



WATAUGA COUNTY, NC

VALLE CRUCIS

HISTORIC DISTRICT ORDINANCE

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STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

VALLE CRUCIS HISTORIC DISTRICT ORDINANCE

ARTICLE I

GENERAL PROVISIONS

1.1 Purposes

The Watauga County Board of County Commissioners, mindful of the historic significance of the Valle Crucis community and in furtherance of the protection of the public health, safety, morals and general welfare, enacts this Ordinance for the following purposes:

- a. To preserve and protect the heritage of the Valle Crucis community in Watauga County.
- b. To protect and conserve individual properties within the Valle Crucis community that embody important elements of Valle Crucis' and Watauga County's social, economic, cultural, political or architectural history.
- c. To promote the conservation of the Valle Crucis Historic District for the education, pleasure and enrichment of the Valle Crucis community, Watauga County and the State of North Carolina.
- d. To foster civic beauty and amenity within the Valle Crucis Historic District.
- e. Contribute to the improvement of the general health and welfare of the residents of the Valle Crucis Historic District and Watauga County.

1.2 Legislative Authority

This Ordinance is enacted pursuant to Chapter 153A, Article 18, Part 3, as amended, North Carolina General Statutes, for the purposes enunciated therein, and Chapter 160A, Article 19, Part 3C as amended, North Carolina General Statutes.

The regulations contained in this Ordinance are made with reasonable consideration, among other things, as to the character of the District and its peculiar suitability for particular uses and with a view to conserving the value and integrity of buildings and encouraging the most appropriate use of land throughout the District.

ARTICLE II

HISTORIC DISTRICT AND HISTORIC PRESERVATION COMMISSION

2.1 Historic District Established

The Valle Crucis Historic District is hereby established

The boundaries of the Historic District are as shown on the map entitled “Map of the Valle Crucis Historic District”. This map, together with all lawfully adopted explanatory matters shown thereon or therewith, is hereby adopted by reference and declared to be a part of this Ordinance.

2.2 Application of Regulations

No building, structure, or land shall hereafter be used or occupied and no building, structure or part hereof shall be hereafter erected, reconstructed, moved, demolished, located or the exterior structurally altered except in conformity with regulations set out herein for the District.

2.3 Exemption of Bonafide Farms

This ordinance shall not be applicable to bonafide farms, but any use of farm property for non-farm purposes is subject to the regulation. Bona fide farm purposes include production of crops, fruits, vegetables, ornamental and flowering plants, dairy, poultry, and all other forms of agricultural products having a domestic or foreign market.

2.4 Area, Height and Placement Standards

Standards governing minimum lot area and width, required yards and maximum height shall be as shown below:

	Residential Uses	All Other Uses
Minimum Lot Size	21,780 Sq. Ft.	21,780 Sq. Ft.
Minimum Lot Width	75'	75'
Minimum Required Yards:		
Front (Edge of Pavement)	50'	50'
Side	15'	30'
Rear	20'	20'
Maximum Building Height	30'	30'

Additional requirements may also be applicable for some development (e.g. development consisting of more than one unit)

## 2.5 Performance Standards

All land uses subject to this ordinance shall comply with the performance standards defined herein.

### a. Buffer Zones

Where a commercial or multi-family use is proposed adjacent to a single family residential use, a side yard setback of 30 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer zone and shall be landscaped as follows. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no less than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one half (1-1/2) inch caliper (trunk measured six (6) inches above grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet at maturity. In addition, plantings of low growing shrubs, and/or trees shall be placed at ten (10) foot intervals. Plantings within buffer zones shall be staggered unless topography is prohibitive. No planting shall be placed in the road right-of-way. Lists of recommended plantings are available from the Planning and Inspections Department. Where commercial or multi-family use is proposed adjacent to commercial or multi-family use the same requirements apply with the exception of the low growing shrubs.

The recipient of any permit, or his successor, shall be responsible for maintaining all common areas, improvements of facilities required by this ordinance or any permit issued in accordance with its provisions, except those areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

### b. Parking

All uses other than single-family residential shall have at least two (2) off-street parking spaces per dwelling unit or as follows.

1. Parking space for commercial uses shall consist of one (1) off street parking space for each two hundred (200) square feet of gross floor area.

2. Bed and breakfasts, hotels, motels, or and commercial use of this nature shall have parking based on one and one half (1-1/2) parking spaces per bedroom (fractions shall be rounded up to next whole number).
3. Loading/unloading space for commercial uses shall consist of one (1) space at least three hundred (300) square feet in size for each five thousand (5000) square feet of gross floor area. A minimum of one (1) loading/unloading space is required regardless of floor area square footage.

c. Screening of Parking

Parking and loading/unloading areas shall be located at the rear or side of buildings. ("Front" is defined as the face of the building that is parallel to a public road. By this definition, buildings or multiple public road frontage lots would have multiple "front yards" thereby limiting the location of parking areas to the remaining side or rear yards.) Side-yard parking areas that are exposed to a public road shall be screened so as to eliminate visual contact from the road(s). Such screening shall consist of a ten (10) foot wide planting of evergreen trees at ten (10) foot intervals. The trees shall be at least four (4) feet high at planting (2" caliper) and shall reach a height of no less than twenty (20) feet at maturity.

d. Density

Any proposed development consisting of more than one unit shall comply with the Watauga County Ordinance to Govern Subdivisions and Multi-Unit Structures, Articles VIII and X as applicable as well as any additional or stricter requirements imposed by this ordinance. However, the maximum overall density shall not exceed one (1) unit per acre. The goal sought by this standard is the reservation of perpetual open (green) space. To that end, an impervious surface ratio of twelve (12) percent is established. Impervious surface is defined as surfaces that do not absorb water. They consist of all buildings, parking areas, driveways, road, sidewalks, and any areas of concrete, gravel or asphalt. The impervious surface ratio is applicable to any new commercial building regardless of the number of units.

e. Signage

In order to maintain the rural historic character of the District, signs must be limited in size and number. Therefore, off-premises advertising signs are prohibited.

On-premises signs are limited as follows:

- a) Signs shall not be placed within a public road right-of-way.
- b) Signs located fifteen (15) feet to twenty five (25) feet from the centerline of a road shall be limited to ten (10) square feet in size.
- c) Signs located twenty five (25) to thirty five (35) feet from the centerline of a road shall be limited to twenty (20) square feet in size.
- d) Signs located thirty five (35) feet or more from the centerline of a road shall have a maximum size of thirty two (32) square feet.
- e) Each establishment is limited to a maximum of two signs (one (1) detached and one (1) attached). However, in a situation where a detached sign is not visible from both directions due to topography or other obstruction, two (2) detached signs may be permitted and shall have a maximum size of ten (10) square feet each.
- f) The maximum height of detached signs is ten (10) feet measured from the ground.
- g) Signs shall not be internally illuminated – i.e. translucent plastic signs prohibited.
- h) Where street or site lighting does not provide sufficient illumination, signs may be externally illuminated by low level, shielded stationary bulbs installed in compliance with North Carolina Statutes §136-32.2. Sign lighting shall be turned off by 11 pm.

f. Lighting

Lighting of nonresidential land uses must be controlled in both height and intensity to maintain rural character. Under no circumstances may the light level at the lot line exceed 0.2 foot candles, measured at ground level. To achieve this, luminaries shall be shielded to prevent light shining beyond the lot lines onto neighboring properties or public roads. Where there is a mix of residential and commercial uses, light standards are restricted to a maximum of twenty (20) feet in height. In addition, all lighting (except for security purposes) should be turned off between 11 pm and 6 am. Exceptions will be granted for those businesses that are operating during these hours.

g. Placement of Buildings

Buildings should be sited so that obstruction of views from the public roads will be minimized. This can be achieved by taking advantage of topographic changes or existing vegetation.

h. Facades

It is particularly important that new construction meet minimum design criteria in order that it may blend with the surroundings. New construction throughout the District should be compatible with surrounding properties, in terms of formal characteristics such as height, massing, roof shapes and window proportions.

Where new construction is contiguous with or within 100' of existing historic buildings, building height and exterior materials shall be harmonious with those of adjacent properties. In the interests of maintaining a sense of history, vertical siding shall be discouraged, and synthetic siding should imitate the character and dimensions of traditional clapboards. Masonry block buildings

should be faced in an appropriate material, such as horizontal wooden siding or brick of a consistent traditional red color (not “used” brick or any varieties doctored to appear old), and have pitched roofs.

i. Definitions

1. Residence, Multi-Family. A residential use consisting, of a building containing two (2) or more dwelling units.
2. Residence, Single Family. A residential use consisting of a single detached building containing no other dwelling units. Any use clearly incidental to the single-family residence shall also be included in this definition.
3. Commercial Use. For purposes of this ordinance any use which is of or connected with commerce or trade, operating primarily for profit, is not a farm or farm use, and is the primary use of the lot shall be considered commercial.

2.6 Historic Preservation Commission

There is hereby established the Valle Crucis Historic Preservation Commission (hereafter referred to as the Commission) to consist of five members appointed by the Watauga County Board of Commissioners. Members of the Commission shall serve without compensation.

a. Tenure

Initially members shall be appointed for staggered terms with one member being appointed for one year, two members for two years and two members for three years. Thereafter, all appointments shall be for a term of three years.

b. Qualifications

Three (3) members of the Commission shall be resident property owners of the Historic District, two (2) shall be members of the Valle Crucis Community Council and residents of Watauga County, and the majority of the members shall have special interest, experience or education in history or architecture.

c. Meetings

The Commission shall establish a meeting time and shall meet monthly and more or less often as it shall determine and require. All meetings of the Commission shall be open to the public and reasonable notice of the time and place thereof shall be given to the public. All meetings shall conform to the



North Carolina Open Meeting Law. (See North Carolina General Statutes 14333C).

d. Attendance at Meetings

Any member of the Commission who misses more than three consecutive regular meetings or more than half of the regular meetings in a calendar year shall lose status with the Commission and shall be replaced or reappointed by the Watauga County Board of County Commissioners.

Absence due to sickness, death or emergencies of like nature shall be recognized as approved absences and shall not affect a member's status on the Commission, except in the event of long illness or other such cause for prolonged absence a member shall be replaced.

e. Rules of Procedure

The Commission shall adopt and publish Rules of Procedure for the conduct of its business.

f. Annual Report

An annual report shall be prepared and submitted by February 1<sup>st</sup> of each year to the Board of County Commissioners. Such report shall include a comprehensive review of the activities, problems, and actions of the Commission as well as any budget requests or recommendations.

g. Meeting Minutes

The Commission shall keep permanent minutes of all its meetings. The minutes shall record attendance of its members, its resolution, findings, recommendations and actions.

The minutes of the Commission shall be a public record.

2.7 Commission Powers

The Commission shall seek to promote, enhance and preserve the character of the Valle Crucis Historic District, provided however that the Commission shall not require the reconstruction of individual or original buildings or structures or portion thereof.

The Commission is authorized and empowered to undertake such action as is reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this Ordinance and Part 3C of Chapter 160A of the General Statutes of the State of North Carolina including but not limited to the following:

- a. To recommend to the Planning Board and the Board of County Commissioners districts or areas to be designated by ordinance as Historic Districts.
- b. To recommend to the Planning Board and the County Board of Commissioners that the designation of any district or area as a Historic District be revoked or removed.
- c. To consider and grant or deny applications for Certificates of Appropriateness in accordance with the provisions of this Ordinance.
- d. To give advice to property owners concerning the treatment of the historic and visual characteristics of their properties located within the District such as color schemes, gardens and landscape features and minor decorative elements.
- e. To propose to the County Board of Commissioners changes to this or any related Ordinance and to propose new ordinances related to the Valle Crucis Historic District.
- f. To cooperate with other Watauga County boards, commissions and agencies or other governmental units in order to offer or request assistance, aid, guidance or advice concerning matters under its purview or of mutual interest.
- g. To publish information about or otherwise inform the owners of property within the Valle Crucis Historic District of any matters pertinent to its duties, organization, procedures, responsibilities, functions or requirements.
- h. To undertake programs of information, research or analysis relating to any matters within its purview.
- i. To report violations of this Ordinance or related ordinances to the local officials responsible for enforcement.
- j. To assist the Watauga County staff in obtaining the services of consultants to aid in carrying out programs of research and analysis.
- k. To accept funds granted to the Commission from private or nonprofit organizations.
- l. To contract, with the approval of the County Board of Commissioners, for services or funds from the State of North Carolina or agencies or departments of the United States.

- m. To recommend to the Watauga County Board of County Commissioners and the State of North Carolina structures, sites, objects or districts worthy of national, state or local recognition.
- n. To initiate and participate in negotiation with owners and other parties in an effort to find means of preserving buildings scheduled for demolition.
- o. To establish guidelines under which the County Manager or his designee may approve minor modifications on behalf of the Commission. No applications shall be denied without being first considered by the Commission.
- p. To conduct public hearings on applications for Certificates of Appropriateness where the Commission deems that such a hearing is necessary.
- q. To organize itself and conduct its business by whatever legal means it deems proper.
- r. To exercise such other powers and perform such other duties as are required elsewhere by this Ordinance, the General Statutes of North Carolina or by the Watauga County Board of County Commissioners.

## 2.8 Certificate of Appropriateness

### a. Required

No exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement or other appurtenant features) nor above ground utility structure shall be erected, altered, restored, moved or demolished within the Valle Crucis Historic District until after an application for a Certificate of Appropriateness as to exterior features has been submitted to and approved by the Valle Crucis Historic Preservation Commission.

For purposes of this Ordinance, “exterior features” shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, “exterior features” shall be construed to mean the style, material, size, and location of all such signs. Such “exterior features” may include important landscape and natural features of the District. Such a Certificate of Appropriateness must be issued by the Commission prior to the issuance of a building permit

intended for the purposes of constructing, altering, moving or demolishing structures.

The Certificate of Appropriateness may be issued subject to reasonable conditions necessary to carry out the purposes of this Ordinance.

A Certificate of Appropriateness shall be required whether or not a building permit is required.

Any building permit or other such permit not issued in conformity with this Ordinance shall be invalid.

b. Required Procedures

The following procedures shall be observed in the submission, review, action and administration of applications for approval of Certificates of Appropriateness:

1. Applications Submitted to Department of Planning and Inspections

An application for a Certificate of Appropriateness shall be obtained from and, when completed, filed with the County Department of Planning & Inspections.

Application for Certificates of Appropriateness shall be considered by the Commission at its next regular meeting provided they been filed, complete in form and content, at least fifteen calendar days before the regularly scheduled meeting; otherwise consideration shall be deferred until the following meeting.

2. Contents of Application

The Commission shall by uniform rule in its Rules of Procedure require data as are reasonably necessary to determine the nature of the application. An application for a Certificate of Appropriateness shall not be considered complete until all required data are submitted.

Nothing shall prevent the applicant from filing with the application additional relevant information bearing on the application.

3. Notification of Commission

Upon the receipt of an application, the Department of Planning & Inspections shall notify the Commission at least seven calendar days before its regularly scheduled meeting of the contents of the application and its conformance to the provisions of the Ordinance.

4. Notification of Property Owners

Prior to issuance or denial of a Certificate of Appropriateness the Commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially effected by the application and shall give the applicant and such owners an opportunity to be heard by the Commission.

5. Public Hearing

In cases where the Commission deems it necessary, it may hold a public hearing concerning the application.

6. Commission Action on Application

The Commission shall take on the application and in doing so shall apply the Review Criteria contained in this Ordinance.

The Commission's action on the application shall be approval, approval with modifications or disapproval.

Prior to final action on an application, the Commission, using the Review Criteria in this Ordinance, shall make findings of fact indicating the extent to which the application is or is not congruous with the historic aspects of the Valle Crucis Historic District.

7. Reasons for Commission Actions to Appear in Minutes

The Commission shall cause to be entered into the minutes of its meeting the reasons for its actions whether it be approval, approval with modifications or denial.

8. Time Limits

If the Commission fails to take final action upon an application within thirty (30) calendar days after the complete application is submitted to the County Manager or his designee the application shall be deemed to be approved.

9. Submission of New Applications

If the Commission determines that a Certificate of Appropriateness should not be issued, a new application affecting the same property may be submitted only if substantial changes are made in plans for the proposed construction, reconstruction, alteration, restoration or moving.

2.9 Interior Arrangement Not Considered

The Commission shall not consider interior arrangement.

2.10 Certain Changes Not Prohibited

Nothing in this Ordinance shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the Valle Crucis Historic District which does not involve a substantial change in design, material, or outer appearance thereof nor to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which the Watauga County Building Inspector shall certify in writing to the Commission as required by his duty to protect the public safety because of its unsafe or dangerous condition.

2.11 Delay in Demolition of Buildings Within the District

Application for a Certificate of Appropriateness authorizing the demolition of a building or structure within the District may not be denied. However, the effective date of such a certificate may be delayed for a period of up to one hundred eighty days from the date of approval. The maximum period of delay authorized by this subsection shall be reduced by the Commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay.

During the delay period the Commission may negotiate with the owner or any other parties in an effort to find a means of preserving the building.

If the Commission finds that the building has no particular significance or value towards maintaining the Valle Crucis Historic District, it shall waive all or part of such period and authorize earlier demolition or removal.

2.12 Review of Application by Commission

As part of its review procedure the Commission may view the premises and seek the advice of the North Carolina Department of Cultural Resources or such other expert advice as may be deemed necessary under the circumstances.

2.13 Appeal of Decision

An appeal may be taken to the Board of Adjustment from the Commission's action in granting or denying any certificate. The appeal (1) may be taken by any aggrieved party, (2) shall be taken within times prescribed by the Commission by general rule, and (3) shall be in the nature of certiorari.

An appeal from the Board of Adjustment's decision in any case shall be heard by the Superior Court of Watauga County.

#### 2.14 Compliance

Compliance with the terms of the Certificate of Appropriateness shall be enforced by the Watauga County Department of Planning and Inspections.

Failure to comply with a Certificate of Appropriateness shall be a violation of this Ordinance.

To ensure continued compliance with the provisions of this ordinance, each approved Certificate of Appropriateness shall expire 12 months from the date on which final action was taken to approve the application, unless otherwise identified in the certificate, if the alteration, construction, demolition, relocation, or removal has not been initiated. Time extensions may be granted in accordance with the Commission's Rules of Procedure Section 10.17.

Nothing contained in this Ordinance shall prohibit, impair or limit in any way the power of Watauga County to prevent the construction, reconstruction, alteration, or removal of building structures, appurtenant fixtures or outdoor signs in the Historic District in violation of the provisions of this Ordinance.

The enforcement of any remedy already provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in any other ordinances or laws. (See North Carolina General Statutes 160A-175 and 160A-389)

#### 2.15 Review Criteria

##### a. Intent

It is the intention of these regulations to insure, in so far as possible, that buildings or structures in the Valle Crucis Historic District shall be in harmony with other buildings or structures located therein. However, it is not the intention of the regulations to require the reconstruction or restoration of individual or original buildings or prohibit demolition or removal of the same or to impose architectural styles of particular historic periods. In considering new construction, the Commission shall encourage contemporary design that is harmonious with the character of the District.

In granting a Certificate of Appropriateness, the Commission shall take into account the historic or architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure, as well as the effect of such changes or additions upon other structures in the vicinity.

b. Exterior Form and Appearance

The following criteria should be considered, when relevant, by the Commission in reviewing applications for Certificates of Appropriateness:

1. New construction and alteration should reflect the atmosphere, existing landscape characteristics and appearance of the District.
2. New buildings should have a definite relationship to existing buildings; that is, they should be compatible but not imitative.
3. Wood, brick and stone are traditional building materials in the District and should be employed whenever possible, as should metal roofs.
4. Remodeling and alterations to buildings should be in the style of the existing building and be compatible in size, scale, color and material.
5. Double-wide mobile homes are preferred. All mobile homes should be placed on permanent solid masonry foundations, un-pierced except for required access and ventilation openings. The chassis and towing bar should be removed.
6. If cinder blocks are used in the foundations, the surface should be treated with masonry paint or other suitable material.
7. Outbuildings should be compatible with the main building and with the rural atmosphere of the District.
8. Native plant materials should be used in landscaping around buildings.
9. Signs should reflect good taste in size and materials.



## ARTICLE III

### AMENDMENTS

#### 3.1 Intent

For the purpose of establishing and maintaining sound, stable, and desirable development within the Valle Crucis Historic District, this Ordinance shall not be amended except to (a) correct a manifest error in the Ordinance or, (b) because of changed or changing conditions in the District, (1) to modify District regulations, or (2) extend the boundary of the District and then only as reasonably necessary to the promotion of the public health, safety or general welfare.

#### 3.2 Amendment Initiation

Subject to the limitations of the foregoing Statement of Intent, an amendment to this Ordinance may be initiated by:

- a. The Board of County Commissioners on its own motion;
- b. The Planning Board;
- c. The Historic Preservation Commission;
- d. Application by any property owner or his or her agent, a citizen or his or her agent.

#### 3.3 Filing and Contents of Petitions

All petitions for amendment to this Ordinance shall be in writing, signed and filed with the Department of Planning and Inspections.

All petitions for amendments to this Ordinance, without limiting the right to file additional material, shall contain at least the following:

- a. A fully dimensioned map, at a scale of not less than 100 feet nor more than 20 feet to the inch, showing the land covered by the proposed amendment, only if the proposes amendment would require a change in the Map of the Valle Crucis Historic District.
- b. A legal description of such land, if applicable.
- c. The alleged error in this Ordinance which would be corrected by the proposed amendment with a detailed explanation of such error in the

Ordinance and detailed reasons how the proposed amendment will correct same.

- d. The changed or changing conditions, if any, in the District, which make the proposed amendment reasonably necessary to the promotion of the public health, safety and general welfare.
- e. All other circumstances, factors and reasons which petitioner offers in support of the proposed amendment.

### 3.4 Referral of Application

The Department of Planning and Inspections, upon receipt of the application to amend this Ordinance, shall refer the same to the Planning Board and the Commission for study and report. The Board of County Commissioners shall not enact the proposed amendment until 30 days after such referral or until the Planning Board and Commission makes its report, whichever first occurs.

In cases where alteration in the boundaries of the District is involved, the Department of Planning and Inspections shall refer a copy of the application to the Division of Archives and History for comments thereon, in accord with Section 160A-400.4 of the NC General Statutes.

### 3.5 Public Hearing and Notice

A public hearing shall be held by the Board of County Commissioners before adoption of any proposed amendment to this Ordinance. Notice of the public hearing shall be given by publishing said notice at least twice in a newspaper of general circulation in Watauga County, stating the time and place of such hearing and the substance of the proposed amendment. This notice shall appear in said newspaper for two successive weeks with the first notice appearing not less than ten days nor more than twenty-five days before the date set for the public hearing.

In addition to notice required above, where the proposed amendment involves a change in the designation of any parcel of land, the Department of Planning and Inspections shall, by first class mail, give notice of the public hearing to the owner(s) of parcel(s) involved in the proposed amendment, if the owner(s) are different from the applicant(s), as well as the owners, as shown on the tax rolls, of all land abutting the parcel(s) involved in the proposed amendment.

### 3.6 Action of Board of County Commissioners

After the public hearing on the application, the Board of County Commissioners shall receive the recommendation of the Planning Board and the Commission. It shall then take one of the following actions:

- a. Approval of the application.
- b. Approval of a modified version of the application.
- c. Denial of the application.

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

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

### 3.7 Fees

Fees for filing application for amendments shall be set by resolution of the Board of County Commissioners.

### 3.8 Conflict of Interest

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

## ARTICLE IV

### BOARD OF ADJUSTMENT

#### 4.1 Establishment of Board

“The Board of Adjustment shall be appointed by the Board of Commissioners and shall consist of five (5) regular members and any alternate members (if any) that the Board of Commissioners shall designate.”

#### 4.2 Powers of Board

The Board shall have the following powers:

- a. Hear and decide appeals from and review any order, requirement, decision, or determination made by the Historic Preservation Commission, or the Department of Planning and Inspections in the performance of his duties.
- b. Hear and decide appeals for variances from the dimensional regulations of this Ordinance in accordance with Section 4.4. Nothing in this Section shall be construed to authorize the Board to permit a use in the District where that use is not a permitted use.
- c. Pass upon, decide or determine such other matters as may be required by this Ordinance.
- d. The Board of Adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor.

#### 4.3 Administration

The Board shall adopt rules of procedures and regulations for the conduct of its affairs.

All meetings of the Board shall be open to the public. The Board shall keep a record of its meetings, including the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it and all official actions. The Board shall give due notice of matters coming before it.

The Board Chair and Board Clerk are authorized to administer oaths to any witnesses in any matter coming before the Board.

Applications for variances, requests for interpretations and appeals for review of decisions of the Department of Planning and Inspections shall be filed with the Board Clerk, as agent for the Board, on forms provided by the Clerk.

The decision of the Board shall be delivered to the applicant, property owner, and to any other person who has submitted a written request for a copy prior to the date the decision becomes effective.

It shall be the responsibility of the Department of Planning & Inspections to prepare a written decision of the Board for signature by the Board Chair or authorized Board representative.

#### 4.4 Quorum and Vote Required

A quorum of the Board, necessary to conduct any business of the Board, shall consist of four-fifths of the total membership of the Board.

The concurring vote of four-fifths of the Board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. Vacant positions on the Board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

#### 4.5 Application of the Variance Power

A variance may only be allowed by the Board in cases involving unnecessary hardships when substantial evidence in the official record of the application supports all of the following findings:

- a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- d. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance.

The Board may impose appropriate conditions upon the granting of any variance, provided that the conditions are reasonably related to the variance.

#### 4.6 Application of Interpretation Power

An appeal from an order, requirement, decision of the Department of Planning and Inspections shall be decided by the Board, based upon its findings of fact and to achieve the intent of the Ordinance. In exercising this power, the Board shall act in a prudent manner so that the purposes of the Ordinance shall be served. The effect of the decision shall not be to vary the terms of the Ordinance nor add to the list of permitted or permissible uses in the District.

#### 4.7 Appeal Stays Further Proceedings

An appeal to the Board from a decision or determination stays all proceedings in furtherance of the decision or determination appealed from, except as provided in Section 4.8.

#### 4.8 Exceptions to Stay of Action

An appeal to the Board of a determination or decision shall not stay proceedings in furtherance of the decision or determination appealed from, if the Department of Planning and Inspections certifies either:

- a. that a stay would cause imminent peril to life or property
- b. that the situation appealed from is transitory in nature and, therefore, an appeal would seriously interfere with enforcement of this Ordinance.

In each instance, the Department of Planning and Inspections shall place in the affidavit facts to support the conclusion.

#### 4.9 Impermissible Conflicts

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

member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

#### 4.10 Appeals of Board Actions

Every quasi-judicial decision of the Board shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Secretary of the Board of the decision in the office of the Department of Planning and Inspections or the delivery of the notice required in 4.3, whichever is later.

### ARTICLE V

#### NONCONFORMITIES

##### 5.1 Classification

Any building, structure or use of land existing at the time of enactment of this ordinance or any amendment thereto which was lawful but would be prohibited, regulated or restricted by such enactment or amendment is a nonconformity.

##### 5.2 Repair, Reconstruction, Expansion, Reinstatement

It is the intent of this Ordinance to permit nonconformities to continue until they are removed or cease. Such continuance shall include routine maintenance and repair, reconstruction in case of total or partial destruction, and expansion, provided that such expansion meets all other requirements of this Ordinance (yard requirements, Certificate of Appropriateness, etc.). A nonconforming use shall not be reinstated after discontinuance for a period of one (1) year unless the Historic Preservation Commission finds that such reinstatement will not have a detrimental effect upon the District.

##### 5.3 Nonconforming Lots

In the District, structures may be erected, occupied and used on separate, nonconforming lots of record, in accord with all other requirements applying in the District.

### ARTICLE VI

## LEGAL PROVISIONS

### 6.1 Violation

If the Department of Planning and Inspections finds that any of the provisions of this Ordinance are being violated, they shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it within ten (10) working days. They shall order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; the discontinuance of any illegal work being done; and shall take any action authorized by this ordinance or the NC General Statutes to insure compliance with, or to prevent violation of, its provisions.

### 6.2 Remedies and Penalties

In accordance with NC G.S. 153A-123 violation of this ordinance is a misdemeanor and is punishable by a fine of \$50 dollars or 30 days imprisonment or both. Each day of violation is a separate offense.

In lieu of or in addition to the criminal penalties outlined above, any person violating this ordinance may be subject to a civil penalty, under NC G.S. 153A-123(c), in the discretion of the Board of County Commissioners, not to exceed \$100.00. No penalty shall be assessed prior to notice to the violator. For every day a violator is in violation of this ordinance, it may be considered a separate offense. If the violator does not pay such penalty within 30 day of notification of its assessment by written citation it may be recovered by the County in a civil action in the nature of a debt. The violator may contest said penalty in the court of appropriate jurisdiction.

### 6.3 Severability

It is the legislative intent of the Board of County Commissioners in adopting this Ordinance that all provisions thereof shall be liberally construed to protect and preserve the peace, health, safety, and general welfare of the inhabitants of Watauga County. It is the further intent of the Board of County Commissioners that this Ordinance shall stand, notwithstanding the invalidity of any part thereof, and that should any provision of this Ordinance be held to be unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions.

### 6.4 Conflict with Other Laws

When provisions of this ordinance impose higher standards than required in any other statute or local ordinance or regulation, the provisions of this Ordinance shall govern. When the provisions of any other statute or local ordinance or regulation



impose higher standards than are required by the provisions of this Ordinance, the provisions of that statute or local ordinance or regulation shall govern.

6.5 Effective Date

The provisions of this Ordinance shall be effective on and after the 1<sup>st</sup> day of September, 1990.

ARTICLE VII

VESTED RIGHTS

7.1 Purpose. The purpose of this article is to implement the provisions of N.C.G.S. 153A-344.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan.

7.2 Definitions As used in this article, the following terms shall have the meaning indicated:

Approval authority – The Board of Commissioners, Board of Adjustment or other board or official designated by ordinance for this article as being authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan.

Site specific development plan – A plan of land development submitted to the county for purposes of obtaining a zoning vested right. At a minimum, such a plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. Applications for zoning permits or conditional use permits meet the requirements of this definition. Notwithstanding the foregoing, neither a variance, a sketch plan nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels or property shall constitute a site specific development plan.

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

7.3 Establishment of a Zoning Vested Right.

- (a) A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the board of adjustment, of a site specific development plan, following notice and public hearing.
- (b) The approving authority may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.
- (c) Notwithstanding subsection (a) and (b), approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.
- (d) A site specific development plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto.
- (e) The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land-use regulation by the county, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this article.
- (f) A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

7.4 Approval Procedures and Approval Authority.

- (a) Except as otherwise provided in this section, an application for site specific development plan approval shall be processed in accordance with the procedures established by ordinance and shall be considered by the designated approval authority for the specific type of zoning or land use permit or approval for which application is made.
- (b) Notwithstanding the provisions of subsection (a), if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to a board, committee or administrative official other than the Board of Commissioners, Board of Adjustment or other planning agency

designated to perform any or all of the duties of a board of adjustment, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the Board of Adjustment, following notice and a public hearing as provided in G.S. 153A-323 and Chapter 160A, Article 19.

- (c) In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of application, on a form to be provided by the county, that a zoning vested right is being sought.
- (d) Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under G.S. 152A-344.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."
- (e) Following approval or conditional approval of a site specific development plan, nothing in this article shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
- (f) Nothing in this article shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.

#### 7.5 Duration.

- (a) A zoning right that has been vested or provided in this chapter shall remain vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to subsection (b). This vesting shall not be extended by any amendments or modification to a site specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.
- (b) Notwithstanding the provisions of subsection (a), the approval authority may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the approval authority at the time the site specific development plan is approved.

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

7.6 Termination.

A zoning right that has been vested as provided in this article shall terminate:

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

7.7 Limitations.

Nothing in this article is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 153A-344.1.

7.8 Repealer

In the event that G.S. 153A-344.1 is repealed, this article shall be deemed repealed and the provisions hereof no longer effective.

7.9 Effective Date.

This article shall be effective November 19, 1991.