



Ordinance to Regulate High Impact Land Uses

Watauga County, NC

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TABLE OF CONTENTS

ARTICLE I - INTRODUCTION	4
Section 1. General Purpose	
Section 2. Legal Authority	
Section 3. Territorial Coverage	
ARTICLE II - REGULATED LAND USES	4
Section 1. Regulated Uses	
A. Category 1	
B. Category 2	
C. Category 3	
Section 2. Definitions	
Section 3. Regulations and Standards Imposed	
A. Parking Space Requirements	
B. Building Height Limits	
C. Outdoor Lighting Standards	
D. Setbacks Required	
E. Landscape Buffers Required	
F. Spacing Requirements	
G. Driveway Connection Permit Required	
H. Federal and State Permits	
ARTICLE III – PRE-EXISTING HIGH IMPACT LAND USES	12
Section 1. Grandfathering of Pre-existing High Impact Land Uses	
A. Expansion	
B. Reconstruction	
Section 2. New High Impact Land Uses Regulated	
Section 3. Pre-existing Regulated Land Uses	
ARTICLE IV - PERMIT REQUIRED	13
Section 1. Permitting Process.	
A. Special Use Permit Required	
B. Applications for Special Use Permits	
C. Administrator to Maintain Permit Records	
D. Building Permit	
Section 2. Permit Expiration	
Section 3. High Impact Land Use Occupancy Permit	
Section 4. Permit Revocation	
ARTICLE V – APPEALS, SPECIAL USE PERMITS AND VARIANCES	14
Section 1. Board of Adjustment	
Section 2. Board of Adjustment Powers	
Section 3. Administration	
Section 4. Quorum and Vote Required	
Section 5. Application of the Variance Power	
Section 6. Application of Interpretation Power	
Section 7. Appeal Stays Further Proceedings	
Section 8. Exceptions to Stay of Action	

- Section 9. Application of Special Use Power
- Section 10. Appeals of Board Actions

ARTICLE VI – ENFORCEMENT AND PENALTIES

18

- Section 1. Administration and Enforcement
- Section 2. Conflict with Other Laws
- Section 3. Penalties
- Section 4. Severability Clause
- Section 5. Ordinance Amendments

ARTICLE I

INTRODUCTION

Section 1 General Purpose. The following regulations of High Impact Land Uses (HILU) are adopted for the purpose of promoting the health, safety and general welfare of the citizens of Watauga County, and to promote the peace and dignity of the county; the Watauga County Commissioners hereby establish certain criteria relating to high impact land uses. These uses by their very nature produce objectionable levels of noise, odors, vibrations, fumes, light, smoke, and other impacts upon the lands adjacent to them. These standards shall allow for the placement and growth of such uses, while maintaining the health, safety, and general welfare standards of established residential and commercial areas in Watauga County.

Section 2 Legal Authority. This ordinance is adopted under the general ordinance authority granted to counties by the General Assembly of North Carolina. (General Statutes 153A-121 *et seq.*, and other pertinent statutes and amendments thereto).

Section 3 Territorial Coverage. Pursuant to NCGS § 153A-122, this ordinance shall apply to all areas of unincorporated Watauga County which are not within the extraterritorial planning jurisdictions of any municipalities. All municipalities, their respective corporate limits, and extra-territorial jurisdiction shall be exempted from the ordinance, unless they choose to adopt this ordinance or some form thereof. This ordinance does not apply to Watauga County owned and operated solid waste facilities or container sites.

ARTICLE II

REGULATED LAND USES

Section 1 Regulated Uses. This ordinance applies to the following High Impact Land Uses:

- A. Category 1. Asphalt Plants, Cement Mixing Facilities, Quarries/Stone Crushers, Chemical Manufacturing, Chemical Storage Facilities, Explosives Manufacturing, and Explosives Storage Facilities, Chip Mills, and Electricity Generating Facilities (excluding Wind and Solar Power Farms), Motor Sports Facilities.
- B. Category 2. Automotive Graveyards, Propane, Gasoline, or Fuel Oil Bulk Storage Facilities, and Junk/Scrap Yards.
- C. Category 3. Electric Substations, Commercial/Industrial Development with aggregate building footprint 50,000 square feet or greater, Recycling Facilities, and Solar Power Farms. (Note: Wind Power Farms are regulated by separate Watauga County Ordinance.)

Section 2 Definitions. The following definitions shall be used for the purposes of interpreting this ordinance. For terms not defined below, the common usage of the term shall prevail.

Agricultural Farm – A bona fide farm whose primary purpose is the production of agricultural products including but not limited to crops, fruits, Christmas trees, vegetables, ornamental or flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

Asphalt Plant – A facility utilizing equipment that blends, dries, heats and mixes aggregates with asphalt cement to produce hot mix asphalt (HMA), including *batch* and *drum* plants.

Assisted Living Facility – Any group housing and services program for two or more unrelated adults, however named, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more NC licensed home care or hospice agencies.

Automobile Graveyard – An outdoor establishment which is used for storing, keeping, processing, buying or selling more than five (5) wrecked, abandoned, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

Cement Mixing Facility – A facility utilizing equipment that combines materials including but not limited to sand, water, aggregate, ash, and cement to form concrete, including *ready mix* and *central mix* plants.

Chemical – An element, chemical compound, a mixture of elements or compounds or both.

Chemical Manufacturing – A facility involved in the production, synthesis, formation, processing, refining, manufacturing, and/or distribution of chemical products in bulk.

Chemical Storage Facilities – A facility used for the storage of chemical compounds in bulk.

Child Care Facility – Includes child care centers, family child care homes, and any other child care arrangement not excluded by NCGS §110-86(2), that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.

- a. A child care center is an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.
- b. A family child care home is a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care.

Chip Mill – A mechanized facility that grinds whole logs into wood chips for paper, particle board and other products and is capable of producing at least 250,000 tons annually.

Commercial – Used for an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.

Dwelling– Any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation.

Educational Facility – Elementary schools, secondary schools, community colleges, colleges, and universities, including support facilities such as administration for all of the preceding. Also includes any property owned or operated by those facilities used for educational, vocational or athletic purposes.

Electricity Generating Facility - A stand-alone plant, not ancillary to another land use which generates electricity to be distributed to consumers including but not limited to fossil fuel burning facilities and solar power farms. This definition shall not include electricity produced on an agricultural farm or residence whose use is limited to on-site consumption which only sells electricity to a public utility incidental to the on-site use.

Explosives Manufacturing – Manufacturing of a chemical compound, mixture, or device the primary or common purpose of which is to function by explosion. This term includes but is not limited to dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniting cord, igniters, and display fireworks, but does not include hand-loaded small arms ammunition.

High Impact Land Use – For the purposes of this ordinance, means any and all of the Category 1, Category 2, and Category 3 uses listed in Article II, Section 1. Regulated Uses.

Immediate Family – A person’s parents, spouse, children, and siblings, including the parent’s spouse. Includes step children and adopted children and their spouses.

Industrial – Use engaged in the manufacturing, and basic processing of materials or products predominantly from extracted or raw materials, or previously prepared materials, including processing, fabrication, assembly, treatment, packaging, storage, sales, and distribution of such products.

Junk/Scrap Yards – An outdoor establishment primarily engaged in the collection, sorting, outdoor storage and/or distribution of recyclable scrap and waste materials including automobiles, cans, steel containers, cast iron, appliances, construction materials, and other ferrous metals.

Motor Sports Facility – A facility, track or course open to the general public or accessed by more than five (5) simultaneous riders outside of the owner’s immediate family upon which motor sports racing, racing practice or motor sports related activity is conducted and may include paved or dirt tracks, spectator seating/standing areas, concession areas, restrooms, parking facilities, and broadcast platforms or booths.

Nursing Home – A facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the operator.

Ordinance Administrator – The Watauga County Department of Planning and Inspections.

Propane – A heavy flammable gaseous alkane C₃H₈, found in crude petroleum and natural gas, also known as LP Gas.

Propane, Gasoline or Fuel Oil Bulk Storage Facilities – A facility whose primary purpose is the storage, distribution, mixing or transfer of flammable or combustible liquids or gases received by or transferred by tank vessel, pipelines, tank car, piping, or portable tank or container. This definition shall not include filling stations used solely for distribution to individual consumers.

Processing – Any technique designed to change the physical, chemical, or biological character or composition of any material so as to render it safe for transport; amenable to recovery, storage or recycling; safe for disposal; or reduced in volume or concentration.

Public Outdoor Recreation Area – A tract of land owned by a government agency or a non-profit community group intended for use for active or passive recreation. This does not include similarly owned land intended for conservation.

Quarry/Stone Crusher – A place from which dimension stone, rock, construction aggregate, riprap, sand, gravel, or slate is excavated from the ground and/or processed for use.

Recovered Material – A material that has known recycling potential, can be feasibly recycled, and has been diverted or removed from the solid waste stream for sale, use, or reuse.

Recycling Facility – A building or structure used for the indoor collection, separation, storage and/or processing of recovered materials including non-ferrous metals and may include a time-limited outdoor material collection area. It does not include a thrift store, antique or secondhand store.

Religious Facility – A facility operated by religious organizations for worship, religious activity or instruction, and related accessory uses on the same site including living quarters and/or child care operations. Solo cemeteries are excluded.

Replacement Value – The cost to restore a structure to its previously existing condition as computed by an appraisal which has been conducted by an appraiser holding a North Carolina State Certified General Real Estate Appraisal License and conducted in compliance with generally accepted practices within the appraisal community.

Section 3. Regulations and Standards Imposed

A. Parking Space Requirements. Adequate parking facilities shall be provided to accommodate the type and intensity of vehicles likely to frequent High Impact Land Uses. Standards for specific land uses are as follows:

- (1) Retail uses shall provide a minimum of three (3) spaces per 1,000 square feet of floor area for buildings up to 10,000 SF in size, and (5) spaces per each 1,000 square feet of floor area in excess of 10,000 square feet.
- (2) Overnight accommodations shall provide a minimum of one and one-half (1.5) spaces per bedroom.
- (3) Factory, Industrial and Commercial (other than specified in (1) and (2) above) uses shall provide one and one-half (1.5) spaces per three employees computed on the total employment.

Parking spaces shall be at least nine (9) by eighteen (18) feet. Accessible spaces shall be provided in accordance with NC Building Code requirements. The Ordinance Administrator may permit deviations from the preceding specified standards based upon the expected parking needs of the establishment while recognizing the desire to limit excess parking area.

B. Building Height Limits. In order to allow for adequate fire protection, no building shall exceed a vertical height of forty (40) feet, measured as defined by the Watauga County Height of Structures Ordinance.

C. Outdoor Lighting Standards. High Impact Land Uses shall use outdoor lighting that does not create a nuisance on adjacent property, roadways, or pollute the night sky. These objectives are easily accomplished by choosing good quality, shielded fixtures. Therefore:

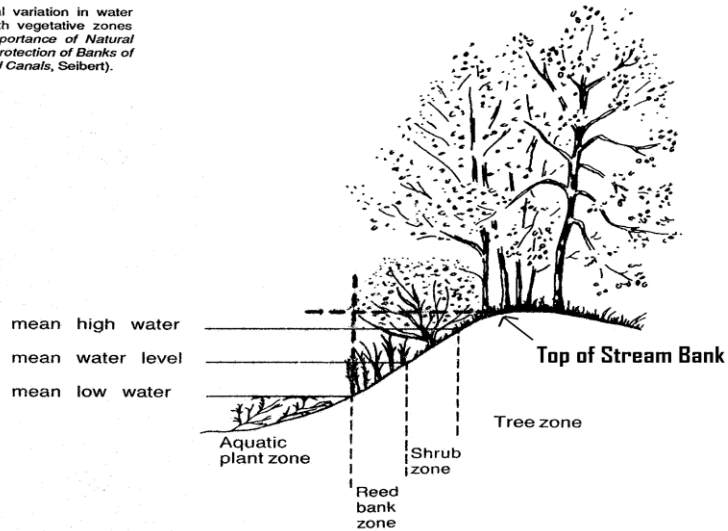
- (1) All parking lot lighting shall use full cutoff lighting fixtures;
- (2) Wall-packs and floodlights shall be either full cutoff design or have shields such that they do not put any light above the horizon and will be mounted to not shine on roadways and neighboring properties. Use of floodlights is discouraged;
- (3) Typical pole-mounted “dusk-to-dawn” security lights shall use reflecting “sky caps” instead of clear plastic refractors;
- (4) Building façade lighting shall not shine above the facades; and
- (5) For buildings required by the NC Building Code to have plans prepared by a design professional, the lighting levels shall be determined as defined by the Recommended Practices of the Illuminating Engineering Society of North America, or other recognized lighting publication. All other buildings comply with the requirement by virtue of compliance with (1) through (4) of this section.

D. Setbacks Required.

- (1) Category 1 & Category 2 High Impact Land Uses shall be set back 200 feet from side and rear property lines.
- (2) Category 3 High Impact Land Uses shall be set back 100 feet from side and rear property lines.
- (3) Where High Impact Land Uses adjoin each other, the required setbacks along common boundary lines for each High Impact Use may be reduced as follows:
 - (a) Category 1 & Category 2 High Impact Land Uses – 50 feet;
 - (b) Category 3 High Impact Land Uses – 25 feet.
- (4) Category 1 & 2 High Impact Land Uses shall be set back 200 feet from the edge of travelled area (stone or paved) of all public roads, unless spacing requirements (subsection F) apply. In no instance shall such setbacks be less than 20 feet from any recorded right of way or NCDOT property boundary.
- (5) High Impact Land Uses shall be set back from all perennial waters indicated by blue lines on the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps as follows:

There shall be a 100 foot vegetative buffer (measured from the top of the stream bank as indicated below) for all “blue line” streams; the 30 feet closest to the top of the stream bank being undisturbed and 70 feet managed vegetation. Publicly accessible walkways may be allowed within the managed vegetation area.

Typical variation in water level correlated with vegetative zones (modified from: *Importance of Natural Vegetation for the Protection of Banks of Streams, Rivers and Canals*, Seibert).



(6) No part of a yard provided around any building or structure for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard required under this ordinance for any other building or structure.

E. Landscape Buffers Required. Each High Impact Land Use shall be effectively buffered by landscaping which lessens the visual impact of the development at road grade level and from all sides with non-High Impact Uses in place and increases the buffering of noise and particulate matter. Each applicant shall submit a landscape plan which describes in detail how the above objectives will be met. The Ordinance Administrator may reasonably require adjustments and/or alterations to any proposed landscape plan necessary to comply with the provisions of this ordinance.

(1) Category 1 & Category 2 Landscape Buffers. All Category 1 & Category 2 High Impact Land Uses shall be buffered utilizing the following combination of landscape material designed for screening effect:

(a) Deciduous trees – three (3) per 100 lineal feet of property boundary line; and

(b) Evergreen trees – six (6) per 100 lineal feet of property boundary line; and

(c) Shrubs – ten (10) per 100 lineal feet of property boundary line.

(2) Category 3 Landscape Buffers. All Category 3 High Impact Land Uses shall be buffered utilizing the following combination of landscape material designed for aesthetic effect:

(a) Deciduous/Evergreen trees – four (4) per 100 lineal feet of property boundary line; and

(b) Shrubs – ten (10) per 100 lineal feet of property boundary line.

Opaque fencing made from conventional material or masonry walls and existing healthy trees and shrubs may be used in combination with a reduced number of required trees and shrubs when landscape buffer objectives are met and plans are approved by the Ordinance Administrator.

(3) Plant material shall be inspected and approved prior to planting and must meet the following minimum size requirements:

(a) Deciduous trees shall be a minimum of 6 feet tall with a 1 ½ -inch caliper measured six inches above grade upon planting;

(b) Evergreen trees shall be a minimum of 6 feet tall upon planting;

(c) Shrubs shall be a minimum of 1 foot tall upon planting.

F. Spacing Requirements.

- (1) Category 1 & Category 2 High Impact Land Uses may not be established within 1,500 feet of a public or private Educational Facility, NC licensed Child Care Facility, NC licensed Assisted Living Facility, NC licensed Nursing Home, Public Outdoor Recreation Area, or Religious Facility. In order to establish required spacing, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building, structure, or outdoor storage area utilized by Category 1 or 2 Land Uses, to the nearest property line of the above-listed facilities.
- (2) Category 1 High Impact Land Uses may not be established within 750 feet of a dwelling. In order to establish required spacing, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building, structure, or outdoor storage area utilized by a Category 1 Land Use, to the nearest property line of a dwelling.
- (3) Category 1 High Impact Land Uses may not be established within 1,500 feet of the right-of-way line of a roadway designated by NCDOT as a NC Scenic Byway or within 1,500 feet of the Blue Ridge Parkway.

Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the spacing requirements of this Section.

G. Driveway Connection Permit Required: A driveway connection permit issued by NC Department of Transportation shall be obtained. A Traffic Impact Analysis shall be required from the applicant under the following circumstances, unless the Ordinance Administrator and NCDOT concur that one is unnecessary:

- (1) The development proposes to have access to any public road at a location where sight distance in any direction along the road is less than 500 feet; or
- (2) The development proposes access onto a public road that does not have a paved width of at least 18 feet; or
- (3) The development proposes access to a public road with current NCDOT traffic counts that are 85% of capacity shown in the most recent Watauga County Comprehensive Transportation Plan and based upon ITE trip generation rates is projected to generate 1,500 or more weekday trips; or
- (4) The Ordinance Administrator determines that the proposed project will have a potential negative impact on the public road system due to the size of the project or existing transportation system or determines that there are safety concerns with the driveway location and design. If a traffic impact analysis is performed and that analysis concludes that improvements are required to the transportation system, the applicant may be required to complete those improvements in connection with the project as a condition of issuing a permit. Unless an agreement is executed by the County in which the time for the improvement is specified, the improvement shall be completed prior to issuance of a certificate of occupancy.

- H. Federal and State Permits: The developer shall obtain all applicable federal and state Permits as a condition of issuance of a HILU Special Use Permit. Failure to obtain said permits shall result in revocation of the conditional Special Use Permit.

ARTICLE III

PRE-EXISTING HIGH IMPACT LAND USES

Section 1. Grandfathering of Pre-existing High Impact Land Uses. Any High Impact Land Use existing upon the date of adoption of this ordinance which does not conform to the requirements of this ordinance may continue so long as the use is not discontinued for more than One Hundred Eighty (180) days. In cases where repair or renovation is necessary to re-occupy a vacant building, a permit for such construction must be obtained within one hundred eighty (180) days of last occupancy and repairs must proceed continuously to completion. A High Impact Land Use shall not be deemed to be discontinued during such time as the owner or operator thereof has temporarily suspended operations solely due to the seasonal nature of the business.

- A. Expansion. Grandfathered nonconforming High Impact Land Uses may be expanded provided the degree of nonconformity is not increased. In addition, the expansion shall comply with the standards of Article II, and the pre-existing development shall comply with the standards of Article II to the extent physically practicable as determined by the Ordinance Administrator, and upon issuance of a Special Use Permit pursuant to Article V, Section 9.
- B. Reconstruction. In cases of damage to grandfathered nonconforming buildings to the extent of seventy-five percent (75%) or less of the replacement value, repairs may be made, provided the original building footprint is maintained. When such damage exceeds seventy-five percent (75%) of the replacement value, repairs may be made only if the original building footprint is maintained and the standards of Article II are met to the extent physically practicable as determined by the Ordinance Administrator, and upon issuance of a Special Use Permit pursuant to Article V, Section 9.

Compliance with a requirement of this ordinance is not physically practicable if compliance cannot be achieved without adding land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting requirements does not constitute grounds for finding that compliance is not physically practicable.

Section 2. New High Impact Land Uses Regulated. After the effective date of this ordinance all new High Impact Land Uses as well as any pre-existing High Impact Land Uses which are moved, altered or enlarged shall conform to the regulations contained in this ordinance except as set forth in Article III, Section 1.

Section 3. Pre-existing Regulated Land Uses. After the effective date of this ordinance, new permits or approvals for any of the protected land uses listed in Article II, Section 3 (F) Spacing Requirements shall not have the effect of creating new non-conformities for any lawfully existing High Impact Land Use.

ARTICLE IV

PERMIT REQUIRED

Section 1. Permitting Process.

A. Special Use Permit Required

No use subject to this ordinance shall be established or expanded, and no building used or occupied without a Special Use Permit having been issued pursuant to Article V, Section 9.

B. Applications for Special Use Permits

All applications for Special Use permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of any buildings already existing; the location and dimensions of the proposed building or alteration; and compliance with the standards of Article II. The application shall include such other information as may reasonably be required by the Ordinance Administrator, including a description of all existing or proposed buildings or alterations; existing and proposed uses of the buildings and land; conditions existing on the land parcel; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this ordinance.

C. Administrator to Maintain Permit Records. The Ordinance Administrator shall maintain a record of all Special Use Permits and copies shall be furnished upon request to any interested person.

D. Building Permit. No permit required under the North Carolina State Building Code shall be issued for any activity for which a HILU Special Use Permit is required until the Special Use Permit has been issued.

Section 2. Permit Expiration. A HILU Special Use Permit shall expire if a Building Permit or High Impact Land Use Occupancy Permit for such use is not obtained by the applicant within twenty four (24) months from the date of issuance.

Section 3. High Impact Land Use Occupancy Permit.

A. The Ordinance Administrator shall issue a High Impact Land Use Occupancy Permit certifying that all requirements of this ordinance 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 High Impact Land Use Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Special Use Permit and shall be issued or denied within ten (10) days after the construction or structural alterations of the building, provided all ordinance requirements are met.

Section 4. Permit Revocation

- A. A permit or certificate may be revoked by the Ordinance Administrator for:
 - (1) Any substantial departure from the approved application, plans, or specifications;
or
 - (2) 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;
or
 - (3) Any permit or certificate mistakenly issued in violation of an applicable state or local law may also be revoked.
- B. Appeal. Permit revocation may be appealed pursuant to Article V of this ordinance.

ARTICLE V

APPEALS, SPECIAL USE PERMITS AND VARIANCES

Section 1. Board of Adjustment. The Watauga County Board of Adjustment shall hear all appeals, requests for special use permits, requests for variances, and all challenges to the decision or interpretation of the Ordinance Administrator.

Section 2. Board of Adjustment Powers. The Board shall have the following powers:

- (a) To hear and decide appeals from a person with legal standing pursuant to NC General Statute §160A-393(d) of any final binding order, requirement, or determination made by the Ordinance Administrator charged with enforcement of the ordinance;
- (b) To hear and decide applications for Special Use Permits in accordance with Article V, Section 9; and
- (c) To hear and decide applications for variances from the requirements of this Ordinance in accordance with Article V, Section 5. Nothing in this Section shall be construed to broaden the power of the Board to permit a use by variance beyond that power given in Article V, Section 5 below.

Section 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 of the vote of each member on every question, a fair and accurate summary of the evidence submitted to it, the documents (or accurate copies thereof) submitted to it and of all official actions. The Board shall give due notice of matters coming before it. Due notice shall include posting a sign on property being considered by the Board as well as mailed notice to owners of property abutting and other property owners within 500 feet of the subject property twenty-five (25) days in advance of the evidentiary hearing. In addition, notice shall be published in a newspaper of general circulation in the area sixty (60) days and again two (2) weeks in advance of the evidentiary hearing, and an announcement of the hearing shall be placed on the County's web site sixty (60) days in advance of the hearing, and remain there continuously until the hearing.

In presenting an appeal, the petitioner shall bear the burden of proof, which shall be by the greater weight of the evidence. The Board shall rule if the petitioner has legal standing pursuant to NC General Statute § 160A-393 (d) in order to determine whether to hear the appeal.

All evidence presented to the Board shall be sworn.

The person acting as Board Chair is authorized to administer oaths to any witnesses in any matter coming before the Board.

Applications for appeals for review of decisions of the Ordinance Administrator shall be filed with the County Clerk. It shall be the responsibility of the Ordinance Administrator to provide the notice required pursuant to this Section 3 and NC General Statute 160A-388(a2).

It shall be the responsibility of the Ordinance Administrator to notify the applicant or appellant of the disposition which the Board makes of any matter before it.

It shall be the responsibility of the Ordinance Administrator to issue or revoke a permit in accordance with the Board's action on an appeal or application, if a permit is authorized by the Board action.

Section 4. Quorum and Vote Required. A concurring vote of a simple majority of the members shall be required to decide upon all matters to come before the Board. For the purpose of this subsection, vacant positions on the Board and members who are disqualified from voting shall not be considered members of the Board for calculation of the requisite majority.

Section 5. Application of the Variance Power. When unnecessary hardships would result from strict application of the ordinance, upon application by an aggrieved party with standing, the Board of Adjustment may hold a hearing pursuant to NCGS §160A-388 (a2) and may grant variances to the provisions of the ordinance in accordance with the standards and procedures established in NCGS §160A-388(d), and as established by County policy.

The Board may impose reasonable conditions upon the granting of any variance in order to protect the public interest or neighboring property owners. Violation of any such conditions

shall be a violation of this ordinance and subject to the penalties set forth in Article VI of this ordinance.

With regard to hardships involving the spacing requirements set forth in Article II, Section 3 (F), the Board may consider the character of the land separating the proposed regulated land use from the protected land use(s). The Board may grant a variance from the spacing requirements if natural or man-made conditions, including but not limited to a mountain ridge or highway, or mitigating actions proposed by the developer, offer adequate protection for secondary impacts of the regulated use.

Section 6. Application of Interpretation Power. An appeal from an order, requirement, or decision of the Ordinance Administrator shall be decided by the Board duly supported by competent evidence. In exercising this power, the Board shall act in a prudent manner so that the purposes and intent of the Ordinance shall be served. No decision shall have the effect of varying the terms of the Ordinance or permitting as a matter of right any use otherwise limited or prohibited hereunder.

Section 7. Appeal Stays Further Proceedings. An appeal to the Board of Adjustment from a decision or determination of the Ordinance Administrator stays all proceedings in furtherance of the decision or determination appealed from, except as provided in Section 8, during the pendency of the appeal.

Section 8. Exceptions to Stay of Action. An appeal to the Board of Adjustment of a decision or determination of the Ordinance Administrator shall not stay proceedings in furtherance of the decision or determination appealed from, if the Ordinance Administrator certifies either:

- (a) That a stay would cause imminent peril to life or property; or
- (b) That the situation subject to the appeal is transitory in nature and therefore, an appeal would seriously interfere with enforcement of this Ordinance.

In each instance, the Ordinance Administrator shall set forth in the certificate facts to support its conclusion.

Section 9. Application of Special Use Power

- (a) An application for a special use permit shall be submitted to the Board of Adjustment by filing a copy of the application with the Ordinance Administrator.
- (b) Subject to subsection (c), the Board of Adjustment shall issue the requested permit unless it concludes, based upon the information submitted at the hearing, that:
 - (1) The requested permit is not within its jurisdiction, or
 - (2) The application is incomplete, or
 - (3) If completed as proposed in the application, the development will not comply with one or more requirements of this Ordinance (not including those the

applicant is not required to comply with under the circumstances specified in Article III, Pre-Existing High Impact Land Uses).

- (c) Even if the Board finds that the application complies with all other provisions of this chapter, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:
 - (1) Will materially endanger the public health or safety, or
 - (2) Will substantially injure the value of adjoining or abutting property, or
 - (3) Will not be in harmony with the area in which it is to be located, or
 - (4) Will not be in general conformity with the land-use plan, thoroughfare plan, or other plan officially adopted by the Board of Commissioners.
- (d) The Board shall consider whether the application is complete. If the Board concludes that the application is incomplete and the applicant refuses to provide the necessary information, the application shall be denied. A motion to this effect shall specify either the particular type of information lacking or the particular requirement with respect to which the application is incomplete. A motion to this effect, concurred in by a majority of the Board, shall constitute the Board's finding on this issue. If a motion to this effect is not made and concurred in by a majority of members, this shall be taken as an affirmative finding by the Board that the application is complete.
- (e) The Board shall consider whether the application complies with all of the applicable requirements of this Ordinance. If a motion to this effect passes by a majority of members, the Board need not make further findings concerning such requirements. If such a motion fails to receive the majority vote or is not made, then a motion shall be made that the application be found not in compliance with one or more requirements of this chapter. Such a motion shall specify the particular requirements the application fails to meet. A separate vote may be taken with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the Board to be unsatisfied through this process. As provided in Subsection 9 (c) if the Board concludes that the application fails to meet one or more of the requirements of this section, the application shall be denied.
- (f) If the Board concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in Subsection 9 (c). Such motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion and is carried by a simple majority vote.
- (g) Subject to Subsection (h), in granting a special use permit, the Board of Adjustment may attach to the permit such reasonable requirements in addition to those specified in this chapter as will ensure that the development in its proposed location:

- (1) Will not endanger the public health or safety,
 - (2) Will not injure the value of adjoining or abutting property,
 - (3) Will be in harmony with the area in which it is located, and
 - (4) Will be in conformity with the land-use plan, thoroughfare plan, or other plan officially adopted by the Board of Commissioners.
- (h) The Board may not attach additional conditions that modify or alter the specific requirements set forth in this ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.
- (i) Without limiting the foregoing, the Board may attach to a permit a condition limiting the permit to a specified duration.
- (j) All additional conditions or requirements shall be entered on the permit.
- (k) All additional conditions or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirements of this Ordinance.
- (l) A vote may be taken on application conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in Subsections (b) or (c).

Section 10. Appeals of Board Actions. Every decision of the Board shall be subject to review at the instance of any aggrieved party in the Superior Court by proceedings in the nature of a petition for writ of certiorari. Such proceedings in the Superior Court shall be initiated within thirty (30) days of the filing of the decision in the office of the Ordinance Administrator or the delivery of the notice required in Article VI, Section 3, whichever is later. Appeals not received within this thirty (30) day period are not timely. The Superior Court is authorized to stay enforcement of this ordinance during the pendency of an appeal from the decision of the Board of Adjustment upon a hearing and the posting of a bond sufficient to the Court which will adequately protect the interests of the County.

ARTICLE VI

ENFORCEMENT AND PENALTIES

Section 1. Administration and Enforcement. The Ordinance Administrator shall be responsible for the administration and enforcement of this ordinance.

If the Ordinance Administrator shall determine that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to within ten (10) working days correct the violation. He may order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of addition,

alterations, or structural changes thereto; the discontinuance of any illegal work being done; and may take any other action authorized by this ordinance to insure compliance with, or to prevent violation of, its provisions.

Section 2. Conflict with Other Laws. Wherever the provisions or application of this ordinance impose higher standards than are required in any other local ordinance or regulation, the provisions or application of this ordinance shall govern. Wherever the provisions of any other statute or local ordinance or regulation impose higher standards than are required by the provisions or application this ordinance, the provisions of such other statute or local ordinance or regulation shall govern.

Section 3. Penalties. Any person, firm or corporation who violates any provision of any article of this ordinance; or who shall violate or fail to comply with any order made hereunder; or who shall continue to work upon any structure after having received written notice from the Ordinance Administrator to cease work, shall, upon conviction, be guilty of a Class 3 misdemeanor as provided by NCGS § 14-4 and shall be punishable by a fine not to exceed fifty (\$50.00) dollars, or imprisonment not to exceed twenty days. Each day such violation shall be permitted to exist shall constitute a separate offense. Notice of violation shall be sufficient if directed to the owner, the agent of the owner, or the contractor and left at his known place of residence or place of business. In lieu of or in addition to the criminal penalties outlined above, each person violating this ordinance shall be subject to a civil penalty, under NCGS § 153A-123(c), in the amount of \$200.00 per day. No penalty shall be assessed prior to notice to the violator. For every day a violator is in violation of this ordinance, it shall be considered a separate offense. If the violator does not pay such penalty within 30 days of notification of its assessment by written citation it and any subsequently accruing penalty may be recovered by the County in a civil action in the nature of a debt. Any contest of said penalty shall be by appropriate action taken in the General Court of Justice for Watauga County.

Section 4. Severability Clause. Should any section or provisions of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this ordinance as a whole, or any part hereof other than the part so declared to be unconstitutional or invalid.

Section 5. Ordinance Amendments. This ordinance may be amended by the Board of Commissioners following a public hearing on the proposed changes. The Board shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Should any Federal or State regulation or statute incorporated herein by reference or otherwise referred to herein, be changed or amended, or should either require or mandate a different procedure or change or impose new, different or additional requirements, then, in that event, this ordinance shall be deemed to have been amended without further action to have complied with such new, additional or amended requirements.