) Permanently maintain all records that pertain to the administration of this chapter and make these records available for public inspection.

(O) *Make on-site inspections of work in progress.* As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

(P) *Issue stop-work orders as required.* Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this chapter, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

(Q) *Revoke floodplain development permits as required.* The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.

(R) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(S) Follow through with corrective procedures of § 157.28.

(T) Review, provide input, and make recommendations for variance requests.

(U) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with § 157.07 of this chapter, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.

(V) Coordinate revisions to FIS reports and FIRMs, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).
(Ord. 080205.01, passed 2-5-08)

§ 157.28 CORRECTIVE PROCEDURES.

(A) *Violations to be corrected.* When the Floodplain Administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in the notification.

(B) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

- (1) That the building or property is in violation of the Flood Damage Prevention chapter;
- (2) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- (3) That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

(C) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention chapter, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days, nor more than 180 calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.

(D) *Appeal.* Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

(E) *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

(Ord. 080205.01, passed 2-5-08)

§ 157.29 VARIANCE PROCEDURES.

(A) The Board of Adjustment as established by the town hereinafter referred to as the Appeal Board, shall hear and decide requests for variances from the requirements of this chapter.

(B) Any person aggrieved by the decision of the appeal board may appeal the decision to the Court, as provided in G.S. Ch. 7A.

(C) *Variances may be issued for:*

(1) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.

(2) Functionally dependant facilities if determined to meet the definition as stated in § 157.05 of this chapter, provided provisions of § 157.29(1)(2), (3), and (5) have been satisfied, and the facilities are protected by methods that minimize flood damages.

(3) Any other type of development, provided it meets the requirements stated in this section.

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(D) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of the damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location as defined under § 157.07 of this chapter as a functionally dependant facility, where applicable;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(E) A written report addressing each of the above factors shall be submitted with the application for a variance.

(F) Upon consideration of the factors listed above and the purposes of this chapter, the Appeal Board may attach conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(G) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that construction below the base flood elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. The notification shall be maintained with a record of all variance actions, including justification for their issuance.

(H) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the state upon request.

(I) *Conditions for variances:*

(1) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

(2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) Variances shall only be issued prior to development permit approval.

(5) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship;

and

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(J) A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met.

(1) The use serves a critical need in the community.

(2) No feasible location exists for the use outside the special flood hazard area.

(3) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.

(4) The use complies with all other applicable federal, state and local laws.

(5) The town has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance. (Ord. 080205.01, passed 2-5-08)

PROVISIONS FOR FLOOD HAZARD REDUCTION

§ 157.40 GENERAL STANDARDS.

In all special flood hazard areas the following provisions are required:

(A) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

(B) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(C) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.

(D) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, and the like), hot water heaters, and electric outlets/switches.

(E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.

(G) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(H) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this chapter, shall meet the requirements of new construction as contained in this chapter.

(I) Nothing in this chapter shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this chapter and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that the repair, reconstruction, or replacement meets all of the other requirements of this chapter.

(J) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in § 157.29(J). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to § 157.26(C) of this chapter.

(K) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

(L) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(M) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(N) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. (Ord. 080205.01, passed 2-5-08)

§ 157.41 SPECIFIC STANDARDS.

In all special flood hazard areas where base flood elevation (BFE) data has been provided, as set forth in § 157.07, or § 157.27(K) and (L), the following provisions, in addition to § 157.40, are required:

(A) *Residential construction.* New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in § 157.05 of this chapter.

(B) *Non-residential construction.* New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in § 157.05 of this chapter. Structures located in A, AE and A1-30 Zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with § 157.43. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. The certification shall be provided to the Floodplain Administrator as set forth in § 157.26(C), along with the operational and maintenance plans.

(C) *Manufactured homes.*

(1) New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in § 157.05 of this chapter.

(2) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by engineer certification, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to G.S. § 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

(3) All enclosures or skirting below the lowest floor shall meet the requirements of § 157.41(A), (B), and (C).

(4) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the floodplain administrator and the local Emergency Management coordinator.

(D) *Elevated buildings.* Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

(1) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of the enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

(2) Shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

(3) Shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria;

(a) A minimum of two flood openings on different sides of each enclosed area subject to flooding;

(b) The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;

(c) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;

(d) The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;

(e) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

(f) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(E) *Additions/improvements.*

(1) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(a) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.

(b) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(2) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

(3) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(a) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.

(b) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(4) Where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

(F) *Recreational vehicles.* Recreational vehicles shall either:

(1) Be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or

(2) Meet all the requirements for new construction.

(C) *Temporary non-residential structures.* Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval;

(1) A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;

(2) The name, address, and phone number of the individual responsible for the removal of the temporary structure;

(3) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

(4) A copy of the contract or other suitable instrument with the entity responsible for physical removal the structure; and

(5) Designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.

(H) *Accessory structures.*

(1) When accessory structures (sheds, detached garages, and the like) are to be placed within a special flood hazard area, the following criteria shall be met:

(a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);

(b) Accessory structures shall not be temperature-controlled;

(c) Accessory structures shall be designed to have low flood damage potential;

(d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

(e) Accessory structures shall be firmly anchored in accordance with § 157.40(A);

(f) All service facilities such as electrical shall be installed in accordance with § 157.40(D);
and

(g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with § 157.41(C).

(2) An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with § 157.26(C).
(Ord. 080205.01, passed 2-5-08)

§ 157.42 RESERVED.

§ 157.43 STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.

Within the special flood hazard areas designated as approximate Zone A and established in § 157.07, where no base flood elevation (BFE) data has been provided by FEMA, the following provisions, in addition to § 157.40 shall apply:

(A) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 20 feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(B) The BFE used in determining the regulatory flood protection elevation shall be determined based on one of the following criteria set in priority order:

(1) When base flood elevation (BFE) data is available from other sources, all new construction and substantial improvements within the areas shall also comply with all applicable provisions of this chapter and shall be elevated or floodproofed in accordance with standards in § 157.40 and § 157.41.

(2) When floodway data is available from a federal, state, or other source, all new construction and substantial improvements within floodway areas shall also comply with the requirements of § 157.41 and § 157.45.

(3) All subdivision, manufactured home park and other development proposals shall provide base flood elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. The base flood elevation (BFE) data shall be adopted by reference per § 157.07 to be utilized in implementing this chapter.

(4) When base flood elevation (BFE) data is not available from a federal, state, or other source as outlined above, the reference level shall be elevated or floodproofed (non-residential) to or above the regulatory flood protection elevation, as defined in § 157.05. All other applicable provisions of § 157.41 shall also apply.

(Ord. 080205.01, passed 2-5-08)

§ 157.44 STANDARDS FOR RIVERINE FLOODPLAINS WITH BFE BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.

Along rivers and streams where BFE data is provided but neither floodway nor non-encroachment areas are identified for a special flood hazard area on the FIRM or in the FIS report, the following requirements shall apply to all development within those areas:

(A) Standards outlined in § 157.40 and § 157.41; and

(B) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(Ord. 080205.01, passed 2-5-08)

§ 157.45 FLOODWAYS AND NON-ENCROACHMENT AREAS.

Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in § 157.07. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in § 157.40 and § 157.41, shall apply to all development within those areas:

(A) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been demonstrated that:

(1) The proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or

(2) A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained upon completion of the proposed encroachment.

(B) If § 157.45(A) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this chapter.

(C) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

(1) The anchoring and the elevation standards of § 157.26(C); and

(2) The no encroachment standard of § 157.45(A).
(Ord. 080205.01, passed 2-5-08)

LEGAL STATUS PROVISIONS

§ 157.60 EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION CHAPTER.

This chapter in part comes forward by re-enactment of some of the provisions of the flood damage prevention chapter enacted June 5, 2007 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of the existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this chapter shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention chapter of the town enacted on June 5, 2007, as amended, which are not reenacted herein are repealed.

(Ord. 080205.01, passed 2-5-08)

§ 157.61 EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this chapter; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this chapter.

(Ord. 080205.01, passed 2-5-08)

§ 157.99 PENALTY.

Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50 or imprisoned for not more than 30 days, or both. Each day the violation continues shall be considered a separate offense. Nothing herein contained shall prevent the town from taking other lawful action as is necessary to prevent or remedy any violation.

(Ord. 080205.01, passed 2-5-08)

CHAPTER 158: WATERSHED PROTECTION

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GENERAL PROVISIONS**§ 158.01 AUTHORITY AND ENACTMENT.**

The Legislature of the state has, in G.S. Chapter 160A, Article 8, § 174, General Ordinance Authority; and in G.S. Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

(Ord. 071106.01, passed 11-6-07)

§ 158.02 JURISDICTION.

The provisions of this chapter shall apply within the areas designated as a public water supply watershed by the North Carolina Environmental Management Commission and shall be defined and established on the map entitled, Watershed Protection Map of Boiling Springs, North Carolina (the Watershed Map), which is adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompany and are hereby made a part of this chapter. This chapter shall be permanently kept on file in the office of the Town Clerk.

(Ord. 071106.01, passed 11-6-07)

§ 158.03 EXCEPTIONS TO APPLICABILITY.

(A) Nothing contained herein shall repeal, modify, or amend any federal or state law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this chapter amend, modify, or restrict any provisions of the Code of Ordinances of the town; however, the adoption of this chapter shall and does amend any and all ordinances, resolutions, and regulations in effect in the town at the time of the adoption of this chapter that may be construed to impair or reduce the effectiveness of this chapter or to conflict with any of its provisions.

(B) It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.

(C) Existing development, as defined in this chapter, is not subject to the requirements of this chapter. Expansions to structures classified as existing development must meet the requirements of this chapter, however, the built-upon area of the existing development is not required to be included in the density calculations.

(D) If a nonconforming lot of record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this chapter if it is developed for single-family residential purposes. Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject to the land use requirements (including impervious surface requirements) of these rules, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent practicable.

(Ord. 071106.01, passed 11-6-07)

§ 158.04 DEFINITIONS.

(A) *General definitions.* For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGRICULTURAL USE. The use of waters for stock watering, irrigation, and other farm purposes.

BEST MANAGEMENT PRACTICES (BMP). A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

BUFFER. An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

BUILDING. Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other open structure, with or without a roof, shall not be deemed to make them one building.

BUILT-UPON AREA. Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (e.g. roads, parking lots, paths), recreation facilities (e.g. tennis courts), and the like. (Note: wooden slatted decks and the water area of a swimming pool are considered pervious.)

CLUSTER DEVELOPMENT. Cluster development means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single-family residential and multi-family developments. For the purpose of this chapter, planned unit developments and mixed use development are considered as cluster development.

CRITICAL AREA. The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

CUSTOMARY HOME OCCUPATIONS. Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over 25% of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, and the like.

DEVELOPMENT. Any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

DWELLING UNIT. A building, or portion thereof, providing complete and permanent living facilities for one family.

EXISTING DEVELOPMENT. Those projects that are built or those projects that at a minimum have established a vested right under state zoning law as of the effective date of this chapter based on at least one of the following criteria:

(a) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project; or

(b) Having an outstanding valid building permit as authorized by state statutes (G.S. § 160A-385.1); or

(c) Having an approved site specific or phased development plan as authorized by state statutes (G.S. § 160A-385.1).

EXISTING LOT (LOT OF RECORD). A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter.

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

FAMILY SUBDIVISION. Family subdivision means a division of a tract of land:

(a) To convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or

(b) To divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

INDUSTRIAL DEVELOPMENT. Any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

LANDFILL. A facility for the disposal of solid waste on land in a sanitary manner in accordance with G.S. Chapter 130A, Article 9. For the purpose of this chapter this term does not include composting facilities.

LOT. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

MAJOR VARIANCE. A variance from the minimum statewide watershed protection rules that results in any one or more of the following:

(a) The relaxation, by a factor greater than 10%, of any management requirement under the low-density option;

(b) The relaxation, by a factor greater than 5%, of any buffer, density or built-upon area requirement under the high-density option;

(c) Any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system.

MINOR VARIANCE. A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to 5% of any buffer, density or built-upon area requirement under the high density option; or that results in a relaxation, by a factor of up to 10%, of any management requirement under the low density option.

NONCONFORMING LOT OF RECORD. A lot described by a plat or a deed that was recorded prior to the effective date of local watershed protection regulations (or their amendments) that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.

NON-RESIDENTIAL DEVELOPMENT. All development other than residential development, agriculture and silviculture.

PLAT. A map or plan of a parcel of land which is to be, or has been subdivided.

PROTECTED AREA. The area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within ten miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

RESIDENTIAL DEVELOPMENT. Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, and the like, and their associated outbuildings such as garages, storage buildings, gazebos, and the like and customary home occupations.

RESIDUALS. Any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.

SINGLE-FAMILY RESIDENTIAL. Any development where:

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

STREET (ROAD). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

STRUCTURE. Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

SUBDIVIDER. Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

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

(a) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this chapter;

(b) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;

(c) The public acquisition by purchase of strips of land for the widening or opening of streets;

(d) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the this chapter;

(e) The division of a tract into plots or lots used as a cemetery.

TOXIC SUBSTANCE. Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in the organisms or their offspring or other adverse health effects.

VARIANCE. A permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this chapter.

WATER DEPENDENT STRUCTURE. Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

WATERSHED. The entire land area contributing surface drainage to a specific point (e.g. the water supply intake.)

WATERSHED ADMINISTRATOR. An official or designated person of the town responsible for administration and enforcement of this chapter.

(B) *Word interpretation.*

(1) For the purpose of this chapter, certain words shall be interpreted as follows: words in the present tense include the future tense.

(2) Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.

(3) The word **PERSON** includes a firm, association, corporation, trust, and company as well as an individual.

(4) The word **STRUCTURE** shall include the word building.

(5) The word **LOT** shall include the words, plot, parcel, or tract.

(6) The word **SHALL** is always mandatory and not merely directory.

(7) The word **WILL** is always mandatory and not merely directory.
(Ord. 071106.01, passed 11-6-07)

SUBDIVISION REGULATIONS

§ 158.10 GENERAL PROVISIONS.

(A) No subdivision plat of land within the public water supply watershed shall be filed or recorded by the register of deeds until it has been approved in accordance with the provisions of this chapter. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with this chapter.

(B) All subdivisions of land within the jurisdiction of the town after the effective date of this chapter shall require a plat to be prepared, approved, and recorded pursuant to this chapter.
(Ord. 071106.01, passed 11-6-07)

§ 158.11 SUBDIVISION APPLICATION AND REVIEW PROCEDURES.

(A) All proposed subdivisions shall be reviewed prior to recording with the register of deeds by submitting a vicinity map to the Watershed Administrator to determine whether or not the property is located within the designated public water supply watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this chapter and may be recorded provided the Watershed Administrator initials the vicinity map.

(B) Subdivisions within a WS-IV watershed are subject to the provisions of this chapter only when an erosion and sedimentation plan is required under the provisions of state law or approved local program.

(C) Subdivisions within the designated watershed area shall comply with the provisions of this chapter and all other state and local requirements that may apply.

(D) Compliance with this chapter shall be indicated by completion of the following certificate on an approved plat:

Certificate of Approval for Recording

I certify that the plat shown hereon complies with the Watershed Protection Ordinance and is approved by the Watershed Review Board for recording in the Register of Deeds office.

Date

Watershed Administrator

NOTE: This property is located within a Public Water Supply Watershed - development restrictions may apply.

(Ord. 071106.01, passed 11-6-07)

§ 158.12 SUBDIVISION STANDARDS AND REQUIRED IMPROVEMENTS.

(A) All lots shall provide adequate building space in accordance with the development standards contained in §§ 158.20 through 158.28. Lots which are smaller than the minimum required for residential lots may be developed using built-upon area criteria in accordance with §§ 158.20 through 158.28.

(B) For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(C) *Storm water drainage facilities.* The application shall be accompanied by a description of the proposed method of providing stormwater drainage. The subdivider shall provide a drainage system that diverts stormwater runoff away from surface waters and incorporates best management practices to minimize water quality impacts.

(D) *Erosion and sedimentation control.* The application shall, where required, be accompanied by a written statement that a sedimentation and erosion control plan has been submitted to and approved by the North Carolina Division of Land Quality.

(E) *Roads constructed in critical areas and watershed buffer areas.* Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed to minimize their impact on water quality.
(Ord. 071106.01, passed 11-6-07)

§ 158.13 CONSTRUCTION PROCEDURES.

(A) No construction or installation of improvements shall commence in a proposed subdivision until a subdivision plat has been approved.

(B) No building or other permits shall be issued for erection of a structure on any lot not of record at the time of adoption of this chapter until all requirements of this chapter have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection.
(Ord. 071106.01, passed 11-6-07)

DEVELOPMENT REGULATIONS**§ 158.20 ESTABLISHMENT OF WATERSHED AREAS.**

For purposes of this chapter, portions of the jurisdiction of the Town of Boiling Springs and its extraterritorial jurisdiction are hereby located within a WS-IV-PA (protected area) (Ord. 071106.01, passed 11-6-07)

§ 158.21 WS-IV-PA WATERSHED AREA DESCRIBED.**(A) Uses allowed:**

(1) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.

(2) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

(3) Residential development.

(4) Non-residential development.

(B) Density and built-upon limits:

(1) *Single-family detached residential.* Development shall not exceed two dwelling units per acre. No residential lot shall be less than 15,000 square feet, except within an approved cluster development.

(2) *All other residential and non-residential.* Development shall not exceed 24% built-upon area on a project by project basis. For projects without a curb and gutter street system, development shall not exceed 36% built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.

(3) *Ten/seventy allocation.* In addition to the development allowed under the aforementioned provisions, new development and expansions to existing development may occupy up to 10% of the protected area with up to 70% built-upon area on a project by project basis, when approved as a special intensity allocation (SIA).

(a) The Watershed Review Board is authorized to approve SIAs consistent with the provisions of this chapter. Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters, and incorporate best management practices to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(b) The 10/70 option may only be applied to an area within a project equal to or less than 25 acres. The project area may be of any size and location.

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(c) To qualify for an SIA, a project must accumulate 200 total points according to the following criteria:

<i>Tax base added by project:</i>	<i>Points</i>
\$250,000 or less	25
\$250,000 to \$500,000	50
\$500,000 to \$1,000,000	75
\$1,000,000 or more	100
<i>Employment added by project:</i>	<i>Points</i>
1 to 10	25
11 to 20	50
21 to 50	75
51 or more	100
<i>Zoning classification:</i>	<i>Points</i>
Non-residential zoning	50
<i>Percentage of built-upon area</i>	<i>Points</i>
36 to 50%	25
51 to 60%	50
61 to 70%	75
<i>Access:</i>	<i>Points</i>
Access from or frontage on thoroughfare	50

(4) *Cluster development.* Cluster development is allowed in a WS-IV-PA under the following conditions:

(a) Minimum lot sizes are not applicable to single family cluster development projects; however, the density and built-upon area shall not exceed that allowed for the protected area.

(b) All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

(c) Areas of concentrated density development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways.

(d) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowners association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

(e) Cluster developments that meet the applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable. (Ord. 071106.01, passed 11-6-07; Am. Ord. 080506.01, passed 5-6-08)

§ 158.22 BUFFER AREAS REQUIRED.

(A) A minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density option (including special intensity allocations); otherwise, a minimum 30 foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures, other structures such as flag poles, signs and security lights which result in only diminutive increases in impervious area and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater best management practices. (Ord. 071106.01, passed 11-6-07)

§ 158.23 RULES GOVERNING THE INTERPRETATION OF WATERSHED AREA BOUNDARIES.

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Map, the following rules shall apply:

(A) Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or centerlines thereof, the lines shall be construed to be the boundaries.

(B) Where area boundaries are indicated as approximately following lot lines, the lot lines shall be construed to be the boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the town as evidence that one or more properties along these boundaries do not lie within the watershed area.

(C) Where the watershed area boundaries lie at a scaled distance more than 25 feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.

(D) Where the watershed area boundaries lie at a scaled distance of 25 feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.

(E) Where other uncertainty exists, the Watershed Administrator shall interpret the Watershed Map as to location of the boundaries. This decision may be appealed to the Watershed Review Board. (Ord. 071106.01, passed 11-6-07)

§ 158.24 APPLICATION OF REGULATIONS.

(A) No building or land shall hereafter be used and no development shall take place except in conformity with the regulations herein specified for the watershed area in which it is located.

(B) No area required for the purpose of complying with the provisions of this chapter shall be included in the area required for another building.

(C) If a use or class of use is not specifically indicated as being allowed in a watershed area, the use or class of use is prohibited.

(Ord. 071106.01, passed 11-6-07)

§ 158.25 EXISTING DEVELOPMENT.

Existing development as defined in this chapter may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this chapter, however, the built-upon area of the existing development is not required to be included in the built-upon area calculations.

(A) *Uses of land.* This category consists of uses existing at the time of adoption of this chapter where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. These uses may be continued except as follows:

(1) When the use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.

(2) The use of land shall be changed only to an allowed use.

(3) When the use ceases for a period of at least one year, it shall not be reestablished.

(B) *Reconstruction of buildings or built-upon areas.* Any existing building or built-upon area not in conformance with the restrictions of this chapter that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single family residential development, provided:

(1) Repair or reconstruction is initiated within 12 months and completed within two years of the damage.

(2) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

(Ord. 071106.01, passed 11-6-07)

§ 158.26 WATERSHED PROTECTION PERMIT.

(A) Except where a single-family residence is constructed on a lot deeded prior to the effective date of this chapter, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a watershed protection permit has been issued by the Watershed Administrator. No watershed protection permit shall be issued except in conformity with the provisions of this chapter.

(B) Watershed protection permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form and supporting documentation deemed necessary by the Watershed Administrator.

(C) Prior to issuance of a watershed protection permit, the Watershed Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this chapter.

(D) A watershed protection permit shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within 12 months from the date of issuance.
(Ord. 071106.01, passed 11-6-07)

§ 158.27 BUILDING PERMIT REQUIRED.

No permit required under the North Carolina State Building Code shall be issued for any activity for which a watershed protection permit is required until that permit has been issued.
(Ord. 071106.01, passed 11-6-07)

§ 158.28 WATERSHED PROTECTION OCCUPANCY PERMIT.

(A) The Watershed Administrator shall issue a watershed protection occupancy permit certifying that all requirements of this chapter have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.

(B) A watershed protection occupancy permit, either for the whole or part of a building, shall be applied for coincident with the application for a watershed protection permit and shall be issued or denied within ten days after the erection or structural alterations of the building.

(C) When only a change in use of land or existing building occurs, the Watershed Administrator shall issue a watershed protection occupancy permit certifying that all requirements of this chapter have been met coincident with the watershed protection permit.

(D) If the watershed protection occupancy permit is denied, the Watershed Administrator shall notify the applicant in writing stating the reasons for denial.

(E) No building or structure which has been erected, moved, or structurally altered may be occupied until the Watershed Administrator has approved and issued a watershed protection occupancy permit.
(Ord. 071106.01, passed 11-6-07)

PUBLIC HEALTH REGULATIONS

§ 158.40 PUBLIC HEALTH.

No activity, situation, structure or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety and welfare. These conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.
(Ord. 071106.01, passed 11-6-07)

§ 158.41 ABATEMENT.

(A) The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.

(B) The Watershed Administrator shall report all findings to the Watershed Review Board. The Watershed Administrator may consult with any public agency or official and request recommendations.

(C) Where the Watershed Review Board finds a threat to water quality and the public health, safety and welfare, the Board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

(Ord. 071106.01, passed 11-6-07)

ADMINISTRATION, ENFORCEMENT AND APPEALS**§ 158.50 WATERSHED ADMINISTRATOR AND DUTIES THEREOF.**

The Town Manager is hereby appointed as the Watershed Administrator. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this chapter as follows:

(A) The Watershed Administrator shall issue watershed protection permits and watershed protection occupancy permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.

(B) The Watershed Administrator shall serve as staff to the Watershed Review Board.

(C) The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection chapter and shall provide copies of all amendments upon adoption to the Water Quality Section of the Division of Water Quality.

(D) The Watershed Administrator shall keep records of the jurisdiction's use of special intensity allocations. Records for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, number of developed acres, type of land use and stormwater management plan (if applicable).

(E) The Watershed Administrator is granted the authority to administer and enforce the provisions of this chapter, exercising in the fulfillment of his or her responsibility the full police power of the town. The Watershed Administrator, or his or her duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him or her by this chapter.

(F) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection chapter. This record shall be submitted for each calendar year to the Water Quality Section of the Division of Environmental Management on or before January 1 of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.
(Ord. 071106.01, passed 11-6-07)

§ 158.51 APPEAL FROM THE WATERSHED ADMINISTRATOR.

(A) Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Watershed Review Board.

(B) An appeal from a decision of the Watershed Administrator must be submitted to the Watershed Review Board within 30 days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

(C) An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

(D) The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.
(Ord. 071106.01, passed 11-6-07)

§ 158.52 CHANGES AND AMENDMENTS TO THE WATERSHED PROTECTION CHAPTER.

(A) The Board of Commissioners may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.

(B) No action shall be taken until the proposal has been submitted to the Watershed Review Board for review and recommendations. If no recommendation has been received from the Watershed Review Board within 45 days after submission of the proposal to the Chairman of the Watershed Review Board, the Board of Commissioners may proceed as though a favorable report had been received.

(C) Under no circumstances shall the Board of Commissioners adopt such amendments, supplements or changes that would cause this chapter to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the N.C. Division of Water Quality, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.
(Ord. 071106.01, passed 11-6-07)

§ 158.53 ESTABLISHMENT OF WATERSHED REVIEW BOARD.

The Town Board of Planning and Adjustment shall serve as the Watershed Review Board.
(Ord. 071106.01, passed 11-6-07)

§ 158.54 POWERS AND DUTIES OF THE WATERSHED REVIEW BOARD.

(A) *Administrative review.* The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this chapter.

(B) *Minor variances.* The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this chapter as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this chapter will result in practical difficulties or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done. In addition, the town shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

(1) Applications for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:

(a) A site plan, drawn to a scale of at least one inch to 40 feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(b) A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the Watershed Review Board in considering the application.

(c) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption. The notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Watershed Administrator prior to a decision by the Watershed Review Board. The comments shall become a part of the record of proceedings of the Watershed Review Board.

(2) Before the Watershed Review Board may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:

(a) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the chapter. The hardship must be due to the physical aspects that are particular to the property (size, shape, topography) and not widespread within the area. It must also be demonstrated that the hardship suffered by the property would mean that no reasonable return could be made from the property if required to comply with the chapter.

(b) The variance is in harmony with the general purpose and intent of the chapter and preserves its spirit.

(c) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

(3) In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this chapter. If a variance for the construction, alteration or use of property is granted, the construction, alteration or use shall be in accordance with the approved site plan.

(4) The Watershed Review Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

(5) A variance issued in accordance with this section shall be considered a watershed protection permit and shall expire if a building permit or watershed occupancy permit for the use is not obtained by the applicant within six months from the date of the decision.

(C) *Major variances.* If the application calls for the granting of a major variance, and if the Watershed Review Board decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed and forward the documentation to the Environmental Management Commission.

(1) The preliminary record of the hearing shall include:

- (a) The variance application;
- (b) The hearing notices;
- (c) The evidence presented;
- (d) Motions, offers of proof, objections to evidence, and rulings on them;
- (e) Proposed findings and exceptions;
- (f) The proposed decision, including all conditions proposed to be added to the permit.

(2) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including the conditions and stipulations, granting the proposed variance.

(3) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.

(D) Subdivision approval. See §§ 158.10 through 158.13.

(E) Public health. See §§ 158.40 and 157.41.

(F) Approval of special intensity allocations. See § 158.21(B)(3).
(Ord. 071106.01, passed 11-6-07)

§ 158.55 APPEALS FROM THE WATERSHED REVIEW BOARD.

Appeals from the Watershed Review Board must be filed with the Superior Court within 30 days from the date of the decision. Decisions by the Superior Court will be in the manner of certiorari.
(Ord. 071106.01, passed 11-6-07)

§ 158.98 REMEDIES.

(A) If any subdivision, development and/or land use is found to be in violation of this chapter, the Board of Commissioners of the town may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$50, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. § 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

(B) If the Watershed Administrator finds that any of the provisions of this chapter are being violated, he or she shall notify in writing the person responsible for the violation, indicating the nature of the violation, and ordering the action necessary to correct it. He or she shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this chapter to ensure compliance with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal the ruling to the Watershed Review Board.
(Ord. 071106.01, passed 11-6-07)

§ 158.99 CRIMINAL PENALTIES.

Any person violating any provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. § 14-4. The maximum fine for each offense shall not exceed \$500. Each day the violation continues shall constitute a separate offense.
(Ord. 071106.01, passed 11-6-07)