

WATAUGA COUNTY, NC
ZONING ORDINANCE
FOR
FOSCOE-GRANDFATHER COMMUNITY

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ARTICLE I

PURPOSE, AUTHORITY AND JURISDICTION

Section 1. Purpose. The zoning regulations and districts as herein set forth are being adopted in accordance with a comprehensive plan and are designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote good health and the general welfare; to provide adequate light and air, to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations are being made with reasonable consideration, among other things, to the character of the district and their peculiar suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the community, and with the goal of preserving the rural environment of the Foscoe-Grandfather Community.

Section 2. Authority. The provisions of this ordinance are adopted under authority granted by the General Assembly of North Carolina. (General Statutes 153A-340 to 348, and other pertinent statutes and amendments thereto.)

Section 3. Jurisdiction. The regulations set forth in this ordinance shall be applicable to all land within the boundaries of the Foscoe-Grandfather Community as established and amended by the Watauga County Board of County Commissioners.

ARTICLE II

GENERAL PROVISIONS

Section 1. Application. The regulations set forth in this ordinance shall apply to all land, every building and every use of land and/or buildings except bona fide farms within the boundaries of the Foscoe-Grandfather Community.

Bona fide farm purposes include production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

Section 2. New Uses or Construction. After the effective date of this ordinance all new construction and the moving, altering and enlarging of existing structures shall conform to the use, area and bulk regulations for the district in which it is, or is to be, located.

Section 3. Conforming Uses. After the effective date of this ordinance, existing structures, or the use of land or structures which conform to the regulations for the district, may be continued, provided that any structural alteration or change in use shall conform with the regulation herein specified for the district in which it is located.

Section 4. Nonconforming Uses. After the effective date of this ordinance, existing structures, or the uses of land or structures which would be prohibited under the

regulations for the district in which it is located (if they existed on the adoption date of this ordinance), shall be considered as nonconforming. Nonconforming structures or uses may be continued provided they conform to the following provisions:

(a) Continuing the Use of Nonconforming Land

(1) Extensions of Use

Nonconforming uses of land shall not hereafter be enlarged or extended in any way.

(2) Change of Use

Any nonconforming use of land may be changed to conforming use, or with the approval of the Board of Adjustment to any use more in character with the uses permitted in the district.

(b) Continuing the Use of Nonconforming Buildings

(1) Extensions of Use

Nonconforming buildings and nonconforming uses of buildings shall not hereafter be enlarged except when such enlargement or extension is in compliance with subparagraph (b) (6) below.

(2) Change of Use

If no structural alterations or enlargements are made, any nonconforming building or use of buildings may be changed (with the approval of Board of Adjustment) to any use more in character with uses permitted in the district. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this ordinance.

(3) Cessation of Use

If active operations are discontinued for a continuous period of six months with respect to a nonconforming use of building, such building or buildings shall thereafter be occupied and used only for a conforming use.

(4) Repair and Alteration

Normal maintenance and repair in a building occupied by a nonconforming use is permitted provided it does not extend the nonconforming use.

(5) Damage or Destruction

If a building occupied by a nonconforming use or a nonconforming building is destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, such building may not be restored for any nonconforming use.

- (6) Nonconforming features of buildings may be extended into the yard (setback) which is being violated by the nonconforming feature(s). However, the addition shall not be more than fifty (50) percent of the existing gross floor area and shall not extend further than the existing building line and in no case shall the addition be closer than five (5) feet to the property line. Additional screening shall be required for commercial uses if adjacent to residential uses. Additional screening shall be defined as a six (6) foot high opaque fence or an evergreen tree a minimum six (6) feet in height planted on four (4) foot centers.

Section 5. Open Space Requirements. No part of a yard, court or other open space provided around any building or structure for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard or other open space required under this ordinance for another building or structure.

Section 6. Reduction of Lot and Yard Areas Prohibited. No yard or lot existing at the time of passage of this ordinance shall be reduced in size or area below the minimum requirements set forth herein. Yards and lots created after the effective date of this ordinance shall meet at least the minimum requirements established by the ordinance.

Section 7. Projections into Public Rights-of-way. No signs or other structures shall project beyond the curb line of any street or other public way.

Section 8. Interpretation of District Boundaries. When uncertainty exists with respect to the boundaries or districts as shown on the Official Zoning Map, the following rules shall apply:

(a) Delineation

District boundary lines indicated as approximately following property lines, lot lines, the center line of streets, alleys, railroads, easements, other rights-of-way, and creeks, streams, or other water channels, shall be constructed to follow such lines.

(b) Official Zoning Map

In the absence of specified distances on the map, dimensions or distances shall be determined by scaling the distance on the Official Zoning Map

(c) Board of Adjustment

When the street or property layout existing on the ground is at variance with that shown on the Official Zoning Map, the Board of Adjustment shall interpret the district boundaries of this ordinance.

Section 9. Conflict with Other Laws. Wherever the regulations made under authority of this ordinance require a greater width or size or yards, or courts, or require a lower height of building or less number of stories, or require a greater percentage of lots to be left unoccupied or impose other higher standards than that required in any other local

ordinance or regulation, the provisions of the regulations made under authority of this ordinance shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yard or courts or require a lower height of building, or a less number of stories or require a greater percentage of lot to be left unoccupied, or impose other standards than are required by the regulations made under authority of this ordinance, the provisions of such statute or local ordinance or regulation shall govern.

Section 10. Remedies. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this ordinance, the Building Inspector or any appropriate authority of the county, or any adjacent, nearby, or neighboring property owner who would be affected by such violation, may institute injunction, mandamus or other appropriate legal action to prevent the occupancy or use of such building, structure or land.

Section 11. 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 there under; or who shall continue to work upon any structure after having received written notice from the Building Inspector to cease work, shall, upon conviction, be guilty of a misdemeanor and shall be punishable by a fine not to exceed fifty (\$50.00) dollars, or imprisonment not to exceed thirty 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 as his known place of residence or place of business. In lieu of or in addition to the criminal penalties outlined above, a person violating this ordinance may be subject to a civil penalty, under N.C.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 days 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.

Section 12. Separability 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 thereof other than the part so declared to be unconstitutional or invalid.

ARTICLE III

OFFICIAL ZONING MAP

Section 1. Zoning Map. The boundaries of each zoning district are shown on a map entitled "Watauga County Official Zoning Map" which is hereby made a portion of this ordinance. The Official Zoning Map shall bear the adoption date of this ordinance.

ARTICLE IV

ADMINISTRATION AND ENFORCEMENT

Section 1. Administration and Enforcement. The Watauga County Department of Planning and Inspections (hereinafter referred to as Zoning Officials) shall administer and enforce this ordinance.

If the Zoning Official shall find 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 correct it within ten (10) days. He shall 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 shall take any other action authorized by this ordinance to insure compliance with, or to prevent violation of, its provisions.

Section 2. Permit Process.

(a) Zoning Permits

No building or other structures shall be erected, moved, added to, or structurally altered without a zoning permit therefore, issued by the Zoning Official. No building permit shall be issued except in conformity with the provisions of this ordinance, except after written order from the Board of Adjustment.

(b) Application for Zoning Permit

All applications for building 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 buildings already existing, if any; and location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Zoning Official including a description of all existing or proposed buildings or alterations; existing or proposed uses of the buildings and land; the number of families, housekeeping units, or rental units the buildings are designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this ordinance.

One copy of the plans shall be returned to the applicant by the Zoning Official after he shall have marked such copy either as approved or disapproved and attested to the same by his signature on such copy. The second copy of these plans, similarly marked, shall be retained by the Zoning Official.

(c) Expiration of Zoning Permit

If the work described in any building permit is not begun within 180 days from the date of issuance thereof, said permit shall expire, it shall be cancelled by the Zoning Official, and written notice of such cancellation shall be given to the person affected.

(d) Zoning Permit for New, Altered, or Nonconforming Uses

(1) It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises, or both, or any part thereof which may be hereafter created, erected, changed, converted, (or wholly or partly altered or enlarged as to its use or structure) until a zoning permit shall have been issued therefore by the Zoning Official stating that the proposed use of the building or land conforms to the requirements of this ordinance.

(2) No permit for the erection, alteration, moving, or repair of any building shall be issued until an application has been made for a zoning permit in connection therewith. Such zoning permit shall be issued in conformity with the provisions of this ordinance upon the satisfactory completion of the work.

(3) A temporary zoning permit may be issued by the Zoning Official for a period not to exceed six (6) months during alterations or construction for partial occupancy of a building pending its completion, or for bazaars, carnivals, and revivals, provided that such temporary permit shall require such conditions and safeguards as will protect the safety of the occupants and the public.

(4) The Zoning Official shall maintain a record of all zoning permits and copies shall be furnished upon request to any responsible and interested person.

(5) In case of the failure to obtain the required zoning permit, procedures may be followed as set out in Article VIII of this ordinance.

(6) The Failure to obtain the necessary zoning permit shall be a violation of this ordinance and shall be punishable under Article II Section 10 & 11 of this ordinance.

(e) Construction and Use to be as Stated on Zoning Permits

Zoning permits issued on the basis of plans and applications approved by the Zoning Official authorize only the use, arrangement, and construction set forth in such approved plans and applications. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of

this ordinance, and shall be punishable as provided by Article II, Sections 10 & 11 hereof.

Section 3. Right of Appeal. If the zoning permit is denied, the applicant may appeal the action of the Zoning Official to the Board of Adjustment, as specified in Article VIII.

ARTICLE V

DISTRICT REGULATIONS

For the purpose of this ordinance, the Foscoe-Grandfather Community is hereby divided into four districts:

Rural District
Rural/Residential District
Highway District
Light Industrial District

The boundaries of these districts are hereby established as shown on a map entitled “Watauga County Official Zoning Map” for Foscoe-Grandfather Community North Carolina, which is hereby made a part of this ordinance.

Section 1. Rural District. The Rural District is established as a district in which the principal use of land is for low density residential and agricultural purposes. The regulations of this district are intended to protect the agricultural sections of the community from an influx of uses likely to render them undesirable for farms and future development; to insure that residential development not having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at sufficiently low densities to insure a healthful environment; and to protect the Watauga River and tributaries from degradation.

A. Permitted Uses

1. Land which is used solely for agricultural, farming, dairying, stock raising, stable, or similar purposes. (NCGS 153A-340: “These regulations may not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to the regulations”)
2. Construction or placement of single or two-family units in legally-platted subdivision as permitted; included are additions to these units and accessory buildings, provided that the principal use remains residential;

Residential
And
Accessory

3. Placement of manufactured housing units in approved residential parks or legally platted subdivision: included are additions to these units and accessory buildings provided that the principal use remains residential;
4. Constructions or placement of and/or addition to single or two-family dwelling units or manufactured housing units outside legally platted subdivisions or residential parks as permitted, provided that the principal use remains residential;

Home
Occupations

5. Conduct of a home occupation in or on the premises of single family dwelling where the dwelling is the original use of the property;

Churches

6. Churches and affiliated uses (standards regarding parking, driveway access, stormwater control, and buffer areas are applicable);

Signs

7. Installation of sign(s) on a non-residential site (on-premise sign) in accordance with the Watauga County Sign Ordinance and maintaining a setback off the right-of-way of Highway 105;

Continued
Uses

8. Continued use of any land, structure, or development as it legally existed and was occupied on the effective date of this ordinance.

B. Conditional Uses

Multi-
Family
Uses

1. Multi-family and clustered dwellings and manufactured home parks (also subject to review under the Watauga County Ordinance to Govern Subdivisions and Multi-Unit Structures and the Watauga County Manufactured Home Parks Ordinance respectively);

“Special”
Uses

2. Special uses: schools, public utility facilities, fire stations, recreational facilities (including golf courses, but not including driving ranges or miniature courses) and public buildings or facilities.

C. Dimensional Requirements

Minimum required lot area for single and two-family dwellings – One (1) acre (43,560 square feet). Any lot in a residential subdivision recorded prior to June 15, 1973, or otherwise made exempt from subdivision regulation by official action of Watauga County to “grandfather” the development, shall not be subject to the lot size or yard requirements of this ordinance. However, in no case shall any structures be built closer than five (5) feet to a property line. Setbacks from stream banks required by this ordinance shall apply to said developments. Preexisting recorded residential lots less than one acre may be used provided that all other requirements of the ordinance can be met. In addition to one (1) acre

minimum lot site, all other land uses are subject to a maximum density standard of twelve (12) percent impervious surface (built-upon area) if an erosion control plan is required pursuant to 15NCAC, chapter 4 (Sedimentation Pollution Control Act rules).

- Lot Width Minimum required mean lot width for each dwelling unit – 100 feet.
- Front Yard Minimum required depth of front yard – 30 feet.
- Side Yard Minimum required width of any side yard – 15 feet.
- Rear Yard Minimum required depth of rear yard – 15 feet.
- Off-Street Parking Off-street parking if applicable shall be provided as required in Article VI, Section 3 of this ordinance.
- Building Height Maximum height of structure (not including chimneys, steeples, antennas, etc) – 35 feet, measured from entrance grade. One (1) floor may be below entrance grade (basement).

Section 2. Rural/Residential District. The Rural/Residential District is established as a more restricted, yet similar district to the Rural District. The principal use of land is for low density conventional residential structures.

A. Permitted Uses

- 1. Construction or placement of single family units in legally-platted subdivision as permitted; included are additions to these units and accessory buildings, provided that the principal use remains residential,
 - 2. Construction or placement of and/or addition to single family dwelling outside legally platted subdivisions as permitted, provided that the principal use remains residential;
 - 3. Conduct of a home occupation in or on the premises of single family dwelling where the dwelling is the original use of the property;
 - 4. Churches and affiliated uses (standards regarding parking, driveway access, stormwater control, and buffer areas are applicable);
 - 5. Installation of sign(s) on a non-residential site (on-premise sign) in accordance with the Watauga County Sign Ordinance and maintaining a setback off the right-of-way of Highway 105;
- Residential And Accessory
 - Home Occupations
 - Churches
 - Signs

Continued Uses 6. Continued use of any land, structure, or development as it legally existed and was occupied on the effective date of this ordinance.

B. Conditional Uses

Multi-Family Uses 1. multi-family and clustered dwellings (also subject to review under the Watauga County Ordinance to Govern Subdivisions and Multi-Unit Structures);

“Special” Uses 2. special uses: schools, public utility facilities, fire stations, recreational facilities (including golf courses, but not including driving ranges or miniature courses) and public buildings.

3. public utility buildings and facilities if such use is essential for the service of the immediate area and provided that:
- a. all buildings shall be located at least 35 feet from any lot line.
 - b. fences and/or other appropriate safety devices are installed to protect the public safety and welfare.
 - c. no vehicles or equipment are stored, maintained or repaired on premises.
 - d. All structures are in keeping with the residential character of the neighborhood.
 - e. Adequate landscaping, screening and/or buffering shall be provided to insure compatibility with the neighborhood.
4. Radio and television transmitting stations and studios provided that:
- a. such facilities shall be housed in structures which are in keeping with the character of the residential neighborhood.
 - b. No structure shall be located within 35 feet of any lot line.

C. Dimensional Requirements

Minimum requirements for lot area, yards, parking, and building height are as described for the Rural District or as established in Article VI.

Section 3. Highway District. The Highway District is located on the major thoroughfare. It is intended to provide offices, personal services, and retailing of durable and convenience goods for the community. Because the commercial uses are subject to

public view and are important to the economy, they should have an appropriate appearance, ample parking, controlled traffic movement and suitable landscaping.

A. Permitted Uses

Rural Uses

1. all uses permitted within the Rural District;

Commercial
Uses

2. non-residential uses which are not subject to a conditional use permit as shown below or are prohibited by this ordinance, except industrial uses which are permitted only in the industrial district.

These uses are subject to a site plan review and must comply with the standards of Article VI.

B. Conditional Uses

1. multi-family and clustered dwellings and manufactured home parks as described for the Rural District;

2. “special” uses as described for the Rural District, also hospitals, police stations, libraries, circuses, carnivals, fairs, flea markets, and temporary uses;

a. Standards for Flea Markets

1. Site Plan Information: Seven (7) copies of a site plan, drawn to scale, shall be submitted which legibly indicated the following:

- (a) Boundary survey;
- (b) Hours and frequency of operation;
- (c) Location and dimensions of individual booths and sale areas;
- (d) Off-street parking (vendor and customer);
- (e) Screening, if applicable.

2. Off-street parking: Off-street parking will be required at one (1) space per 200 sq. ft. of commercial area used for display and sales of two (2) per booth or individual display area, whichever is greater. All parking facilities shall be provided with on-site drainage in accordance with the standards approved by Watauga County.

3. Screening/buffering: shall be provided as specified in Article VI.

4. Signs: One (1) freestanding directory sign shall be allowed provided such sign does not exceed 50 sq. ft. In

addition each vendor may have a four (4) square foot attached sign.

5. Applicant shall submit a written statement setting forth the method and frequency of maintenance, repair, refuse collection and disposal along with the site plan.

6. The conditional use permit shall be issued for a one (1) year period with automatic renewal for additional (1) year periods provided that the site is maintained in a satisfactory manner as originally approved. When the conditional use is discontinued or abandoned for one hundred and eighty (180) consecutive days, the conditional use permit shall become null and void and application to Watauga County will be required for any subsequent special use request for the site.

Mixed Uses

3. Combination of residential and non-residential uses;

Miscellaneous

4. Non-residential uses which consist of multiple units, are greater than 5000 square feet in size, or are deemed by the Zoning Official to be potentially detrimental to the community as follows:

- a. Could materially endanger the public health or safety, or
- b. Could substantially injure the value of adjoining or abutting property, or
- c. May not be in harmony with the area in which it is to be located, or
- d. May not be in general conformity with the land use plan, thoroughfare plan, or other plans officially adopted by the County.

C. Dimensional Requirements

Minimum required lot area is one-half (1/2) acre. Preexisting recorded lots less than one-half may be used provided all other requirements of the ordinance can be met. However, if an erosion control plan is required pursuant to 15NCAC, Chapter 4, the minimum lot area for single family dwellings is one (1) acre; all other land uses are subject to a maximum density standard of twelve (12%) percent impervious surface (built upon area).

<u>Lot Area</u>	Higher Density (than 12% built upon area) will be permitted if stormwater control systems utilizing wet detention ponds are installed, operated, and maintained which control the runoff from all built upon areas generated from one inch of rainfall. Specifications for detention ponds shall be established by the NC Division of Environmental Management.
<u>Yard Requirements</u>	Minimum yard requirements for residential structures shall be as established for the Rural District. Yard requirements for nonresidential structures are established in Article VI, Section 4.
<u>Building Height</u>	Same as Article V, Section 1.C.
<u>Off-Street Parking</u>	Off-Street parking, if applicable, shall be provided as required in Article VI, Section 3.

Section 4. Light Industrial District. The Industrial District is established as a district in which the principal use of land is for industries and certain other land use functions which can be operated in a relatively clean and quiet manner, and industries which are not obnoxious to adjacent residential or business districts. The regulations are designed to prohibit the use of land for heavy industry which should be properly segregated and to prohibit any other use which would substantially interfere with the development of industrial establishments in the district.

a. Permitted Uses

There are no permitted uses in the Industrial District.

b. Conditional Uses

All land uses are conditional uses and must comply with the Site Plan Review Standards and the requirements of Article VIII, Section 9, Conditional Use Permits.

c. Dimensional Requirements

Minimum requirements for lot area, yards, parking, and building height are as described for the Highway District or as established in Article VI.

Section 5. Accessory Uses.

A. Sections 1, 2, 3, and 4 of this article describe permitted and conditional uses for each district. Whenever an activity is conducted in conjunction with another principal use and the former use (i) constitutes only an incidental or insubstantial part of the total activity that takes place on a lot, or (ii) is commonly associated with the principal use and integrally related to it, then

the former use may be regarded as accessory to the principal use and may be carried on underneath the umbrella of the permit issued for the principal use. For example, a swimming pool/tennis court complex is customarily associated with and integrally related to a residential subdivision or multi-family development and would be regarded as accessory to such principal uses, even though such facilities, if developed apart from a residential development, would require a conditional use permit.

B. For purposes of interpreting Subsection A:

1. A use may be regarded as incidental or insubstantial if it is incidental or insubstantial in and of itself or in relation to the principal use,
2. To be “commonly associated” with a principal use it is not necessary for an accessory use to be connected with such principal use more times than not, but only that the association of such accessory use with such principal use takes place with sufficient frequency that there is common acceptance of their relatedness.

C. Without limiting the generality of Subsection A and B, the following activities, so long as they satisfy the general criteria set forth above, are specifically regarded as accessory to residential principal uses:

1. Offices or studios within an enclosed building and used by an occupant of a residence located on the same lot as such building to carry on administrative or artistic activities of a commercial nature, so long as such activities do not fall within the definition of a home occupations.
2. Hobbies or recreational activities of non-commercial nature.
3. The renting out of one or two rooms within a single-family residence (which one or two rooms do not themselves constitute a separate dwelling unit) to not more than two persons who are not part of the family that resides in the single-family dwelling.
4. Yard sales or garage sales, so long as such are not conducted on the same lot for more than three days (whether consecutive or not) during any 90-day period.

D. Without limiting the generality of Subsections A and B, the following activities shall not be regarded as accessory to a residential principal use and are prohibited in residential districts.

1. Storage outside of a substantially enclosed structure of any motor vehicle that is neither licensed nor operational.

2. Parking outside a substantially enclosed structure of more than four motor vehicles between the front building line of the principal building and the street on any lot used for single or two-family residences.

ARTICLE VI

SITE PLAN REVIEW

All non-residential uses are subject to the standards described in this section. Compliance with the standards shall be determined through a site plan review by the Zoning Official. Standards are as follows:

Section 1. Sign Regulations

Placement of signs is regulated by the Watauga County Sign Ordinance with the following exceptions:

- a. new off-premises signs are prohibited;
- b. the setbacks for new on-premises signs shall be located beyond the right-of-way of Highway 105 and 10 feet from side property lines; and
- c. pre-existing non-conforming on-premises signs shall be permitted to remain until the use of the property is changed or the occupancy of the use is changed. Signs must be brought into compliance with the ordinances at that time.
- d. pre-existing off-premise signs shall be permitted to remain in their present location, however once moved from that location, the off-premise sign shall be considered a new off-premise sign.
- e. off-premise signs shall not be re-established after damage or destruction by an act of nature in excess of sixty (60) percent of its replacement value at the time of the damage or destruction.

Section 2. Buffer Areas

Buffer areas shall be established in order to create the impression of spatial separation between adjacent land uses. The purpose of this separation is to lessen possible adverse effects of land uses upon each other and to provide within development planted/green areas so as to maintain the rural character of the community. Buffer requirements are as follows.

- a. Where a commercial or multi-family use is proposed adjacent to a single family residential use, side and rear yard setback of 30 feet shall be observed

for buildings, parking, or storage. This area is to be used as a buffer 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 as 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.

- b. Where a commercial or multi-family use is proposed adjacent to a commercial or multi-family use side and rear yard setback of 15 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer 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 for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet at maturity. In addition, permanent ground cover such as grasses shall be established.
- c. Wall, fences, earthen berms, or other natural features may be used in combination with or in lieu of planted buffers if approved as part of the conditional use permit. Considerations include but are not limited to:
 - (1) Any existing significant vegetation within the buffer(s) may be preserved and credited towards meeting the standard for the required buffer. Existing fences, berms, and/or walls within the buffer(s) may be used to fulfill the standards set forth for the buffer providing these elements are healthy and in a condition of good repair. Chain link fencing is not acceptable in meeting the performance criteria of this ordinance.
 - (2) Installation of supplemental vegetation and/or site features may be required at the time of Site Plan review, if existing vegetation and/or site features within the buffer do not meet or exceed the requirements of this ordinance.
- d. Open storage areas, exposed machinery and outdoor areas used for the storage and collection of rubbish must be visually screened from roads and surrounding land uses. Suitable types of screening include opaque wood fences and dense evergreen hedges of six (6) feet or more in height. Where evergreen hedges are proposed, a temporary fence should be built to provide screening until the evergreens are of sufficient height.

- e. The recipient of any zoning or conditional-use permit, or his successor, shall be responsible for maintaining all common areas, improvements, or facilities required by the 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.

Section 3. Parking Standards

All development shall be provided with adequate parking facilities to handle the expected number of automobiles for that site. Spaces shall be provided as follows; use classifications for buildings are the same as those definitions use in the N.C. Building Code.

- (a) Assembly, business, and mercantile buildings shall be provided with parking spaces as follows:
 - (1) one space per 300 square feet of floor space in buildings of under 11,000 square feet; and
 - (2) one space per 200 square feet of floor space in buildings 11,000 square feet and greater.
- (b) Factory and industrial buildings shall be provided with 1.5 spaces per three employees, computed on the total employment.
- (c) Institutional buildings shall be provided with one space per five person identified in the building's occupant load figures.
- (d) Residential buildings shall be provided with 1.5 spaces per bedroom.

Parking spaces shall be calculated as being 162 square feet each, broken down to 9 by 18 feet. Once the total required square footage has been determined as required by (a) through (d), developers shall be permitted to increase the numbers of spaces by downsizing some for use by smaller automobiles. Total space requirements of (a) through (d) shall, however, be met in any case. Paving is not required, unless required by Watauga County Ordinance to Govern Subdivisions and Multi-Unit Structures. 4" compacted crusher-run or DOT-approved ABC stone is adequate.

A. Loading/Unloading Space

Loading/unloading space for non-residential 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.

B. Location and Buffering of Parking

In order to preserve the rural environment, developers are encouraged to place parking and loading/unloading areas at the rear or side of buildings. (“Front” is defined as the face of the building which is paralleled to a public road or a county standard road as defined in the Watauga County Ordinance to Govern Subdivisions and Multi-Unit Structures. By this definition, buildings on multiple public road or county standard road frontage would have multiple “front yards”.) In any event, parking areas which are exposed to a public road or county standard road shall include a ten (10) foot buffer strip along the front. At a minimum, such strips shall be grassed and/or mulched and shall be planted with low growing trees, or shrubs no more than twenty (20) feet apart. Incentive to place parking areas to the side or rear of buildings is provided in the form of lessened front yard setback requirements. (See Article VI, Section 4)

Section 4. Yard Requirements – Highway and Industrial Districts

- A. Front Yard (side or rear parking) – 20 feet from edge of road right-of-way.
- B. Front Yard (front parking) – 40 feet from edge of right-of-way (includes buffer strip).
- C. Side and rear yards – 30 feet or 15 feet depending upon use of adjacent property (see buffer area requirements)

Section 5. Driveway Connections

Driveway access to Highway 105 shall be limited to two (2) per development; one (1) is preferred. Channellization will be required (unless waived by Watauga County) as part of driveway and parking lot design so that the driveway(s) can be specifically located. Use of the entire frontage as a single driveway connection is prohibited.

NC DOT “Policy on Street and Driveway Access to North Carolina Highways” requires County site plan approval prior to DOT review and approval of driveway connection applications. No building permit, however, shall be issued unless DOT has issued a driveway connection permit or has indicated in writing that a permit can be issued.

Section 6. Drainage, Erosion Control, Storm Water Management

- A. Natural Drainage. To the extent practicable, all development shall conform to the natural contours of the land and natural and pre-existing man-made drainage way shall remain undisturbed.
- B. Erosion Control. All developments which involve one-half (1/2) acre or more of grading (land-disturbing activity) shall comply with the requirements of the Watauga County Erosion Control Ordinance. All developments which involve less than one-half (1/2) acre of land-disturbing activity shall take adequate measures to prevent sediment from being washed off-site or into waterways during construction, and shall restore permanent vegetative ground cover within 120 days of the date the site is first disturbed. This 120 day period may be extended by Watauga County in the event of inclement weather.
- C. Storm Water Management. All developments shall be constructed and maintained so that adjacent properties are not reasonably burdened with surface waters as a result of such developments. More specifically:
 - 1. No development may be constructed or maintained so that such development unreasonably impedes the natural flow of water from higher adjacent properties across such development, thereby unreasonably causing substantial damage to such higher adjacent properties; and
 - 2. No development may be constructed or maintained so that surface waters from such development are unreasonably collected and channeled onto lower adjacent properties at such locations or at such volumes as to cause substantial damage to such lower adjacent properties.

Section 7. Stream Protection, Flood Plain Protection

- A. Stream Protection. A minimum vegetative buffer of 50 feet shall be maintained between the top of the banks of Watauga River and Boone Fork Creek and new built upon areas. A minimum vegetative buffer of 40 feet shall be maintained between the top of the banks of Valley Creek, Moody Mill Creek, Spice Bottom Creek and tributaries to the five (5) named streams and new built upon areas. New developments large enough to warrant an erosion control plan pursuant to the Watauga County Erosion Control Ordinance shall also maintain a 25 foot undisturbed area adjacent to the top of the banks of designated trout streams and their tributaries as required by the N.C. Sedimentation Pollution Control Act of 1973 as amended (all of the named stream are designated). The undisturbed area is not required for smaller developments. However erosion control measures approved by the

Department of Planning and Inspections shall be installed and maintained within the required buffer until permanent vegetation is established. The Zoning Official shall keep lists/map of stream classifications on file.

The buffers (and undisturbed areas, if applicable) may be penetrated by driveways/stream crossings, which are necessary to access property. Under those circumstances, the penetration and any land disturbing activity shall be kept to a minimum and approved erosion control measures shall be installed and maintained. The requirements for buffers or undisturbed areas does not preclude the construction, when necessary, of storm drainage facilities such as detention ponds.

Streams are perennial streams as depicted by a solid blue line on USGS 7 1/2 minute scale topographic sheets. Top of stream bank is the nearest point at the top of the natural stream channel which is the beginning point of an imaginary horizontal line that forms a 90 degree angle with an imaginary vertical line perpendicular to the stream at the low water line. (see diagram) Often, it appears that streams have multiple banks. In most cases, the top of the bank for purposes of this ordinance will be the bank closest to the water's edge.

Built-upon area means that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities (e.g. tennis courts), etc.

- B. Flood Plain Protection. In addition to the requirements of stream classifications, development adjacent to the Watauga River shall comply with the Watauga County Flood Damage Prevention Ordinance. Dredging or filling activity in or adjacent to the Watauga River, Boone Fork Creek, or other wetland areas potentially requires a Section 404 permit from the U.S. Army Corps of Engineers. The Zoning Official shall inform developers of this potential. It is the responsibility of the developer to contact the Corps of Engineers.

ARTICLE VII

AMENDMENTS

Section 1. Intent

For the purpose of establishing and maintaining sound, stable, and desirable development within the Foscoe-Grandfather Zoning Districts 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 Districts and then only as reasonably necessary to the promotion of the public health, safety or general welfare.

Section 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 Foscoe-Grandfather Community Council;
- d. Application by any property owner of his or her agent, a citizen or his or her agent.

Section 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 & Inspections.

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

1. A fully dimensioned map, at a scale if not less than 100 feet nor more than 20 feet to the inch, showing the land covered by the proposed amendment, only if the proposed amendment would require a change in the Map of the Foscoe-Grandfather Zoning Districts.
2. A legal description of such land, if applicable.
3. 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.
4. 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.
5. All other circumstances, factors and reasons which petitioner offers in support of the proposed amendment.

A statement analyzing the reasonableness of the proposed rezoning shall be prepared by the planning staff for each petition for small-scale rezoning prior to Planning Board consideration of the petition.

Section 4. Referral of Application

The Department of Planning & Inspections, upon receipt of the application to amend this Ordinance, shall refer the same to the Planning Board and the Foscoe-Grandfather Community Council 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 Foscoe-Grandfather Community Council makes its report, whichever first occurs.

In addition, prior to adopting any amendment (text or map) to the Rural/Residential District, the Board of Commissioners shall provide an opportunity for official comment on the proposal from the Town of Seven Devils.

Section 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.

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

The first class mail notice required under this section shall not be required if the zoning map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the county elects to use the expanded published notice provided for in this subsection. In this instance, a county may elect to either make the mailed notice provided for in this section or may as an alternative elect to publish notice of the hearings required by G.S. 153A-323, but provided that each of the advertisements shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of this section.

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

Section 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, Foscoe-Grandfather Community Council, and Seven Devils. 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.

Petition Resubmittal. If a rezoning request is denied by the Board of County Commissioners, the County shall not accept a rezoning petition similar to that denied for the same property or a portion of the property within one (1) year of the Board's action, except that the County may accept a new rezoning petition within the one (1) year period if it is determined that:

- a. There has been a significant change in the zoning district classification of an adjacent property;
- b. A new or updated land use plan which changes public policy regarding the property is adopted by the County;

- c. Public facilities such as roads, water lines, sewer lines, or other infrastructure are constructed or expanded to serve the property and enable proposed development to be accommodated; or
- d. There has been some other significant change, other than a change in ownership of the property, which might justify waving the one-year restriction on submitting a new petition.

Section 7. Fees

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

Section 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 VIII

BOARD OF ADJUSTMENT

Section 1. Establishment of Board

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.

Section 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 Zoning Official, or the Department of Planning & 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. Nothing in this Section shall be construed to authorize the Board to permit a use in the District where that use in not a permitted use.
- c. Hear and decide upon application for conditional use permits.

- 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.

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 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.

Application for variances, request for interpretations and appeal for review of decisions of the Department of Planning & 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 and 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.

Section 4. Quorum and Vote Required

A quorum of Board, necessary to conduct any business, 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.

A simple majority vote shall be necessary to conduct routine business of the Board.

Section 5. Application of the Variance Power

A variance may only be allowed by the Board in cases involving unnecessary hardships when competent, material, and substantial evidence in the record 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.

Section 6. Application of Interpretation Power

An appeal from an order, requirement, or decision of the Department of Planning & Inspection 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 Districts.

Section 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.

Section 8. Exceptions to Stay of Action

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

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

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

Section 9. Application of Conditional Use Power

- a. An application for a conditional use permit shall be submitted to the board of adjustment by filing a copy of the application with the Zoning Official.
- 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 according to the district regulations pertaining to uses, 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 II, Section 4, Nonconforming 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 conditional-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 council.
- 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. 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.

Section 11. Appeals of Board Actions

Every 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 Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice required in VIII 3, whichever is later.

ARTICLE IX

DEFINITIONS

Unless otherwise specifically provided, or unless clearly required by the context, the words and phrases defined in this section shall have the meaning indicated when used in this chapter.

1. Accessory Use. See Article V Section 4
2. Base Flood. The flood having a one percent chance of being equaled or exceeded in any given year. Also known as the 100-year flood.
3. Boarding House. A residential use consisting of at least one dwelling unit together with more than two rooms that are rented or are designed or intended to be rented but which rooms, individually or collectively, do not constitute separate dwelling units. A rooming house or boarding house is distinguished from a tourist home in that the former is designed to be occupied by longer-term residents (at least month-to-month tenants) as opposed to overnight or weekly guests.
4. Building. A structure designed to be used as a place of occupancy, storage or shelter.
5. Building, Accessory. A minor building that is located on the same lot as a principal building and that is used incidentally to a principal building or that houses an accessory use.
6. Building, Principal. The primary building on a lot or a building that house a principal use.
7. Built-Upon Area. Any portion of a development project that is covered by imperious or partially imperious cover including buildings, pavement, gravel, etc.
8. Certify. Whenever this chapter requires that some agency certify the existence of some fact or circumstance to the county, the county may require that such certification be made in any manner that provides reasonable assurance of the accuracy of the certification. By way of illustration, and without limiting the foregoing, the county may accept certification by telephone from some agency when the circumstances warrant it, or the county may require that the certification be in the form of a letter or other document.
9. Child Care Home. A home for not more than nine orphaned, abandoned, dependent, abused, or neglected children, together with not

more than two adults who supervise such children, all of whom live together as a single housekeeping unit.

10. Child Care Institution. An institutional facility housing more than nine orphaned, abandoned, dependent, abused, or neglected children.
11. Cluster Development. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes non-residential development as well as single-family residential subdivision and multi-family developments that do not involve the subdivision of land.
12. Combination Use. A use consisting of a combination on one lot of two or more principal uses. When two or more separately owned or separately operated enterprises occupy the same lot, and all such enterprises fall within the same principal use classification, this shall not constitute a combination use.
13. Conditional-Use Permit. A permit issued by the city council that authorizes the recipient to make use of property in accordance with the requirements of this chapter as well as any additional requirements imposed by the council.
14. Convenience Store. A one-story, retail store containing less than 2,000 square feet of gross floor area that is designed and stocked to sell primarily food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a “supermarket”). It is designed to attract and depends upon a large volume of stop-and-go traffic. Illustrative examples of convenience stores are those operated by the “Fast Fare”, “7-11” and “Pantry” chains.
15. County. The County of Watauga, N.C.
16. Day Care Center. Any childcare center arrangement that provides day care on a regular basis for more than four hours per day for more than five children of preschool age.
17. Developer. A person who is responsible for any undertaking that requires a zoning permit, conditional-use permit, or sign permit.
18. Development. That which is to be done pursuant to a zoning permit, conditional-use permit, or sign permit.
19. Dimensional Nonconformity. A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the

relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.

20. Dwelling Unit. An enclosure containing sleeping, kitchen, and bathroom facilities designed for and used or held ready for use as a permanent residence by one family.
21. Family. One or more person living together as a single housekeeping unit.
22. Farmer's Market. A retail establishment primarily engaged in the sale of fresh fruits, vegetables and similar perishable goods.
23. Flea Market. Buildings or open areas in which booths or sales areas are provided for rent by various unrelated individuals to sell a variety of merchandise. This does not include yards sales, rummage sales, or farmer's markets.
24. Floodplain. Any land area susceptible to be inundated by water from the base flood. As used in this ordinance, the term refers to that area designed as subject to flooding from the base flood (100-year flood) on the "Flood Boundary and Floodway Map" prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the planning department.
25. Floodway. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. As used in this chapter, the term refers to that area designated as a floodway on the "Flood Boundary and Floodway Map" prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the planning department.
26. Halfway House. A home for not more than nine person who have demonstrated a tendency toward alcoholism, drug abuse, mental illness, or antisocial or criminal conduct, together with not more than two person providing supervision and other services to such persons, the eleven of whom live together as a single housekeeping unit.
27. Handicapped or Inform Home. A residence within a single dwelling unit for at least six but not more than nine persons who are physically or mentally handicapped or inform, together with not more than two persons providing care or assistance to such person, all living together as a single housekeeping unit. Person residing in such homes,

including the aged and disabled, principally need residential care rather than medical treatment.

28. Home Occupation. An accessory use of a dwelling unit for gainful employment which:
- a) is clearly incidental and subordinate to the use of the dwelling unit;
 - b) is carried on within or from accessory buildings from the main dwelling unit and does not alter or change the exterior character or appearances of the dwelling;
 - c) is located in a residential district;
 - d) is created and operated as a sole proprietorship.
29. Impervious Surface. Any material that substantially reduces or prevents the infiltration of stormwater into previously undeveloped land.
30. Intermediate Care Home. A facility maintained for the purpose of providing accommodations for not more than seven occupants needing medical care and supervision at a lower level than that provided in a nursing care institution but a higher level than that provided in institutions for the handicapped or inform.
31. Intermediate Care Institution. A institutional facility maintained for the purpose of providing accommodations for more than seven occupants needing medical care and supervision at a lower level than that provided in a nursing care institution but at a higher level than that provided in institutions for the handicapped or inform.
32. Kennel. A commercial operation that: (i) provides food and shelter and care of animals for purposes not primarily related to medical care (a kennel may or may not be run by or associated with a veterinarian), or (ii) engages in the breeding of animals for sale.
33. Lot. A parcel of land whose boundaries have been established by some legal instrument such as a recorded deed or a recorded map and which is recognized as a separate legal entity for purposes of transfer of title.

If a public body or any authority with the power of eminent domain condemns, purchases, or otherwise obtains fee simple title to or lesser interest in a strip of land cutting across a parcel of land otherwise

characterized as a lot by this definition, or a private road is created across a parcel of land otherwise characterized as a lot by this definition, and the interest thus obtained or the road so created is such as effectively to prevent the use of this parcel as one lot, then the land on either side of this strip shall constitute a separate lot.

The permit-issuing authority and the owner of two or more contiguous lots may agree to regard the lots as one lot if necessary or convenient to comply with any of the requirements of this ordinance.

34. **Lot Area.** The total area circumscribed by the boundaries of a lot, except that: (i) when the legal instrument creating a lot shows the boundary of the lot extending into public street right-of-way, then the lot boundary for purposes of computing the lot area shall be street right-of-way line, or if the right-of-way line cannot be determined, a line running parallel to and 30 feet from the center of the traveled portion of the street, and (ii) in a residential district, when a private road that served more than three dwelling units is located along any lot boundary, then the lot boundary for purposes of computing the lot area shall be inside boundary of the traveled portion of that road.
35. **Manufactured Home.** A dwelling unit that (i) is not constructed in accordance with the standards set forth in the state and local building code applicable to site-built homes, and (ii) is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis, and (iii) exceeds 40 feet in length and eight feet in width.
36. **Manufactured Home Park.** The rental of any site or tract of land upon which three or more manufactured homes occupied for dwelling or sleeping purposes are located. Leases of a term longer than ten (10) years shall be constructed as sale of property. In determining the term of a proposed lease, periods that may add to the original term by options to renew or extend shall be included. Any sale of land within the manufactured home park shall comply with the Watauga County Ordinance to govern subdivision and multi-unit structures.
37. **Modular Home.** A dwelling unit constructed to accordance with the standards set forth in the county building code applicable to site-built homes and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on permanent foundation. Among other possibilities, a modular home may consist of two sections transported to the site in a manner similar to a mobile home (except that the modular home meets the county building code applicable to site built homes), or a series of

panels or room sections transported on a truck or erected or joined together on the site.

38. Nonconforming Lot. A lot existing at the effective date of this chapter (and not created for the purposes of evading the restrictions of this chapter) that does not meet the minimum area requirement of the district in which the lot is located.
39. Nonconforming Situation. A situation that occurs when, on the effective date of this chapter, any existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a non-conforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this chapter, or because land or buildings are used for purposes made unlawful by this chapter. Nonconforming signs shall not be regarded as nonconforming situations for purposes of Article II but shall be governed by the provisions of Article VI, Section 1.
40. Nonconforming Use. A nonconforming situation that occurs when property is used for a purpose or in a manner unlawful by the use regulations applicable to the district in which the property is located. (For example, a commercial office building in a residential district may be a nonconforming use). The term also refers to the activity that constitutes the use made of the property. (For example, all activity associated with operating a retail clothing store in a residentially zoned area constitutes a nonconforming use).
41. Nursing Car Home. A facility maintained for the purpose of providing skilled nursing care and medical supervision at a lower level than that available in a hospital to not more than nine persons.
42. Nursing Car Institution. An institution facility maintained for the purpose of providing skilled nursing care and medical supervision at a lower level than that available in a hospital to more than nine persons.
43. Parking Space. A portion of the vehicle accommodation area set aside for the parking of one vehicle.
44. Person. An individual, trustee, executor, other fiduciary, corporation, firm partnership, association, organization, or other entity acting as a unit.

45. Planned Unit Development (PUD). The planned unit development is a permitted use designed to provide for developments incorporating a single type or a variety of related uses which are planned and developed as a unit. Such development may consist of individual lots or common building sites. Common land must be an element of the plan related to affecting the long-term value of the entire development.
46. Public Water Supply System. Any water supply system furnishing potable water to 10 or more dwelling units or businesses or any combination thereof.
47. Residence, Duplex. A two-family residential use in which the dwellings units share a common wall (including without limitation the wall of an attached garage or porch) and in which each dwelling unit has living space on the ground floor and a separate, ground floor entrance.
48. Residence, Multi-Family. A residential use consisting of a building containing three or more dwelling units. For purposes of this definition, a building includes all dwelling units that are enclosed within that building or attached to it by a common floor or wall (even the wall of an attached garage or porch).
49. Residence, Single-Family Detached, One Dwelling Unit Per Lot. A residential use consisting of a single detached building containing one dwelling unit and located on a lot containing no other dwelling unit.
50. Residence, Two-Family. A residential use consisting of a building containing two dwelling units. If two dwellings units share a common wall, even the wall of an attached garage or porch, the dwelling units shall be considered to be located in one building.
51. Road. All private ways used to provide motor vehicle access to (i) two or more lots or (ii) two or more distinct areas or buildings in unsubdivided developments.
52. Rummage Sales. A sale by a non-profit organization where individual members bring personal property to be sold in order to raise funds for the organization.
53. Sign. Any device that (i) is sufficiently visible to persons not located on the lot where such device is located to accomplish either of the objectives set forth in subdivision (ii) of this definition; and (ii) is designed to attract the attention of such persons or to communicate information to them.

54. Sign, Freestanding. A sign that is attached to, erected on, or supported by some structure (such as a pole, mast, frame, or other structure) that is not itself an integral part of or attached to a building or other structure having a principal function other than the support of a sign. A sign that stands without supporting elements, such as a “sandwich sign,” is also a freestanding sign.
55. Sign, Nonconforming. A sign that, on the effective date of this ordinance, does not conform to one or more of the regulations set forth in this ordinance particularly Article VI.
56. Sign, Off-Premises. A sign that draws attention to or communicates information about a business, service, commodity, accommodation, attraction, or other activity that is conducted, sold, or offered at a location other than the premises on which the sign is located.
57. Sign Permit. A permit issued by the land-use administrator that authorizes the recipient to erect, move, enlarge, or substantially alter a sign.
58. Sign, Temporary. A sign that (i) is used in connection with a circumstance, situation, or event that is designed, intended or expected to take place or to be completed within a reasonably short or definite period after the erection of such sign, or (ii) is intended to remain on the location where it is erected or placed for a period of not more than 15 days. If a sign display area is permanent but the message displayed is subject to periodic changes, that sign shall not be regarded as temporary.
59. Special Events. Circuses, fairs, carnivals, festivals, or other types of special events that (i) run for longer than one day but not longer than two weeks, (ii) are intended to or likely to attract substantial crowds, and (iii) are unlike the customary or usual activities generally associated with the property where the special event is to be located.
60. Stable. A building in which horses or other livestock are kept for commercial use including boarding, hire, and sell.
61. Structure. Anything constructed or erected.
62. Subdivision. The division of a tract of land into two or more lots, building sites, or other division for the purpose of sale or building development (whether immediate or future) and including all divisions of land involving the dedication of a new street or a change in existing street; but the following shall not be included within this definition nor be subject to the regulations of this chapter applicable strictly to

subdivision: (i) the combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the minimum standards set forth in this chapter, (ii) the division of land into parcels greater than 10 acres where no street, right-of-way dedication is involved, (iii) the public acquisition by purchase of strips of land for widening or opening streets, or (iv) the division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the minimum standards set forth in this chapter.

63. Temporary Emergency, Construction, or Repair Residence. A residence (which may be a mobile home) that is: (i) located on the same lot as a residence made uninhabitable by fire, flood, or other natural disaster and occupied by the person displaced by such disaster, or (ii) located on the same lot as a residence that is under construction or undergoing substantial repairs or reconstruction and occupied by the person intending to live in such permanent residence when the work is completed, or (iii) located on a nonresidential construction site and occupied by persons having construction or security responsibilities over such construction site.
64. Tower. Any structure whose principal function is to support an antenna.
65. Tract. A lot (see definition (33)). The term tract is used interchangeably with the term lot, particularly in the context of subdivisions, where one “tract” is subdivided into several “lots.”
66. Travel Trailer. A structure that (i) is intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle) and (ii) is designed for temporary use as sleeping quarters but that does not satisfy one or more of the definitional criteria of a mobile home.
67. Use. The activity or function that actually takes place or is intended to take place on a lot.
68. Utility Facilities. Any above-ground structures or facilities (other than buildings, unless such buildings are used as storage incidental to operation of such structures or facilities) owned by a governmental entity, a nonprofit organization, a corporation, or any entity defined as a public utility for any purpose by the appropriate provision of state law and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, solid

waste, electricity, gas, oil or electronic signals. Excepted from this definition are utility lines and supporting structures.

- 69. Variance. A grant of permission by the board of adjustment that authorizes the recipient to do that which, according to the strict letter of this chapter, he could not otherwise legally do.
- 70. Wholesale Sales. On-premises sales of goods primarily to customers engaged in the business of reselling the goods.
- 71. Wooded Area. An area if contiguous wooded vegetation where trees are at a density of at least one six-inch or greater caliper tree per 325 square feet of land and where the branches and leaves form a contiguous canopy.
- 72. Yard Sales. An occasional sale (no more than two (2) in a twelve (12) month period) held for the purpose of disposing of personal property. The term yard sale shall include attic sales, garage sales and patio sales.
- 73. Yard Setback. A required open space on a lot adjoining a lot line, containing only landscaping or other uses provided by this zoning ordinance.

(front) A yard extending along the full width of a front line between side lot lines and from the front line to the front building line in depth, and the face of the building which is paralleled to a public road.

(rear) A yard extending across the full width of the lot and lying between the rear lot line and the nearest line of the building.

(side) A yard lying between the side line of the lot and nearest line of the building and extending from the front yard to the rear yard, or in the absence of either of such front or rear yards, to the front or rear lot lines.

PUBLIC OR COUNTY STANDARDS ROAD				
Lot 1	Lot 2		Lot 3	Lot 4
	Front yard setback			
	Side Yard Set-back	Single-family dwelling	Side Yard Set-Back	
	Rear yard setback			

74. Zoning Permit. A permit issued by the zoning officer that authorizes the recipient to make use of property in accordance with the requirements of this ordinance.

ARTICLE X

VESTED RIGHTS

Section 1. Purpose. The purpose of this article is to implement the provision 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.

Section 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 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; 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 that type and intensity of use for specified parcel or parcels of 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.

Section 3. Establishment of Zoning Vested Ridge.

- (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 subsections (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.

Section 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 established a zoning vested right under G.S. 153A-344.1 Unless terminated at an earlier date, the zoning vested right shall be valid until (date).”
- (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.

Section 5. Duration.

- (a) A zoning right that has been vested as 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 modifications 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.

Section 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 finding by the Board of Commissioner, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, in 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 Commissioners, by ordinance after notice and a hearing, that the land owner or his representative intentionally supplies 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 the plan, by ordinance after notice and a hearing.

Section 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.

Section 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.

Section 9. Effective Date.

This article shall be effective November 19, 1991 and shall apply to site specific development plans approved on or after November 19, 1991.